

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 50 and 380

(Docket No. RM06-12-000; Order No. 689)

Regulations for Filing Applications for Permits to Site
Interstate Electric Transmission Facilities

(Issued November 16, 2006)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule

SUMMARY: The Federal Energy Regulatory Commission (Commission) is implementing new regulations in accordance with section 1221 of the Energy Policy Act of 2005 to establish filing requirements and procedures for entities seeking to construct electric transmission facilities. The regulations will coordinate the processing of Federal authorizations and environmental review of electric transmission facilities in national interest transmission corridors.

EFFECTIVE DATE: This rule will become effective **[Insert_Date 60 days after publication in the FEDERAL REGISTER]**

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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Interstate Electric Transmission Facilities

ORDER NO. 689

FINAL RULE

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Regulations for Filing Applications for Permits to Site Docket No. RM06-12-000
Interstate Electric Transmission Facilities

ORDER NO. 689

FINAL RULE

(Issued November 16, 2006)

1. On June 16, 2006, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.¹ In the NOPR, the Commission proposed regulations in accordance with section 1221 of the Energy Policy Act of 2005 (EPAAct 2005)² to implement filing requirements and procedures for entities seeking permits to construct or modify electric transmission facilities under the circumstances set forth in that section. This Final Rule considers comments submitted in response to the NOPR, and as a result, makes various modifications to the regulatory text described in the NOPR. Following the issuance of this rule, we will convene regional conferences to assist stakeholders in its implementation.

¹ 71 FR 36258 (June 26, 2006); FERC Stats. & Regs. ¶ 32,605 (2006).

² Pub. L. No. 109-58, 119 Stat. 594 (2005).

I. Background

2. On August 8, 2005, EPOA 2005 became law. Section 1221 of EPOA 2005 adds a new section 216 to the Federal Power Act (FPA), providing for Federal siting of electric transmission facilities under certain circumstances.

3. New FPA section 216 requires that the Secretary of the Department of Energy (DOE or Secretary) identify transmission constraints. It mandates that the Secretary conduct a study of electric transmission congestion within one year of enactment and every three years thereafter, and that the Secretary then issue a report. The Secretary is further empowered to designate certain constrained areas as national interest electric transmission corridors (National Corridors).

4. FPA section 216(b) provides that the Commission may issue permits to construct or modify electric transmission facilities in a National Corridor under certain circumstances. The Commission has the authority to issue permits to construct or modify electric transmission facilities if it finds that: (1) a State in which such facilities are located does not have the authority to approve the siting of the facilities or to consider the interstate benefits expected to be achieved by the construction or modification of the facilities; (2) the applicant is a transmitting utility but does not qualify to apply for siting approval in the State because the applicant does not serve end-use customers in the State; or (3) the State commission or entity with siting authority withholds approval of the facilities for more than one year after an application is filed or one year after the

designation of the relevant national interest electric transmission 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.³

5. Additionally, under FPA sections 216 (b)(2) through (6), before issuing a permit the Commission must find that the proposed facility: (1) will be used for the transmission of electric energy in interstate commerce; (2) is consistent with the public interest; (3) will significantly reduce transmission congestion in interstate commerce and protect or benefit consumers; (4) is 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.

6. New FPA section 216(h)(2) designates DOE as lead agency to coordinate all Federal authorizations needed to construct proposed electric transmission facilities in National Corridors. Under FPA section 216(h)(4)(A), to ensure timely efficient reviews and permit decisions, DOE is required to establish prompt and binding intermediate milestones and ultimate deadlines for all Federal reviews and authorizations required for

³ Under FPA section 216(i)(4), the Commission may not issue a permit for facilities within a State that is a party to an interstate compact establishing a regional transmission siting agency unless the members of the compact are in disagreement and the Secretary of the Department of Energy makes certain findings.

a proposed electric transmission facility.⁴ Section 216(h)(5)(A) of the FPA requires that DOE as lead agency, in consultation with the other affected agencies, prepare a single environmental review document that would be used as the basis for all decisions for the proposed projects under Federal law.

7. On May 16, 2006, the Secretary delegated paragraphs (2), (3), (4)(A)–(B), and (5) of FPA section 216(h) to the Commission as they apply to proposed facilities in designated National Corridors for which an application for authority to construct has been submitted to the Commission.⁵ Specifically, the Secretary delegated to the Commission DOE’s lead agency responsibilities for the purpose of coordinating all applicable Federal authorizations and related environmental review and preparing a single environmental review document for facilities falling within the Commission’s siting jurisdiction. With respect to such projects, the Commission will establish prompt and binding intermediate milestones and ultimate deadlines for the review, and ensure that all Federal permits are issued, and reviews are completed, within a year or as soon as practicable thereafter.

8. On August 8, 2006, DOE issued its National Electric Transmission Congestion Study that examined transmission congestion and constraints and identified affected

⁴ 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, the applicant or any State in which the facility would be located may file an appeal with the President.

⁵ Department of Energy Delegation Order No. 00-004.00A.

transmission paths in many areas of the nation.⁶ DOE states that it expects the study to open a dialogue with stakeholders in areas of the Nation where congestion is a matter of concern, focusing on ways in which these problems might be alleviated. DOE states that where appropriate in relation to the congestion areas, it may designate National Corridors.

9. Also on August 8, 2006, several Federal agencies including DOE and the Commission entered into a Memorandum of Understanding on Early Coordination of Federal Authorization and Related Environmental Reviews Required in Order to Site Electric Transmission Facilities (MOU).⁷ The purpose of the MOU is to establish a framework for early cooperation and participation that will enhance coordination of all applicable land use authorizations, related environmental, cultural, and historic preservation reviews, and any other approvals that may be required under Federal law in order to site an electric transmission facility.

⁶ Department of Energy, National Electric Transmission Congestion Study, Executive Summary (2006), http://www.oe.energy.gov/energy_policy/epa_sec1221.htm#Timeline (follow “Congestion Study Executive Summary” hyperlink).

⁷ The other agencies include the Department of Defense, the Department of Agriculture, the Department of the Interior, the Department of Commerce, the Environmental Protection Agency, the Council on Environmental Quality, and the Advisory Council on Historic Preservation.

10. FPA section 216(c)(2) requires that the Commission 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. The Commission is implementing those regulations in a new Part 50 of existing subchapter B of its regulations.

II. Discussion

A. National Interest Transmission Corridors

11. As stated, on August 8, 2006, DOE issued its National Electric Transmission Congestion Study and stated that where appropriate in relation to the congestion areas, it may designate National Corridors. Once DOE designates a National Corridor, the Commission has the authority under FPA section 216(b) to issue permits to construct or modify electric transmission facilities in such a corridor under certain circumstances.

12. The Western Interstate Energy Board and Committee on Regional Electric Power Cooperation (Western Energy Board) and Western Governor's Association (Western Governors) request that the Commission delay issuing the Final Rule until DOE acts on establishing National Corridors. Section 216(c)(2) of the FPA requires that the Commission issue rules specifying the form of the application, the information to be contained in the application, and the manner of service and notice of the permit application on interested persons. While the Commission has no authority to issue a

permit unless a facility is in a National Corridor, this does not affect the Commission's ability to put in place the filing requirements that will apply once National Corridors are designated. The Commission, therefore, declines to delay issuance of the Final Rule. The Commission believes that prompt issuance of the Final Rule, coupled with regional conferences to discuss its implementation, is in the public interest and provides timely notice to stakeholders of the procedures that will apply to applications submitted under FPA section 216.

13. American Electric Power Service Corporation (AEP) requests that the Commission define what constitutes a National Corridor and whether the designation is a permanent one. Massachusetts Energy and Facilities Siting Board (Massachusetts Energy Board) requests that the Commission define the ends, geographic dimensions, and specified boundaries for a National Corridor. U.S. Department of the Interior (DOI) also requests clarification on what constitutes a National Corridor. The Commission declines to make such rulings. DOE, not the Commission, is responsible for designating and defining the National Corridors under EAct 2005. Thus, it would be inappropriate for the Commission to establish an independent definition in the Final Rule or opine on whether a corridor designation is a permanent one.

B. Permit Findings

1. Commission Jurisdiction under 216(b)(1)

14. Under FPA section 216(b)(1), the Commission has the authority to issue permits to construct or modify electric transmission facilities if: (A) a State in which the transmission facilities are to be constructed or modified does not have the authority to- (i) approve the siting of the facilities; or (ii) consider the interstate benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State; (B) the applicant for a permit is a transmitting utility under this Act but does not qualify to apply for a permit or siting approval for the proposed project in a State because the applicant does not serve end-use customers in the State; or (C) a State commission or other entity that has authority to approve the siting of the facilities has- (i) withheld approval for more than 1 year after the filing of an application or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later; or (ii) conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible.

15. Numerous commenters request that the Commission specifically address what it will require of applicants to establish the basis and supporting rationale for the

Commission's claiming jurisdiction over proposed electric transmission facilities.⁸ Specifically, they request that the Commission clarify how it intends to determine when the clock starts and stops for the one-year time period for State action on siting requests under FPA section 216(b)(1)(C). They also request that the Commission clarify under what circumstances it will determine that a State has withheld approval and what conditions in a State authorization the Commission will consider sufficient to trigger Commission jurisdiction. The commenters also request that the Commission generally explain how, and when, it will make the determination that it indeed has jurisdiction over a proposed project.

a. One Year Clock/Pre-filing

16. Many commenters request that the Commission specifically address when the one-year period for State processing of an application will commence. They state that the Commission should specify that the one-year clock will not start running until the State determines that the application submitted to it is final and in compliance with the State's

⁸ American Public Power Association (APPA), American Transmission Co. (American Transmission), California Resources Agency (CA Resources), Edison Electric Institute (EEI), Kentucky Public Service Commission (Kentucky PSC), New York Department of Public Service (DPS), New York State Senator Wright (Senator Wright), Southern Company Services (Southern Company), Southern California Edison Co. (SoCal Edison), Washington Energy Facility Site Evaluation Council (Washington Council), Western Energy Board, Western Governors, and the Wilderness Society (Wilderness).

filing requirements.⁹ Several commenters contend that the States should have the ability to re-start the one-year review period if the applicant significantly modifies or makes substantive changes to its application.¹⁰ The Wilderness Society (Wilderness) states that the Commission should require that the applicant prove that it made a good faith effort to comply with State siting and permitting requirements. The Western Energy Board requests that the Commission clarify that an applicant who has not obtained the required Federal permit findings in support of a State application has not filed a complete State application. Iowa Board states that one-year time period should not include periods of appellate review.

17. Several commenters also request that the Commission require an applicant demonstrate how its proposed application has met the statutory requirements for

⁹ Allegheny Power (Allegheny), California Public Utilities Commission (California PUC), Iowa Utilities Board (Iowa Board), Massachusetts Energy Board, National Association of Regulatory Utility Commissioners (NARUC), Pennsylvania Public Utilities Commission (Pennsylvania PUC), Pepco Holdings, Potomac Electric Power Co., Delmarva Power & Light Co., and Atlantic City Electric Co. (PHI Companies), San Diego Gas & Electric (SDG&E), Western Energy Board, Public Service Commission of Wisconsin (Wisconsin PSC), and Washington Council.

¹⁰ Iowa Board, NARUC, and Wisconsin PSC.

Commission jurisdiction prior to initiating the pre-filing process.¹¹ Others request that the Commission begin the pre-filing process while the State process is ongoing.¹²

18. Communities Against Regional Interconnect (Communities) contend that permitting the pre-filing process to be initiated simultaneous with the ongoing State process represents nothing more than the Commission's desire to "pounce" at the moment its jurisdiction is triggered. Communities, CA Resources, and New York DPS are concerned that simultaneous filings could result in an unwarranted and massive expenditure of time and resources, if it turns out the Commission lacks jurisdiction to consider the application. Iowa Board contends that simultaneous filing deprives States of their authority and conflicts with the purpose of the law. Senator Wright and NARUC note that allowing the pre-filing process to begin at such an early stage prevents the Commission from fully considering the information brought forth during the State siting process.

19. The Commission appreciates the concerns of the States regarding the potential for overlap in State and Commission siting processes. However, the language of FPA section 216 provides for this potential overlap by allowing the Commission to issue a

¹¹ CA Resources, Communities, Iowa Board, NARUC, New York PSC, Senator Wright, SoCal Edison, Washington Council, and Western Energy Board.

¹² APPA, AEP, Allegheny, Southern Companies, National Grid USA (National Grid), SDG&E, National Rural Electric Cooperative Association (NRECA), and Virginia Electric and Power Co. (Virginia Electric).

construction permit one year after the State siting process has begun and requiring an expeditious pre-application mechanism for all permit decisions under Federal law. Thus, the Commission pre-filing process can occur at the same time as parallel State proceedings.¹³ To ensure that needed infrastructure is built, Congress therefore adopted a statutory scheme that permits parallel proceedings.

20. While we believe the statute clearly permits parallel Commission-State processes, after taking into account the comments of State agencies and other stakeholders, we do not adopt the approach proposed in the NOPR. Rather, we adopt an approach that is more fully respectful of State jurisdiction.

21. Although some overlap in State and Federal proceedings is inevitable, as was contemplated by FPA section 216, we believe 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. Therefore, we find that, in cases where our jurisdiction rests on FPA section 216(b)(1)(C),¹⁴ the pre-filing process should not commence until one year after the relevant State applications have been filed. This

¹³ The Commission's pre-filing process is discussed in section II.D. of this Final Rule.

¹⁴ In all other instances (*i.e.*, where the state does not have jurisdiction to act or otherwise to consider interstate benefits, or the applicant does not qualify to apply for a permit with the State because it does not serve end use customers in the State), the pre-filing process may be commenced at any time.

will give the States one full year to process an application without any intervening Federal proceedings, including both the pre-filing and application processes. Once that year is complete, an applicant may seek to commence our pre-filing process. Thereafter, once the pre-filing process is complete, the applicant may submit its application for a construction permit. We believe this approach most adequately addresses State concerns. If we determine in the future, however, that the lack of a Commission pre-filing process prior to the end of the one year is delaying projects or otherwise not in the public interest, we will reconsider this issue.

22. The States also express concern that the one-year time period can be abused. For example, an applicant might not provide complete information to the States in the hopes of frustrating their ability to act within one year and, hence, invoking the Commission's jurisdiction. The Commission believes such instances should be rare. We also wish to make clear that we will not countenance such behavior. The Commission expects all potential applicants under FPA section 216 to act in good faith as it relates to State jurisdiction. Although the Commission may exercise jurisdiction in all instances where a State has withheld approval for more than one year, the Commission, in determining whether to do so, will weigh heavily clear evidence that an applicant has abused the State process.

23. Under the approach adopted herein, once the one-year time period has elapsed the applicant may commence pre-filing. At the pre-filing consultation required under

§ 50.5(b) of the Commission's regulations, the applicant will need to tell Commission staff the date that it filed its application and the status of that application. As part of the pre-filing consultation, the Director of the Office of Energy Projects (OEP) will review the applicant's progress at the State proceeding. After the initial consultation process, if the Director of OEP determines that there is sufficient reason to commence pre-filing, a notice will be issued under § 50.5(d) of the regulations. To the extent the State proceeding is still ongoing, the Commission will host a scoping meeting or technical conference to work with the applicant and the State agencies to discuss the need to coordinate, among other things, simultaneous environmental reviews. We believe that such coordination is appropriate because, in some instances, the State may be able to complete its action while our pre-filing process is ongoing, possibly allowing us to terminate any proceedings under FPA section 216.

b. Withholding/Conditioning Approval

24. Numerous commenters request that the Commission define the criteria it would use to determine that a State has withheld approval or conditioned its approval so as to render a project not economically feasible, triggering Commission jurisdiction.¹⁵ The Western Energy Board and California PUC maintain that a State should not be deemed to

¹⁵ Department of Interior, Iowa Utility Board, Massachusetts Energy Board, National Parks, National Regulatory Commissioners, Pennsylvania PUC, PJM, Washington Council, Wisconsin PSC, Western Energy Board,

have withheld or unreasonably conditioned approval if it fails to act within one year because a project has not received Federal agency approvals or because of delays related to “another provision of Federal law.” California PUC points out that FPA § 216(h)(4)(B) allows the Commission to extend its process beyond a year for those reasons.

25. The Iowa Board and Senator Wright state that the Commission should clarify that a State’s timely and lawful denial of a transmission project should not give rise to Commission jurisdiction. The Iowa Board also contends that any other conclusion would allow an applicant to sidestep an adverse State ruling by subsequently requesting Federal jurisdiction. The Wisconsin PSC asks that the Commission clarify that State denial for failure to meet proper State requirements does not trigger the withheld approval provision. It claims that this would be a situation where a State agency acted properly and is not guilty of regulatory failure. Communities state that the Commission should not have jurisdiction where the State denies siting approval for valid reasons under State law, such as the protection of environmental resources, the health and safety of its citizens, or if better alternatives are identified through the process.

26. FPA section 216(b)(1)(C) provides jurisdiction to the Commission whenever a State has "withheld approval" for more than one year. The statute does not explicitly define the full range of State actions that are deemed to be withholding approval. Nonetheless, to promote regulatory certainty, we believe it is our responsibility to

interpret the statutory language in this proceeding and to give all parties notice of such interpretation. To this end, we believe that a reasonable interpretation of the language in the context of the legislation supports a finding that withholding approval includes denial of an application.

27. Support for this interpretation is found in comparing the language added by EPAAct 2005 as new FPA section 216(b)(1)(C)(i) to that of new FPA section 203(a)(5), also added by EPAAct 2005. There, in requiring that the Commission grant or deny applications for approval of certain merger transactions within 180 days after the application is filed, the statute specifies the consequences “[i]f the Commission does not act.” The Commission has an obligation to construe a statute in such a manner as to give every word some operative effect.¹⁶ Interpreting the phrase “withhold approval” to mean “does not act” fails to recognize Congress’ use of different words to express its intent.

28. Further support for this interpretation can be found in the fact that in addition to giving the Commission jurisdiction to site transmission facilities whenever a State has “withheld approval” for more than a year, FPA section 216(b)(1)(C) also gives the Commission jurisdiction to act in instances where a State has approved construction, but “conditioned its approval” in such a manner that the proposed construction or modification is not economically feasible. Since Congress has provided the Commission with the authority to intervene in circumstances where a State has issued an authorization

¹⁶ Cooper Industries, Inc. v. Aviall Services, Inc., 543 U.S. 157, 167 (2004).

which will essentially prevent a project from going forward, it would not be reasonable to interpret the statute in such a manner that would leave the Commission without authority to intervene in instances where a State has expressly denied an application.

29. Moreover, legislative history lends support to this interpretation of the statute. Congress devoted substantial time to consideration of energy legislation in the years immediately prior to the enactment of EAct 2005. It is noteworthy that transmission siting language first appeared in legislation considered in the House of Representatives in 2003. That measure (H.R. 6) allowed the Commission to exercise jurisdiction where a State entity with transmission siting authority “has withheld approval, conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce and is otherwise not economically feasible, or delayed final approval for more than one year after the filing of an application seeking approval”¹⁷ In addition, the report language accompanying the above legislative text states, “The section provides that for such lines, persons may obtain a permit from FERC and exercise eminent domain if, after one year, a State is unable or refuses to site the line.”¹⁸ The fact that this precursor to the transmission siting provision of EAct 2005 distinguished “withholding approval” from “delaying final

¹⁷ H.R. 6, 108th Cong. §16012 (2003).

¹⁸ H.R. Rep No. 108-65 (April 6, 2003)(emphasis added).

approval for more than one year” and was interpreted to include a State “refusing to site a line” supports the conclusion that “withholding approval” was intended to mean something beyond a failure to act.

30. Finally, Section 216(b)(1)(C)(i) allows the Commission to exercise jurisdiction where a State entity with siting authority has "withheld approval for more than 1 year after the filing of an application seeking approval pursuant to applicable law" If an applicant seeks State siting approval pursuant to applicable law, and the State does not grant the application within one year, the approval is withheld, regardless of whether the State takes a specific action denying it. Indeed, the term "withhold" in this context means to refrain from granting approval, and, conversely, the term "deny" is synonymous with "withhold." Webster's Third New International dictionary defines "withhold" as "... to desist or refrain from granting, giving, or allowing" The same dictionary defines "deny" as ". . . to refuse to grant: WITHHOLD" [caps in original]. "Denial," similarly, is defined as "refusal to grant . . . : rejection of something requested." Furthermore, Roget's International Thesaurus 4th Ed., Section 776 ("Refusal") at paragraph 776.4 lists "deny, withhold, hold back . . ." as synonyms. Thus, there is no textual or lexical basis for saying that a formal denial does not entail refraining to grant or allow (i.e. to withhold). To say that an official denial does not count as a withholding is to say that “to deny” means something other than "to refrain from granting," which would not be a reasonable interpretation.

31. Therefore, the Commission finds that when a State fails to act or rejects an application, it has withheld approval and the proposed facility would be subject to the Commission's jurisdiction. However, the fact that we possess jurisdiction does not mean that it will be exercised in all cases. Rather, we retain the discretion, in appropriate circumstances, to allow State processes to be completed beyond the one-year period provided in the statute. Indeed, under the approach describe above, the States will, in many cases, have more than two years to complete their action, and thereby avoid issuance of a construction permit by this Commission, because our pre-filing and construction permit processes typically take more than one year to complete (which is in addition to the one year provided to State authorities).

32. We also clarify that mere consideration of an application by the Commission does not equate to a jurisdictional determination or Commission approval of the proposed project. Once an application is filed for consideration by the Commission, anyone who questions the Commission's jurisdiction over the proposed project, the timing of the exercise of that jurisdiction, or the merits of the proposal can raise those matters in its intervention or protest. The Commission will make a jurisdictional determination and address comments and protests in a subsequent order issued on the merits of the proposed project.

33. Allegheny requests that the Commission address whether the following would constitute withholding approval: (1) a State cannot make a decision in one year due to

State statutes or rules; (2) the State has declined to establish a procedural schedule for reaching a decision within a year; (3) a State commission, after an elapse of one year, has not acted on an application; and (4) approval is conditioned in an unacceptable manner, but does not meet the significantly reduce transmission congestion or not economically feasible test. Wilderness states that the Commission should adopt detailed standards defining what constitutes an economically infeasible project or restrictions that prevent a proposed project from significantly reducing congestion. Communities argue that Commission jurisdiction should not be triggered simply because mitigation measures might increase the costs of the project. DOI also encourages the Commission to look closely at the reason that certain conditions were imposed on a project.

34. The Commission believes that these issues cannot be resolved adequately on a generic basis in this rule. Rather, it is important to consider all relevant factors presented on a case-by-case basis. The Commission will, therefore, not limit its ability to review an application on a case-by-case basis by establishing specific criteria that it will consider in determining if its jurisdiction had properly been invoked under FPA section 216(b)(1).

c. Other Jurisdictional Issues

35. PJM Interconnection (PJM) requests that the Commission address the Commission's jurisdiction over facilities that span multiple States where one State may have approved the facilities and another does not. While the Commission's jurisdiction may, in these circumstances, only attach to the portion of the facility that would qualify

under FPA section 216(b)(1), under the National Environmental Policy Act of 1969 (NEPA), the Commission would have to analyze the impact of the entire project. The Commission may, however, adopt State analyses where possible. Additionally, to make its determination under FPA sections 216(b)(2) through (6) the Commission would have to review the operation of the facility as a whole.

36. PHI Companies request that the Commission clarify that where a State does not have the authority to grant eminent domain rights for transmission facilities, that constitutes the State not having authority to approve the siting of facilities, thus giving a project sponsor immediate access to the Commission's jurisdiction. While State law may not authorize the taking of property by eminent domain, if it still has laws that address the siting of electric transmission facilities, it appears that the Commission's jurisdiction will not attach unless the State fails to act or denies an application as required by FPA section 216(b)(1)(C). We will, however, consider such issues if, and when, they arise.

2. Other Findings under 216(b)(2) through (6)

37. Under FPA sections 216 (b)(2) through (6), the Commission must find that the proposed facility: (1) will be used for the transmission of electric energy in interstate commerce; (2) is consistent with the public interest; (3) will significantly reduce transmission congestion in interstate commerce and protect or benefit consumers; (4) is 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.

38. NARUC asserts that the final rule needs to state more clearly how the Commission will implement all five of the above criteria. Pacific Gas and Electric Company (PG&E) requests that the Commission clarify how it intends to measure and analyze sufficient showings related to consistency with the public interest and national policy. DOI and Laura and John Reinhardt (Reinhardts) request that the Commission define the criteria necessary to establish a basis for the public interest determination. Massachusetts Energy Board states the Commission should define “consistent with the public interest” to include that there is no superior approach to the identified transmission project; there is no superior alternative to the proposed route; and all feasible mitigation of environmental impacts and any adverse reliability impacts will be undertaken.

39. Wisconsin PSC states the Commission should examine a variety of factors, including cost-effectiveness, safety, engineering, project alternatives, individual hardships, reliability, competitive impacts, and environmental impact to judge whether a project is in the public interest. PJM believes the Commission should specifically look at adding a reliability requirement and a market efficiency analysis. NARUC requests that the Commission consider the impact of the project on host States and any possible mitigation, and also require that harmful financial impacts of the project are mitigated through an applicable cost allocation methodology within the Commission’s jurisdiction.

40. PSEG Companies contend that the Commission should define the term public interest to consider the energy and environmental policies of the States where the transmitted energy will provide power. It states that “significant” should be defined as it applies to the reduction of congestion and that “sound national energy policy” should be clarified to consider that national security concerns will be taken into consideration. Finally, PSEG Companies state that the criteria for approval should be on a cost-benefit basis and an applicant should specify whether the project is being built for reliability or for economic reasons because that could lead to a different evaluation. Wilderness asserts that the Commission’s public interest determination should consider the benefits of electric transmission, the project’s environmental impacts, and alternatives with less environmental impacts. Progress Energy (Progress) cautions the Commission to be mindful that a policy of maximum use of existing towers and structures should be conditioned upon maintaining or improving the reliability of the transmission system.

41. While commenters have raised a number of valid public interest considerations, the Commission cannot adopt an exclusive list of factors or construct a bright-line test to determine whether a project meets all the statutory criteria. It is difficult to construct helpful bright line standards or tests for this area. Bright line tests are unlikely to be flexible enough to resolve specific cases and to allow the Commission to take into account the different interests that must be considered. In reviewing a proposed project, the Commission will consider all relevant factors presented on a case-by-case basis and

balance the public benefits against the potential adverse consequences. The Commission will conduct an independent environmental analysis of the project and determine if there is no significant impact as required by NEPA. It will look at alternatives, including, as appropriate, alternatives other than transmission lines, and consider whether the proposed facilities would maximize the use of existing transmission facilities. It will review the alternatives for their respective impacts on the environment and will determine mitigation measures to lessen the adverse impacts. The Commission will review the proposed project and determine if it reduces the transmission congestion identified in DOE's study and if it will protect or benefit consumers. It will investigate and determine the impact the proposed facility will have on the existing transmission grid and the reliability of the system.

42. The Commission will also consider the adverse effects the proposed facilities will have on landowners and local communities. The Commission will evaluate the entire record of the proceeding, and after due consideration of the issues raised, determine if the proposed project is consistent with Congress' goals and objectives in enacting FPA section 216, while avoiding unnecessary disruptions to the environment and the unneeded exercise of eminent domain. The Commission's review of a proposed project will be a flexible balancing process during which it will weigh the factors presented in a particular application. It will impose appropriate conditions necessary to avoid adverse economic, competitive, environmental or other effects on the relevant interests from the construction

of a new project, and will approve the project only where the public benefits to be achieved from the project outweigh the adverse effects.

43. PG&E states the Commission should rebuttably presume a need for a project subject to the independent oversight of an approved independent system operator (ISO) or regional transmission organization (RTO) without a direct economic interest in the application process. It contends that this will maximize efficiency as participants must already make showings of local or regional need to gain approval from an ISO or RTO. PSEG Companies encourages the Commission to incorporate the results of the RTO process into its proceeding. APPA asserts that if a project results from an open and collaborative regional planning process designed to meet the transmission needs of load-serving entities (LSE) within the national interest electric transmission corridors, or a consortium with broad LSE ownership/participation then there should be a presumption of public interest. Similarly, NRECA contends that the Commission cannot reasonably make the FPA section 216(b)(2) through (6) findings unless the proposed expansion or modification arose from a truly open and inclusive joint transmission planning process. It requests that the Commission require an applicant to complete a joint planning process before beginning the pre-filing process.

44. The Commission agrees that the determinations of an independent entity, such as an RTO, should be given due weight in our assessment of whether a particular facility is needed to protect or benefit customers. We will, therefore, consider any such

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

C. Project Participation

45. Section 216(d) of the FPA requires that the Commission afford each State in which the transmission facility covered by the permit application is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons, a reasonable opportunity to present their views and recommendations with respect to the need for and impact of a facility covered by the permit application. Additionally, under FPA section 216(h)(3) and its delegated authority, the Commission needs to coordinate the Federal authorization and review process with any Federal agencies, Indian tribes, multistate entities, and State agencies that are responsible for conducting separate permitting and environmental reviews of the facilities.

46. Under the Commission's review process, any interested entity or individual will have multiple opportunities to participate and express its views on the proposed project.¹⁹ Under § 50.4 of the Commission's regulations, the applicant is required to develop a Project Participation Plan (Participation Plan) to facilitate participation from all stakeholders during the Commission's proceedings. The Participation Plan will be used to provide accurate and timely information, including the environmental impacts, as well

¹⁹ The Commission considers any interested entity or individual to be included in its definition of stakeholder in § 50.1 of the Commission's regulations.

as the national and local benefits, of the proposed project, to all stakeholders. The Commission expects that the applicant will conduct various outreach activities to solicit comments on its proposal before commencing the Commission's review process.

47. In addition to the applicant's outreach activities, Commission staff will conduct its pre-filing process. As part of this process, Commission staff will start its scoping and environmental review of the proposed project as required by NEPA. As part of this review, it will seek comments and recommendations from interested stakeholders. Commission staff will use those comments during its preliminary review of the proposed project to formulate the issues raised by the project and to assist the applicant in compiling the information necessary for the Commission staff to draft the environmental document and for the Commission to address those issues during the application process.

48. Once the application is filed, it will be noticed and interested stakeholders will be able to file to intervene and/or file protests and/or comments concerning the applicant's proposal. Additionally, during the application proceeding, the Commission will issue a draft environmental document.²⁰ The environmental document will also be subject to a comment period where any stakeholder may file comments concerning the findings made

²⁰ The Commission will issue an environmental assessment under § 380.5 or an environmental impact statement under § 380.6 of the Commission's regulations depending upon the level of NEPA review that will be required for the proposed project.

in that document. Finally, the Commission will issue a final environmental document and an order addressing the issues raised in the proceeding.

49. The Commission received numerous comments on its proposal for public participation in its siting process. Many commenters requested clarification on how the Commission envisioned its notification requirements would be implemented, who would be notified about the project, and how an interested stakeholder would be able to access information and participate in the Commission's proceedings. Some commenters were concerned that the Commission's definition of affected landowners was too limited. Others thought it was too broad. Some commenters were afraid that their group may be excluded from the definition of stakeholder. Others thought a stakeholder's right to participate should be restricted.

1. Landowners

50. Under § 50.1, an affected landowner is an owner of property interests, as noted in the most recent tax notice, whose property is: (1) directly affected, crossed or used, by the proposed project; or (2) abuts either side of an existing right-of-way or proposed facility site or right-of-way, or contains a residence within 50 feet of a proposed construction work area. In addition, § 50.4(c) requires that the applicant notify any landowner with a residence within a quarter mile from the edge of the construction right-of-way.

51. Communities contend that the definition of affected landowner is too limited and must be broadened to provide a fair opportunity for intervention and a comprehensive environmental review. It states that it should include all landowners directly affected by the proposed facility so that all such individuals are allowed to participate fully in the proceeding. DOI requests that the definition of affected landowners include land management agencies. Similarly, National Parks Conservation Association (Parks Association) requests that the definition of affected landowner be reworded so that land managing agencies with fee simple lands and those lands in which agencies own scenic easements, are notified during the appropriate times.²¹ They contend that if the Commission does not include Federal agencies as “affected landowners,” it needs to develop a notification criterion for Federal agencies that manage public lands. DOI also encourages the Commission to add a procedure for notifying stakeholders who would be within the viewshed, but not necessarily abutting, the proposal project to help notify other Federal governments and agencies involved in the project.

52. Parks Association requests that the reference to “directly affected” landowners in § 50.1(a)(1) needs to be defined since an electricity corridor might not cross or use parklands, but could still “directly” affect the scenic and historic resources of a park. It also states that a specific definition of “used” in § 50.1 should be added and include

²¹ Lackawaxen River Conservancy adopts the comment of the Parks Association.

landowners whose property is exposed to noise and visual impacts. Moreover, Park Associations believes the quarter mile distance requirement is inadequate to address the possible adverse impacts on lands discussed in the land use, recreation, and aesthetics resource report. Massachusetts Energy Board requests that the Commission define affected landowner using a distance greater than 50 feet from overhead transmission lines or use a definition based on a distance from the edge of the cleared or permanent right-of-way.²²

53. The definition of affected landowner is meant to encompass owners of property either directly within or adjacent to the proposed right-of-way and construction area. If a land management agency manages land on or adjacent to the proposed right-of-way and construction area, it will be considered an affected landowner. While the definition only encompasses land on or abutting a proposed right-of-way, the applicant must also notify all landowners with a residence within a quarter mile of the edge of the construction right-of-way under the notification requirements of §50.4(c)(1). The Commission believes that between the definition of affected landowner and the expanded quarter mile notification requirement, a sufficient group of individuals will be notified of the proposed project.

²² Additionally, Massachusetts Siting Board also states that the word “and” should be replaced with “or” after the phrase “temporary workspace”. We agree that the word “and” between the two requirements should be replaced with “or” and have changed the regulation accordingly.

54. Stakeholders do not need to be an affected landowner or live in a residence within a quarter mile of the proposed site to participate in the Commission's proceedings.

Under the definition of stakeholder in § 50.1, any interested entity or person may file comments as a stakeholder and participate in the Commission's process. Even if a specific land management agency is not included in the definition of affected landowner, it can still participate as a stakeholder. Resource Report 8, in § 380.16(j), requires that the applicant identify the existing land use in the vicinity of the proposed facility, including areas designated for studies under Federal law under § 380.16(j)(7). If, for some reason, a specific land management agency is not identified in the early planning stages of a project, as discussed below, during the pre-filing process Commission staff will work with the applicant to determine if any potential stakeholder has been missed and if they have, to make sure that they have had notice of the proposed project and an opportunity to participate.

55. Southern states that owners with property interests that abut an existing right-of-way should not be included in the definition of affected landowners unless it becomes necessary to secure easements or other rights from such owners. It argues that the definition should be limited to owners of property interests directly affected by the project and not to property interests that abut existing rights-of-way. Allegheny states that the Commission should only require notification of landowners with residence within 50 feet of a construction work site, as required under the affected landowner definition

under the Commission's natural gas pipeline regulations in § 157.6(d)(2)(ii) and not expand the landowner group to residences within a quarter mile of the right-of-way as required under §50.4(c).

56. While property owners with land that abuts the proposed right-of-way or with a residence within 50 feet of the proposed construction work area may not be required to negotiate easements once the ultimate route is determined, one of the purposes of the pre-filing process is to review the applicant's proposed route and explore route alternatives and variations based on the input the Commission receives from property owners and other interested entities and individuals. It is important that potentially affected property owners are notified early on in this review process to provide the Commission with their views and recommendations as required under FPA section 216(d). Additionally, once construction commences, abutting property owners may be impacted by the construction activities conducted in such close proximity to their property and should be made aware of these activities.

57. The Commission also believes it is appropriate to notify all landowners within a quarter mile of the proposed right-of-way. Unlike gas pipelines which are generally buried underground, electric transmission lines can be seen from greater distances. Therefore, more surrounding landowners should be directly notified by the applicant. The fact that these landowners are not designated as affected landowners does not diminish their right to be notified and participate in the Commission's proceedings.

Additionally, the Commission will also notify these individuals of its intent to conduct its environmental review and will seek comments from them during that review.

58. PG&E states that the Commission should defer to States' distance requirements for notification of affected landowners. It requests that where there is no corresponding State requirement, the Commission should designate the appropriate minimum distance between the proposed project and a landowner's property that would trigger the direct notification requirement. National Grid recommends that the Commission only require notification within 300 feet of the construction right-of-way.

59. The Commission does not believe it is appropriate to defer to States' distance requirements for notification of affected landowners or that notification within 300 feet is sufficient to reach the broad group of participants that the Commission seeks to include in these proceedings. Moreover, having different requirements in different States may result in inconsistent requirements along the route of a multistate project.

2. Stakeholders and Notification

60. Section § 50.1 defines a stakeholder as a Federal, State, or multistate, Tribal or local agency, any affected non-governmental organization, or other interested person. In other words, a stakeholder includes agencies and individuals contemplated under FPA section 216(d) and the permitting agencies contemplated under FPA section 216(h)(3).²³

²³ Section § 50.1 defines a permitting entity as any entity, including Federal, State, Tribal, or multistate, or local agency that is responsible for conducting reviews for any
(continued...)

Under § 50.4(c) the applicant is required to notify all known stakeholders, including affected landowners, of the proposed new facilities or modification of existing facilities within 14 days after the Director of OEP or his designee notifies the applicant of the commencement of the pre-filing process. Additionally, under proposed § 50.4(c)(1)(ii), the applicant must publish the notice of the pre-filing request and application filing twice in a daily or weekly newspaper of general circulation in each county in which the facilities will be located.

61. Communities states that while counties are technically included in the definition of a person under § 385.102(d) of the Commission's regulations they should, nevertheless, be prominently listed as stakeholders for the purposes of these regulations. Imperial states that as a political subdivision, it should be accorded stakeholder status. The Commission considers any interested entity or individual to be included in its definition of stakeholder in § 50.1 of the regulations. Thus, if a particular entity, such as a non-public utility or a county, is not specifically listed in the definition of stakeholder, it still may comment and participate in the Commission's proceedings.

62. SoCal Edison, PG&E, and NRECA request that the applicant provide electric utilities and affected transmission owners and operators with notice and opportunities to participate in the process if they would be connected to an applicant's proposed

Federal authorization that will be required to construct an electric transmission facility in a national interest electric transmission corridor.

transmission facility, provide service in the service area, or would be impacted, either by environmental, reliability or structural impact, as a result of the project. Western Energy Board requests that the applicant should also notify individuals who have expressed an interest in the State proceeding. It also requests that the Commission include a requirement for the applicant to periodically update the notification list as properties change hands.

63. The Commission agrees that electric utilities and transmission owners and operators that are connected to the applicant's proposed transmission facilities should be notified of the proposed project. We also believe it is appropriate for the applicant to notify individuals that have expressed an interest in the State proceeding, if a list of those individuals is available to the applicant. Accordingly, we will expand the notification requirement in § 50.4(c)(1) to include electric utilities and transmission owners and operators that are or may be connected to the applicant's proposed transmission facilities and any known individuals that have expressed an interest in the State proceeding.

64. Section 50.4(c)(3) requires that the applicant supply a stakeholder notice of the proposed project if a stakeholder is identified subsequent to the initial notice of the project. If a property changes hands during the pre-filing and application proceeding, the applicant is required to notify the new owners once they are identified. We will not, however, require that the applicant actively monitor land sales along the project route to determine if a piece of property happens to be sold during the Commission's proceedings.

65. White Mountain Apache Tribe (White Mountain) recommends that the Commission require applicants to publish the notice of a pre-filing request in tribal newspapers when any part of the project will affect tribal lands. We agree and will add tribal newspapers to the notification requirement of § 50.4(c)(1)(ii).

66. DOI recommends that the notices published in the newspapers include a map of sufficient detail to allow the reader an immediate understanding of the general location or the proposed construction right-of-way. Section 50.4(c)(2)(i)(C) requires the filing of a general location map. The notice also provides information concerning how an individual can seek additional information if the information in the newspaper is not sufficient.

67. Affiliated Tribes of Northwest Indians (Affiliated) and White Mountain state that the Commission should assure that all Tribal entities whose traditional lands or cultural places are crossed by a potential project should be notified. National Grid states that the Commission should clarify what Tribal governments involved in the project means so the proper ones can be notified. Section 50.4(c)(1) requires that the applicant notify tribal governments. We believe this is sufficient to address Affiliated's and White Mountain's concerns. We also do not believe any clarification of Tribal government is necessary. That information is readily available from the Bureau of Indian Affairs or the State or Tribal Historic Preservation Office. Moreover, as discussed below, part of the pre-filing process is for the Commission staff to work with the applicant to determine if any

potential stakeholder has been missed and if they have, to make sure that they have had notice of the proposed project and an opportunity to participate.

68. EEI requests that the Commission limit the term stakeholder to an affected agency or person.²⁴ It contends that interested person could include a broad range of parties that are not impacted by the proposed project. Southern states that interested person should be reasonably and precisely drawn to clearly specify the scope of their participation, including actions these participants may take with respect to any project or application. National Grid states that the Commission should require stakeholders to provide notice to Commission staff and the applicant of the stakeholder's interest and intended involvement in the pre-filing process.

69. The Commission intends to seek comments from a broad group of participants during the pre-filing process. Once the application is filed the Commission will still entertain comments from interested entities and individuals. If anyone wishes to intervene in the application proceeding and become a party, however, they will need to file a motion to intervene in accordance with § 385.214 of the Commission's regulations. Under § 385.214(b)(2) the motion to intervene must show that the movant has an interest that is directly affected by the outcome of the proceeding.

²⁴ PHI Companies supports EEI's comments.

70. Old Dominion Electric Cooperative (Old Dominion) is concerned that stakeholders will not receive sufficient notice of the commencement of the pre-filing proceeding because the Director of OEP will only notify the applicant under § 50.5(d). Old Dominion suggests, among other things, that the Director's notice be published in the Federal Register and be made available on the Commission's website. As discussed above, the Commission has modified the group of stakeholders listed in § 50.5(e)(3) that are required to receive notification of the Director of OEP's notice commencing the pre-application process from the applicant. Additionally, the notice will be available on the Commission's website. We find that is sufficient notification of the commencement of the pre-filing process.

71. Reinhardt's request that the Commission require that the applicant file a formal affidavit with: a copy of the notice sent to landowners; a copy of the newspaper notices and list of publications where they appeared; and the names and addresses of all notified entities so that third parties are able to verify that the applicant has complied with the notice requirements. Western Energy Board states that the applicant should be held to a higher standard than "good faith effort" for the notification of property owners.

Affiliated contends that the notice requirements are insufficient because there are no penalties to assure that all stakeholders are identified at the beginning of the project.

American Transmission asserts that the notification should be made on a good faith effort basis and stakeholders will have a reasonable opportunity to receive notice. NRECA

states that the notification requirement should be deemed deficient if the applicant learns of additional stakeholders after the 14-day period.

72. Pre-filing is an information-gathering process. During this process, Commission staff will work with the applicant to make sure that all interested stakeholders have been made aware of the proposed project and have had an opportunity for their views and recommendations to be considered. Thus, part of the pre-filing process is for the Commission staff to review who the applicant has notified and to work with the applicant to determine if a potential stakeholder has been missed and if they have, to make sure that they received notice of the proposed project and an opportunity to participate. The Commission has successfully relied on this process in its review of hydroelectric and natural gas projects.

3. Document Availability

73. Under § 50.4(b), an applicant is required to make copies of all of its filings readily available for all stakeholders to review at accessible central locations, either in paper or electronic format, and on the applicant's project website. Allegheny requests that the Commission add a provision comparable to those in the natural gas pipeline certificate regulations that reduce the applicant's service requirements if its materials include voluminous or difficult to reproduce material. The Commission agrees that if these materials are readily available at central locations and on the applicant's project website, it should not be required to serve these materials on all parties as required under

§ 385.2010 of the Commission's regulations. Thus, we will add § 50.4(b)(3) to the regulations to state:

An applicant is not required to serve voluminous or difficult to reproduce material, such as copies of certain environmental information, to all parties, as long as such material is publicly available in an accessible central location in each county throughout the project area and on the applicant's project website.

4. Participation Process

74. As stated, under the Commission's review process all interested stakeholders will have numerous opportunities to present their views and recommendations with respect to the need for and impact of a proposed facility. Those opportunities include participating during the applicant's outreach activities, during the Commission's NEPA process during both the pre-filing and application processes, and through the Commission's intervention and protest procedures during the application process. Numerous commenters raise concerns about their ability to participate in the pre-filing and application processes.

75. Reinhardtts state that the Participation Plan should include information of how interested persons may be notified of dates and times for public meetings or hearings on the proposed project. Star Group (Star) states that the Participation Plan should identify the means by which stakeholders will be given the opportunity to meet with the applicant to attempt to understand and resolve key issues. American Transmission believes the Commission should give more guidance concerning what constitutes a complete Participation Plan. Old Dominion requests that the Commission require the applicants

provide a summary of stakeholder participation to date in the Participation Plan, including concerns expressed by stakeholders, and efforts by the applicant to address those concerns.

76. The Commission expects that the applicant will have conducted outreach activities at the planning and/or State level prior to commencing the Commission's pre-filing process. The Participation Plan must detail all of the outreach activities the applicant has done to date and summarize the input it received during that outreach. It also must include a list and schedule of all pre-filing and application activities the applicant is planning, including, among other things, consultations, information gathering, and proposed location(s) and date(s) for the meetings. The applicant must also describe how it intends to keep the stakeholders apprised of any updates to its Participation Plan, including, but not limited to, postings to its project website and how the stakeholder can reach the company's contact to seek additional information.

77. Parks Association and DOI request that the Commission require applicants to release a pre-route proposal before the pre-filing process begins for a permit. One of the purposes of the pre-filing process is for Commission staff to work with the applicant and interested stakeholders to determine the ultimate route of the proposed project. Moreover, for siting proceedings that are initiated in a State proceeding, stakeholders will already have some idea of the approximate route from that proceeding. The Commission

does not believe it is necessary to add yet another level of notification to an already potentially lengthy process.

78. PSE&G and Allegheny request that the Commission establish a docketed, publicly-noticed proceeding for pre-filing or use a technical conference to assure that stakeholders will be afforded a formal opportunity to present their views. New Jersey Board of Public Utilities (New Jersey BPU) requests that the Commission provide for videoconferencing of the meetings. Old Dominion states that the Commission should not only fix the time by which interventions are due, but also provide a fixed time for interested parties to file comments or protests to applications. Communities, Old Dominion, and Star are concerned that the pre-filing process does not provide an opportunity to give any meaningful input to the Commission. Communities argue that without notice and comment during the pre-filing process or transparency in the Commission's decision-making process, intervenors and the public will be significantly handicapped in their efforts to meaningfully participate once the formal application process begins. They are also concerned that interested parties and the public will not have any intervention rights or any comment rights during the pre-filing process.

79. The Commission's pre-filing procedures offer numerous occasions for stakeholders to express their interests and make meaningful contributions. Once the Commission commences the pre-filing proceeding, it will assign a docket number to the project. All the applicant's pre-filing materials will be posted under that docket number

in the Commission's eLibrary and will be available through the Commission's website. All subsequent filings made in that docket by the applicant, any comments filed by stakeholders in that docket, and any issuances made by the Commission in that docket, including notices and requests for additional information will be posted on eLibrary under that docket number.²⁵

80. Once the Commission staff establishes that the applicant has filed sufficient preliminary information to proceed with pre-filing, the Commission will issue a notice of intent (NOI) to prepare an environmental document. The NOI will describe the project, list potential issues identified by the Commission staff,²⁶ and explain the Commission's scoping and environmental review process. It will explain how to participate in the Commission's process by submitting written comments. The notice will set a date by which time the comments will be due. It will also list the scoping meetings the Commission staff will hold at various locations throughout the proposed project route to access the maximum amount of participation possible. The Commission will have a transcriber at its scoping meeting to create a record of the comments received at that meeting.

²⁵ Information concerning how to use the Commission's services can be found on the Commission's website at www.ferc.gov and will also be included in the notices the Commission issues concerning the proposed project.

²⁶ The list of issues may be modified during the environmental review process based on the comments received during the Commission staff's analysis.

81. Depending on the issues that arise during the course of pre-filing, Commission staff may determine that it is necessary to hold various technical conferences or other meetings to acquire additional input and information concerning the proposed project. The Commission will issue notices of these meetings in the docket number assigned to the project. Additionally, the applicant will need to update its Participation Plan to reflect any additional outreach that may be conducted as part of the Commission's review process. If the Commission determines it is appropriate, it could arrange to provide for videoconferencing of certain meetings. However, because the Commission conducts various meetings along the route of the proposed project, videoconferencing should not be necessary. Additionally, transcripts of the meeting will be available under the assigned docket in eLibrary and the Commission's website

82. AEP is concerned that there is no limit on stakeholder input in the pre-filing process. It states that stakeholders can push for revisions and continue to ask questions, which continue to postpone a project. AEP recommends that the process should be modeled more like a rulemaking with time-limited input. EEI asserts that the applicant should not necessarily be obligated to communicate with parties that have not demonstrated that they will be impacted by the proposed project. Southern states that the obligation to entertain requests for information should be limited in scope and in terms of the participants that may request additional information or else it would lead to significant delays.

83. During pre-filing, the Commission will solicit comments from stakeholders. Any notice issued by the Commission soliciting comments will include a deadline date for those comments. The Commission expects that the applicant will address stakeholder concerns in various ways. Under § 50.4(a)(1), the applicant is required to have a point of contact within the company to answer general inquiries that may arise. The applicant can also establish a link on the project website that addresses frequently asked questions and refer the inquiry to that link or other areas on the website to address inquiries, as appropriate.

84. Based on the comments received in response to the NOI and information gathered on visits to the site of the proposed project, Commission staff will work with the applicant to compile the information and conduct the studies necessary for the Commission staff to prepare a draft environmental document. Once the Director of OEP has determined that sufficient information has been gathered for the Commission to proceed with the final review of the applicant's proposed project, pre-filing will end and the applicant will file an application.

85. Once the application is filed, it will be noticed and interested entities and individuals will be able to file to intervene and become a party to the proceeding under Subpart B of Part 385 of the Commission's regulations. Instructions on how to do this will be explained in the notice of the application and are available on the Commission's website.

86. American Transmission requests that the Commission allow State, local, and regional planning and siting entities to participate in the proceeding as a matter of right. Communities state that local counties that will be impacted by the proposed facilities should have automatic rights to intervene and receive notices and information. NRECA contends that the Commission should coordinate closely with the Rural Utilities Service to avoid duplication and the imposition of additional burdens on applicants.²⁷

87. Under § 385.214 of the Commission's regulations, any State commission, Advisory Council on Historical Preservation, the U.S. Departments of Agriculture, Commerce, and the Interior, any State fish and wildlife, water quality certification, or water rights agency, or Indian tribe with authorization to issue a water quality certification is a party to any proceeding upon filing a notice of intervention in that proceeding. The Commission sees no reason to expand this regulation. All other interested persons may seek intervention by filing a motion to intervene.

88. DOI raises several issues pertaining to the timing of the draft environmental document under the NEPA. Specifically, it is concerned as to when other Federal agencies will get an opportunity to review the draft document. It encourages the

²⁷ The Rural Utilities Service provides capital to upgrade, expand, maintain, and replace America's vast rural electric infrastructure. NRECA states that financing obtained through the Rural Utilities Service is subject to rigorous long-term planning obligations that are substantially more demanding than the resource adequacy requirements that apply to other LSEs.

Commission to include a timeframe for public review of the NEPA document along with clarification as to when the Commission will issue the NEPA document. After the application is filed, the Commission will issue a draft environmental document, on which interested stakeholders will be able to comment. All comments received will be addressed in the final environmental document which will be completed before the Commission issues an order on the merits of the application.

89. When the Commission completes its review of the application, it will issue an order addressing the issues raised in the proceeding and issuing, or denying, a permit to construct the proposed facilities. Under FPA section 313(a) and § 385.713 of the Commission's regulations, any party may file a request for rehearing. Requests for rehearing must include the information required under § 385.719(c) of the Commission's regulations. The Commission will issue an order addressing the issues raised in the rehearing requests. If the Commission denies the rehearing requests, any party who intervened in the proceeding and is aggrieved by the Commission's order may file, under FPA section 313(b), an appeal in the United States Court of Appeals.

D. Pre-filing

90. 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 need for and impact of the facilities early on in the planning stages of the proposed facilities as required under FPA section 216(d). In

addition to gathering stakeholder input, during this time Commission staff will work with the applicant to compile the information required for a complete application under §§ 50.6 and 50.7.

91. The filing requirements in §§ 50.6 and 50.7 set forth the basic information that the Commission will need for a generic project. However, each project will have its own unique issues that will need to be considered on a case-by-case basis. For example, an electric transmission facility constructed through farmland will have a different impact than one that will go through a heavily populated area. During the pre-filing process, Commission staff will initiate its independent environmental analysis of the project as required by NEPA. It will conduct scoping meetings and site visits. Staff will use the information gathered through this process and from information acquired from stakeholder input to define the issues particular to a specific project. Based on these activities, Commission staff assists the applicant in compiling the information necessary for the Commission to address the specific concerns raised by the proposed project during the application process.

1. Initial Consultation Issues

92. Section 50.5(b) requires that an applicant meet with the Director of OEP before filing its pre-filing materials. During the consultation process, Commission staff will review the applicant's proposed project description, including the status of the applicant's progress towards collecting the data needed to commence the pre-filing process, and any

preliminary contacts the applicant has had with stakeholders, including its progress in DOE's pre-application process and in the State proceeding, if applicable.

93. Commission staff will review the applicant's eligibility for Commission jurisdiction for a permit for the proposed facility, outline the pre-filing process, and provide guidance as to what further work is necessary to prepare the pre-filing request. Commission staff will also review the proposed project to determine if the applicant will be required to hire a third-party contractor to assist in preparing a NEPA document under the direction of the Commission staff.

94. Virginia Electric requests that the Commission explain what will be reviewed by staff in the initial consultation and when such reviews will take place. American Transmission request that the Commission define what constitutes a complete set of pre-filing information to assist in expediting the process.

95. While any applicant may seek guidance on a potential project from Commission staff at any time, the Commission expects that the applicant will commence the initial consultation process for pre-filing when it believes that there is sufficient evidence that a proposed project will be subject to the Commission's jurisdiction and it has prepared the required pre-filing information. At the pre-filing consultation, Commission staff will review the applicant's specific project and the information the applicant has compiled to date and discuss how that information complies with the initial pre-filing filing requirements in § 50.5(e) and the application filing requirements in §§ 50.6 and 50.7.

Commission staff will also review what work the applicant has done at the State level, the amount of community outreach the applicant has conducted, and the results of that outreach.

96. While the potential differences between projects make it difficult for the Commission to specifically define what would constitute complete pre-filing information, § 50.5(e) lists the minimum filing requirements that are needed for an applicant to commence the pre-filing process. If the Commission staff find that the applicant has sufficient information to comply with the pre-filing filing requirements in § 50.5(e), the applicant will be allowed to commence pre-filing. If the applicant does not have sufficient information to meet the pre-filing filing requirements, Commission staff will work with the applicant to determine what additional information will be needed to proceed. If the applicant does not have the necessary information, it may take more than one pre-filing consultation before the applicant is prepared to commence pre-filing.

97. EEI argues that rather than requiring applicants to develop and implement an extensive new pre-filing public Participation Plan, the Commission should simply require the applicant to provide appropriate notification to stakeholders that the venue for the siting approval process has moved from the State to the Federal level along with an explanation of how they can become involved in the Commission's process as an intervenor or under NEPA. SDG&E recommends that an applicant should be able to bypass the pre-filing stage, if at the initial consultation with the Director of OEP it is

determined that it has submitted sufficient information with OEP to support beginning to process the application, has submitted a Participation Plan, and has complied with the pre-filing requirements of § 50.5(e). PHI Companies similarly suggests the pre-filing process should be optional.

98. Because pre-filing is a fact-finding process used by the Commission staff to commence and initiate its independent environmental analysis and to define specific issues raised by specific projects, it is not possible for an applicant to by-pass the process. However, the time it takes for an applicant to complete the pre-filing process could be significantly reduced depending on the amount of work the applicant had completed in compiling the necessary information prior to the pre-filing process.

99. PJM requests that the Commission staff commence its system analysis review of the proposed facilities during the pre-filing process. Commission staff primarily focuses on compiling the information for the subsequent environmental review during pre-filing. In cases where a project would be located in the geographic area covered by an RTO, we expect much of the information for the system analysis to be developed in consultation with the RTO during the pre-filing phase. If necessary, however, Commission staff will work with the applicant during pre-filing to identify specific information that will be required for the Commission to conduct a system analysis during the application process.

2. Third-party Contractors

100. Under § 50.5(c)(6) the applicant is required to propose at least three third-party NEPA contractors for the Commission to consider for the proposed project. Under § 50.5(d)(1), the Director of OEP's pre-filing notice will designate the chosen third-party contractor at the beginning of the pre-filing process.

101. Southern states that the applicant should be entitled to select any third-party NEPA contractor to use in its pre-filing and application process, insofar as the Director of OEP determines that a third-party contractor will be necessary. Similarly, National Grid states that an applicant should be permitted to express a preference for a particular contractor and the Commission's staff should generally defer to the applicant's choice because the applicant is financially responsible for the contractor's work. Los Angeles DWP is concerned that the requirement to finalize the contract with the third-party contractor may take 90 days or longer unless one of the four NEPA contractors selected who is currently under contract with the Los Angeles DWP. American Transmission requests that the Commission clarify why it requires that third party contracts be finalized in two weeks in all cases; instead it recommends that it should be 45 days. DOI requests clarification or a reference to the criteria that the Commission will use to determine if a third-party contractor must be hired.

102. The Commission is required under NEPA to do an independent analysis of the environmental impacts of a proposed project. Depending on the amount of work

involved, it often requires that the applicant hire a third-party contractor to assist the Commission in analyzing the proposed project. The third-party contractor, while paid for by the applicant, reports directly to Commission staff. Thus, the Director of OEP will designate the appropriate third-party contractor.²⁸ While § 50.5(e)(2) requires that the applicant finalize the contract with the selected third-party contractor within 14 days the Commission may waive that requirement rule for good cause. If the applicant cannot finalize the contract with the third-party contractor within two weeks, it can request a waiver of the requirement of § 50.5(e)(2). We note, however, that preparation of an environmental document is a time and labor intensive process. The Commission has implemented the 14-day requirement as a way to expedite the process.

3. Subsequent Filing Requirements

103. Section 50.5(e) lists the initial filing requirements and filing deadlines that are required for the Commission staff to commence the pre-filing process. Parks Associations is concerned that this language does not impose strict deadlines to protect the public interest. On the other hand, National Grid requests that the Commission permit reasonable extensions of time beyond the 60-day timeframe for submitting resource reports.

²⁸ See 40 CFR 1506.5(c), requiring that a contractor used to prepare an environmental impact statement is to be chosen solely by the lead agency (or where appropriate, by a cooperating agency).

104. The deadline requirements in the regulations are intended by the Commission to expedite the pre-filing process. Since part of the pre-filing process is to assist the applicant in compiling the information needed to file a complete application, the Commission does not expect that the preliminary resource reports filed at the beginning of the pre-filing process will contain every detail required for the ultimate report that will need to be filed with the application. The resource reports required in § 50.5(e)(7) should be preliminary reports that contain sufficient information for Commission staff to commence the pre-filing process and specifically the NEPA process. Commission staff will work with the applicant throughout the pre-filing process to develop all the necessary information for each resource report. It should be noted, however, that delays in filing these materials may delay the decision to allow an application to be filed.

4. Lead Agency Issues/Coordinating Federal Permits

105. Effective May 16, 2006, DOE delegated paragraphs (2), (3), (4)(A)–(B), and (5) of FPA section 216(h) to the Commission as they apply to proposed facilities in designated national interest electric transmission corridors.²⁹ Specifically, it delegated lead agency responsibilities for the purpose of coordinating all applicable Federal authorizations and related environmental review and preparing a single environmental review document for facilities in a National Corridor.

²⁹ Supra note 5.

106. PJM states that the Final Rule should promote coordination among Federal agencies and the resolution of disputes among Federal agencies. AEP states that while the Commission developed well-defined procedures for interacting with State agencies, it should also coordinate siting for the various Federal agencies. DOI requests clarification on whether there are two separate pre-filing processes (one led by DOE and one led by the Commission). Western Energy Board raises similar concerns regarding the duplication of the two processes.

107. As stated, several Federal agencies including DOE and the Commission entered into a MOU to establish a framework for early cooperation and participation that will enhance coordination of all applicable land use authorizations, related environmental, cultural, and historic preservation reviews, and any other approvals that may be required under Federal law in order to site electric transmission facilities. The MOU requires participating agencies, to the extent practicable, to commit to early involvement and cooperation to ensure that timely decisions are made and that the responsibilities of each agency are met. The Commission intends to work with DOE and the participating agencies to ensure that all Federal permit decisions are rendered in a timely manner.

108. National Grid states that the Commission should request that DOE delegate lead agency status to the Commission at the time the Commission's pre-filing process begins rather than at the filing of an application. Virginia Electric states that the Commission should try to amend its delegated authority to transfer DOE's pre-application

coordination to the Commission or coordinate and use DOE's pre-application process to the maximum extent practicable as its own pre-filing process. It contends that anything else may require the applicant to duplicate its agency review activities with the Commission and DOE. EEI requests that the Commission explain the timing and coordination of its lead agency authority with DOE and clarify that filing requirements from permitting agencies be relevant, and preferably significant.

109. We anticipate working closely with DOE and other Federal agencies under the terms of the DOE MOU to coordinate all Federal actions and to ensure that DOE's and Commission's processes interact seamlessly and with as little duplication of effort as possible. We expect that we will coordinate with DOE on an ongoing basis on general issues regarding these matters, as well as on specific cases. In light of this, we see no need to seek amendment of DOE's delegation order.

110. Progress contends that the Commission should exercise lead agency authority in circumstances where Federal agencies are impeding the construction of new transmission facilities regardless of whether the State still has jurisdiction or if it is outside a National Corridor. California PUC similarly urges the Commission to use its lead agency authority to get Federal agencies to expeditiously review applications during the time an application is filed at the State level. PSE&G encourages the Commission not to overstep its statutory authority in this regard.

111. Under DOE's May 17, 2006 delegation order, the Commission is responsible for acting as lead agency when an applicant has submitted an application to the Commission to construct or modify electric transmission facilities. Thus, the Commission's lead agency delegated authority only pertains to facilities subject to the Commission's jurisdiction in National Corridors. DOE retains lead agency authority for coordinating Federal action on facilities not subject to the Commission's delegated authority.

5. Timeframe for Pre-filing

112. Because of the potential for differences between projects, the Commission does not propose to set exact timeframes for the pre-filing process. The timeframe will depend upon, among other things, the size of the project, stakeholder participation, the applicant's preparedness, and the applicant's progress at the State level. The Commission expects that the pre-filing process for large, multistate "greenfield" projects, will take longer than the pre-filing process for minor modifications to existing facilities.³⁰ The Commission anticipates that the pre-filing process for extensive projects may take a year to complete. Additionally, the environmental resource reports required under § 380.16, discussed below, will require comprehensive field work to compile the information necessary to comply with the Commission's obligations under NEPA.

³⁰ Greenfield facilities are facilities that primarily will be located in new rights-of-way.

113. Southern states that the Commission should acknowledge that the time required for processing applications will vary and that the Commission may also lack authority to require any deadline is met. American Transmission states that the Commission should create a definitive timeline for the submission of information and for the receipt of responsive action by Commission staff. DOI also urges the Commission to establish a chronological timeline to assist applicants and permitting entities to better understand the timing of steps within the permitting process. EEI opposes a uniform pre-filing process schedule. Allegheny states that minor modifications should not require a full-blown pre-filing process.

114. Northern Wasco County Peoples Utility District and Seattle City Light state that since major transmission projects entail long lead-times for land acquisition, procurement, design/engineering and construction, they are concerned that the rule may unnecessarily prolong the amount of time required to take action on project applications. SDG&E states that the rules should embody the urgency reflected in the statute that energy security may be at stake due to delays in transmission siting. EEI requests that the Commission explain the variables in determining how long the pre-filing and NEPA processes will take. Allegheny states that a two-year process for authorization is too long for extensive, reliability-driven transmission projects.

115. As stated in the NOPR and above, because of the potential differences between projects, the Commission cannot establish or predict timeframes for electric transmission

projects proceedings. NEPA requires the Commission to conduct an independent environmental analysis of a proposed project. The Commission's NEPA analysis may require a more stringent review of the environmental impacts than is required at the State level. The pre-filing timeframe is dependent upon how far along the applicant is on compiling the information needed by the Commission, the complexity of the project, and what additional information will be required based on the specific issues raised for the individual project. The Commission agrees that time is of the essence in the siting of these facilities. Thus, it believes that it is incumbent on a project sponsor and States to work together in an attempt to site the facilities at the State level. This would be the most expeditious way to site the facilities.

6. Review of Director's Decisions in Pre-filing

116. Under § 50.5(f), the Director of OEP will determine when there is sufficient information for the applicant to file its application. Old Dominion requests that the Commission provide an opportunity for stakeholder comment before the OEP Director determines that the pre-filing process is complete. Allegheny states that since the Commission had delegated broad authority to OEP, it should provide potential applicants with an opportunity to seek Commission review of OEP's decisions. Southern states that the Commission should add a review process to allow applicants to review and challenge a determination by the Director of OEP. It claims that an absence of due process could

lead to court challenges. DOI requests that Federal agencies be consulted prior to the conclusion of the pre-filing process.

117. Stakeholders have various opportunities to comment during the pre-filing process. Therefore, we do not believe it is necessary to add any additional round of comments. Moreover, once the pre-filing process is complete, the applicant will be filing an application for Commission review of the proposed facility which will be noticed and subject to the Commission's intervention and protest procedures. As a general matter, the Commission relies on its staff to develop the record necessary for the Commission to act on energy project applications, and it does not anticipate entertaining interlocutory appeals regarding the Director of OEP's pre-filing decisions.

E. Application Requirements

118. Pennsylvania PUC states that for a more informed process the Commission should include procedures whereby the application would publicly disclose what information or data the application has omitted. Section 50.2(c) requires that the applicant provide all information required in Part 50 unless it shows that the information is not necessary. We find that this is sufficient to address the concern raised by Pennsylvania PUC.

119. NRECA states that entities seeking permits should be required to show that all requirements are met, including Federal, State, and Tribal permitting requirements which

would be consistent with the natural gas regulations. Section 50.2(d) is identical to the requirement in § 157.5(c) and no further modification is necessary.

F. Filing Requirements

120. Section 50.6 lists the general requirements that need to be met when filing an application for a permit. Section 50.6(e) requires that the applicant demonstrate how its proposed project would satisfy the requirements of FPA section 216(b)(2) through (6). The Commission will review this information in addition to the technical information provided in the Exhibits submitted under § 50.7 in making its findings concerning the proposed project. As stated, the filing requirements in §§ 50.6 and 50.7 are the basic information that the Commission will need for a generic project. However, each project will have its own unique issues that will need to be considered on a case-by-case basis. An applicant may request a waiver of a specific requirement if it believes it may not be applicable to its particular project. Similarly, the Commission may request additional information if it deems it is necessary to address issues raised by a proposed project.

121. Various commenters raised issues concerning the Commission's need for specific requirements in each of the exhibits. Some requested that the Commission require additional information. Others question the Commission's need for some of the required information. Several commenters request that the Commission accept the record from the State proceeding to satisfy some of the Commission's filing requirements.

1. State Record

122. The Commission received numerous comments requesting that it maximize the use of information, notices, and materials produced during the State siting process to avoid the costly duplication of materials.³¹ Specifically, Allegheny states that the Commission should not require an applicant to notify stakeholders, conduct public meetings, and submit studies of information that are duplicative of State commission requirements. PHI Companies contend that, at a minimum, the Commission should allow for a waiver of various pre-filing and application steps that the applicant can demonstrate have been satisfied in the State proceeding. Committees request that the Commission require that the record already developed for any State permitting authority be filed and included in the Commission's record.

123. California PUC states that the Commission should incorporate the findings from the State siting process into its proceeding. SDG&E asserts that the Commission should accept the State's environmental review to the extent it satisfies the requirements of NEPA and to rely on prior NEPA analysis performed as well. Pennsylvania PSC states that the Commission should incorporate the work of already-existing planning processes conducted either by regional State organizations or RTOs. SoCal Edison recommends

³¹ Communities, American Public Power, EEI, PHI Companies, PSE&G, NARUC, Allegheny, SDG&E, National Grid, American Transmission, SoCal Edison, Pennsylvania PUC, Western Governor's, Virginia Electric, PPL Electric, and California PUC.

that the Commission adopt generally applicable standards for the submission of previously collected materials to expedite the process. PPL Electric urges the Commission to rely on the aid of State officials to navigate the State siting procedures.

124. It is our expectation that by working with States, applicants, Federal agencies and other stakeholders on an ongoing basis, we will be able to ensure, to the maximum extent possible, that information developed in State proceedings can be used, where appropriate, at the Commission, thereby increasing efficiency and lessening burdens on all parties.

125. While the Commission will accept any pertinent information developed in the State proceeding or elsewhere into its record, the Commission is required under NEPA to do an independent review of environmental impacts. The Commission will take all filed information into consideration as it conducts its review. Similarly, it will consider the State findings while it considers its own findings under FPA section 216(b). Its ultimate determination on whether to issue a permit, however, will be based on the entire record developed in the Commission proceeding after due consideration of all the issues raised.

2. Exhibits

126. Section § 50.7 contains the requirements for the exhibits that must be filed with the application. The exhibits will contain the technical data needed for the Commission's analysis of the application. All the environmental data required under Part 380, specifically the Resource Reports required under § 380.16, will be filed as proposed Exhibit F. Engineering data and system analysis data must be filed in Exhibits G and H.

127. The Massachusetts Energy Board recommends that the Commission add another exhibit that would require that the applicant submit construction information including: construction procedures; construction schedules; plans to coordinate with local authorities; construction noise impacts and noise mitigation; mitigation of wetland impacts of construction; plans for mitigation of the traffic impacts of project construction; and plans to inhibit unauthorized travel on the right-of-way. These are all required to be filed under the environmental requirements in Exhibit F or will be addressed in the Commission environmental analysis. Therefore, additional exhibits are not necessary.

128. Affiliated contends that either § 50.6 or § 50.7 should require an exhibit which describes all tribal interests in the project and outcomes from all Tribal stakeholder participation in the project pre-filing activities and any issues discussed and whether they were either resolved or unresolved and details of the resolution or breakdown in discussions. Tribal governments or agencies are required to be notified at the beginning of the pre-filing process. In addition, information concerning tribal interests are required under § 360.16(f) and § 360.16(j). The Commission believes this is sufficient basic information for the Commission to commence its review of a proposed project. As stated, each project will raise its own unique issues for which the Commission may request additional information if it deems it is necessary to address particular issues raised by a proposed project. Any information developed during the pre-filing process

will be made part of the record and will be considered by the Commission as it conducts its substantive review when an application is subsequently filed.

a. Exhibit E – Maps

129. Section 50.7(e) states that the format for maps will be determined during the initial pre-filing consultation. American Transmission contends that the Commission should use a uniform format that satisfies other government agencies and avoids redundancy. Because technology changes over time, the Commission will not specify a specific format in its regulations. Particular formats will be addressed during the initial pre-filing consultation. Additionally, a potential applicant may contact Commission staff at any time for guidance on the Commission's required formats.

b. Exhibit F – Environmental Requirements

130. The Commission is required to conduct an environmental analysis of a proposed electric transmission project under NEPA. Exhibit F requires that the applicant file the environmental information required under Part 380 of the Commission's regulations. As stated, the filing requirements are the basic information that the Commission will need for a generic project. However, each project will have its own unique issues that will need to be considered on a case-by-case basis. At the pre-filing consultation and throughout the pre-filing process, Commission staff will work with the applicants and stakeholders to determine the issues that arise for each project. Depending on those issues, the Commission staff may require additional information. Conversely, if certain

of the filing requirements are not needed for certain projects, Commission staff will consider whether waivers are appropriate for those requirements.

131. Massachusetts Energy Board states that the Commission should include regulatory procedures for evaluating alternatives to a project, minimizing environmental impacts, and denying a permit to construct a project that has significant avoidable adverse impacts. The principal purposes of the Commission's environmental review are to:

(1) identify and assess the potential impact on the natural and human environment that would result from the implementation of a proposed project; (2) identify and recommend reasonable alternatives, including, as appropriate, alternatives other than transmission lines, and specific mitigation measures to avoid or minimize environmental impact; and (3) encourage and facilitate public involvement in the environmental review process.

During the application process, the Commission will review the analysis created in the environmental document in concert with the other information analyzed during its review process to determine if it is in the public interest to issue a permit to construct the facilities. If it determines that it is not, it will deny the application.

132. Reinhardt's state that the Commission should broaden its rules and its area of inquiry to reasonably justify whether one State or region should suffer the significant environmental and aesthetic burdens associated with large transmission infrastructure to bring economic benefit and pollution reduction to another. The Commission's mandate under the FPA is to determine if the proposed facility is consistent with the public interest

on a national level. It may be that a transmission facility will cross several States in order to benefit consumers in other States. The fact that the facility may not benefit the State's crossed by the facility is not determinative on the Commission's decision if the facility benefits a broader region.

133. Communities state that the applicant should be required to demonstrate a good faith attempt to negotiate access, and if access is denied, provide thorough research of all available documentation regarding the property. The Commission expects that the applicant will attempt to negotiate access to as much of the proposed right-of-way as possible for survey purposes. It is in landowners' best interests to allow the applicant access and to get involved in the pre-filing process to have input in the ultimate alignment of the proposed facility. During the pre-filing and application processes, there is more flexibility to achieving shifts in alignment of the proposed facility to accommodate individual landowner needs on their property.

i. Section 380.5- Actions that Require EAs

134. Section 380.5 (b)(14) provides that under certain circumstances the Commission may prepare an environmental assessment (EA) instead of an environmental impact statement (EIS) for a proposed project. American Transmission seeks clarification on whether the Commission will allow applicants the option of preparing a preliminary applicant-prepared environmental assessment. The Commission will decide if an EA or EIS is applicable for a proposed project. If the Commission determines that an EA is

appropriate, the Commission will accept an applicant-prepared preliminary draft. After reviewing the draft, the Commission may still require a third-party contractor to assist with finalizing the draft NEPA document.

ii. Section 380.6 Actions that Require EISs

135. Section 380.6 requires that an EIS be prepared for major electric transmission facilities using a right-of-way in which there is no existing facility.³² Affiliated proposes that the Commission also add “for which there are likely to be endangered species impacted, substantial issues under the National Preservation Act, or a significant impact to the natural or human environment.” The Commission will require an EIS for these and several other reasons. The decision on what needs to be addressed in the EIS generally is determined on a case-by-case basis based on the information compiled during the pre-filing process. We do not believe it is appropriate to add language that could be interpreted to limit the Commission’s discretion to prepare an EIS.

136. Virginia Electric contends that the Commission should delete the “major” before “transmission facilities” in §380.6 because FPA section 216 confers jurisdiction to the Commission over all electric transmission facilities. The word major in §380.6 denotes

³² Section 380.6 also lists when EISs are required for natural gas pipelines and hydroelectric projects. AEP requests that the Commission eliminate the references to pipeline projects. Those sections were added to assure the proper placement of the semicolons and the word “and”. They have no other purpose relative to electric transmission siting.

when the Commission will prepare an EIS under §380.6 as opposed to an EA under §380.5. The Commission will still review all proposals for electric transmission facilities under its FPA jurisdiction.

iii. Section 380.10 – Participation in Commission Proceeding

137. In § 380.10(a)(2)(iii), the Commission clarified that interventions should not be filed in natural gas pre-filing proceedings and in the proposed electric transmission pre-filing proceedings. Old Dominion points out that while interested parties cannot intervene in the pre-filing phase, they can submit comments. New Jersey BPU states that this section should reference the stakeholder participation provided in §§ 50.4 and 50.5 to clarify that stakeholders have the right to be involved in the process.

Section 380.10(a)(2)(iii) already refers back to the pre-filing activities under § 50.5. We do not believe any further reference to that section is necessary.

iv. Resource Report 1 – General Requirements

138. Resource Report 1 requires that the applicant describe, among other things, the facilities associated with the project, special construction and operation procedures, and construction timetables. National Grid contends that whether a project is going to be built in an existing right-of-way should dictate the amount and type of data needed on construction methods, workspace, and related matters. As stated, specific projects will be considered on a case-by-case basis. Projects constructed in an existing right-of-way will raise different issues than a greenfield facility.

139. Section 380.16(c)(2)(i), requires maps and photos covering at least a one-half mile wide corridor centered on the electric transmission facility centerline. Communities contend that a fair definition of the area of impact should begin with a minimum of one-half mile and require an evaluation of the extent beyond that point for each type of impact. National Grid states that the map and photos should be consistent with the State's corridor requirements. The Commission uses the one-half mile distance as a generally acceptable distance for its map requirements. On a case-by-case basis, it will determine the extent of the area of impact based on the specific information gathered during the review process.

140. Section 380.16(c)(2)(i) requires United States Geological Survey (USGS) 7.5-minute series topographic maps or maps of equivalent detail. The Massachusetts Energy Board contends that these maps are not adequate for a detailed evaluation of impacts in densely populated areas and requests a better resolution of detail than USGS-based maps. We agree that the impact of a proposed facility in a densely populated area will raise different issues than a facility located in a rural area. The Commission will address the issues, as necessary, in each individual proceeding before the Commission.

141. The Center for Biological Diversity requests that the general content requirement include a full lifecycle assessment and air quality and greenhouse gas emissions. It contends that the Commission's NEPA analyses must address the full lifecycle of electric generation and include analysis, mitigation measures, and alternatives that address air

quality impacts, energy losses, criteria pollutants, and greenhouse gas emissions. The Commission will review these impacts of the proposed facilities, as required by NEPA and all other relevant environmental laws.

v. **Resource Report 2 – Water Use and Quality**

142. Section 380.16(d) requires that the applicant describe water quality and provide data sufficient to determine the expected impact of the project and effectiveness of mitigation, enhancement, or protective measures. DOI urges the Commission to review the regional impact from local water use. EEI states that the requirement that the applicant identify known public and private groundwater supply wells or springs is inappropriate for above-ground facilities. AEP contends that the Commission should eliminate this requirement because it only pertains to pipeline projects. National Grid states that the Commission should grant requests for waiver for this report for overhead electric transmission projects where no water use or quality effects would occur.

143. The construction of electric transmission facilities will create ground disturbance that may disrupt groundwater in the area of the construction. Thus, the Commission will require that the applicant comply with the requirements of this section.

vi. **Resource Report 3- Fish, Wildlife, and Vegetation**

144. Section 360.16(e) requires that the applicant file information describing aquatic life, wildlife, and vegetation in the vicinity of the proposed project. Massachusetts Energy Board requests that the Commission require applicants to provide habitat

information obtained from State natural heritage officials. Section 360.16 (e)(8) requires that applicants include correspondence from, among others, State fish and wildlife agencies. We believe this is sufficient to address Massachusetts Energy Board's concern.

145. DOI requests that the applicant identify Federal- and State-listed threatened or endangered species in the project area and the impacts to such species in this report. It also requests the section be expanded to require mitigation for invasive species. Sections 360.16(e)(4) and (5) require that the applicant address specific areas of significant habitats or communities of species of special concern to the Federal- and State- listed or proposed threatened or endangered species or critical habitat, respectively.

vii. Resource Report 4 – Cultural Resources

146. Section 360.16(f) requires that the applicant file the information needed for the Commission to determine that it has complied with the requirements of the National Historic Preservation Act (NHPA). Wilderness states that Resource Report 4 should explicitly state that the project must comply with section 106 of the NHPA. DOI requests that the report should be expanded to cover nationally and regionally significant historical and cultural resources. It also believes the report should cover the potential construction impacts on archeological sites which may be present in the identified project site.

147. Resource Report 4 is specifically designed to gather all the information necessary for the Commission to comply with NHPA section 106. We do not believe it is necessary to specifically state this in the list of information that the Commission requires the

applicant to file. Resource Report 4 requires that the applicant provide the information requested by DOI. Moreover, the Commission's environmental review document will cover the potential impacts on the identified sites.

148. Communities state that there is no valid reason for allowing the delay in the filing of certain reports until immediately before the permit is issued. They contend that all such reports should be filed with the application or the application may be deemed incomplete until such filings are made. The Commission does not believe it is necessary that the applicant have all the cultural resources reports and plans completed before it issues a permit. Under some circumstance where access to private property is denied, the applicant will not have access to the property to complete the report until after the permit is issued and the applicant gains access by eminent domain. The Commission will not authorize construction, however, until permittee has complied with all the requirements of NHPA and all other relevant environmental laws..

149. National Grid contends that the Commission should grant requests for waiver of Resource Report 4 if overhead electric lines are on existing rights-of-way. Regardless of the location of the facilities, the Commission will still need to comply with NHPA section 106.

viii. Resource Report 5 – Socioeconomics

150. Section 360.16(g) requires that the applicant provide information concerning the impact of the proposed project on the towns and counties in the vicinity of the project.

Section 360.16(g)(2) requires that the applicant evaluate the impact of any substantial immigration of people on governmental facilities and services, and plans to reduce the impact on local infrastructure.

151. EEI states that electric transmission line construction typically does not involve a large influx of workers into an area, so a requirement for an evaluation of the impact of the immigration of people and a fiscal impact analysis evaluating incremental local government expenditures is unnecessary. The construction of any major energy infrastructure facility has the potential to require some influx of workers into the areas. Depending on the facilities available, number of employees, and duration of their stay they may have a major impact on communities. This may especially be the case with the expedited construction we expect for permitted projects.

152. Under § 360.16(g)(7), the applicant is required to conduct a property value impact analysis of the proposed transmission line for residential properties located adjacent to or abutting the right-of-way. Numerous commenters recommended expansion or deletion of the proposed property value impact analysis.

153. EEI requests that the Commission delete the requirement for a property value impact analysis for residential properties located adjacent or abutting to the proposed right-of-way. National Grid asserts that requiring property value impact for these facilities is unwarranted and it would serve only to promote and fuel not-in-my-backyard

sentiment. It also contends that assessing property values for virgin right-of-ways would be very time consuming with no tangible benefits.

154. Virginia Electric states that there is no consensus to support a conclusion that transmission lines have any impact on real property values and that the type of property value impact studies in this regulation would overstate, by double-counting, the normal right-of-way cost for the project. SoCal Edison believes such a requirement would be highly subjective and could significantly delay approval of a transmission facility. EEI is concerned that a property value impact study would be highly subjective and could further complicate negotiations and communication between the transmission project sponsor and homeowners in the vicinity of the project. AEP states that the Commission should reconsider requiring this information because it will be time-consuming and the conclusions would be highly speculative.

155. EEI and SoCal Edison assert that there is no similar requirement in the Commission's regulation regarding the siting of other energy infrastructure. SoCal Edison states that such an analysis is not required by NEPA. EEI, National Grid, and SoCal Edison also note that this type of information is not generally required at the state level.

156. Communities requests that the analysis include all landowners, residential and commercial, within the entire area of impact and should require a fiscal impact analysis on both local and regional economies. Wilderness recommends that the Commission's

analysis use the methods described in “Socio-Economic Framework for Public Land Management Planning: Indicators for the West’s Economy”. In addition, it requests that the assessment consider the potential impacts on the values of public lands.

157. After considering the comments raised in this proceeding, the Commission agrees that the property value impact analysis should be eliminated from the Final Rule. The Commission believes that requiring such information could significantly delay the development of transmission projects, which is contrary to the national interest. The Commission also is concerned with the accuracy of such studies and the fact that no uniform methodology is available to calculate the impact of transmission lines on property values. In many cases, such studies could be highly speculative and inaccurate while providing limited beneficial information to the public. Finally, the Commission agrees that there is no particular rationale why such a study should be required when it is not required for other infrastructure projects before the Commission or generally required at the State level.

158. Given the speculative nature of these reports and the time and resources the application would need to dedicate towards completion of this study, the Commission does not believe such a requirement is consistent with the purpose of EPLA 2005. The Commission will consider such information when provided in making a determination on the project, but such information will not be required.

ix. Resource Report 6 – Geological Resources

159. Section 350.16(h) requires that the applicant describe geological resources and hazards in the project area that might be directly or indirectly affected by the proposed action or that could place the proposed facilities at risk, the potential effects of those hazards on the facilities, and methods proposed to reduce the effects or risks. National Grid states that this requirement should be eliminated for overhead electric transmission line projects and required only for underground projects, where the nature of the facility makes such analysis relevant and appropriate.³³ Construction of electric transmission facilities will require the placement of towers subject to substantial loads in areas with potential geological hazards that the Commission would want to take into account in its analysis. Therefore, we will not eliminate this requirement.

x. Resource Report 7 – Soils

160. Section 360.16(i) requires that the applicant provide information on the soils that will be affected by the proposed project, the effect on those soils, and measures to minimize or avoid impact. EEI, AEP, and National Grid contend that the Commission should eliminate this requirement because electric transmission projects will have no significant impacts on soil. We disagree. Whenever there is ground disturbance and the

³³ DOI requests that Resource Report 6 address impacts to local aquifers or water sources which may supply water to local communities. These impacts are specifically addressed in Resource Report – 2 – Water use and quality.

possibility of erosion, the Commission needs to determine the potential impact of that activity.

161. DOI recommends that this report include a requirement to identify highly erodible soils. Section 360.16(i)(1) requires that the applicant list the soil associations that would be crossed and describe, among other things, the erosion potential. We think this adequately addresses DOI's concern.

xi. Resource Report 8 – Land Use, Recreation, and Aesthetics

162. Section 360.16(j) requires that the applicant describe the existing uses of land within a quarter mile of the edge of the proposed right-of-way and changes to the land use if the project is approved. It also requires that the applicant list all buildings within a half-mile of the center of the proposed right-of-way. Communities state that the Commission should clarify in the regulation that not only must existing land use be evaluated but also all permitted land use. Under § 360.16(j)(3), the applicant is required to provide information on “planned development” in the project area, which is defined as development included in a master plan or on file with local planning authorities and would included permitted land use.

163. DOI requests that this report include identification of the loss of agricultural/grazing property within the project area. Section 360.16(j) requires that the applicant address changes to those land uses that will occur if the project is approved.

164. EEI states that the requirement that the applicant submit information regarding a

corridor that is one-half mile wide is unnecessarily broad, and could pose an undue burden on the applicant, and would exceed the study corridor width used in many States. It contends that the appropriate corridor width will vary from State to State depending on topography, the nature of development in the vicinity, and other factors. Therefore, it requests that the Final Rule be modified to permit the applicant to propose a corridor width that takes these factors into account. In the alternative, EEI states that the Final Rule should be modified to require information be provided for a corridor that is 200 feet wide, an approach that it states is consistent with current practice in certain States. Southern raises similar concerns. AEP states that the Commission's land use requirement of a quarter mile would be excessively costly. DOI also requests that the Commission explain the justification for the quarter-mile distance requirement.

165. The Commission believes that it is reasonable to require preliminary information on land uses and inhabited buildings within a half-mile corridor along a proposed transmission line. Having information about such areas from the outset will enable the Commission to more efficiently examine minor routing alternatives or modifications. In some instances, based on a review of the preliminary materials and information gained during the scoping process, the Commission may request additional information.

166. Section 350.16(j)(4) requires that the applicant identify various areas including, among others, sugar maple stands, orchards and nurseries, game management areas, national or State forest, parks, golf courses, or recreational or scenic areas.

Massachusetts Energy Board requests that the Commission add cranberry bogs after orchards and nurseries. The Commission will consider additional areas that need to be identified on a case-by-case basis depending on the proposed project.

167. Wilderness requests that the Commission lands managed by the Bureau of Land Management, the National Park Service, and the U.S. Forest Service be specifically listed as requiring information in Resource Report 8. It contends that the regulations should emphasize the protection of the special values of public lands. Section 360.16(j)(4) requires that the applicant identify all lands owned and controlled by Federal or State agencies, as well as land owned by private preservation groups in addition to parks and recreation areas. We believe this sufficiently covers the areas of concern raised by Wilderness in its comment. If Wilderness believes that something was overlooked when a applicant makes a specific filing, it can file comments during the Commission's scoping period.

168. EEI states that the Commission's requirement that the applicant identify Indian Tribes that may attach significance to the project's right-of-way is broad and vague and should be removed. It contends that there are transmission lines that are hundreds of miles long and that it would be difficult to determine the "project vicinity". EEI asserts that the cultural resources consultations with Native Americans required in § 380.16(f) and the requirement that the applicant identify Native American religious sites and cultural properties in § 380.16(j)(4) should be sufficient to assure that

appropriate consideration is given to the impacts on tribal resources of a proposed transmission facility.

169. Affiliated states that the applicant should provide names of all Indian tribes who may have permit authority or the ability to consent to, or withhold consent over, any aspect of the project. Affiliated also asserts that the rule should describe the different interests tribes have in projects, either as permitting and consenting entities inside the external boundaries of reservations, or outside of reservations on tribal traditional lands or cultural places. It should also explicitly cite, describe, and inform other stakeholders of the Commission's tribal obligations, identify treaty rights, and any other tribal interests that may be impacted by the proposed project. Confederated Tribes of the Warm Springs Reservation of Oregon (Confederated Tribes) requests that the Commission require an applicant to identify treaty rights and any other tribal interests that may be impacted by the proposed project in § 380.16(j)(5).

170. As discussed above, the Commission believes that the filing requirements concerning tribal interests under § 360.16(f) and § 360.16(j) and the notification requirements under §50.4(c) are sufficient to provide the basic information for the Commission to commence its review of a proposed project.

171. Pre-filing is an information gathering process. During this process, Commission staff will work with the applicant to make sure that all interested stakeholders, including any tribes, have been made aware of the proposed project and have had an opportunity

for their views and recommendations to be considered. Any issues particular to a proposed project will be raised and evaluated during the pre-filing process. Information developed during the pre-filing process will be made part of the record and will be considered by the Commission as it conducts its review when an application is subsequently filed.

172. Southern contends that the requirement in § 350.16(j)(6) to list all schools, homes, and other structures within one-half mile of a proposed facility and AM radio transmitters within 10,000 feet imposes an enormous burden with no discernible benefit. We disagree. It is more efficient for Commission staff to consider the land use and aesthetic issues within a wider area than to prematurely narrow the focus of the evaluation and scoping process. Any lesser requirement might require the applicant to do a more expansive review later in the process in response to stakeholder comments which could potentially extend the processing time for the proposed project.

173. Section 380.16(j)(11) requires that the applicant describe the visual characteristics of the lands and waters affected by the project. EEI states that significant visual impacts are inherent in virtually all transmission line construction and cannot be avoided or minimized in most cases. Therefore, it argues that the Commission's requirement that the applicant describe how the facilities will impact the visual character of the project right-of-way and list measures to lessen these impacts should be modified to clarify that an applicant must only propose measures to lessen such impacts "to the extend

practicable.” The Commission understands that it is difficult to lessen the impact of an electric transmission facility and will consider visual impacts on a case-by-case basis, but nevertheless needs visual impact information to complete its NEPA and public interest analysis.

174. National Grid states that the Commission should change this report to require the applicant to identify and give a general description of the surrounding areas and describe the effect of the proposed project on those areas. A general description of the surrounding areas is not sufficient for the Commission’s land use review. As stated, it is more efficient for the Commission to consider land use issues within a wider area.

xii. Resource Report 9 – Alternatives

175. Section 380.16(k) requires that the applicant describe alternatives to the project and compare the environmental impacts of the alternatives. Center for Biological Diversity wants to ensure the full environmental impacts of the alternatives are considered. National Grid states that the Commission should clarify that the applicant is only required to prepare resource reports for proposed projects, not alternatives.

American Transmission requests that the Commission specify what is meant by all alternatives, including the identity of the number of alternative routes that must be considered. AEP states that Resource Report 9 would require excessive research, including costly environmental analyses, to be completed on an undefined and seemingly limitless number of alternative routes. Southern states that it is not clear how much

information an applicant needs to collect to review and report on alternatives and that it could lead to an enormous burden.

176. For the preliminary reports required at the early stages of pre-filing, the applicant need only submit information that would allow Commission staff to discern reasonable alternatives. As the Commission conducts its site visits and reviews the comments submitted during the scoping period, alternatives will be considered. Once the applicant reaches a decision regarding its final proposed route, it will need to comply with the resource report requirements for that route before the application is filed.

177. Wilderness states that alternatives should be identified to avoid the locations identified in Resource Report 8 or to explain why they could not be avoided altogether. It also requests that a transparent comparison of costs and environmental impacts should be included in this section. The purpose of the Commission's NEPA analysis is to analyze the potential environmental impacts of a proposed project and reasonable alternatives to that project. Section 380.16(k) requires that applicants describe and evaluate alternatives including a discussion of costs and benefits. While the avoidance of impacts to special land use areas is not specifically addressed in the resource report, it will be explored through the course of the NEPA review.

178. APPA states that non-wires alternatives should be thoroughly evaluated "up front" during the interregional planning process and should not be among the alternatives evaluated by the Commission in the construction permit application process.

Massachusetts Energy Board, New Jersey BPU, and Pennsylvania PUC all request that the Commission consider alternatives beyond new transmission lines, including configuration and design alternatives, upgrades to existing transmission facilities, and demand side alternatives. Reinhardtts suggest the Commission consider “system alternatives” to a proposed project as opposed to just route alternatives. California PUC contends that the Commission should consider alternatives inside and outside the National Corridors and use all the information on alternatives developed in the State siting process. Communities requests that the Commission require the applicant to evaluate all technologically achievable alternatives.

179. NEPA requires the Commission to consider and discuss reasonable alternatives; it does not require consideration of patently unsuitable alternatives.³⁴ The Commission’s experience in the hydropower and gas pipeline programs is that the range of reasonable alternatives can best be determined based upon the facts of a specific siting proposal. In light of the specific facts raised by individual projects, the applicant will be required to address a variety of alternatives in the resource reports, including, where appropriate, alternatives other than new transmission lines. Moreover, reasonable alternatives can be identified by Commission staff or other stakeholders at various points during the proceeding for consideration in the NEPA process.

³⁴ See American Rivers v. FERC, 201 F.3d 1186, 1200 (9th Cir. 2000).

xiii. Resource Report 10 – Reliability and Safety

180. Section 380.16(1) requires that the applicant address potential hazards to the public and how these will affect reliability. Communities request that the report include an evaluation of homeland security issues and whether the project will result in energy independence. Homeland security related issues will be addressed on a case-by-case basis.

181. Southern states that the Commission should not require an applicant to include a discussion on potential acoustic or electric noise from electric and magnetic fields (EMF). National Grid contends that since these requirements are duplicative of local requirements, the Commission should waive the requirements where the applicant can demonstrate that comparable requirements are being complied with at a local level. As discussed above, an applicant may use any information developed during its planning stage and for the State proceeding to satisfy the Commission's filing requirements. However, it must clearly explain and demonstrate how that information complies with the Commission's specific requirements.

xiv. Resource Report 11 – Design and Engineering

182. EEI states that the requirement that the applicant submit detailed design and engineering drawings showing all major project structures is inconsistent with typical industry and State permitting practice which is to only submit pole spotting or spacing information and general consideration of structure type when siting authorization is

sought. It states that detailed engineering is then completed after a proposed transmission project is authorized. EEI contends that electric transmission lines are subject to specific field designs along their entire length to accommodate particular circumstances.

Therefore, it states it would be more appropriate for the Commission to require the submission of detailed engineering information after a permit is issued rather than beforehand. National Grid states that this requirement should be modified to require only maps of the proposed siting route and drawings depicting the predominate type of structures to be used.

183. The Commission expects the applicant to be able to commence construction when the Commission issues the permit. The applicant can develop its design during the pre-filing phase, but the Commission expects that all design plans should be well-defined when it files its application.

184. Massachusetts Energy Board requests that the Commission require applicants to provide an explanation for any selection of a structure design that is different from structures already present and an explanation of any structure placement that is longitudinally offset from existing structures. Resource Report 1 requires that the applicant describe the facilities associated with the proposed construction. If the Massachusetts Energy Board believes additional information is required for a specific project, it should file comments during the NEPA scoping process and those comments will be addressed in that proceeding.

c. **Exhibit G – Engineering Data**

185. The Commission requires specific engineering data to support its review of a proposed transmission line in Exhibit G. National Manufacture's contend that flexibility should be allowed in the permit application facilities description because the design will probably not be finalized at the time of permit application. It also notes that filings have historically been made 5 to 10 years before the final design is completed. The Commission expects that the applicant will be prepared to commence construction when the permit is issued. Thus, it will need to have all its final designs completed prior to when the Commission issues an order on the merit of a proposed project.

186. Massachusetts Energy Board states that the Commission should require applicants to provide: (1) existing and expected EMF cross-sectional profiles for points along a proposed project and identify any low-cost mitigation of EMF; (2) information on interference with existing cathodic protection systems; (3) an analysis of noise levels; (4) engineering data on substations and switching station that would be constructed or altered in connection with the transmission line project; and (5) any other information that has been identified as a requirement component of siting review or of an application to construct in the State in which the facility will be located. DOI also requests the Commission review the potential environmental impact of noise.

187. The information Massachusetts Energy Board and DOI recommend the Commission should require applicants to provide is already required by Resource

Report 10. Should other pertinent information be identified during the State siting process, this information may be filed for consideration by the Commission.

d. Exhibit H – System Analysis Data

188. Exhibit H requires information to evaluate the impact the proposed facilities will have on the existing electric transmission system performance, including an analysis of existing and expected congestion, power flow cases which include contingency data files, a list of assumptions and guidelines used in the cases, a stability analysis, a short circuit analysis and a concise analysis that explains how system reliability will be improved, how long-term regional planning is impacted and how congestion will be impacted on the applicant's entire system.

189. Communities state that system analyses should include all relevant reliability assessments completed by State commissions, ISO, RTO, energy service companies and the like. New Jersey BPU states that the Commission analysis should include input from a RTO/ISO (if applicable) because they are in the best position to analyze the impact new facilities will have on overall system performance. In determining whether to issue a permit to construct the proposed facilities, the Commission will review all processes that were conducted by the applicant with the relevant stakeholders in determining whether to approve the proposed facilities, including input from RTOs and ISOs.

190. Reinhardtts contend that the Commission must consider how interstate transmission will impact electricity available to individual States and regions. They state

that the Commission's rules must include data requirements that would shed light on potential reliability issues. They also assert that the rules should: (1) require full disclosure of all electric generation (new or existing) for which the new transmission facilities have been proposed; (2) require that alternatives to the proposed transmission include alternative electric generation scenarios; and (3) require a detailed analysis of all impacts that would be imposed by construction of the desired interstate transmission resources that are expected to feed into the new transmission facilities to meet identifiable power needs. APPA and PJM suggest more details concerning the reliability criteria the Commission will use to approve projects. PSEG Companies and APPA contend that there is a need for a broad congestion analysis.

191. The Commission anticipates that DOE will designate corridors to help connect existing generation to load. In most cases, the proposed project will be limited to transmission facilities designed to achieve this purpose. The Commission's decision on the proposed project will take into account the applicant's submitted reliability and systems analysis, an analysis of alternatives, and an analysis of project impacts as required by NEPA. Additionally, based on the specific issues that arise in individual projects, the Commission may request additional information to assure that the proposed project is in compliance with any Commission-approved reliability standard.

e. Exhibit I – Project Cost and Financing

192. Exhibit I requires general information concerning the cost of the proposed project.

Communities state that the applicant should provide a detailed analysis of the projected cost impact on customers both inside and outside the National Corridors. California PUC states that the description of project financing should identify the specific mechanisms by which the applicant will seek cost recovery, what categories of ratepayer costs would be recovered from, and what rate or other incentives the applicant proposes to seek. It contends that this will provide adequate transparency regarding the financial impact of the project on the State or region.

193. Cost recovery and the effect on customer rates are not part of the proceeding to issue a construction permit. The Commission will address issues related to the costs associated with the proposed facilities in separate rate proceedings filed under FPA section 205.³⁵ Any concerns about cost recovery should be raised in those proceedings.

G. Critical Energy Infrastructure Information

194. Information filed during the pre-filing and application proceedings will likely contain critical energy infrastructure information (CEII). Under § 50.4(c)(5), access to this information is subject to the CEII requirement in § 388.113 of the Commission's regulations.

³⁵ See, e.g., Allegheny Energy, Inc., 116 FERC ¶ 61,058 (2006), American Electric Power Service Corp., 116 FERC ¶ 61,059 (2006). See also Promoting Transmission Investment through Pricing Reform, 71 FR 43294 (July 31, 2006); FERC Stats. & Regs. ¶ 31,222 (2006).

195. Western Energy Board,³⁶ NARUC, and CA Resources contend that the Commission should recognize that State agencies with permitting or other regulatory authority with respect to a project are distinguishable from individuals or businesses seeking CEII information for their own private interests. They state that such agencies are invested by statute with safeguarding the public interest and as such, have a need to know with respect to CEII, and should not be required to demonstrate a need for the CEII when requesting this material. In their filings, they make various recommendations for changes to the Commission's CEII regulations.

196. On September 21, 2006, in Docket No. RM06-23-000, the Commission issued a notice of proposed rulemaking regarding its regulations for access to CEII.³⁷ Copies of the comments submitted by Western Energy Board, NARUC, Washington Council, and CA Resources have been placed in the official record in Docket No. RM06-23-000, and will be addressed in that proceeding.

197. DOI requests the Commission include a definition of CEII along with an identified procedure for obtaining CEII. The Commission finds that the reference in § 50.4(c)(5) to the CEII regulations § 388.113 is sufficient to direct the reader to the Commission's procedures concerning CEII.

³⁶ Washington Council adopts the comments of the Western Energy Board.

³⁷ Critical Energy Infrastructure Information, 71 FR 58321 (Oct. 3, 2006); FERC Stats. & Regs. ¶ 32,607 (2006).

H. Accepting/Rejecting Applications

198. Under § 50.8(b), the Director of OEP may reject an application that does not comply with any applicable statute, rule, or order as provided for under § 385.2001(b) of the Commission's regulations. Allegheny requests that the Commission impose a 10-day deadline for the rejection of applications as required under § 157.8(a) of the Commission's natural gas regulations. The Director of OEP will either notice the application or reject it, in a timely manner. Assigning an arbitrary deadline for these actions is not in the interest of an applicant who is earnestly trying to perfect an application.

I. Hearings

199. Section 50.3(e) states that the Commission will conduct a paper hearing on applications for permits for electric transmission facilities. NARUC contends that the regulations do not provide for notice and an opportunity for a hearing as required under FPA section 216(b). They argue that the major portion of the Commission's examination of the application and the participation of the States occurs in the pre-filing process and that the applicant, not the Commission, is tasked with deciding what kind of participation process will provide interested persons an opportunity to be heard. They state that because the majority of the evaluative work performed with respect to the application will occur before the hearing process ever begins, the Commission will deprive interested persons of the ability to participate in a fair and open process. NARUC also states that

during the pre-filing process the applicant can make its case to the Commission before interested persons can intervene, test the information provided by the applicant, and provide their own analysis without being subject to the Commission's ex parte restrictions.

200. Pre-filing is an information-gathering process. The Commission will assign a docket number at the beginning of the process. All filings made in that docket from both the applicant and stakeholders will be available for anyone to comment on. During this process, Commission staff will work with the applicant to make sure that all interested stakeholders have been made aware of the proposed project and have had an opportunity for their views and recommendations to be considered. The Commission staff also will start its environmental scoping and review process. During this process, Commission staff will conduct public meetings and/or technical conferences and work with the applicant and all stakeholders to formulate the issues raised by a particular project and to compile the information that will be needed by the Commission to address those issues when it conducts the substantive review of the proposed project during the application process. During pre-filing, Commission staff will be available to provide guidance on the process to both the applicant and any interested stakeholder.

201. Once the Commission staff determines that there is sufficient information for the Commission to evaluate the proposed project, the applicant will file its application. At that point, the hearing envisioned under FPA section 216(b) will commence. The

application will be subject to the Commission's notice, intervention, and protest requirements. Based on the information in the application and the information compiled during the application proceeding, the Commission will evaluate the proposed project and issue an order on the merits. Thus, any interested stakeholder will have numerous opportunities to participate not only informally during the pre-filing process, but also formally during the application process.

202. Southern contends that a paper hearing should not preclude an evidentiary hearing in the event that circumstances dictate one. Iowa Board similarly argues that paper hearings should not foreclose the possibility of a live hearing if it is more appropriate. New Jersey BPU states that the Commission should determine the nature of the hearing depending on the circumstances, including whether material issues of fact are in dispute that cannot be adequately resolved on the written record. Pennsylvania PUC urges the Commission to adopt provisions that provide for a hearing that affords entities an opportunity to present their case in full using all due process protections afforded by a contested on-the-record proceeding. SoCal Edison states that when material disputes are raised, the Commission should have a full hearing before an ALJ with the appropriate protections. Western Governors raise similar concerns.

203. The Commission believes that in most instances, the Commission will make its ultimate determination on the basis of the paper record compiled in the proceeding. The Commission may order a trial-type hearing, however, either on its own motion or the

motion of any interested party of record in accordance with subpart E of Part 385 of the regulations if the Commission deems it appropriate.

J. Permit Conditions

204. Section 50.11(b) requires that the permittee accept the permit in writing within 30 days from the date of the order issuing the permit. EEI contends that the deadline should be extended to allow the permittee to seek rehearing. It states that this is necessary because certain aspects of the permit order may render the proposed project uneconomic or otherwise infeasible. Therefore, it states that the applicant's rehearing request must be addressed before it can determine whether or not to accept the permit. Allegheny makes similar arguments. The Commission agrees that an applicant should be able to appeal the Commission's decision before it is required to accept its permit and has modified § 50.11(b) accordingly.

205. Los Angeles Department of Water and Power (Los Angeles DWP) contends that acceptance of a permit would require approval of its Board of Commissioners and that the approval may take more than 30 days. Los Angeles DWP proposes that the 30 day period be extended in response to a reasonable request by the applicant. The Commission may waive a rule for good cause shown. If a permittee needs an extension of time to accept its permit it may request a waiver of § 50.11(b).

206. Section 50.11(c) requires, among other things, that the facilities be constructed in a manner to prevent interference with service furnished by other public utilities. Imperial

states that the construction, installation, operation, and maintenance of new transmission facilities should be conducted in a manner that prevents interference with service not only furnished by public utilities, but also services furnished by non-public utilities. We will add non-public utilities to § 50.11(c).

207. Section 50.11(d) requires written authorization from the Director of OEP prior to commencing construction or initiating operations of the approved facilities. American Transmission states that the Commission's issuance of a permit should be sufficiently final so that applicants can begin the construction process, including making financial commitments. It contends that any further delay would be unnecessary. The Commission generally imposes a substantial number of conditions in its orders authorizing project construction, such as requests that the permittee receive all final comments from various resource agencies before commencing construction. Additionally, the permittee may not be able to conduct all of the required surveys until it is able to condemn the property with the eminent domain authority received with the issuance of the Commission's permit. Thus, the Commission requires that the permittee complete all conditions precedent before it will authorize the construction of the facilities.

208. Virginia Electric states that written authorization obtained from the Director of OEP should permit both commencing construction of the facilities and initiating operations. A single permit will allow for the timely construction and operations of new

transmission facilities. Generally, the Commission will not authorize the commencement of service on the new facilities until it determines that the rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

Accordingly, the permittee needs authorization from the Director of OEP to make the facilities available for service.

209. Communities contend that in instances of delayed construction, there should be a provision for reopening the order granting the permit to allow for public scrutiny of the change of circumstances to ensure that the delay is in the public interest. Section 50.11(e) requires that the facilities be completed within the timeframe specified in the Commission order. If the facilities are constructed as required by the Commission, there will be no reason to revisit the Commission's decision. Section 50.11(e) also states that if the permittee does not complete the facilities within the specified timeframe it must file a request for an extension of time.

210. Under § 50.11(g) a permittee must notify affected landowners that have executed easement agreements to convey property rights for the proposed facilities if the permit is transferred. EEI states that the requirement that the permit holder notify all affected landowners if a permit is transferred could be unduly burdensome in many instances when the permittee no longer knows the identity of landowners along the right-of-way because the transmission line was authorized and landowners consulted many years previously. The Commission is issuing a permit to construct the facilities. If a permit is

transferred at any time before the facilities are constructed, the new permittee will be required to contact all landowners subject to easement agreements that a different company will be constructing the facilities and who they will need to contact while the facilities are being constructed.

211. Affiliated states that compliance with applicable tribal law should be included as condition to a permit. Section 50.11 details general conditions that will apply to all permits issued by the Commission. The Commission also will impose other conditions to address specific issues that will arise in a proceeding on a case-by-case basis.

212. American Transmission states that the Commission should include reporting requirements which could capture any changes since a permit is issued. National Grid states that there should be no ongoing reporting requirements regarding operations and maintenance. The Commission's jurisdiction under FPA section 216 is to issue permits to construct electric transmission facilities. Once the facilities are constructed and operational and all the Commission's right-of-way restoration conditions have been met, the Commission's jurisdiction over the facilities under FPA section 216 ends. Thus, there will be no changes to the permits or any ongoing reporting and maintenance requirements.

K. State and Local Permits

213. Under §§ 50.5(c)(2) and (3) the applicant is required to include a description of the zoning requirements for the facilities and a list of local entities with local

authorization requirements, respectively. EEI states that the requirements that the applicant describe the zoning and site availability for any permanent facilities and to account for each of the local permitting requirements could potentially be misconstrued by localities to imply that a transmission project sponsor must obtain local permits. It contends that this is counter to the plain language of FPA section 216 that preempts State and local law, including zoning requirements. It requests that the Commission clarify that the Final Rule preempts State and local permitting requirements. American Transmission requests that the Commission clarify the need for zoning requirement information.

214. While the Commission may, where appropriate, require applicants comply with State and local permitting, we note, any State or local permits issued with respect to jurisdictional facilities must be consistent with the conditions of the Commission's permit. The Commission encourages cooperation between the applicants and local authorities. However, this does not mean that State and local agencies, through application of State or local laws, may prohibit or unreasonably delay the construction of facilities approved by the Commission.³⁸

215. Communities state that while the Commission may assert jurisdiction over the siting of transmission facilities, it cannot ignore the role the States must still play in the

³⁸ See, e.g., Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988); National Fuel Gas Supply v. Public Service Comm'n, 894 F.2d 571 (2d Cir. 1990).

siting process. They argue that the Commission is attempting to limit State authority to only State agencies that provide authorization under Federal law. They contend that this is inconsistent with the requirements of FPA section 216(h)(3) which requires that the NEPA review process be coordinated with State agencies conducting separate permitting and environmental reviews.

216. FPA section 216(h), which is entitled “Coordination of Federal Authorizations for Transmission Facilities”, directs the Commission, under its delegated authority, to “coordinate the Federal authorization and review process under this subsection with . . . State agencies”. Section 216(h)(3) specifically involves only Federal authorizations. Under FPA section 216(h)(4), however, the Commission can coordinate with “State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorizations and environmental reviews.”

217. As stated, under § 50.5(c)(3), in the initial pre-filing filing requirements the applicant is required to list all local entities with local authorization requirements. Section 50.5(c)(3) also requires that the applicant explain how it intends to account for the local permits in the environmental review process and when it intends to file for such permits. Once the pre-filing process commences, under § 50.5(e)(6), the applicant is required to submit a schedule detailing when it intends to submit the applications with the local agency. Further, under § 50.5(e)(8), the applicant is required to submit status reports updating its progress in obtaining those permits.

218. Commission staff will work with the applicant and the local agencies throughout the pre-filing and application process to get the information required for all applicable Federal and State permit processes needed to site the proposed facilities. However, as discussed above, a State or local agency cannot prevent the construction of the facility through its permitting process, which is preempted by Federal law in instances where our jurisdiction is triggered under FPA section 216. For example, it would be inconsistent with the text, purpose and intent of FPA section 216 to allow a State permitting agency to halt the construction of a facility that has been permitted by the Commission for the very reason that the State agency withheld approval of the project for more than one year. To hold otherwise would essentially render FPA section 216 a nullity.

L. Subsequent Modifications to Facilities

219. Several commenters request clarification on how a permittee may make minor improvements to the facilities authorized by the Commission after they are constructed. EEI requests that the permit include provisions that allow a permittee to make minor improvements after facilities are constructed. Allegheny states that the Commission should clarify the process for making modifications to existing facilities to specify that an applicant is not required to first seek State approval. Allegheny further requests that when such a modification is proposed, the Commission's review be limited to the proposed modifications, whether the existing facility was sited by the Commission or State siting authority. National Grid contends that a transmission siting permit is valid in

perpetuity. It argues that otherwise, an applicant would have no incentive for investment. It also requests that the Commission develop criteria to determine whether project modification requires notice to the Commission or a revision to the permit.

220. As stated, once the facilities are constructed, the Commission's jurisdiction under FPA section 216 ends. All modifications to existing transmission facilities will be subject to the provisions of FPA section 216 at the time the facilities are proposed. Specifically, the facilities will have to be located in a then-designated National Corridor and will have to qualify for the Commission's jurisdiction under FPA section 216(b)(1).

M. Definitions

221. Section 50.1 lists the terms the Commission determined needed to be specifically defined in the regulations. Allegheny requests that the Commission define the terms "project" and "transmission facility" to clarify that they only pertain to the portions of transmission facilities that a transmission owner is unable to successfully site through a State process. Southern contends that the Commission should consider defining "project" to embody the triggering requirements in FPA section 216(b). The only projects that the Commission will be issuing permits to are those that will fall under FPA section 216(b). Thus, no further explanation of those terms is necessary.

222. National Grid requests that the Commission define "Electric transmission facilities" to include those facilities, including various listed equipment and materials, used for the transmission of electric energy in interstate commerce for the sale of electric

energy at wholesale. Transmission facilities that will be subject to a Commission permit will include all the facilities necessary to provide service on the facilities approved by the Commission. Further definition of facilities in the regulations is unnecessary.

223. Section 50.1 defines transmitting utility as an entity that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale. Massachusetts Energy Board states that the Commission should consider defining the terms “transmission” and “wholesale” in the definition of transmitting utility or reference the existing CFR definitions. Section 50.1 defines a transmitting utility consistent with the definition in FPA section 3(23). The Commission does not believe any further definition is necessary.

224. Southern requests that the Commission define the term “applicant” and clarify that the permitting process will only be available to transmission utilities, unless exceptional circumstances are shown. The Commission does not believe that it was Congress’ intent in enacting EAct 2005 to limit the construction of electric transmission facilities in national interest transmission corridors to any specific entity. The Commission will accept any viable project proposed by any prospective transmission company.

N. Eminent Domain Issues

225. Under § 50.4(c)(2)(i)(E), the applicant must include a brief summary of what rights the affected landowner has at the Commission and in proceedings under the

eminent domain rules of the relevant State. Reinhardts request that the pre-filing notifications include a statement that the applicant will have the ability to use the power of eminent domain to get the land for the facility and the basis for that authority.

Southern states that the Commission should not require an applicant to summarize the State eminent domain rules because the applicant would be legally liable for the accuracy of this information.

226. The Commission believes that the applicant should provide landowners with some basic information concerning what is involved in the eminent domain process. The general public is probably not greatly informed on these matters and may need to invest significant time and money just to get a basic understanding. We do not believe that providing this information would put the applicant at risk for unnecessary litigation, especially if the applicant prefaces its explanation with a disclaimer statement. It can also refer the landowner to a State agency or the State Attorney General for further information concerning the laws of their State, if appropriate. Additionally, we will require that the applicant explain that it has the right to acquire the property by eminent domain under FPA section 216(e).

227. Communities suggest that if State law limits eminent domain authority, the Federal court likewise is constrained. Southern states that the Commission should make clear how, and to what extent, the United States District Courts are to employ State

practices and procedures as part of an eminent domain proceeding commenced in a Federal forum. Section 216(e)(3) of the FPA states:

The practice and procedures of any action or proceeding conducted under this subsection in the district court of the United States shall conform as nearly as practicable to the practice and procedures in a similar action or proceeding in the courts of the State in which the property is located.

Thus, it is for the court to decide what procedures are appropriate for their individual proceedings.

O. Filing Fees/Funding

228. Affiliated states that if Tribes are impacted by any project, a filing fee should be required by the Commission to fund reasonable tribal responses and requirements under these regulations. Washington Council contends that the Commission should require the applicants fund reasonable State participation in FERC siting proceedings. Parks Association request that the applicant fund third-party contractors for the research that other agencies will need to do for the resource reports. The Commission does not require that applicants fund any participation in Commission proceedings and will not do so here.

P. Technical Conferences

229. APPA, NARUC, and CA Resources request that the Commission hold a technical conference prior to issuing the Final Rule to discuss various issues raised in the NOPR. Specifically, APPA requests that the Commission hold a technical conference to help define diverse State and Federal processes and the regulator's legal authorities. NARUC contends that the Commission should hold a technical conference to give the State

commissions an opportunity to address key matters related to the implementation of this rule. CA Resources Agency requests that the Commission hold a technical conference or establish an informal workshop to develop solutions to the issue of the concurrent jurisdiction and with regard to potential changes to the Commission's CEII regulations.

230. The Commission believes that the comments filed in response to the NOPR are sufficient for the Commission to issue a Final Rule without further proceedings. By acting promptly, the Commission is assured that it will have its procedures required under FPA section 216(c) in place when DOE designates National Corridors.

III. Information Collection Statement

231. The Commission is submitting the following collection of information contained in this proposed rulemaking to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.³⁹ The Commission will identify the information provided for under the proposed Part 50 as FERC-729.

232. The number of applicants for electric transmission permits in national interest electric transmission corridors is unknown. Proposed transmission projects would have to, among other things, significantly reduce electric transmission congestion in a national interest electric transmission corridor. These corridors are yet to be defined by the Secretary. Also, Federal permitting of electric transmission facilities used in interstate

³⁹ 44 U.S.C. 3507(d).

commerce will occur only if, or when, States do not or cannot act on an application, or have conditioned a project in such a manner that the proposed construction or modification will not significantly reduce congestion in interstate commerce or is not economically feasible. Any estimates of the number of anticipated electric transmission construction permit applications are extremely variable, ranging from two to 20 per year.

233. The Commission solicited comments on the Commission’s need for the information required by the proposed regulations, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality and clarity of the information that the Commission will collect, and any suggested methods for minimizing the respondent’s burden, including the use of information techniques. The burden estimates for complying with this proposed rule are as follows:

Data Collection	Number of Respondents	Number of Responses	Hours Per Response	Total Annual Hours
FERC-729	10	1	9,600	96,000

The Commission did not receive any specific comments concerning its burden estimates. Where commenters raised concerns concerning specific information collection requirements that would be burdensome to implement, the Commission has addressed elsewhere in the rule.

Information Collection Costs: Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical and

support) the Commission is using an hourly rate of \$150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated annual cost is anticipated to be \$14.4 million. The Commission sought comments on these estimates and did not receive any. Therefore, it will use these estimates in the Final Rule.

Title: FERC-729 Electric Transmission Facilities

Action: Proposed Data Collections

OMB Control No. To be determined.

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 this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

Respondents: Businesses or other for profit, State, local, or Tribal government.

Necessity of the Information: The information collected from applicants will be used by the Commission to review the suitability of the proposal for a permit to construct the proposed electric transmission facilities.

234. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE,

Washington, D.C. 20426 [Attention: Michael Miller, Office of the Executive Director,
Phone: (202)502-8415, fax: (202)273-0873, e-mail: michael.miller@ferc.gov]

235. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395-4650, fax: (202)395-7285, e-mail: oir_submission@omb.eop.gov. As the OMB control number has not been assigned to this information collection, please use the docket number for reference in your comments.

IV. Environmental Analysis

236. The Commission is required to prepare an EA or an EIS for any action that may have a significant adverse effect on the human environment.⁴⁰ No environmental consideration is raised by the promulgation of a rule that is procedural in nature or does not substantially change the effect of legislation or regulations being amended. The proposed regulations implement the procedural filing requirements for applications to construct electric transmission facilities. Accordingly, neither an EIS nor EA is required.

⁴⁰ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

V. Regulatory Flexibility Act

237. The Regulatory Flexibility Act of 1980 (RFA)⁴¹ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission expects entities seeking approval for interstate transmission siting will be major transmission utilities capable of financing complex and costly transmission projects. The Commission anticipates that the high cost of construction of transmission facilities will bar the entry into this field by small entities as defined by the RFA. Therefore, the Commission concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

238. 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 FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

239. From FERC'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

⁴¹ 5 USC 601-612.

eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

240. User assistance is available for eLibrary and the FERC's website during normal business hours from our Help line at (202)502-8222 or the Public Reference Room at (202) 502-8371 Press 0, TTY (202)502-8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

241. These regulations are effective [insert date 60 days from the date the rule is published in the **FEDERAL REGISTER**]. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a “major rule” as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit the Final Rule to both houses of Congress and to General Accounting Office

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 the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission adds Part 50 and amends Part 380, Chapter I, Title 18, Code of Federal Regulations, as follows:

1. Part 50, Subchapter B, is added to read as follows:

PART 50 - - APPLICATIONS FOR PERMITS TO SITE INTERSTATE ELECTRIC

TRANSMISSION FACILITIES

Sec.

- 50.1 Definitions.
- 50.2 Purpose and intent of rules.
- 50.3 Applications/pre-filing; rules and format.
- 50.4 Stakeholder Participation.
- 50.5 Pre-filing procedures.
- 50.6 Applications: general content.
- 50.7 Applications: exhibits.
- 50.8 Acceptance/rejection of applications.
- 50.9 Notice of application.
- 50.10 Interventions.
- 50.11 General conditions applicable to permits.

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

§ 50.1 **Definitions.**

As used in this part:

Affected landowners include 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.

Director means the Director of the Office of Energy Projects or his designees.

Federal authorization means permits, special use authorization, certifications, opinions, or other approvals that may be required under Federal law in order to site a transmission facility.

National interest electric transmission corridor means any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers, as designated by the Secretary of Energy.

Permitting entity means any Federal or State agency, Indian tribe, multistate, or local agency 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, Tribal, or local agency, any affected non-governmental organization, affected landowner, or interested person.

Transmitting utility means an entity that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale.

§ 50.2 Purpose and intent of rules.

(a) The purpose of the regulations in this part is to provide for efficient and timely review of requests for permits for the siting of electric transmission facilities under section 216 of the Federal Power Act. The regulations ensure that each stakeholder is afforded an opportunity to present views and recommendations with respect to the need for and impact of a facility covered by the permit. They also coordinate, to the maximum extent practicable, the Federal authorization and review processes of other Federal and State agencies, Indian tribes, multistate, and local entities that are responsible for conducting any separate permitting and environmental reviews of the proposed facilities.

(b) Every applicant shall file all pertinent data and information necessary for a full and complete understanding of the proposed project.

(c) Every requirement of this part will be considered as an obligation of the applicant which can only be avoided by a definite and positive showing that the

information or data called for by the applicable rules is not necessary for the consideration and ultimate determination of the application.

(d) The burden of assuring that all applications and information submitted under this part is in an intelligible form and any omission of data is justified rests with the applicant.

§ 50.3 Applications/pre-filing; rules and format.

(a) Filings are subject to the formal paper and electronic filing requirements for proceedings before the Commission as provided in part 385 of this chapter.

(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 an original and 7 conformed copies.

(c) When an application considered alone is incomplete and depends vitally upon information in another application, it will not be accepted for filing until the supporting application has been filed. When applications are interdependent, they must be filed concurrently.

(d) All filings must be signed in compliance with § 385.2005 of this chapter.

(e) The Commission will conduct a paper hearing on applications for permits for electric transmission facilities.

(f) Permitting entities will be subject to the filing requirements of this section and the prompt and binding intermediate milestones and ultimate deadlines established in

the notice issued under § 50.9.

(g) Any person submitting documents containing critical energy infrastructure information must follow the procedures specified in § 388.113 of this chapter.

§ 50.4 Stakeholder participation.

A Project Participation Plan is required to ensure stakeholders have access to accurate and timely information on the proposed project and permit application process.

(a) Project Participation Plan. An applicant must develop a Project Participation Plan and file it with the pre-filing materials under § 50.5(c)(7) that:

- (1) Identifies specific tools and actions to facilitate stakeholder communications and public information, including an up-to-date project website and a readily accessible, single point of contact within the company;
- (2) Lists all central locations in each county throughout the project area where the applicant will provide copies of all their filings related to the proposed project; and
- (3) Includes a description and schedule explaining how the applicant intends to respond to requests for information from the public as well as Federal, State, and Tribal permitting agencies, and other legal entities with local authorization requirements.

(b) Document Availability.

(1) Within three business days of the date the pre-filing materials are filed or application is issued a docket number, an applicant must ensure that:

(i) Complete copies of the pre-filing or application materials are available in accessible central locations in each county throughout the project area, either in paper or electronic format; and

(ii) Complete copies of all filed materials are available on the project website.

(2) An applicant is not required to serve voluminous or difficult to reproduce material, such as copies of certain environmental information, on all parties, as long as such material is publicly available in an accessible central location in each county throughout the project area and on the applicant's project website.

(c) Project notification.

(1) The applicant must make a good faith effort to notify: all affected landowners; landowners with a residence within a quarter mile from the edge of the construction right-of-way of the proposed project; towns and communities; permitting agencies; 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 application's proposed transmission facilities; and any known individuals that have expressed an interest in the State permitting proceeding.

Notification must be made:

(i) By certified or first class mail, sent:

- (A) Within 14 days after the Director notifies the applicant of the commencement of the pre-filing process under § 50.5(d);
- (B) Within 3 business days after the Commission notices the application under § 50.9; and
 - (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) The pre-filing request notification must, at a minimum, include:
 - (A) The docket number assigned to the proceeding;
 - (B) The most recent edition of the Commission's pamphlet Electric Transmission Facilities Permit Process. The newspaper notice need only refer to the pamphlet and indicate that it is available on the Commission's website;
 - (C) A description of the applicant and a description of the proposed project, its location (including a general location map), its purpose, and the timing of the project;
 - (D) A general description of the property the applicant will need from an affected landowner if the project is approved, how to contact the applicant, including a local or toll-free phone number, the name of a specific person to contact who is knowledgeable about the project, and a reference to the project website. The newspaper

notice need not include a description of the property, but should indicate that a separate notice is being mailed to affected landowners and governmental entities;

(E) A brief summary of what rights the affected landowner has at the Commission and in proceedings under the eminent domain rules of the relevant State. The newspaper notice does not need to include this summary;

(F) Information on how to get a copy of the pre-filing information from the company and the location(s) where copies of the pre-filing information may be found as specified in paragraph (b) of this section;

(G) A copy of the Director's notification of commencement of the pre-filing process, the Commission's Internet address, and the telephone number for the Commission's Office of External Affairs; and

(H) Information explaining the pre-filing and application process and when and how to intervene in the application proceedings.

(ii) The application notification must include the Commission's notice issued under § 50.9.

(3) If, for any reason, a stakeholder has not yet been identified when the notices under this paragraph are sent or published, the applicant must supply the information required under paragraphs (c)(2)(i) and (ii) of this section when the stakeholder is identified.

(4) If the notification is returned as undeliverable, the applicant must make a reasonable attempt to find the correct address and notify the stakeholder.

(5) Access to critical energy infrastructure information is subject to the requirements of § 388.113 of this chapter.

§ 50.5 Pre-filing procedures.

(a) Introduction. Any applicant seeking a permit to site new electric transmission facilities or modify existing facilities must comply with the following pre-filing procedures prior to filing an application for Commission review.

(b) Initial consultation. An applicant must meet and consult with the Director concerning the proposed project.

(1) At the initial consultation meeting, the applicant must be prepared to discuss the nature of the project, the contents of the pre-filing request, and the status of the applicant's progress toward obtaining the information required for the pre-filing request described in paragraph (c) of this section.

(2) The initial consultation meeting will also include a discussion of whether a third-party contractor is likely to be needed to prepare the environmental documentation for the project and the specifications for the applicant's solicitation for prospective third-party contractors.

(3) The applicant also must discuss how its proposed project will be subject to the Commission's jurisdiction under section 216(b)(1) of the Federal Power Act. If the

application is seeking Commission jurisdiction under section 216(b)(1)(C) of the Federal Power Act, the applicant must be prepared to discuss when it filed its application with the State and the status of that application.

(c) Contents of the initial filing. An applicant's pre-filing request will be filed after the initial consultation and must include the following information:

(1) A description of the schedule desired for the project, including the expected application filing date, desired date for Commission approval, and proposed project operation date, as well as the status of any State siting proceedings.

(2) A detailed description of the project, including location maps and plot plans to scale showing all major components, including a description of zoning and site availability for any permanent facilities.

(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 local entities with local authorization requirements. The filing must include information concerning:

(i) How the applicant intends to account for each of the relevant entity's permitting and environmental review schedules, including its progress in DOE's pre-application process; and

(ii) When the applicant proposes to file with these permitting and local entities for the respective permits or other authorizations.

(4) A list of all affected landowners and other stakeholders (include contact names and telephone numbers) that have been contacted, or have contacted the applicant, about the project.

(5) A description of what other work already has been done, including, contacting stakeholders, agency and Indian tribe consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental surveys/studies, open houses, and any work done or actions taken in conjunction with a State proceeding. This description also must include the identification of the environmental and engineering firms and sub-contractors under contract to develop the project.

(6) Proposals for at least three prospective third-party contractors from which Commission staff may make a selection to assist in the preparation of the requisite NEPA document, if the Director determined a third-party contractor would be necessary in the Initial Consultation meeting.

(7) A proposed Project Participation Plan, as set forth in § 50.4(a).

(d) Director's notice.

(1) When the Director finds that an applicant seeking authority to site and construct an electric transmission facility has adequately addressed the requirements of paragraphs (a), (b), and (c) of this section, and any other requirements determined at the Initial Consultation meeting, the Director will so notify the applicant.

- (i) The notification will designate the third-party contractor, and
 - (ii) The pre-filing process will be deemed to have commenced on the date of the Director's notification.
- (2) If the Director determines that the contents of the initial pre-filing request are insufficient, the applicant will be notified and given a reasonable time to correct the deficiencies.
- (e) Subsequent filing requirements. Upon the Director's issuance of a notice commencing an applicant's pre-filing process, the applicant must:
- (1) Within 7 days, finalize and file the Project Participation Plan, as defined in § 50.4(a), and establish the dates and locations at which the applicant will conduct meetings with stakeholders and Commission staff.
 - (2) Within 14 days, finalize the contract with the selected third-party contractor, if applicable.
 - (3) Within 14 days:
 - (i) Provide all identified stakeholders with a copy of the Director's notification commencing the pre-filing process;
 - (ii) Notify affected landowners in compliance with the requirements of § 50.4(c); and
 - (iii) Notify permitting entities and request information detailing any specific information not required by the Commission in the resource reports required under

§ 380.16 of this chapter that the permitting entities may require to reach a decision concerning the proposed project. The responses of the permitting entities must be filed with the Commission, as well as being provided to the applicant.

(4) Within 30 days, submit a mailing list of all stakeholders contacted under paragraph (e)(3) of this section, including the names of the Federal, State, Tribal, and local jurisdictions' representatives. The list must include information concerning affected landowner notifications that were returned as undeliverable.

(5) Within 30 days, file a summary of the project alternatives considered or under consideration.

(6) Within 30 days, file an updated list of all Federal, State, Tribal, and local agencies permits and authorizations that are necessary to construct the proposed facilities.

The list must include:

- (i) A schedule detailing when the applications for the permits and authorizations will be submitted (or were submitted);
- (ii) Copies of all filed applications; and
- (iii) The status of all pending permit or authorization requests and of the Secretary of Energy's pre-application process being conducted under section 216(h)(4)(C) of the Federal Power Act.

(7) Within 60 days, file the draft resource reports required in § 380.16 of this chapter.

(8) On a monthly basis, file status reports detailing the applicant's project activities including surveys, stakeholder communications, and agency and tribe meetings, including updates on the status of other required permits or authorizations. If the applicant fails to respond to any request for additional information, fails to provide sufficient information, or is not making sufficient progress towards completing the pre-filing process, the Director may issue a notice terminating the process.

(f) Concluding the pre-filing process. The Director will determine when the information gathered during the pre-filing process is complete, after which the applicant may file an application. An application must contain all the information specified by the Commission staff during the pre-filing process, including the environmental material required in part 380 of this chapter and the exhibits required in § 50.7.

§ 50.6 Applications: general content.

Each application filed under this part must provide the following information:

(a) The exact legal name of applicant; its principal place of business; whether the applicant is an individual, partnership, corporation, or otherwise; the State laws under which the applicant is organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the application are to be addressed.

(b) A concise description of applicant's existing operations.

(c) A concise general description of the proposed project sufficient to explain its scope and purpose. The description must, at a minimum: describe 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, origin and termination points of the transmission line, and the geographic character of 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.

(e) Evidence that:

(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 expected to be achieved by the proposed construction or modification of transmission facilities in the State;

(2) The applicant is a transmitting utility but does not qualify to apply for a permit or siting approval of the proposed project in a State because the applicant does not serve end-use customers in the State; or

(3) A State commission or other entity that has the authority to approve the siting of the facilities has:

(i) Withheld approval for more than one year after the filing of an application seeking approval under applicable law or one year after the designation of the relevant national interest electric transmission corridor, whichever is later; or

(ii) Conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible.

(f) A demonstration that the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce, and that the proposed construction or modification:

(1) Is consistent with the public interest;

(2) Will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers;

(3) Is consistent with sound national energy policy and will enhance energy interdependence; and

(4) Will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.

(g) A description of the proposed construction and operation of the facilities, including the proposed dates for the beginning and completion of construction and the commencement of service.

(h) A general description of project financing.

(i) A full statement as to whether any other application to supplement or effectuate the applicant's proposals 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.

(j) A table of contents that must list all exhibits and documents filed in compliance with this part, as well as all other documents and exhibits otherwise filed, identifying them by their appropriate titles and alphabetical letter designations. The alphabetical letter designations specified in § 50.7 must be strictly adhered to and extra exhibits submitted at the volition of applicant must be designated in sequence under the letter Z (Z1, Z2, Z3, etc.).

(k) A form of notice suitable for publication in the Federal Register, as provided by § 50.9(a), which will briefly summarize the facts contained in the application in such a way as to acquaint the public with its scope and purpose. The form of notice also must include the name, address, and telephone number of an authorized contact person.

§ 50.7 Applications: exhibits.

Each exhibit must contain a title page showing the applicant's name, title of the exhibit, the proper letter designation of the exhibit, and, if 10 or more pages, a table of contents, citing by page, section number or subdivision, the component elements or matters contained in the exhibit.

(a) Exhibit A - Articles of incorporation and bylaws. If the applicant is not an individual, a conformed copy of its articles of incorporation and bylaws, or other similar documents.

(b) Exhibit B - State authorization. For each State where the applicant is authorized to do business, a statement showing the date of authorization, the scope of the business the applicant is authorized to carry on and all limitations, if any, including expiration dates and renewal obligations. A conformed copy of applicant's authorization to do business in each State affected must be supplied upon request.

(c) Exhibit C - Company officials. A list of the names and business addresses of the applicant's officers and directors, or similar officials if the applicant is not a corporation.

(d) Exhibit D - Other pending applications and filings. A list of other applications and filings submitted by the applicant that are pending before the Commission at the time of the filing of an application and that directly and significantly affect the proposed project, including an explanation of any material effect the grant or

denial of those other applications and filings will have on the application and of any material effect the grant or denial of the application will have on those other applications and filings.

(e) Exhibit E - Maps of general location of facilities. The general location map required under § 50.5(c) must be provided as Exhibit E. Detailed maps required by other exhibits must be filed in those exhibits, in a format determined during the pre-filing process § 50.5.

(f) Exhibit F - Environmental report. An environmental report as specified in §§ 380.3 and 380.16 of this chapter. The applicant must submit all appropriate revisions to Exhibit F whenever route or site changes are filed. These revisions must identify the locations by mile post and describe all other specific differences resulting from the route or site changes, and should not simply provide revised totals for the resources affected. The format of the environmental report filing will be determined during the pre-filing process required under § 50.5.

(g) Exhibit G – Engineering data.

(1) A detailed project description including:

(i) Name and destination of the project;

(ii) Design voltage rating (kV);

(iii) Operating voltage rating (kV);

(iv) Normal peak operating current rating;

(v) Line design features for minimizing television and/or radio interference cause by operation of the proposed facilities; and

(vi) Line design features that minimize audible noise during fog/rain caused by operation of the proposed facilities, including comparing expected audible noise levels to the applicable Federal, State, and local requirements.

(2) A conductor, structures, and substations description including:

(i) Conductor size and type;

(ii) Type of structures;

(iii) Height of typical structures;

(iv) An explanation why these structures were selected;

(v) Dimensional drawings of the typical structures to be used in the project;

and

(vi) A list of the names of all new (and existing if applicable) substations or switching stations that will be associated with the proposed new transmission line.

(3) The location of the site and right-of-way including:

(i) Miles of right-of-way;

(ii) Miles of circuit;

(iii) Width of the right-of-way;

(iv) A brief description of the area traversed by the proposed transmission line, including a description of the general land uses in the area and the type of terrain crossed by the proposed line;

(4) Assumptions, bases, formulae, and methods used in the development and preparation of the diagrams and accompanying data, and a technical description providing the following information:

(i) Number of circuits, with identification as to whether the circuit is overhead or underground;

(ii) The operating voltage and frequency; and

(iii) Conductor size, type and number of conductors per phase.

(5) If the proposed interconnection is an overhead line, the following additional information also must be provided:

(i) The wind and ice loading design parameters;

(ii) A full description and drawing of a typical supporting structure including strength specifications;

(iii) Structure spacing with typical ruling and maximum spans;

(iv) Conductor (phase) spacing; and

(v) The designed line-to-ground and conductor-side clearances.

(6) If an underground or underwater interconnection is proposed, the following additional information also must be provided:

- (i) Burial depth;
 - (ii) Type of cable and a description of any required supporting equipment, such as insulation medium pressurizing or forced cooling;
 - (iii) Cathodic protection scheme; and
 - (iv) Type of dielectric fluid and safeguards used to limit potential spills in waterways.
- (7) Technical diagrams that provide clarification of any of the above items should be included.
- (8) Any other data or information not previously identified that has been identified as a minimum requirement for the siting of a transmission line in the State in which the facility will be located.
- (h) Exhibit H - System analysis data. An analysis evaluating the impact the proposed facilities will have on the existing electric transmission system performance, including:
- (1) An analysis of the existing and expected congestion on the electric transmission system.
 - (2) Power flow cases used to analyze the proposed and future transmission system under anticipated load growth, operating conditions, variations in power import and export levels, and additional transmission facilities required for system reliability.
- The cases must:

(i) Provide all files to model normal, single contingency, multiple contingency, and special protective systems, including the special protective systems' automatic switching or load shedding system; and

(ii) State the assumptions, criteria, and guidelines upon which they are based and take into consideration transmission facility loading; first contingency incremental transfer capability (FCITC); normal incremental transfer capability (NITC); system protection; and system stability.

(3) A stability analysis including study assumptions, criteria, and guidelines used in the analysis, including load shedding allowables.

(4) A short circuit analysis for all power flow cases.

(5) A concise analysis to include:

(i) An explanation of how the proposed project will improve system reliability over the long and short term;

(ii) An analysis of how the proposed project will impact long term regional transmission expansion plans;

(iii) An analysis of how the proposed project will impact congestion on the applicant's entire system; and

(iv) A description of proposed high technology design features.

(6) Detailed 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) Exhibit I - Project Cost and Financing.

(1) A statement of estimated costs of any new construction or modification.

(2) The estimated capital cost and estimated annual operations and maintenance expense of each proposed environmental measure.

(3) A statement and evaluation of the consequences of denial of the transmission line permit application.

(j) Exhibit J -Construction, operation, and management. A concise statement providing arrangements for supervision, management, engineering, accounting, legal, or other similar service to be rendered in connection with the construction or operation 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 Acceptance/rejection of applications.

(a) Applications will be docketed when received and the applicant so advised.

(b) If an application patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted, the Director may reject the application as provided by § 385.2001(b) of this chapter. This rejection is without prejudice to an applicant's refiling a

complete application. However, an application will not be rejected solely on the basis that the environmental reports are incomplete because the company has not been granted access by affected landowners to perform required surveys.

(c) An application that relates to a proposed project or modification for which a prior application has been filed and rejected, will be docketed as a new application.

§ 50.9 Notice of application.

(a) Notice of each application filed, except when rejected in accordance with § 50.8, will be issued and subsequently published in the Federal Register.

(b) The notice will establish prompt and binding intermediate milestones and ultimate deadlines for the coordination, and review of, and action on Federal authorization decisions relating to, the proposed facilities.

§ 50.10 Interventions.

Notices of applications, as provided by § 50.9, will fix the time within which any person desiring to participate in the proceeding may file a petition to intervene, and within which any interested regulatory agency, as provided by § 385.214 of this chapter, desiring to intervene may file its notice of intervention.

§ 50.11 General conditions applicable to permits.

(a) The following terms and conditions, among others as the Commission will find 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) The permit will be void and without force or effect unless accepted in writing by the permittee within 30 days from the date of the order issuing the permit. 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 from the issue date of the order of the Commission upon the application for rehearing or within 30 days from the date on which the application may be deemed to have been denied when the Commission has not acted on such application within 30 days after it has been filed. Provided further, that when a petition for review is filed in accordance with the provisions of FPA section 313(b), the acceptance shall be filed within 30 days after final disposition of the judicial review proceedings thus initiated.

(c) Standards of construction and operation. In determining standard practice, the Commission will be guided by the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code, and any other codes and standards that are generally accepted by the industry, except as modified by this Commission or by municipal regulators within their jurisdiction. Each electric utility will construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in a manner to best accommodate the public, and to prevent interference with service furnished by other public or non-public utilities insofar as practical.

(d) Written authorization must be obtained from the Director prior to commencing construction of the facilities or initiating operations. Requests for these authorizations must demonstrate compliance with all terms and conditions of the construction permit.

(e) Any authorized construction or modification must be completed and made available for service by the permittee within a period of time to be specified by the Commission in each order issuing the transmission line construction permit. If facilities are not completed within the specified timeframe, the permittee must file for an extension of time under § 385.2008 of this chapter.

(f) A permittee must file with the Commission, in writing and under oath, an original and four conformed copies, as provided in § 385.2011 of this chapter, of the following:

(1) Within ten days after the bona fide beginning of construction, notice of the date of the beginning; and

(2) Within ten days after authorized facilities have been constructed and placed in service, notice of the date of the completion of construction and commencement of service.

(g) The permit issued to the applicant may be transferred, subject to the approval of the Commission, to a person who agrees to comply with the terms, limitations or conditions contained in the filing and in every subsequent Order issued

thereunder. A permit holder seeking to transfer a permit must file with the Secretary a petition for approval of the transfer. The petition must:

- (1) State the reasons supporting the transfer;
- (2) Show that the transferee is qualified to carry out the provisions of the permit and any Orders issued under the permit;
- (3) Be verified by all parties to the proposed transfer;
- (4) Be accompanied by a copy of the proposed transfer agreement;
- (5) Be accompanied by an affidavit of service of a copy on the parties to the permit proceeding; and
- (6) Be accompanied by an affidavit of publication of a notice concerning the petition and service of such notice on all affected landowners that have executed agreements to convey property rights to the transferee and all other persons, municipalities or agencies entitled by law to be given notice of, or be served with a copy of, any application to construct a major electric generation facility.

PART 380 – REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

2. The authority citation for part 380 continues to read as follows:

Authority: 42 U.S.C. 4321-4370a, 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

3. Section 380.3 is amended by revising paragraphs (a) introductory text and (b) introductory text, and by adding a new paragraph (c)(3) to read as follows:

§ 380.3 Environmental information to be supplied by an applicant.

(a) An applicant must submit information as follows:

* * * * *

(b) An applicant must also:

* * * * *

(c) * * *

(3) Electric transmission project. For pre-filing requests and applications filed under section 216 of the Federal Power Act identified in §§ 380.5(b)(14) and 380.6(a)(5).

4. Section 380.5 is amended by revising paragraphs (b) (11), (b)(12), and (b)(13), and by adding a new paragraph (b)(14) to read as follows:

§ 380.5 Actions that require an environmental assessment.

(b) * * *

(11) Approval of electric interconnections and wheeling under section 202(b), 210, 211, and 212 of the Federal Power Act, unless excluded under § 380.4(a)(17);

(12) Regulations or proposals for legislation not included under § 380.4(a)(2);

(13) Surrender of water power licenses and exemptions where project works exist or ground disturbing activity has occurred and amendments to water power licenses

and exemptions that require ground disturbing activity or changes to project works or operations; and

(14) Except as identified in § 380.6, authorization to site new electric transmission facilities under section 216 of the Federal Power Act and DOE Delegation Order No. 00-004.00A.

5. Section 380.6 is amended by revising paragraphs (a)(3) and (a)(4) and by adding a new paragraph (a)(5) to read as follows:

§ 380.6 Actions that require an environmental impact statement.

(a) * * *

(3) Major pipeline construction projects under section 7 of the Natural Gas Act using right-of-way in which there is no existing natural gas pipeline;

(4) Licenses under Part I of the Federal Power Act and part 4 of this chapter for construction of any unconstructed water power projects; and

(5) Major electric transmission facilities under section 216 of the Federal Power Act and DOE Delegation Order No. 00-004.00A using right-of-way in which there is no existing facility.

* * * * *

6. Section 380.8 is revised to read as follows:

§ 380.8 Preparation of environmental documents.

The preparation of environmental documents, as defined in § 1508.10 of the

(2) The detail of each resource report must be commensurate with the complexity of the proposal and its potential for environmental impact. Each topic in each resource report must be addressed or its omission justified, unless the data is not required for that type of proposal. If material required for one resource report is provided in another resource report or in another exhibit, it may be cross referenced. If any resource report topic is required for a particular project but is not provided at the time the application is filed, the environmental report must explain why it is missing and when the applicant anticipates it will be filed.

(b) General requirements. As appropriate, each resource report must:

(1) Address conditions or resources that are likely to be directly or indirectly affected by the project;

(2) Identify significant environmental effects expected to occur as a result of the project;

(3) Identify the effects of construction, operation (including maintenance and malfunctions), as well as cumulative effects resulting from existing or reasonably foreseeable projects;

(4) Identify measures proposed to enhance the environment or to avoid, mitigate, or compensate for adverse effects of the project; and

(5) Provide a list of publications, reports, and other literature or communications, including agency contacts, that were cited or relied upon to prepare

each report. This list must include the names and titles of the persons contacted, their affiliations, and telephone numbers.

(6) Whenever this section refers to “mileposts” the applicant may substitute “survey centerline stationing” if so preferred. However, whatever method is chosen must be used consistently throughout the resource reports.

(c) Resource Report 1- General project description. This report must describe facilities associated with the project, special construction and operation procedures, construction timetables, future plans for related construction, compliance with regulations and codes, and permits that must be obtained. Resource Report 1 must:

(1) Describe and provide location maps of all project facilities, include all facilities associated with the project (such as transmission line towers, substations, and any appurtenant facilities), to be constructed, modified, replaced, or removed, including 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). As relevant, the report must describe the length and size of the proposed transmission line conductor cables, the types of appurtenant facilities that would be constructed, and associated land requirements.

(2) Provide the following maps and photos:

(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. In areas where the facilities described in paragraph (j)(6) are located, topographic map coverage must be expanded to depict those facilities.

(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 location of habitable structures, radio transmitters and other electronic installations, and airstrips. Older images/photographs/alignment sheets must be modified to show any residences not depicted in the original. In areas where the facilities described in paragraph (j)(6) of this section are located, aerial photographic coverage must be expanded to depict those facilities. Alternative formats (e.g., blue-line prints of acceptable resolution) need prior approval by the environmental staff of the Office of Energy Projects.

(iii) In addition to the copies required under § 50.3(b) of this chapter, the applicant must send three additional copies of topographic maps and aerial images/photographs directly to the environmental staff of the Commission's Office of Energy Projects.

(3) Describe and identify by milepost, proposed construction and restoration methods to be used in areas of rugged topography, residential areas, active croplands and sites where explosives are likely to be used.

(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, and any identified constraints to the timing of construction.

(5) Describe reasonably foreseeable plans for future expansion of facilities, including additional land requirements and the compatibility of those plans with the current proposal.

(6) Describe all authorizations required to complete the proposed action and the status of applications for such authorizations. Identify environmental mitigation requirements specified in any permit or proposed in any permit application to the extent not specified elsewhere in this section.

(7) Provide the names and mailing addresses of all affected landowners identified in § 50.5(c)(4) of this chapter and certify that all affected landowners will be notified as required in § 50.4(c) of this chapter.

(d) Resource Report 2—Water use and quality. This report must describe water quality and provide data sufficient to determine the expected impact of the project and the effectiveness of mitigative, enhancement, or protective measures. Resource Report 2 must:

(1) Identify and describe by milepost waterbodies and municipal water supply or watershed areas, specially designated surface water protection areas and sensitive waterbodies, and wetlands that would be crossed. For each waterbody crossing, identify the approximate width, State water quality classifications, any known potential pollutants present in the water or sediments, and any potable water intake sources within three miles downstream.

(2) Provide a description of site-specific construction techniques that will be used at each major waterbody crossing.

(3) Describe typical staging area requirements at waterbody and wetland crossings. Also, identify and describe waterbodies and wetlands where staging areas are likely to be more extensive.

(4) Include National Wetland Inventory (NWI) maps. If NWI maps are not available, provide the appropriate State wetland maps. Identify for each crossing, the

milepost, the wetland classification specified by the U.S. Fish and Wildlife Service, and the length of the crossing. Include two copies of the NWI maps (or the substitutes, if NWI maps are not available) clearly showing the proposed route and mileposts. Describe by milepost, wetland crossings as determined by field delineations using the current Federal methodology.

(5) Identify aquifers within excavation depth in the project area, including the depth of the aquifer, current and projected use, water quality-, and known or suspected contamination problems.

(6) Discuss proposed mitigation measures to reduce the potential for adverse impacts to surface water, wetlands, or groundwater quality. Discuss the potential for blasting to affect water wells, springs, and wetlands, and measures to be taken to detect and remedy such effects.

(7) Identify the location of known public and private groundwater supply wells or springs within 150 feet of proposed construction areas. Identify locations of EPA or State-designated, sole-source aquifers and wellhead protection areas crossed by the proposed transmission line facilities.

(e) Resource Report 3—Fish, wildlife, and vegetation. This report must describe aquatic life, wildlife, and vegetation in the vicinity of the proposed project; e

expected impacts on these resources including potential effects on biodiversity; and proposed mitigation, enhancement, or protection measures. Resource Report 3 must:

(1) Describe commercial and recreational warmwater, coldwater, and saltwater fisheries in the affected area and associated significant habitats such as spawning or rearing areas and estuaries.

(2) Describe terrestrial habitats, including wetlands, typical wildlife habitats, and rare, unique, or otherwise significant habitats that might be affected by the proposed action. Describe typical species that have commercial, recreational, or aesthetic value.

(3) Describe and provide the affected acreage of vegetation cover types that would be affected, including unique ecosystems or communities such as remnant prairie or old-growth forest, or significant individual plants, such as old-growth specimen trees.

(4) Describe the impact of construction and operation 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 maintenance, clearing and treatment of the project area on fish, wildlife, and vegetation. Surveys may be required to determine specific areas of significant habitats or communities of species of special concern to State, Tribal, or local agencies.

(5) Identify all Federally-listed or proposed threatened or endangered species and critical habitat that potentially occur in the vicinity of the project. Discuss the results

of the consultation requirements listed in § 380.13(b) through § 380.13(b)(5)(i) and include any written correspondence that resulted from the consultation. The initial application must include the results of any required surveys unless seasonal considerations make this impractical. If species surveys are impractical, there must be field surveys to determine the presence of suitable habitat unless the entire project area is suitable habitat.

(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 NMFS, and any resulting EFH assessments.

(7) Describe 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 impact on wildlife, fisheries, and vegetation, and the applicant's response to the recommendations.

(f) Resource Report 4—Cultural resources. In order to prepare this report, the applicant must follow the principles in § 380.14.

(1) Resource Report 4 must contain:

(i) Documentation of the applicant's initial cultural resources consultations, including consultations with Native Americans and other interested persons (if appropriate);

(ii) Overview and Survey Reports, as appropriate;

(iii) Evaluation Report, as appropriate;

(iv) 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-managing agencies on the reports in paragraphs (f)(1)(i) through (iv) of this section.

(2) The initial 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-managing agencies, if available. The initial cultural resources 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 initial application or pre-filing documents.

(i) If the comments of the SHPOs, THPOs, or land-management agencies are not available at the time the application is filed, they may be filed separately, but they must be filed before a permit is issued.

(ii) If landowners deny access to private property and certain areas are not

surveyed, the unsurveyed area must be identified by mileposts, and supplemental surveys or evaluations must be conducted after access is granted. In those circumstances, reports, and treatment plans, if necessary, for those inaccessible lands may be filed after a permit is issued.

(3) The Evaluation Report and Treatment Plan, if required, for the entire project must be filed before a permit is issued.

(i) In preparing the Treatment Plan, the applicant must consult with the Commission staff, the SHPO, and any applicable THPO and land-management agencies.

(ii) Authorization to implement the Treatment Plan will occur only after the permit is issued.

(4) 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. The cover and relevant pages or portions of the report should be clearly labeled in bold lettering: “CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE.”

(5) Except as specified in a final Commission order, or by the Director of the Office of Energy Projects, construction may not begin until all cultural resource reports and plans have been approved.

(g) Resource Report 5—Socioeconomics. This report must identify and quantify the impacts of constructing and operating the proposed project on factors affecting towns and counties in the vicinity of the project. Resource Report 5 must:

- (1) Describe the socioeconomic impact area.
- (2) Evaluate the impact of any substantial immigration of people on governmental facilities and services and plans to reduce the impact on the local infrastructure.
- (3) Describe on-site manpower requirements and payroll during construction and operation, 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.
- (4) Determine whether existing housing within the impact area is sufficient to meet the needs of the additional population.
- (5) Describe the number and types of residences and businesses that will be displaced by the project, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments.
- (6) Conduct a fiscal impact analysis evaluating incremental local government expenditures in relation to incremental local government revenues that will result from construction of the project. Incremental expenditures include, but are not limited to,

school operating costs, road maintenance and repair, public safety, and public utility costs.

(h) Resource Report 6—Geological resources. This report must describe geological resources and hazards in the project area that might be directly or indirectly affected by the proposed action or that could place the proposed facilities at risk, the potential effects of those hazards on the facility, and methods proposed to reduce the effects or risks. Resource Report 6 must:

(1) Describe, by milepost, mineral resources that are currently or potentially exploitable.

(2) Describe, by milepost, existing and potential geological hazards and areas of nonroutine geotechnical concern, such as high seismicity areas, active faults, and areas susceptible to soil liquefaction; planned, active, and abandoned mines; karst terrain; and areas of potential ground failure, such as subsidence, slumping, and landsliding. Discuss the hazards posed to the facility from each one.

(3) Describe how the project will be located or designed to avoid or minimize adverse effects to the resources or risk to itself, including geotechnical investigations and monitoring that would be conducted before, during, and after construction. Discuss also the potential for blasting to affect structures, and the measures to be taken to remedy such effects.

(4) Specify methods to be used to prevent project-induced contamination from surface mines or from mine tailings along the right-of-way and whether the project would hinder mine reclamation or expansion efforts.

(i) Resource Report 7—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 impact. Resource Report 7 must:

(1) List, by milepost, the soil associations that would be crossed and describe the erosion potential, fertility, and drainage characteristics of each association.

(2) Identify, by milepost, potential impact 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 loss of soil fertility due to construction activity can occur. Indicate which are classified as prime or unique farmland by the U.S. Department of Agriculture, Natural Resources Conservation Service.

(j) Resource Report 8—Land use, recreation, and aesthetics. This report must describe the existing uses of land on, and (where specified) within 0.25 mile of, the edge of the proposed transmission line right-of-way and changes to those land uses that will occur if the project is approved. The report must discuss proposed mitigation measures, including protection and enhancement of existing land use. Resource Report 8 must:

(1) Describe the width and acreage requirements of all construction and permanent rights-of-way required for project construction, operation and maintenance.

(i) List, by milepost, locations where the proposed right-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 operational right-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 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 the proposed transmission facility, or on or adjacent to each proposed project facility.

(3) Describe planned development on land crossed or within 0.25 mile of proposed facilities, the time frame (if available) for such development, and proposed coordination to minimize impacts on land use. Planned development means development which 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, wild and scenic rivers, designated trails, nature preserves, game management areas, remnant prairie, old-growth forest, national or State forests, parks, golf courses, designated natural, recreational or scenic areas, or 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) Tribal resources. Describe Indian tribes, tribal lands, and interests that may be affected by the project.

(i) Identify Indian tribes that may attach religious and cultural significance to historic properties within the 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 Federally-recognized Indian reservation.

(ii) Information made available under this section must delete specific site or property locations, the disclosure of which will create a risk of harm, theft, or destruction of archaeological or Native American 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. 470w-3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(6) Identify, by milepost, all residences and buildings within 200 feet of the edge of the proposed transmission line construction right-of-way and the distance of the residence or building from the edge of the right-of-way. Provide survey drawings or alignment sheets to illustrate the location of the transmission facilities in relation to the buildings.

(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.

(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 projects. Locate all installations on a routing map.

(iii) Airstrips: 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. Locate all airstrips, airports, and heliports on a routing map.

(7) Describe any areas crossed by or within 0.25 mile of the proposed transmission project facilities which 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).

(8) 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.

(9) 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.

(10) Describe mitigation measures intended for all special use areas identified under this section.

(11) Describe the visual characteristics of the lands and waters affected by the project. Components of this description include a description of how the transmission line project facilities will impact the visual character of project right-of-way and surrounding vicinity, and measures proposed to lessen these impacts. Applicants are encouraged to supplement the text description with visual aids.

(12) Demonstrate that applications for rights-of-way or other proposed land use have been or soon will be filed with Federal land-management agencies with jurisdiction over land that would be affected by the project.

(k) Resource Report 9—Alternatives. This report must describe alternatives to the project and compare the environmental impacts of such alternatives to those of the proposal. It must discuss technological and procedural constraints, costs, and benefits of each alternative. The potential for each alternative to meet project purposes and the environmental consequences of each alternative must be discussed. Resource Report 9 must:

(1) Discuss the “no action” alternative and other alternatives given serious consideration to achieve the proposed objectives.

(2) Provide an analysis of the relative environmental benefits and impacts of each such alternative, including but not limited to:

(i) For alternatives considered in the initial screening for the project but eliminated, describe the environmental characteristics of each alternative, and the reasons

for rejecting it. Where applicable, identify the location of such alternatives on maps of sufficient scale to depict their location and relationship to the proposed action, and the relationship of the transmission facilities to existing rights-of-way; and

(ii) For alternatives that were given more in-depth consideration, describe the environmental characteristics of each alternative and the reasons for rejecting it. Provide comparative tables showing the differences in environmental characteristics for the alternative and proposed action. The location, where applicable, of any alternatives in this paragraph shall be provided on maps equivalent to those required in paragraph (c)(2) of this section.

(1) Resource Report 10—Reliability and safety. This report must address the potential hazard to the public from facility components resulting from accidents or natural catastrophes, how these events will affect reliability, and what procedures and design features have been used to reduce potential hazards. Resource Report 10 must:

- (1) Describe measures proposed to protect the public from failure of the proposed facilities (including coordination with local agencies).
- (2) Discuss hazards, the environmental impact, and service interruptions which could reasonably ensue from failure of the proposed facilities.
- (3) Discuss design and operational measures to avoid or reduce risk.
- (4) Discuss contingency plans for maintaining service or reducing downtime.
- (5) Describe measures used to exclude the public from hazardous areas.

Discuss measures used to minimize problems arising from malfunctions and accidents (with estimates of probability of occurrence) and identify standard procedures for protecting services and public safety during maintenance and breakdowns.

(6) Provide a description of the electromagnetic fields to be generated by the proposed transmission lines, including their strength and extent. Provide a depiction of the expected field compared to distance horizontally along the right-of-way under the conductors, and perpendicular to the centerline of the right-of-way laterally.

(7) Discuss the potential for acoustic and 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. Indicate the noise level generated by the line in both dB and dBA scales and compare this to any known noise ordinances for the zoning districts through which the transmission line will pass.

(8) Discuss the potential for induced or conducted currents along the transmission right-of-way from electric and magnetic fields.

(m) Resource Report 11—Design and Engineering. This report consists of general design and engineering drawings of the principal project facilities described under Resource Report 1—General project description. If the version of this report submitted with the application is preliminary in nature, applicant must state that in the application. The drawings must conform to the specifications determined in the initial consultation meeting required by § 50.5(b) of this chapter.

(1) The drawings must show all major project structures in sufficient detail to provide a full understanding of the project including:

- (i) Plans (overhead view);
- (ii) Elevations (front view);
- (iii) Profiles (side view); and
- (iv) Sections.

(2) The applicant may submit preliminary design drawings with the pre-filing documents or application. The final design drawings may be submitted during the construction permit process or after the Commission issues a permit and must show the precise plans and specifications for proposed structures. 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 Project's prior to commencement of any construction of the project.

(3) Supporting design report. The applicant must submit, at a minimum, the following supporting information to demonstrate that existing and proposed structures are safe and adequate to fulfill their stated functions and must submit such information in a separate report at the time the application is filed:

- (i) An assessment of the suitability of the transmission line towers and appurtenant structures locations based on geological and subsurface investigations, including investigations of soils and rock borings and tests for the evaluation of all

foundations and construction materials sufficient to determine the location and type of transmission line tower or appurtenant structures suitable for the site;

(ii) Copies of boring logs, geology reports, and laboratory test reports;

(iii) An identification of all borrow areas and quarry sites and an estimate of required quantities of suitable construction material;

(iv) Stability and stress analyses for all major transmission structures and conductors under all probable loading conditions, including seismic, wind, and ice loading, as appropriate, in sufficient detail to permit independent staff evaluation.

(4) The applicant must submit two copies of the supporting design report described in paragraph (m)(3) of this section at the time preliminary and final design drawings are filed. If the report contains preliminary drawings, it must be designated a "Preliminary Supporting Design Report."

Note: The following Appendix will not be published in the Code of Federal Regulations.

Appendix

List of Commenters

Affiliated Tribes of Northwest Indians
Allegheny Power
American Electric Power Service Corp.
American Public Power Association
American Transmission Co.
California Public Utilities Commission
California Resources Agency
Center for Biological Diversity
Communities Against Regional Interconnect
Confederate Tribes of the Warm Springs Reservation of Oregon
Edison Electric Institute
Imperial Irrigation District
Iowa Utilities Board
Kentucky Public Service Commission
Lackawaxen River Conservancy
Los Angeles Department of Water and Power
Massachusetts Energy and Facilities Siting Board
National Association of Regulatory Utility Commissioners
National Electric Manufacturers Association
National Grid USA
National Parks Conservation Association
National Rural Electric Cooperative Association
New Jersey Board of Public Utilities
New York Department of Public Service
New York Independent System Operator
New York State Senator Wright
Northern Wasco Peoples Utility District
Old Dominion Electric Cooperative
Pacific Gas and Electric Co.
Pennsylvania Public Utilities Commission
PEPCO Holdings, Potomac Electric Power Co., Delmarva Power & Light Co.,
and Atlantic City Electric Co.
PPL Electric Utilities Corp.
Progress Energy

PSEG Companies
Public Service Commission of Wisconsin
Reinhardt, Laura and John
San Diego Gas & Electric
Sayward, Mazur
Seattle City Light
Southern California Edison Co.
Southern Company Services
Star Group
The Wilderness Society
U.S. Department of the Interior
Virginia Electric and Power Co.
Virginia Farm Bureau Federation
Washington Energy Facility Site Evaluation Council
Western Governor's Association
Western Interstate Energy Board and Committee on Regional Electric Power
Cooperation
White Mountain Apache Tribe
Wyoming Infrastructure Authority

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities Docket No. RM06-12-000

(November 16, 2006)

KELLY, Commissioner, *dissenting in part*:

Section 216(b)(1)(c)(i) of the Federal Power Act provides that the Commission may issue a permit for the construction of an electric transmission line if the State having the authority to site the line has

(i) withheld approval for more than 1 year after the filing of an application seeking approval pursuant to applicable law or 1 year after the designation of the relevant national interest electric corridor, whichever is later.

The majority finds that this language also means that the Commission can issue a permit for the construction of an electric transmission line if the State has *denied* the permit application. I believe the majority's interpretation flies in the face of the plain language of the statute, the purposes of the statute, well-established principles of statutory interpretation and supporting case law, and inappropriately preempts the States in the process.

When interpreting a statute, there is an understanding that Congress says what it means and means what it says therefore, the court will first determine whether the language at issue has a plain and unambiguous meaning.¹ To that end, words will be interpreted as taking their ordinary, contemporary, common meaning.²

The word "withhold" is variously defined as "to refrain from giving, granting, or permitting" (American Heritage Dictionary), "to hold back...keep from action—to desist or refrain from granting, giving, or allowing" (Webster's

¹ *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 120 S.Ct. 1942, 1947 (2000).

² *Perrin v. United States*, 444 U.S. 37, 42 (1979).

Dictionary), and “to omit to disclose upon request; as, to withhold information” (Black’s Law Dictionary). In my view, it defies common sense to insert the concept of “reject” or “deny” into this universally acknowledged definition.

Moreover statutory provisions must be read in context.³ The language at issue here is not, as the majority asserts, “withheld approval.” Rather, it is “withheld approval for more than 1 year after the filing of an application.” When “withheld approval” is read in its appropriate context, it simply cannot mean “deny,” because otherwise the provision must be read to mean that the Commission would have jurisdiction when a state has “denied approval for more than 1 year after the filing of an application.” This reading is nonsensical; yet to read it as the majority does would render the phrase “for more than one year” superfluous. As noted in *Cooper Industries, Inc. Aviall Services*--the very opinion the majority cites for the notion that it must give every word in a statute some operative effect--any reading that would render part of a statute entirely superfluous is something a court should be “loath to do.”⁴

States have always had exclusive, plenary jurisdiction over transmission siting.⁵ In 2005, Congress passed EAct, which, for the first time, carefully carves out a limited role for the federal government in the area of transmission siting. EAct amended the FPA to give the Commission the authority to site electric transmission facilities in five specific situations.⁶ The majority’s interpretation of Section 216(b)(1)(C)(i) would add a sixth situation: the Commission would have jurisdiction to approve the siting of a transmission line pursuant to federal law where the State has lawfully denied an application pursuant to state law.

³ *Bailey v. United States*, 516 U.S. 137, 145 (1995).

⁴ *Cooper Industries, Inc. v. Aviall Services, Inc.*, 543 U.S. 157 (2004).

⁵ FPA section 201(a) confers to the Commission jurisdiction over the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce, and notes that such regulation extends “only to those matters which are not subject to regulation by the States.” *See also New York v. FERC*, 535 U.S. 1, 24 (2002) (“FERC has recognized that the States retain significant control over local matters”), citing Order No. 888 at 31,782 & n. 543, FERC Stats. & Regs., Regs. Preamble, Jan. 1991-June 1996, ¶ 31,036, 31,632, 61 Fed. Reg. 21540 (1996) (“Among other things, Congress left to the States authority to regulate generation and transmission siting”).

⁶ *See* Section 216(b)(1) subsections (A)(i), (A)(ii), B, (C)(i), (C)(ii).

The authority to lawfully deny a permit is critically important to the States for ensuring that the interests of local communities and their citizens are protected. What the Commission does today is a significant inroad into traditional state transmission siting authority. It gives states two options: either issue a permit, or we'll do it for them. Obviously this is no choice. This is preemption.

Courts “have long presumed that Congress does not cavalierly pre-empt” state law.⁷ Indeed, courts should not find federal pre-emption “in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained.”⁸ In short, courts must start with the “basic assumption that Congress did not intend to displace state law.”⁹

There is no evidence to counter this “presumption against pre-emption.” To the contrary, I find it inconceivable that Congress would have specifically listed in section 216(b)(1) a number of circumstances that will trigger Commission jurisdiction, yet fail to include on that list denial of a permit. If Congress had intended to take away the States’ authority to lawfully deny a permit, surely it would have said so in unmistakable terms.

Like me, I suspect that many will be surprised by the majority’s interpretation. The Commission received 51 letters commenting on the proposed rule, including many that delved into minute details of the rule. Yet, no one opined, let alone argued, that the Commission has jurisdiction if a State denies a permit.

Indeed, there is evidence beyond the plain meaning of the statute that Congress did not intend to give the Commission the authority to override a State’s denial of a permit application. In Section 216(b)(1)(A)(ii), Congress told the States that they cannot retain jurisdiction to site transmission facilities unless they have the authority to “consider the interstate benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State.” It makes little sense that Congress would have said, on the one hand, the State has

⁷ *Meditronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).

⁸ *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963); *See also Gregory v. Ashcroft*, 501 U.S. 452 (1991) (for a court to find federal pre-emption, it must be “unmistakably clear” that Congress intended to do so).

⁹ *Building & Construction Trades Council v. Associated Builders*, 507 U.S. 218 (1993).

the authority to review a permit application if it takes these factors into account, but on the other hand, it doesn't really matter if the State takes these factors into account because if the State doesn't approve the permit, it loses jurisdiction to the Commission.

I realize that the majority is concerned that the goal of Section 216 to encourage the construction of transmission facilities may be frustrated if our backstop authority does not extend to denials of permits. However, I believe that States, as well as applicants, will act in good faith in processing requests for permits. Moreover, as noted above, Congress included the requirement that States must have the authority to consider the interstate benefits of applicants' proposals. Accordingly, States will be required to look beyond their borders in considering whether to approve or deny permit applications. If a State does not adequately take these benefits into account and denies the permit application, then applicants will have a remedy in court.

For these reasons, I respectfully dissent.

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