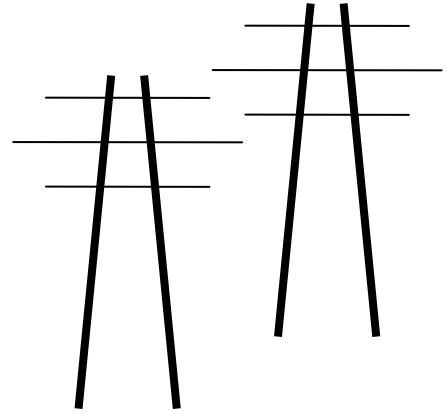


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June 16, 2015

David L. Morenoff, General Counsel
FERC Office of General Counsel
888 First St. NE,
Washington, DC 20426

RE: Petition for Rulemaking – Federal Energy Regulatory Commission
Related to Clean Line Application Plains & Eastern Clean Line
DOE Docket No. TPF-01

Dear Mr. Morenoff

I have been retained by BLOCK Plains & Eastern Clean Line: Arkansas and Oklahoma to address procedural irregularities in the above-entitled docket and to assist in development of Comments on the Application.

In reviewing the Plains & Eastern Clean Line docket, unlike the Section 1221 rules developed by FERC, it's clear there are no rules for DOE review under Section 1222. It's a goal of BLOCK Plains & Eastern Clean Line: Arkansas and Oklahoma to see Section 1222 rulemaking initiated.

Enclosed for filing please find Petition for Rulemaking (FERC). Because there are jurisdictional issues, considering FERC's Section 1221 rulemaking, I'm also enclosing a courtesy copy of the similar Petition for Rulemaking (DOE) we are also filing today with the DOE's Office of Electricity Delivery and Energy, the DOE office handling the Application for Plains & Eastern Clean Line, DOE Docket No. TPF-01.

Please let me know if you have any questions or require anything further.

Very truly yours,

Carol A. Overland
Attorney at Law

Enclosures

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

**Regulations for Filing Applications and Review
of Transmission Line Projects under Section 1222
of the Energy Policy Act of 2005**

Docket No. RM15-___-000

**BLOCK PLAINS & EASTERN CLEAN LINE
PETITION FOR RULEMAKING**

I. INTRODUCTION

Pursuant to Rule 207 of the Federal Energy Regulatory Commission’s Rules of Practice and Procedure, and the Federal Administrative Procedure Act, 5 USC 553(e), BLOCK Plains & Eastern Clean Line: Arkansas and Oklahoma (hereinafter “BLOCK Clean Line), respectfully requests that the Federal Energy Regulatory Commission (hereinafter “Commission”) conduct a rulemaking to develop rules of general applicability for implementation of Section 1222 of the Energy Policy Act of 2005 (EPAAct). 42 U.S.C. 16421. In light of jurisdictional issues, a similar Petition for Rulemaking is being submitted to the Department of Energy’s Office of Electricity Delivery and Energy Reliability (hereinafter “Department”).

In 2006, the Commission proposed regulations in accordance with Section 1221 of the Energy Policy Act of 2005 to implement filings requirements and procedures for entities seeking to construct electric transmission facilities. See FERC Docket RM06-12-000; see also 42 U.S.C. 16421, Pub. Law. No. 109.58, 119 Stat. 594 (2005). That docket remains active, and Section 1221 has yet to be used for a permit to site interstate electric transmission corridors.

However, an Application has been filed under Section 1222 of the Energy Policy Act of 2005. Section 1222 is a third-party finance mechanism for areas designated under 216(a) of the Federal Power Act and for projects necessary to accommodate an actual or projected increase in demand for electric transmission capacity. 42 U.S.C. 16421. As of this date, there are no rules to implement filing requirements and procedures under Section 1222 of the Energy Policy Act of 2005 for parties seeking third-party finance for facilities in areas designated under 216(a) of the Federal Power Act and for projects necessary to accommodate an actual or projected increase in demand for electric transmission capacity. As of this date, no agency has provided Notice of a rulemaking proceeding for section 1222.¹

Unlike section 1221, section 1222 of the Energy Policy Act of 2005 contains no rulemaking mandate to the Commission. Based on the Commission's jurisdiction over the section 1221 rulemaking for filings requirements and procedures for entities seeking to construct electric transmission facilities, and the section 1222 applicability to new facilities in an area designated under section 216(a) of the Federal Power Act, the Commission may determine it has jurisdiction over the section 1222 filings requirements and procedures as well. The Commission could also determine that this rulemaking is the Department's purview.

It is BLOCK Clean Line's goal to spur rulemaking to implement section 1222, by FERC or by the Department of Energy's Office of Electricity Delivery and Energy Reliability, for application to Section 1222 proposals. There is an urgent need for rules because there has been an application to the Department of Energy's Office of Electricity Delivery and Energy Reliability (hereinafter "Department") proposing an interstate transmission line. The Department is proceeding forward with environmental review, need for the project and routing

¹ Upon information and belief, the Department of Energy's Office of Electricity Delivery and Energy Reliability may be preparing to initiate rulemaking, but there has been no Notice of Proposed Rulemaking issued.

options, moving toward a determination whether to participate in the proposed project. This activity has been ongoing without the benefit of promulgated rules. The process chosen by the Department raises due process issues because there are no established rules, the Department's process severely limits public participation and transparency, restricts access to information, and thus far the Department offers no opportunity for public hearings, or intervention in a contested case. The process chosen by the Department also severely limits building a record that would support any decision by the Department. There is no justification for operating without rules.

BLOCK Clean Line respectfully requests that the Federal Energy Regulatory Commission (hereinafter "Commission") conduct a rulemaking to develop rules for implementation of Section 1222 of the Energy Policy Act of 2005 (EPAAct)42 U.S.C. 16421), or in the alternative, an Order that it does not have jurisdiction in this matter.

II. COMMUNICATIONS

All communications with BLOCK Plains & Eastern: Arkansas and Oklahoma should be directed to:

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III. REQUEST FOR SECTION 1222 RULEMAKING

BLOCK Plains & Eastern Clean Line: Arkansas and Oklahoma requests that the Federal Energy Regulatory Commission (hereinafter “Commission”) conduct a rulemaking to develop rules for implementation of Section 1222 of the Energy Policy Act of 2005 (EPAAct)(42 U.S.C. 16421). As of this date, there have been no rules promulgated for review of a project proposed under Section 1222 of the Energy Policy Act of 2005 (EPAAct)(42 U.S.C. 16421). There is now an urgent need for rulemaking.

This rulemaking request is now made because an application for a multi-state 600± kV DC 3,500 megawatt capacity transmission line has been filed with the Department of Energy’s Office of Electricity Delivery and Energy Reliability under section 1222. There are no rules for review of this application. Nevertheless, the Department has conducted NEPA review and has now published a Notice of Application for “non-NEPA” section 1222 review of the Application.

BLOCK Clean Line notes multiple due process issues. The RFP for Section 1222 projects contained application requirements developed unilaterally by the DOE without rules. The only public process in this substantive review upon which a decision will be made is a 45 day comment period, one-half of that provided for environmental review. There are no public hearings proposed, despite DEIS public hearings that included one in Texas, fourteen in Oklahoma, fourteen in Arkansas, and one in Tennessee. There was no notice of an intervention deadline or address to send intervention requests, and no apparent opportunity for consultation. Information provided in the initial Application, an update, and a “Part II” Application is not all accessible on-line, Appendices are referenced but not available, and it is impossible to tell what materials are part of Department review. The criteria to be used for the Department’s decision is that listed in section 1222 of the EPAAct and factors listed in its 2010 RFP. There is no authority

or justification for use of these process decisions and substantive decisions and labeling it as “due diligence.”

Further, in this Section 1222 process, Applicant Clean Line has made repeated threats of using federal eminent domain authority, provided for under Section 1221, but something not contemplated by Section 1222. As recently as last week, speaking about the Missouri PSC impending denial of Clean Line’s “Grain Belt Express” transmission line proposal, Clean Line publicly claimed that it was pursuing eminent domain authority in Arkansas:

If the PSC does reject the project, Lawlor said Clean Line won’t give up. It could pursue federal eminent domain authority through the Energy Department, and approach it is pursuing in Arkansas after the state declined to approve another of its routes.

Attachment A, Missouri regulators may block wind transmission project, St. Louis Post-Dispatch, June 2, 2015. That link by Clean Line to this Section 1222 process heightens BLOCK Clean Line’s process concerns.

The Department of Energy’s Office of Electricity Delivery and Energy Reliability also handles Presidential Permits, a process that requires environmental review and a substantive decision to grant the permit. The Department’s Office handles its Presidential Permit review using FERC Rules of Practice and Procedure. By analogy, this section 1222 review should receive at least that level of process and opportunities for public participation. There should also be section 1222 rules regarding application requirements and decision criteria promulgated before taking on a section 1222 Application and review. BLOCK Clean Line has requested a delay until rulemaking has been completed.²

² Block Clean Line has also Petitioned the Department’s Office of Electricity Delivery and Energy Reliability for an extension of the comment deadline, public hearings, and has filed a Motion to Intervene, all in an effort to secure due process.

Also by analogy, BLOCK Clean Line has attached the initial Section 1221 rules proposed by FERC, including 18 CFR Part 50, and amendment to 18 CFR Part 380, for consideration as a starting place for drafting. Attachment B, Notice of Proposed Rulemaking (selected pages), 115 FERC 61,334 (June 16, 2006). BLOCK Clean Line notes the 10 CFR Part 900 rulemaking initiated by the Department of Energy's Office of Electricity Delivery and Energy Reliability. Attachment C, Notice of Proposed Rulemaking, Coordination of Federal Authorizations for Electric Transmission Facilities, 76 FR 77432. Clean Line, the Applicant in the proceeding now before the Department, without rules, filed a comment in that coordination rulemaking proceeding requesting applicability be expanded to include Federal Marketing Administrations (PMAs) rather than expressly exclude them, where the DOE declined to amend its proposal to be applicable to Section 1222 as requested by Clean Line. Attachment D, Clean Line, Comments on Proposed 216(h) Regulations, Letter to Brian Mills, DOE Office of Electricity Delivery and Energy Reliability (undated).

IV. JURISDICTION

Admittedly, there are jurisdictional questions regarding Section 1222 rulemaking. Rulemaking was specifically mandated in Section 1221. 16 USC 824p(7)(a). In Section 1222 there are no similar provisions mandating rulemaking, and there has been no rulemaking promulgated. However, Section 1222 is applicable to new facilities "located in an area designated under section 216(a) of the Federal Power Act. 42 USC 16421(b)(1)(A).

Some rulemaking requirements and authority over siting and environmental review of energy facilities were delegated to FERC by the Secretary. Attachment E, Department of Energy Delegation Order No. 00-004.00A; see 18 CFR Parts 50 and 380. That Delegation Order states:

Implement section 216(h) of the Federal Power Act, and specifically paragraphs (2), (3), (4)(A)-(B), and (5), to coordinate federal authorizations and related

environmental reviews, and to prepare a single environmental review document, for electric transmission facilities in national interest electric transmission corridors designated pursuant to section 216(a) of the Federal Power Act for which an applicant has submitted an application to the Commission for issuance of a permit for construction or modification under section 216(b) of the Federal Power Act.

Department of Energy Delegation Order No. 00-004.00A, p. 4, para. 1.22.

The Secretary's Delegation Order also delegates to FERC authority to:

Carry out such functions as are necessary to implement and enforce the Secretary's policy requiring holders of **Presidential Permits** authorizing the construction, operation, maintenance, or connection of facilities for the transmission of electric energy between the United States and foreign countries to provide non-discriminatory open access transmission services... This authority is delegated to the Commission for the sole purpose of authorizing the Commission to take actions necessary to implement and enforce non-discriminatory open access transmission service over the United States portion of those international electric transmission lines required by the Secretary to provide such service.

Id., p. 2, para. 1.3 (emphasis added).

As above, the DOE's Office of Electricity Delivery and Energy Reliability reviews Presidential Permits, and utilizes FERC Rules of Practice and Procedure to process these applications. The DOE's Office of Electricity Delivery and Energy Reliability is also the office handling the Section 1222 Application, the only Application under Section 1222.

Like the Commission, the DOE's Office of Electricity Delivery and Energy Reliability has authority to initiate rulemaking. See e.g., Attachment B, Notice of Proposed Rulemaking, Coordination of Federal Authorizations for Electric Transmission Facilities, 76 FR 77432. The 10 CFR Part 900 rulemaking initiated by the Department of Energy's Office of Electricity Delivery and Energy Reliability was regarding coordination of Section 1221 proposed interstate transmission facilities. Clean Line's comment in that proceeding requesting applicability be expanded to include Section 1222 Federal Marketing Administrations (PMAs) projects rather than expressly exclude them, where the DOE declined to amend its proposal to be applicable to

Section 1222 as requested by Clean Line. Attachment C, Notice of Proposed Rulemaking, Coordination of Federal Authorizations for Electric Transmission Facilities, 76 FR 77432.

FERC and the DOE's Office of Electricity Delivery and Energy Reliability both can initiate rulemaking, and arguably both have authority to initiate rulemaking for Section 1222 rules. Section 1221 and Section 1222 are linked in the Energy Policy Act of 2005. Pub. Law. No. 109.58, 119 Stat. 594 (2005). The DOE's Office of Electricity Delivery and Energy Reliability handles both Presidential Permits and Section 1222 Applications, utilized FERC Rules of Practice and Procedure, and is well acquainted with public participation and due process, rules, and rulemaking. Rulemaking is essential.

V. REQUEST FOR RULEMAKING

BLOCK Clean Line respectfully requests that the Federal Energy Regulatory Commission conduct a rulemaking to develop rules for implementation of Section 1222 of the Energy Policy Act of 2005 (EPAAct)(42 U.S.C. 16421), or in the alternative, determine that it does not have jurisdiction in this matter and deny the Petition.

Respectfully submitted,



Dated: June 16, 2015

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Attachment A

Missouri regulators may block wind transmission project

St. Louis Post-Dispatch, June 2, 2015

Missouri regulators may block wind transmission project



JUNE 02, 2015 6:30 PM • BY JACOB BARKER

Missouri regulators appear poised to scuttle a transmission line that backers say would transmit thousands of megawatts of wind power from the Kansas plains to homes and businesses farther east.

The so-called “Grain Belt Express” transmission line is one of several proposed by independent transmission developer Clean Line Energy, of Houston. It has already won regulatory approval in Kansas and Indiana for the project, and it is still waiting on Missouri and Illinois.

Only two Missouri Public Service Commissioners signaled support for Grain Belt. The other three signaled they would oppose the line in a formal vote at one of the PSC’s next meetings.

The line would cross 724 tracts of land in the state, and if the PSC grants it public utility status, it could use eminent domain to acquire easements it can’t buy. Hundreds of rural landowners have taken to social media,

committee meetings in the Legislature and PSC hearings to voice their opposition to the project.

“We’re thrilled,” said Jennifer Gatrel, who heads the group Block Grain Belt Express. “We think this is a great win for representative democracy, grass-roots activism and landowner rights.”

Grain Belt has been in the works for years in response to the growing demand for wind power. Of the 4,000 megawatts of power the line could carry, the company says up to 500 megawatts could be offloaded to the grid in Missouri.

Some commissioners expressed concern Tuesday that it would be a more expensive form of energy. Commissioner Bill Kenney, who said he plans to vote against construction, cast doubts on the economic impact it would have in the state.

“I do not see the benefit to Missourians,” Kenney said.

The issue is bigger than Missouri or the Grain Belt project in particular, said Mark Lawlor, Clean Line’s director of development. The country is trying to figure out how to reduce carbon pollution linked to climate change under new federal regulations, which many say will require a large buildout of transmission infrastructure.

“How do we get stuff built?” Lawlor said. “If the ‘no’ was because people didn’t like it, landowners didn’t like it, then how are we going to build transmission? It kind of goes beyond this one project.”

If the PSC does reject the project, Lawlor said Clean Line won’t give up. It could pursue federal eminent domain authority through the Energy Department, an approach it is pursuing in Arkansas after the state declined to approve another of its routes.

“These projects are too valuable and too much in demand (to walk away from),” Lawlor said. “We remain confident in their value and we’ll look at everything we can.”

At the same meeting, the PSC approved a 7-mile transmission project between Palmyra and the Mississippi River proposed by Ameren Transmission, the final leg of its 380-mile Illinois Rivers project across that state. It is scheduled to be complete in 2018.

Last week, Ameren Transmission asked for PSC approval for a 100-mile transmission project across northeast Missouri, scheduled to be complete by 2019. The company hopes for a decision by January.

“Wind power is one of our main reasons for those power lines as well,” said Peggy Ladd, Ameren Transmission’s director of stakeholder relations.

The Associated Press contributed to this report.

Attachment B

Notice of Proposed Rulemaking (selected pages)

115 FERC 61,334 (June 16, 2006).

In consideration of the foregoing, the Commission proposes to add Part 50 and amend Part 380, Chapter I, Title 18, Code of Federal Regulations, as follows.

1. Part 50 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/preliminary applications; rules and format.

50.4 Shareholder 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.

(a) 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, pipe and contractor yards, and temporary workspace; and

(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.

(b) Director of the Office of Energy Projects included the Director or his designees.

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

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

(e) Permitting entity is any Federal or State agency, Indian tribe, multistate, or local agency that is responsible for conducting separate authorizations pursuant to Federal law

that are required to construct electric transmission facilities in a national interest electric transmission corridor.

(f) Stakeholder is any Federal, State, interstate, Tribal, or local agency, any affected non-governmental organization, affected landowner, or interested person.

(g) Transmitting utility is 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 process 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) This part will be strictly applied to all applications and information as submitted and the burden of adequate presentation in intelligible form as well as justification for omitted data or information 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 located 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 shall 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 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 to be filed with the pre-filing materials under § 50.5(c)(7) of this part 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. Within three business days of the date the pre-filing materials are filed or application is issued a docket number:

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

(2) Complete copies of all filed materials must be available on the project website.

(c) Project notification.

(1) For all pre-filing and application information filed under this part, 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; and other local, State, Tribal, and Federal governments and agencies involved in the project:

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

(A) Within 14 days after the Director of the Office of Energy Projects notifies the applicant of the commencement of the pre-filing process under § 50.5(d) of this part.

(B) Within 3 business days after the Commission notices the application under § 50.9.

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

(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 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 or application from the company or the location(s) where a copy of the application may be found as specified in paragraph (b) of this section;

(G) A copy of the Director of the Office of Energy Projects' 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 is not 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 will 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 this section's pre-filing procedures prior to filing an application for Commission review.

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

(1) At the initial consultation meeting, the applicant shall 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 for the project and the specifications for the applicant's solicitation for prospective third-party contractors to prepare the environmental documentation for the project.

(c) Contents of the initial filing. An applicant's initial 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.

(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 shall include information concerning:

(i) How the applicant intends to account for each of the permitting and local 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 other stakeholders that have been contacted, or have contacted the applicant, about the project (include contact names and telephone numbers), including a list specifying all affected landowners.

(5) A description of what other work has already been done, including, contacting stakeholders, agency and Indian tribe consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental surveys/studies, and open houses. 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 of the Office of Energy Projects determined a third-party contractor would be necessary in the Initial Consultation meeting.

(7) A proposed Project Participation Plan, required in § 50.4(a).

(d) Director's notice.

(1) When the Director of the Office of Energy Projects finds that an applicant for 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 of the Office of Energy Projects 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 of the Office of Energy Projects' notification.

(2) If the Director of the Office of Energy Projects determines that the contents of the initial filing requirements are insufficient, the applicant will be notified and given a reasonable time to correct the deficiencies.

(e) Subsequent filing requirements. Upon the Director of the Office of Energy Projects' 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 stakeholders with a copy of the Director of the Office of Energy Project'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 the permitting entities need for any specific information not required by the Commission in the resource reports required under § 380.16 of this chapter that they may require to reach a decision concerning the proposed project. The responses must be filed with the Commission as well as the applicant.

(4) Within 30 days, submit a mailing list of all stakeholders contacted in paragraph (3) of this section, including the names of the Federal, State, Tribal, and local jurisdictions' representatives, if available, for the proposed project and alternatives. 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 the required permit or authorization 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 of the Office of Energy Projects may issue a notice terminating the process.

(f) Concluding the pre-filing process. The Director of the Office of Energy Projects 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 after reviewing the draft materials filed by the applicant during the pre-filing process, including the environmental material required in part 380 of this chapter and 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 point 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) 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.

(f) 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.

(g) A general description of project financing.

(h) 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.

(i) 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 the sections (section for the exhibits) 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.).

(j) A form of notice suitable for publication in the Federal Register, as contemplated 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 must also 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 initial consultation required under § 50.5(b).

(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 as part of the initial consultation meeting required under § 50.5(b).

(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;

(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;

(v) Assumptions, bases, formulae, and methods used in the development and preparation of the diagrams and accompanying data; and

(vi) A technical description providing the following information:

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

(B) The operating voltage and frequency; and

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

(4) 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.

(5) 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.

(6) Technical diagrams that provide clarification of any of the above items should be included.

(7) 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 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 it is based and must take into consideration transmission facility loading; first contingency incremental transfer capability (FCITIC); normal incremental transfer capability (NIYC); 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 the 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 measures; and

(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 applicant, including reference to any

existing or contemplated agreements, together with a statement showing affiliation between 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 of the Office of Energy Projects 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 construction or modification for which a prior application has been filed and rejected, will be docketed as a new application. The new application must state the docket number of the prior rejected 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 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 is required by the public interest, will attach to the issuance of each permit and to the exercise of the rights granted thereunder.

(b) The permit will be void and without force or effect unless accepted in writing by the permittee within 30 days from the issue date of the order issuing such permit.

(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 such manner to best accommodate the public, and to prevent interference with service furnished by other public utilities insofar as practical.

(d) Written authorization must be obtained from the Director of the Office of Energy Projects prior to commencing construction of the facilities or initiating operations. Requests for such 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 certification 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.
- (h) The Commission will not issue a permit before the criteria established in Federal Power Act section 216(b)(1)(C) have been met.

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 the section heading, 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. Amend § 380.5 by revising paragraphs (b) (11), (b)(12), and (b)(13), and by adding a new paragraph (14) to read as follows:

§ 380.5 Actions that require an environmental assessment.

(b) * * *

(11) Approval of electric interconnections and wheeling under § 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. Amend § 380.6 by revising (a)(3) and (a)(4) and by adding a new (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 regulations of the Council, on hydroelectric projects, natural gas facilities, and electric transmission facilities in national interest electric transmission corridors is the responsibility of the Commission's Office of Energy Projects, 888 First Street NE, Washington, DC 20426, (202) 219-8700. Persons interested in status reports or information on environmental impact statements or other elements of the NEPA process, including the studies or other information the Commission may require on these projects, can contact this office.

7. Section 380.10 is amended by adding paragraph (a)(2)(iii) to read as follows:

§ 380.10 Participation in Commission proceeding.

(a) * * *

(2) * * *

(iii) Commission pre-filing activities commenced under §§157.21 and 50.5 of this chapter, respectively, are not considered proceedings under part 385 of this chapter and are not open to motions to intervene. Once an application is filed under part 157 Subpart A or part 50 of this chapter, any person may file a motion to intervene in accordance with § 157.10 or § 50.10 of this chapter or in accordance with this section.

* * * * *

8. Amend § 380.15 by revising paragraph (c), the heading in paragraph (d), and paragraph (f)(5) to read as follows:

§ 380.15 Siting and maintenance requirements.

* * * * *

(c) Safety regulations. The requirements of this paragraph do not affect a project sponsor's obligations to comply with safety regulations of the U.S. Department of Transportation and recognized safe engineering practices for Natural Gas Act projects and the National Electric Safety Code for section 216 Federal Power Act projects.

(d) Pipeline and electric transmission facilities construction.

* * * * *

(f) * * *

(5) For Natural Gas Act projects, the site of above-ground facilities which are visible from nearby residences or public areas, should be planted in trees and shrubs, or other appropriate landscaping and should be installed to enhance the appearance of the facilities, consistent with operating needs.

9. A new § 380.16 is added to read as follows:

§ 380.16 Environmental reports for section 216 Federal Power Act Permits.

(a) Introduction.

(1) The applicant must submit an environmental report with any application that proposes the construction or modification of any facility identified in § 380.3(c)(3) . The

environmental report must include the eleven resource reports and related material described in this section.

(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 shall:

(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. Show nonlinear construction areas 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) 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 average yield, 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; 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 consultation, 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)–(iv) of this section.

(2) The initial application or pre-filing documents, as applicable, must include the documentation of initial cultural resource consultation, 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 report 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; and

(7) Conduct a property value impact analysis for residential properties located adjacent or abutting to the proposed right-of-way of the proposed transmission line facilities. The analysis must include estimates of residential property values both prior to and subsequent to transmission line construction. The analysis must state the assumptions made and the methodology used to conduct the analysis.

(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.

(i) List the soil series within the transmission line right-of-way and the percentage of the property comprised of each series;

(ii) List the percentage of each series that will be permanently disturbed;

(iii) Describe the characteristics of each soil series; and

(iv) Indicate which are classified as prime or unique farmland by the U.S.

Department of Agriculture, Natural Resources Conservation Service.

(3) 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; and

(4) Identify, by milepost, cropland, and residential areas where loss of soil fertility due to construction activity can occur.

(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; and

(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 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; and

(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 area 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; and

(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 shall 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.

(2) Describe alternative routes or locations considered for each facility during the initial screening for the project:

(i) For alternative routes considered in the initial screening for the project but eliminated, describe the environmental characteristics of each route or site, and the reasons for rejecting it. 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 alternative routes or locations considered for more in-depth consideration, describe the environmental characteristics of each route or site and the reasons for rejecting it. Provide comparative tables showing the differences in environmental characteristics for the alternative and proposed action. The location of any alternatives in this paragraph shall be provided on maps equivalent to those required in paragraph (c)(2) of this section.

(l) 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; and

(6) Provide a description of the electromagnetic fields generated by the 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; and

(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 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 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."

Attachment C

Notice of Proposed Rulemaking

Coordination of Federal Authorizations for Electric Transmission
Facilities

76 FR 77432

and the newly-added paragraph (c) of § 20.1406. The first issuance of guidance on a newly-changed or newly-added rule provision does not constitute backfitting or raise issue finality concerns, inasmuch as the guidance must be consistent with the regulatory requirements in the newly-changed or newly-added rule provisions and the backfitting and issue finality considerations applicable to the newly-changed or newly-added rule provisions must logically apply to this guidance. Therefore, issuance of guidance addressing the newly-changed and newly-added provisions of the amended rule does not constitute issuance of "changed" or "new" guidance within the meaning of the definition of "backfitting" in 10 CFR 50.109(a)(1). Similarly, the issuance of the guidance addressing the newly-changed or newly-added provisions of the amended rule, by itself, does not constitute an action inconsistent with any of the issue finality provisions in 10 CFR part 52. Accordingly, no further consideration of backfitting or issue finality is needed as part of the issuance of this guidance addressing compliance with the newly-changed provisions of § 20.1501 and newly-added paragraph (c) of § 20.1406.

This regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of this regulatory guide. Such action does not constitute backfitting as defined in 10 CFR 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in part 52.

Dated at Rockville, Maryland, this 2nd day of December 2011.

For the Nuclear Regulatory Commission,
Thomas H. Boyce,
Chief, Regulatory Guide Development Branch,
Division of Engineering, Office of Nuclear
Regulatory Research.

[FR Doc. 2011-31905 Filed 12-12-11; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 900

RIN 1901-AB18

Coordination of Federal Authorizations for Electric Transmission Facilities

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations for the timely coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA). The proposed rule would require permitting entities to inform DOE of requests for authorizations required under Federal law for Qualifying Projects as defined in the rule, as well as establish a process whereby applicants for Federal authorizations for interstate electric transmission facilities that are not Qualifying Projects can request DOE assistance in the Federal authorization process. Also, the proposed rule provides for the selection of a Federal Lead Agency responsible for compiling a single environmental review document, and a consolidated administrative record, for Qualifying Projects. In addition, the proposed rule provides for the establishment of intermediate and final deadlines for the review of Federal authorization decisions, as well as establishing a date certain after which all permit decisions and related environmental reviews under all applicable Federal laws shall be completed within one year, or as soon thereafter as practicable in compliance with Federal law.

DATES: Public comment on this proposed rule will be accepted until January 27, 2012.

ADDRESSES: Interested persons are encouraged to submit comments, identified by "Proposed 216(h) Regulations," by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Email: Brian.Mills@hq.doe.gov. Include "Proposed 216(h) Regulations" in the subject line of the message.

Mail: Brian Mills, Office of Electricity Delivery and Energy Reliability (OE-20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Brian Mills, Office of Electricity

Delivery and Energy Reliability (OE-20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Phone (202) 586-8267, email

Brian.Mills@hq.doe.gov, or Lot Cooke, Attorney-Advisor, U.S. Department of Energy, Office of the General Counsel, GC-76, 1000 Independence Avenue SW., Washington, DC 20585, Phone (202) 586-0503, email Lot.Cooke@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
 - A. Statutory Authority and Rulemaking History
 - B. Interpretation of Key Terms
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 - A. Purpose
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 - E. Notification of Requests for Federal Authorizations for Qualifying Projects and Requests for DOE Assistance in the Federal Authorization Process
 - F. Selection of Lead Agency, and Coordination of Permitting and Related Environmental Reviews
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I. Background

A. Statutory Authority and Rulemaking History

Section 1221(a) of the Energy Policy Act of 2005 (Pub. L. 109-58) (EPA05) added a new section 216 to the FPA (16 U.S.C. 791-828c) which deals with the siting of interstate electric transmission facilities. Section 216(h) of the FPA (16 U.S.C. 824p(h)), which is titled "Coordination of Federal Authorizations for Transmission Facilities," provides for DOE to coordinate all applicable Federal authorizations for the siting of interstate electric transmission facilities and related environmental reviews.

Section 216(h) of the FPA provides for the coordination of Federal transmission siting determinations for entities seeking permits, special use authorizations, certifications, opinions, or other approvals required under Federal law to site electric transmission facilities. This coordination avoids duplicative review processes by various Federal agencies. In addition, section 216(h) also provides that Indian tribes, multi-State entities, and State agencies that have their own separate permitting and environmental reviews can

participate in the coordinated Federal review process if they so choose.

On October 23, 2009, nine Federal agencies with permitting or other Federal authorization responsibility for the siting of electric transmission facilities entered into a "Memorandum of Understanding Regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Land" (2009 MOU).¹ The signatories to the 2009 MOU were DOE, the Departments of Defense, Agriculture (USDA), the Interior (DOI), and Commerce, the Federal Energy Regulatory Commission (FERC), the Environmental Protection Agency, the Council on Environmental Quality, and the Advisory Council on Historic Preservation. The purpose of the 2009 MOU is to establish a framework for early cooperation and participation among the signatories that will: (1) Expedite the siting and construction of qualified electric transmission infrastructure in the United States; (2) improve coordination among Federal authorization applicants, Federal agencies, and states and tribes involved in the siting and permitting process; and (3) improve uniformity, consistency, and transparency by setting forth the roles and responsibilities of Federal agencies in the siting and construction of qualifying projects.

On September 19, 2008, DOE published an interim final rule establishing procedures under which entities may request that DOE coordinate Federal authorizations for the siting of interstate electric transmission facilities and related environmental reviews pursuant to FPA section 216(h) (73 FR 54456). The interim final rule became effective on October 20, 2008, and the regulations can be found at 10 CFR 900.1–900.6. Also on September 19, 2008, DOE published a notice of proposed rulemaking (NOPR) which proposed amendments to the interim final rule (73 FR 54461). This proposed rule would amend the interim final rule and replaces the 2008 NOPR. These proposed regulations, subject to revisions based on comments received in response to this NOPR, and in conjunction with the 2009 MOU, would govern DOE's coordination of electric transmission facilities permitting requests under section 216(h) of the FPA.

Comments were filed in response to the 2008 interim final rule and 2008

NOPR.² In Section II of today's NOPR, DOE addresses the comments submitted in response to both the interim final rule and the 2008 NOPR. All references to comments in this NOPR are to comments filed in response to the 2008 interim final rule and 2008 NOPR.

B. Interpretation of Key Terms

Under FPA section 216(h)(2), DOE is required to "act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews" (emphasis added). DOE interprets the term "lead agency" as used in FPA section 216(h)(2) as requiring DOE to coordinate the necessary environmental reviews conducted by other Federal agencies and to ensure that one Federal agency is responsible for preparing a uniform environmental review document. Therefore, DOE would coordinate the selection of a Lead Agency. The selection would be based on land management interests or the recommendations of other participating agencies. The Lead Agency would prepare the environmental review under the National Environmental Policy Act (NEPA). Consistent with the 2009 MOU and in accordance with NEPA regulations issued by the Council on Environmental Quality at 40 CFR part 1500 *et seq.*, this proposal would ensure that the agency with the most relevant subject matter expertise conducts the required environmental reviews. In those circumstances where DOE has a permitting role (e.g., international transmission lines, transmission lines built by the Power Marketing Administrations (PMAs)), DOE may be the Lead Agency for preparing the NEPA compliance document and other environmental, cultural, and historic preservation reviews. For all other types of transmission projects in which DOE has no permitting role, however, DOE will work with the permitting entities responsible for issuing Federal authorizations in coordinating the selection of the appropriate permitting entity to be the Lead Agency for preparing NEPA compliance documents in accordance with the 2009 MOU, 40 CFR part 1500 *et seq.*, and these proposed regulations.

² Comments on the interim final rule were filed by the Allegheny Energy Companies (Allegheny), the Public Utility Commission of the State of California, the American Transmission Company LLC, the utility companies of the American Electric Power System Southern California Edison Company, and the Western Business Roundtable. Edison Electric Institute filed consolidated comments on the interim final rule and the NOPR, and Allegheny filed separate comments on the NOPR.

DOE believes that its coordination responsibilities set forth in section 216(h) are intended to give an applicant seeking one or more Federal authorizations for the construction or modification of electric transmission facilities access to a process under which all Federal reviews are made in an efficient and coordinated manner. The NOPR also provides a discretionary process for applicants seeking only one authorization to ask for DOE assistance. In the 2008 interim final rule, DOE determined that its coordination of Federal authorizations would be most beneficial as a request driven process. In a request driven process, DOE would provide coordination only in circumstances where an applicant for Federal authorizations determined that it would be beneficial for DOE to perform that role.

The parties to the 2009 MOU determined, however, that there should be a mechanism for Federal coordination, and the selection of a Lead Agency for all Qualifying Projects, without the need for an applicant to request coordination. This would place the responsibility to undertake the coordination process on the Federal authorizing agencies and ensure that coordination takes place as intended by the statute. The 2009 MOU defines Qualifying Projects as "high voltage transmission line projects (generally 230 kV or above), and their attendant facilities, or otherwise regionally or nationally significant transmission lines and their attendant facilities, in which all or part of a proposed transmission line crosses jurisdictions administered by more than one Participating Agency." This proposed rule would codify the 2009 MOU coordination process for Qualifying Projects, and, in addition, provide for the discretionary coordination of Federal authorizations for projects other than Qualifying Projects.

DOE, in coordination with other participating agencies, has established a transmission tracking system Web site: <http://www.doe-ettrans.us>. The Web site includes Qualifying Projects, as well as projects that are not Qualifying Projects, under the MOU or these proposed regulations. For example, the Web site lists the application of Garkane Energy to the Forest Service for authorization to construct a 138 kV line. All other projects currently listed on the Web site are Qualifying Projects.

II. Discussion of Proposed Rule

A. Purpose

Section 900.1 states the purpose of the regulations, which is to provide a

¹ The MOU is available at <http://www.oe.energy.gov/668.htm>. The 2009 MOU superseded an August 6, 2006 MOU pertaining to FPA section 216(h) coordination and signed by the same Federal agencies.

process for the timely coordination of Federal authorizations for proposed transmission facilities pursuant to FPA section 216(h).

B. Applicability

Section 900.2 of the proposed rule explains when the provisions of Part 900 would apply to the coordination of Federal authorizations. The provisions of Part 900 would apply to Qualifying Projects, and would also apply to Other Projects at the discretion of the Director of Permitting and Siting within DOE's Office of Electricity Delivery and Energy Reliability. Both types of projects must be for transmission facilities that are used for the transmission of electric energy in interstate commerce, but Qualifying Projects are generally 230 kV or above and cross jurisdictions administered by more than one Participating Agency.

Further, there would be no coordination of Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas (ERCOT) interconnection because section 216(k) of the FPA states that section 216 of the FPA shall not apply within the ERCOT area (16 U.S.C. 824p(k)). Section 900.2 also provides that section 216(h) does not apply when an application has been submitted to FERC for issuance of a permit for construction or modification of a transmission facility, or a pre-filing procedure has been initiated, under section 216(b) of the FPA (16 U.S.C. 824p(b)) (transmission lines within a DOE-designated National Interest Electric Transmission Corridor). In those circumstances, DOE has delegated its section 216(h) coordination authority to FERC³ and, in Order No. 689, FERC adopted regulations setting forth the procedures it will follow in such circumstances. Furthermore, the MOU does not apply to transmission lines that cross the U.S. international border, Federal submerged lands, national marine sanctuaries, or facilities constructed by PMAs.⁴

³ Department of Energy Delegation Order No. 00-004-00A, section 1.22, issued May 16, 2006.

⁴ DOE does not consider applications to the PMAs for transmission interconnections to be Federal authorization request within the meaning of 216(h). In those circumstances the PMAs are not functioning as Federal agencies considering requests for permits, special use authorizations, certifications, opinions, or other approvals, but are acting in their capacity as transmitting utilities. Moreover, section 216(h) specifically provides that nothing in it affects any requirements of U.S. environmental laws, and this exemption does not waive any requirements to obtain necessary Federal authorizations for electric transmission facilities.

Comments

Edison Electric Institute (EEI) requested that "DOE delete this limitation (to transmission in interstate commerce), or at a minimum * * * indicate that this will not be a substantial hurdle to DOE exercising lead-agency authority." The Public Utilities Commission of the State of California (CPUC) and the Western Business Roundtable (Roundtable) also expressed concerns with this limitation.

DOE Response

This limitation on the applicability of the regulations is consistent with the intent of section 216 of the FPA, which is titled "Siting of Interstate Electric Transmission Facilities," and is consistent with the definition of transmission facilities used by FERC in Order No. 689 (regulations regarding application for permits to site electric transmission facilities issued under section 216 of the FPA).⁵ This limitation, however, does not restrict the Federal authorization coordination process only to electric transmission facilities that cross state lines. The facility need only be for the transmission and sale at wholesale of electricity in interstate commerce. This distinction is consistent with the general division of Federal and State authority found in the FPA, with Federal authority over interstate transmission and wholesale sales and State authority over distribution.

Comments

EEI expressed concern with DOE's determination that the rule is not applicable if a pre-filing procedure pursuant to FERC Order No. 689 has been initiated. EEI pointed out that DOE's delegation of its FPA 216(h) coordination authority to FERC applies only after an application for siting an electric transmission facility has been filed with FERC, not when the FERC pre-filing process starts. Also, EEI stated that in a situation where the Federal authorization coordinating process has begun prior to an application for siting before FERC, DOE needs to ensure a smooth transition of lead agency authority to FERC. In comments on the interim final rule, the CPUC commented that it did not oppose this determination because FERC has set forth the procedure that it will follow in such circumstances.

⁵ Establishing Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities, Order No. 689, 71 FR 69,440 (December 1, 2006), FERC Stats. & Regs. ¶ 31,234.

DOE Response

Under FERC Order No. 689, a major portion of the environmental review will be started and undertaken during FERC's pre-filing process. In addition, FERC intends that permitting entities be included in this process. Therefore, it would be duplicative for DOE to simultaneously engage in an FPA 216(h) coordination process for the same electric transmission facilities.

C. Definitions

Section 900.3 would provide definitions applicable to these regulations.

D. Pre-Application Procedures

Section 900.4(a) would implement section 216(h)(4)(C) of the FPA. Section 900.4(b) would codify procedures provided for in the 2009 MOU. It would require permitting entities contacted by prospective applicants for Federal authorization to site electric transmission facilities to notify participating agencies of Qualifying Projects and facilitate a pre-application meeting for prospective applicants and relevant Federal and state agencies and Tribes to communicate key issues of concern, explain applicable processes, outline data requirements and applicant submissions necessary to complete the required Federal agency reviews in a timely manner, and to establish schedules. The section 900.4(a) pre-application mechanism is required by statute and involves a submission of a request by a prospective applicant, while section 900.4(b) codifies a responsibility undertaken by the Participating Agencies in the 2009 MOU.

Comments

Regarding the pre-application mechanism provided for in section 900.4 of the 2008 interim final rule, Allegheny Energy Companies (Allegheny) commented that:

First, the request for information must originate from an applicant or prospective applicant and be directed to a "permitting entity; with notice to DOE of the request. Second, requests are required to "specify in sufficient detail the information sought from the permitting entity and shall contain sufficient information for the permitting entity to provide the requested information." Third, the permitting agency has 60 days from receipt of the information request to provide, "to the extent permissible under existing law," information concerning the request to the applicant or prospective applicant, and DOE. Notably, DOE's pre-application mechanism does not include any explicit mention of the two specific categories of information noted in FPA, section 216(h)—key issues of concern and the

likelihood of approval for a potential facility. Rather, the proposed pre-application section merely makes a passing reference to requests for information pursuant to section 216(h)(4)(C). (Footnotes omitted.)

Allegheny contended that “as drafted, proposed section 900.4 frustrates the clear purpose of FPA, section 216(h)(4),” and provided suggested substitute language for that provision of the regulations. Allegheny also suggested adding language to the effect that “agencies must ensure that they do not make any pre-decisional commitments regarding their future consideration of a permit application or authorization request.”

DOE Response

DOE does not believe that section 900.4, as drafted in the 2008 interim final rule, would frustrate the purpose of FPA section 216(h)(4). FPA section 216(h)(4) directs DOE to provide “an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved * * *.” Section 900.4(a) of this NOPR would provide such a mechanism. To address Allegheny’s comment, however, the proposed rule includes the statutory specifications that a permitting or potential permitting entity should provide information concerning the likelihood of approval for a potential facility and key issues of concern to the agency and public, while stating that the provision of such information does not constitute a commitment by the permitting entity to approve or disapprove the Federal authorization request.

DOE retained the language requiring persons requesting information from a Federal agency pursuant to FPA section 216(b)(4)(C) to supply sufficient details to allow the agency to provide the information requested. A permitting entity cannot provide answers to the questions posed in FPA section 216(h)(4) without knowing the nature and the scope of the facilities to which the information request pertains. DOE will work with persons seeking information under section 900.4(a) and permitting entities to ensure the pre-application mechanism functions properly.

In addition, DOE retained the “to the extent permissible under existing law” language. We also included language in section 900.4(a)(4) specifying that information given to an applicant shall not constitute a commitment by the permitting entity to approve or disapprove any Federal authorization request.

E. Notification of Requests for Federal Authorizations and Requests for DOE Assistance in the Federal Authorization Process

Section 900.5 of the proposed rule would require a permitting entity contacted regarding, or in receipt of, an application for a Federal authorization for a Qualifying Project to inform the DOE’s Director of Permitting and Siting in the Office of Electricity Delivery and Energy Reliability (Director) within ten working days of being contacted or of receipt of an application. In addition, persons seeking Federal authorizations for projects that are not Qualifying Projects can file written requests to DOE for assistance in the Federal authorization process.

Comments

Based on the 2008 NOPR, Allegheny recommended that the rule be changed to require permitting entities to notify DOE within one week of receiving the application for a Federal authorization if the project is: (1) Equal or greater than 230 kV; (2) reasonably likely to require an EIS; or (3) reasonably likely to require more than one Federal authorization. Allegheny’s recommendation was based on language in the superseded 2006 MOU. EEI urged “DOE to require notification from a federal authorizer any time an application for a permit is filed, not just for those projects that will require an EIS.”

DOE Response

In response to Allegheny’s comment, the proposal that DOE be notified within 10 days of all proposals for qualifying projects is consistent with the 2009 MOU, and DOE does not believe that the additional few days would make a significant difference in the review process for an application. In response to EEI’s comments, DOE notes that Federal authorizing agencies informed DOE that there are thousands of Federal authorization requests each year. For example, the Army Corps of Engineers authorizes over 60,000 projects under section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act annually. Thus, requiring by rule that Federal authorizing agencies inform DOE of every request for a Federal authorization would be overly burdensome. Moreover, persons proposing to construct an electric transmission facility that is not a Qualifying Project can utilize the procedure in section 900.5(b) of the NOPR to request DOE assistance in the Federal authorization process.

F. Selection of Lead Agency and Coordination of Permitting and Related Environmental Reviews

Section 900.6(a) provides, consistent with the process agreed to in the 2009 MOU, that DOE will coordinate the selection of a Lead Agency responsible for compiling a single environmental review document and consolidated administrative record for Qualifying Projects. For Qualifying Projects that cross DOI administered lands (including trust or restricted Indian lands) or USDA administered lands, the DOI and USDA would consult and jointly determine: (1) Whether a sufficient land management interest exists to support their assumption of the Lead Agency role and (2) if so, which of the two agencies should assume that role. The DOI and USDA would notify DOE of their determination in writing or electronically. Unless DOE in writing or electronically notifies DOI and USDA of its objection to such determination within two business days, such determination is deemed accepted. When the Lead Agency is not established as described above, the relevant participating agencies will consult and jointly determine a lead agency within 20 days after determining that a proposal is a Qualifying Project. The agencies will notify DOE of their determination in writing or electronically. Unless DOE in writing or electronically notifies those participating agencies of its objection within two business days, such determination is deemed accepted.

In addition, section 900.6(b) provides that for projects that are not Qualifying Projects (defined in section 900.3 as Other Projects), an applicant can request the Director to assist it in the Federal authorization process, and the Director may do so at the Director’s discretion. If DOE decides to provide authorization assistance, DOE will work with the Federal authorizer(s) to determine a Lead Agency.

Finally, section 900.6(c) states that non-Federal entities that have their own separate non-Federal permitting and environmental reviews may elect to participate in the coordination process under this section, including becoming cooperating agencies.

Comments

In the preamble to the 2008 interim final rule, DOE stated that in its view section 216(h) is intended to give an applicant seeking more than one Federal authorization for the construction or modification of electric transmission facilities access to a process under which all Federal reviews are made in

an efficient and coordinated manner. This view is consistent with the definition of a Qualifying Project contained in this NOPR. EEI and Roundtable urged DOE to reconsider this language. Roundtable stated: "Applicants should not be precluded from having DOE serve as lead agency merely because only one federal permitting entity is involved."

DOE Response

FPA section 216(h)(2) states that DOE "shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility." DOE believes that its coordination role is best served for projects where more than one permitting entity is involved. Hence, it defined Qualifying Project as a project where the transmission line crosses jurisdictions administered by more than one participating agency. However, the definition of Other Projects in this NOPR provides an opportunity for an applicant to request DOE coordination for a project that only involves a single permitting entity.

Comments

Several commenters questioned DOE's determination that the term "lead agency," as used in FPA section 216(h) makes the Department responsible for being the lead coordinating agency for environmental reviews, not the lead agency for preparing the environmental review under NEPA. EEI contended that "the Department's statement in the preamble to the interim rule that the term 'lead agency' in section 216(h) means it is 'lead coordinating agency for environmental reviews, not the lead agency for preparing the environmental review under the National Environmental Policy Act,' is an incorrect interpretation of what the statute requires," and that "the designation of the Department as the 'lead agency' clearly indicates that the Department's role under section 216(h) encompasses preparation of an environmental review document for the purposes of NEPA compliance." SCE stated that "DOE was expressly charged by Congress with acting as the lead agency under the National Environmental Protection (sic) Act ("NEPA") for conducting all of the necessary reviews required for Federal authorizations associated with the construction of transmission project on Federal lands." AEP commented:

DOE interprets the requirement to prepare a consolidated environmental review document as merely requiring it to assemble the work of individual agencies and maintain the information available to be used—a

clearing house function. AEP urges the DOE to establish a single environmental review document for electric transmission siting. Establishment of such a document for electric transmission siting will simplify the application process and eliminate the need to submit duplicate information to multiple state and Federal agencies.

In addition, AEP stated:

In order for the single environmental review document to be effective at accelerating the approval process and eliminating duplication, it would also be helpful for DOE to create a comprehensive schedule for participating agencies. To accomplish this, the DOE should clearly define the roles that various entities will play within the approval process. This approval process could identify opportunities to expedite the process, such as opportunities to conduct joint public comment periods and public hearings when multiple agencies must consider the same or similar issues.

On the other hand, CPUC supported the rule's provision that DOE and the permitting entities responsible for issuing Federal authorizations will jointly decide the appropriate lead agency for NEPA purposes, but asked clarification of when DOE itself would be the lead agency.

DOE Response

Section 216(h)(2) requires DOE to act as the lead agency for the purposes of coordinating all applicable Federal authorizations and related environmental reviews of a facility. The phrase "for the purposes of coordination" of environmental reviews limits DOE's responsibility to coordination and does not require DOE to compile the environmental review document. It would be inefficient for DOE, rather than the agency with the most significant land management interests related to a Qualifying Project and with the most relevant subject matter expertise, to compile the document, particularly in those cases where DOE has no permitting role.

Consistent with the 2009 MOU, the proposed rule modifies the 2008 interim final rule to clarify the process by which DOE will coordinate the selection of the lead agency for compiling a single environmental review document and a consolidated administrative record for qualifying projects.

With respect to CPUC's request for clarification, DOE anticipates it will be the Lead Agency when an application for a Federal authorization has been submitted to DOE. DOE is responsible for authorizing exports of electricity under FPA section 202(e) (16 U.S.C. 824a(e)), and issuing Presidential permits for the construction, operation, maintenance and connection of electric transmission facilities at the

international border pursuant to Executive Order (EO) 10485, as amended by EO 12038. Generally, when DOE is considering such Presidential permit applications it is the NEPA lead agency and anticipates that it will continue to be the Lead Agency under those circumstances. Similarly, when applications are filed with one of the PMAs, the PMA is expected to be the NEPA lead agency.

When DOE is not a permitting entity, however, the 2009 MOU provides a mechanism for DOE to coordinate the selection of a Lead Agency for qualifying projects. The selection will reflect the agency with the most significant land management interests related to a Qualifying Project, or the agency recommended by other participating agencies impacted by the project. This agency would be the Lead Agency for preparing NEPA compliance documents and other analyses required to comply with all environmental and cultural statutes and regulations under Federal law. This approach is consistent with FPA section 216(b)(2), as explained above. Consistent with section 216(h)(5)(A), however, DOE clarifies that its role as coordinator for the Federal authorization process will be much broader and more involved than simply acting as a clearing house and repository for environmental compliance information. DOE will establish a central source of information about section 216(h) activities and provide for public access to the information available from participating and cooperating agencies, as well as a schedule for each qualifying project. The Web site will be accessible through http://www.oe.energy.gov/Fed_transmission.htm. DOE also intends to be actively engaged in the coordination of Federal authorizations, including the establishment of timeframes for the submission of information, the scheduling of environmental scoping meetings, and appropriate milestones and deadlines.

G. Lead Agency Responsibilities

Section 900.7 delineates the responsibilities of the lead agency under the rule. These tasks include: Establishing and implementing preapplication consultation procedures, consulting with cooperating agencies, establishing a schedule, preparing a unified environmental review document, maintaining a consolidated administrative record, and other responsibilities enumerated in the rule.

In addition, section 900.7(i) provides that, to the extent practicable and consistent with Federal law, the Lead Agency may establish a procedure to

consolidate costs recoverable from the applicant to reimburse Federal agencies for costs incurred, issue bills for collection, and disburse funds to the appropriate Federal agencies.

H. Cooperating Agencies Responsibilities

Section 900.8 delineates the responsibilities of cooperating agencies. DOE notes that section 900.8(g) provides that Cooperating Agencies may enter into an interagency agreement with the Lead Agency to allow for the recovery of appropriate costs, and that the Cooperating Agencies would be responsible for providing the Lead Agency an accounting of billable costs as a result of the application and permitting process. These last two sections were not included in the MOU but will facilitate the Federal authorization decisionmaking process.

I. DOE Responsibilities

Section 900.9 provides DOE responsibilities under this part, including coordinating the selection of a Lead Agency, providing assistance to the Lead Agency and developing the public Web site.

J. Prompt and Binding Intermediate and Ultimate Deadlines

Consistent with FPA section 216(h)(4)(A), section 900.10 provides for the lead agency, in consultation with DOE, the project applicant, other affected parties, and cooperating agencies to establish an efficient project schedule, including intermediate and ultimate deadlines for the review of Federal authorization applications and decisions relating to proposed electric transmission facilities.

K. Deadlines for Final Decisions on Federal Authorization Requests

Consistent with FPA section 216(h)(4)(B), section 900.11 requires that all Federal permit decisions be completed in accordance with the following time-lines (unless another provision of Federal law does not permit a final decision within those timelines): (1) When a categorical exclusion or an environmental assessment (EA) and Finding of No Significant Impact (FONSI) is determined to be the appropriate level of review under NEPA, within one year of the categorical exclusion determination or publication of a FONSI; or (2) when an environmental impact statement (EIS) is required, one year and 30 days after the close of the public comment period for a Draft EIS.

The 2009 MOU sets the deadline in those instances within one year of the

acceptance of a completed application. While the 2009 MOU provision may seem to establish a shorter deadline than this NOPR, the deadline is imprecise because the MOU contains no definition of a "completed application." The language starting the one year deadline on the date of the NEPA determination is used in this proposed rule to establish a deadline that is easily determinable. DOE remains committed to working with the applicant and the lead and cooperating agencies to expedite the decision process, including final deadlines.

Comments

EEL and Roundtable objected to the one-year deadline for the completion of all Federal authorizations contained in the 2008 NOPR, which was substantially the same as proposed in this rule. EEL stated that "none of these proposed triggers for the one-year period to begin find any support in the text of the statute, and none is lawful." Roundtable stated:

Under EPAAct05, there is a one-year window for states to complete their decisions prior to an applicant approaching FERC for a construction permit and a one-year window for Federal agencies to complete their decisions once an application has been submitted with necessary data. These provisions parallel one another, supporting the view that Congress intended a concurrent approach to federal and state decision-making.

DOE Response

Section 216(h)(4)(B) of the FPA provides that the Secretary of Energy shall ensure that once an application has been submitted with such data as the Secretary of Energy considers necessary, all permit decisions and related environmental reviews under Federal laws will be completed within one year or as soon thereafter as possible in compliance with Federal law. Roundtable compared this one year deadline to the one-year window for states to complete their decisions prior to an applicant applying to FERC for a construction permit under FPA section 216(b). DOE disagrees with Roundtable's comparison because FPA section 216(h)(4)(B) requires submission of an application "with such data as the Secretary considers necessary." A permitting entity needs to have a completed, or substantially completed, environmental review before it can make a Federal authorization determination. Therefore, DOE has determined generally that permitting entities will have such data as the Secretary considers necessary one year after: (1) A determination by the permitting entity has been made that the

Federal authorization is subject to a categorical exclusion, or an EA has been published which resulted in a FONSI; or (2) 30 days after the close of the comment period on the permitting entity's draft EIS. In addition, this determination is consistent with FERC Order No. 689, which contemplates a pre-filing period of a year, during which FERC will start its scoping and environmental review, before an application is filed and the FPA section 216(h)(4)(B) one year deadline begins to run.⁶ Moreover, these proposed section 900.11 deadlines trigger the FPA section 216(h)(6) Presidential appeal process, so it is important that the deadlines are clear and determinable by both applicants and permitting entities.

Comments

EEL asked that DOE "clarify that the one-year deadline applies not only to the record of decision but also to the issuance of the construction permit that allows dirt to be turned."

DOE Response

In response to the clarification requested by EEL, section 900.11 states that the one-year deadline applies to all Federal authorizations or permits needed.

Comment

EEL and Roundtable raised concerns about the ability of a permitting entity to extend the one-year deadline if a requirement in another provision of Federal law does not permit a final decision on the Federal authorization request within one year under section 900.9 of the 2008 NOPR. EEL stated that "this would allow a permitting agency to override the statutory one-year deadline with a cryptic one-sentence reference to NEPA or some other statute, without offering any explanation as to why an extension of the deadline is legally necessary." Allegheny expressed similar concerns over parallel language in section 900.8 of the 2008 NOPR.

DOE Response

Pursuant to the proposed rule, a permitting entity requesting extension of the one year deadline must inform the lead agency, cooperating agencies, the applicant, DOE and any other interested parties of the provision of Federal law that prevents the final decision on the Federal authorization request from being issued within one year of the deadline, an explanation of how the provision is applicable to the

⁶ Establishing Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities, Order No. 689, 71 FR 60,440 (December 1, 2006), FERC Stats. & Regs. ¶ 31,234, at para. 47.

permitting entity's Federal authorization determination and why the provision prevents the decision from being made within that time frame, and the date when the final decision on the authorization request can be issued in compliance with Federal law.

III. Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these regulations fall into the class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an EA nor an EIS is required. Documentation of the use of this categorical exclusion has been completed and is available for review on DOE's Web site <http://www.oe.energy.gov/1260.htm>.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule establishes procedures for DOE coordination of Federal authorizations for the siting of interstate electric transmission facilities. As a result, the rule directly impacts only Federal agencies and not any small entities. In those cases where an applicant requests DOE assistance for a project that is not a qualifying project, DOE expects that the provisions of this proposed rule, if adopted, would not affect the substantive interests of such applicants, including any applicants that are small entities. DOE expects that

actions taken under these proposed provisions to coordinate and speed the issuance of decisions on requests for Federal authorizations would lessen the burden of applying for a Federal authorization on applicants, and that any applicant requesting DOE assistance has made the calculation that such a request was in the best interests of the applicant. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for requesting information during the pre-application process is estimated to average 30 minutes per response. Public reporting burden for requesting DOE assistance in the Federal authorization process is estimated to average one hour per response. Both of these burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Brian Mills at the ADDRESSES above, and email to OIRA_Submission@omb.eop.gov.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by States, Tribal or local governments, in the aggregate, or by the private sector, of \$100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of State, tribal or local governments on a proposed significant intergovernmental mandate, and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the proposed rule published today does not contain any Federal mandates affecting States, tribal, or local governments, or the private sector, so these requirements do not apply.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. No further action is required by the executive order.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a "Family Policymaking Assessment" for any rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the proposed rule published today does not have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule has also not been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs. Therefore, the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for

agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 900

Electric power, Electric utilities, Energy, Reporting and recordkeeping requirements.

Issued in Washington, DC on December 2, 2011.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

For the reasons set forth in the preamble, the Department of Energy is proposing to amend chapter II of title 10 of the Code of Federal Regulations by revising part 900 to read as set forth below:

PART 900—COORDINATION OF FEDERAL AUTHORIZATIONS FOR ELECTRIC TRANSMISSION FACILITIES

Sec.

- 900.1 Purpose.
- 900.2 Applicability.
- 900.3 Definitions.
- 900.4 Pre-application procedures.
- 900.5 Notification of requests for Federal authorizations for Qualifying Project and requests for DOE assistance in the Federal authorization process.
- 900.6 Selection of lead agency and coordination of permitting and related environmental reviews.
- 900.7 Lead agency responsibilities.
- 900.8 Cooperating agencies' responsibilities.
- 900.9 DOE responsibilities.
- 900.10 Prompt and binding intermediate milestones and ultimate deadlines under the Federal Power Act.
- 900.11 Deadlines for all permit decisions and related environmental reviews pursuant to the Federal Power Act.

Authority: 16 U.S.C. 824p(h).

§ 900.1 Purpose.

This part provides a process for the timely coordination of Federal authorization requests for proposed transmission facilities pursuant to section 216(h) of the FPA (16 U.S.C. 824p(h)). These regulations provide a framework for cooperation and for the compilation of uniform environmental

review document in order to coordinate all permitting and environmental reviews required under Federal law to site qualified electric transmission facilities. They also provide an opportunity for non-Federal entities to coordinate their own separate non-Federal permitting and environmental reviews with that of the Federal permitting entities.

§ 900.2 Applicability.

(a) The regulations under this part apply to Qualifying Projects for which Federal authorizations are required to site transmission line projects that are generally 230,000 volts (230 kV) and above and their attendant facilities, or regionally or nationally significant transmission line and their attendant facilities. Such transmission line projects must require more than one Federal authorization, and all or part of a proposed transmission line must cross jurisdictions administered by more than one participating agency. Such transmission line projects must also be used for the transmission of electric energy in interstate commerce for sale at wholesale. The provisions of Part 900 would also apply to Other Projects at the discretion of the Director. Other Projects must also be transmission facilities that are used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale, but do not need to meet the 230 kV or above qualification, be regionally or nationally significant, or cross jurisdictions administered by more than one Participating Agency.

(b) This part does not apply to Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas interconnection.

(c) This part does not apply to transmission lines that cross the U.S. international border, Federal submerged lands, national marine sanctuaries, or the facilities constructed by Federal Power Marketing Administrations. However, section 216(h) does not affect any requirements of U.S. environmental laws, and this exemption does not waive any requirements to obtain necessary Federal authorizations for electric transmission facilities.

(d) This part does not apply to Federal authorizations in regard to transmission facilities where an application has been submitted to the Federal Energy Regulatory Commission (FERC) for issuance of a permit for construction or modification of transmission facilities under 18 CFR 50.6 or where pre-filing procedures have been initiated with FERC under 18 CFR 50.5.

(e) DOE, in exercising its responsibilities under this part, will consult regularly with FERC, electric reliability organizations, and transmission organizations approved by FERC.

§ 900.3 Definitions.

As used in this part:

Applicant means a person or entity who is seeking Federal authorization to construct electric transmission facilities.

Consolidated administrative record means the information assembled and maintained by the lead agency and utilized by the cooperating agencies/permitting entities as the basis for their Federal authorization decisions along with the final decision made by each permitting entity.

Cooperating agencies are those agencies that have jurisdiction by law regarding a proposed project, or that otherwise have special expertise with respect to environmental and other issues pertinent to Federal agency reviews. States, tribes and local governments with relevant expertise or authority, or that are potentially affected by or interested in a project, can also be cooperating agencies.

Director means the Director of Permitting and Siting within DOE's Office of Electricity Delivery and Energy Reliability.

DOE means the United States Department of Energy.

Federal authorization means any authorization required under Federal law to site a transmission facility, including permits, special use authorizations, certifications, opinions, or other approvals. This term includes authorizations issued by Federal and non-Federal entities that are responsible for issuing authorizations under Federal law for a transmission facility.

FPA means the Federal Power Act (16 U.S.C. 791–828c).

Indian tribe has the same meaning as provided in 25 U.S.C. 450b(e).

Lead Agency means the Federal agency, selected as provided for in these rules, to coordinate Federal authorizations and related Federal agency reviews pursuant to this part.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

Non-Federal entities mean local government agencies with relevant expertise or authority that are potentially affected by or are responsible for conducting any separate permitting and environmental reviews of the proposed facilities.

Other projects mean transmission facilities that are not qualifying projects. Other projects must be used for the

transmission of electric energy in interstate commerce for the sale of electric energy at wholesale, but do not need to meet the 230 kV or above qualification, be regionally or nationally significant, or cross jurisdictions administered by more than one Participating Agency.

Participating agency means a signatory of the MOU executed on October 23, 2009. The participating agencies are DOE, the Departments of Defense, Agriculture (USDA), the Interior (DOI), and Commerce, FERC, the Environmental Protection Agency, the Council on Environmental Quality, and the Advisory Council on Historic Preservation.

Permitting entity means any Federal or non-Federal entity that is responsible for making a determination on issuing an authorization required to site an electric transmission line.

Qualifying Projects are high voltage transmission line projects (generally 230 kV or above) and their attendant facilities, or otherwise regionally or nationally significant transmission lines and their attendant facilities, in which all or part of a proposed transmission line crosses jurisdictions administered by more than one participating agency and is used for the transmission of electric energy in interstate commerce for sale at wholesale. This definition is consistent with FERC Order No. 689 (regulations regarding application for permits to site electric transmission facilities issued under section 216 of the FPA) and may include intrastate facilities.

Single environmental review document means the material that the cooperating agencies develop—with the lead agency being primarily responsible—to fulfill Federal obligations for preparing NEPA compliance documents and all other analyses required to comply with all environmental, tribal consultation, cultural and historic preservation statutes and regulations under Federal law. This information shall be available to the applicant, all cooperating agencies, DOE, and all Indian tribes, multistate entities, and State agencies that have their own separate non-Federal permitting and environmental reviews.

§ 900.4 Pre-application procedures.

(a) Pre-application mechanism:

(1) An applicant, or prospective applicant, for a Federal authorization may request information from a permitting or potential permitting entity concerning the likelihood of approval for a potential facility and key issues of concern to the agency and public. The

applicant or prospective applicant requesting information from a permitting or potential permitting entity shall notify the Director of the request to the entity.

(2) Any request for information filed under this section shall specify the information sought from the permitting entity in sufficient detail for the permitting entity to provide the requested information.

(3) Within 60 days of receipt of such a request for information, a permitting entity shall provide, to the extent permissible under existing law, information addressing the request to the applicant, or prospective applicant, and the Director.

(4) The provision of such information does not constitute a commitment by the permitting entity to approve or disapprove any Federal authorization request.

(b) Additional pre-application procedures:

Permitting entities contacted by prospective applicants for Federal authorization to site electric transmission facilities will notify participating agencies of Qualifying Projects and facilitate a pre-application meeting for prospective applicants and relevant Federal and state agencies and Tribes to communicate key issues of concern, explain applicable processes, outline data requirements and applicant submissions necessary to complete the required Federal agency reviews in a timely manner, and to establish schedules.

§ 900.5 Notification of requests for Federal authorizations for Qualifying Project and requests for DOE assistance in the Federal authorization process.

(a) *Qualifying Projects*. When one or more permitting entities determine that a project may be a Qualifying Project, those entities will, within 10 days, notify DOE of that determination. The notification is to be made to the Director, Permitting and Siting, ATTN: Transmission Coordination, U.S. Department of Energy, OE-20, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue SW., Washington, DC 20585 or electronically to transmissioncoordination@hq.doe.gov.

(b) *Other Projects*. Persons seeking DOE assistance in the Federal authorization process for Other Projects shall file a request for coordination with the Director. The request shall contain:

(1) The legal name of the requester; its principal place of business; whether the requester is an individual, partnership, corporation, or other entity; the State laws under which the requester is

organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the request for coordination are to be addressed;

(2) A concise general description of the proposed transmission facility sufficient to explain its scope and purpose;

(3) A list of all permitting entities from which Federal authorizations pertaining to the proposed transmission facility are needed, including the docket numbers of pending applications with permitting entities;

(4) A list of non-Federal entities (*i.e.*, state government agencies) that have their own separate non-Federal permitting and environmental reviews pertaining to the proposed transmission facility, including the docket numbers of relevant applications.

(c) *Written request.* The written request for coordination may be filed by mail or hand delivery with the Director at 1000 Independence Avenue SW., Washington, DC 20585, or electronically in MS Word or PDF formats at Brian.Mills@hq.doe.gov. Electronic filing is DOE's preferred method. If filing by hand or mail, DOE requests that an electronic copy be filed as well.

§ 900.6 Selection of lead agency and coordination of permitting and related environmental reviews.

(a) *Qualifying Projects.* (1) As provided in paragraphs (a)(2) and (3) of this section, DOE will coordinate the selection of a Lead Agency responsible for compiling a unified environmental review document and consolidated administrative record for qualifying projects. The selection will recognize the agency with the most significant land management interests related to the qualifying project or the agency recommended by other cooperating agencies to be the lead agency. Determination of the lead agency for preparing NEPA documents shall be in compliance with regulations issued by the Council on Environmental Quality at 40 CFR part 1500 *et seq.*

(2) For Qualifying Projects that cross DOI-administered lands (including trust or restricted Indian lands) or USDA-administered lands, DOI and USDA will consult and jointly determine within 20 days after determining that a proposal is a Qualifying Project:

(i) Whether a sufficient land management interest exists to support their assumption of the lead agency role; and

(ii) If so, which of the two agencies should assume that role. DOI and USDA will notify DOE of their determination in writing or electronically within 10

days of making the determination. Unless DOE in writing or electronically notifies DOI and USDA of its objection to such determination within two business days of the DOI/USDA notification, such determination is deemed accepted and final.

(3) When the Lead Agency is not established pursuant to paragraph (a)(2) of this section, the cooperating agencies will consult and jointly determine a Lead Agency within 20 days after determining that a proposal is a Qualifying Project. No determination of an agency as a Lead Agency under this rule shall be made absent that agency's consent. The agencies will notify DOE of their determination in writing or electronically within 10 days of making the determination. Unless DOE in writing or electronically notifies those cooperating agencies of its objection within two business days of the cooperating agencies notification, such determination is deemed accepted and final.

(b) *Other Projects.* For Other Projects, pursuant to § 900.5(b), an applicant can file a request for coordination with the Director for assistance in the Federal authorization process, and the Director may provide assistance at the Director's discretion. If DOE decides to provide authorization assistance, DOE will work with the permitting entity to determine a Lead Agency.

(c) Non-Federal entities that have their own separate non-Federal permitting and environmental reviews may elect to participate in the coordination process under this section, including becoming cooperating agencies.

§ 900.7 Lead agency responsibilities.

(a) The Lead Agency will consult fully with the cooperating agencies throughout the Federal authorization review process to improve coordination, identify and obtain relevant data in a timely manner, set schedules, and identify and expeditiously resolve issues or concerns.

(b) The Lead Agency will consult with DOE, the qualifying project applicant, other affected parties, and cooperating agencies to establish an efficient project schedule, including intermediate milestones and ultimate deadlines for the review of Federal authorization applications and decisions relating to proposed electric transmission facilities.

(c) The Lead Agency will prepare a unified environmental review document for the Qualifying Project, incorporating, to the maximum extent practicable, a single environmental record on which all entities with authority to issue

authorizations for a given project can base their decisions.

(d) The Lead Agency will maintain a consolidated administrative record of the information assembled and utilized by the cooperating agencies as the basis for their decisions.

(e) The Lead Agency will, to the extent practicable and consistent with Federal law, ensure that all project data are submitted and maintained in electronic geospatial formats or other generally-accessible electronic forms (*e.g.*, geographic information system data including metadata descriptions meeting Federal Geographic Data Committee standards); compile and make available the information assembled and utilized by the cooperating agencies; and, as appropriate, provide public access to the data by maintaining on the agency Web site information and links to the information available from all cooperating agencies.

(f) The Lead Agency will establish any procedures necessary for it to coordinate the requirements of this part with other Federal and non-Federal entities.

(g) The Lead Agency will produce regular input to and updates of a DOE-maintained electronic project tracking system. The information provided by the lead agency will, as appropriate, be made available to the public as provided in § 900.9(e).

(h) The Lead Agency will inform cooperating agencies regarding new information and necessary changes related to the project.

(i) To the extent practicable and consistent with Federal law, the Lead Agency may establish a procedure to consolidate costs recoverable from the applicant to reimburse Federal agencies for costs incurred, issue bills for collection, and disburse funds to the appropriate Federal agencies.

§ 900.8 Cooperating agencies' responsibilities.

(a) Cooperating agencies will submit reviews in accordance with the timeline established by the Lead Agency after consultation with cooperating agencies.

(b) Cooperating agencies will provide personnel and/or expertise to the Lead Agency as agreed to by the cooperating agencies.

(c) Cooperating agencies will be responsible for the provision of any information necessary to complete application reviews and decisions in accordance with deadlines established by the Lead Agency after consultation with cooperating agencies.

(d) Each cooperating agency will assign a lead point of contact for coordination and consultation with the

Lead Agency during the pendency of Federal authorization requests.

(c) Each cooperating agency will share information and data with each other and, to the maximum extent practicable, submit information in a common standard for electronic recordkeeping and analysis.

(f) Cooperating agencies will ensure that any issues or problems relating to a Federal authorization request or process are brought to the immediate attention of the lead agency and DOE, and will participate fully in seeking and implementing resolutions to the issues or problems.

(g) Cooperating Agencies may enter into an interagency agreement with the Lead Agency to allow for the recovery of appropriate costs. The Cooperating Agencies would be responsible for providing the Lead Agency an accounting of billable costs as a result of the application and permitting process.

§ 900.9 DOE responsibilities.

(a) DOE will lead the overall coordination of activities related to implementation of section 216(h) of the FPA and pursuant to this part.

(b) DOE will coordinate the selection of the Lead Agency as specified in this part.

(c) DOE will provide expertise to assist the Lead Agency as required and ensure adherence to applicable schedules.

(d) DOE will provide assistance to the Lead Agency in establishing the schedule and will approve any deviation in the established project schedule.

(e) DOE will develop a public Web site to serve as a central source of information about section 216(h) of the FPA in general and links to the information available from participating and cooperating agencies, as well as schedule information about the specific transmission projects. The Web site can be accessed via www.ae.energy.gov/fed_transmission.htm.

§ 900.10 Prompt and binding intermediate milestones and ultimate deadlines under the Federal Power Act.

Pursuant to section 216(h)(4)(A) of the Federal Power Act:

(a) Permitting entities will work diligently to comply with the agreed-upon timeline, to the extent consistent with applicable law. To ensure adherence to applicable schedules, DOE will provide assistance to the lead agency in establishing the schedule and will approve any deviation in the established project schedule.

(b) No later than 30 days prior to any intermediate or ultimate deadline

established under this part, any permitting entity subject to a deadline shall inform the lead agency, DOE, and the applicant if the deadline will not, or is not likely to, be met.

(c) The Lead Agency, in consultation with DOE and the permitting entity, may, for good cause shown, extend an interim or ultimate deadline.

§ 900.11 Deadlines for all permit decisions and related environmental reviews pursuant to the Federal Power Act.

Pursuant to section 216(h)(4)(B) of the Federal Power Act:

(a) All permit decisions and related environmental reviews under all applicable Federal laws shall be completed in accordance with the following timelines, except as provided in § 900.11(b):

(1) When a categorical exclusion under NEPA is invoked, or an environmental assessment (EA) finding of no significant impact (FONSI) is determined to be the appropriate level of review under NEPA, within one year of the categorical exclusion determination or the publication of a FONSI; or

(2) When an environmental impact statement (EIS) is required pursuant to NEPA, one year and 30 days after the close of the public comment period for a Draft EIS.

(b) If a requirement in another provision of Federal law does not permit a final decision on the Federal authorization request under the schedule established in paragraph (a) of this section, the permitting entity shall inform the lead agency, DOE, cooperating agencies, the applicant, and other interested parties, cite the provision of Federal law that prevents the final decision on the Federal authorization request from being issued under the schedule established in paragraph (a) of this section, and provide a date when the final decision on the authorization request can be issued in compliance with Federal law.

[FR Doc. 2011-31759 Filed 12-12-11; 8:45 am]

BILLING CODE 6450-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064-AD89

Mutual Insurance Holding Company Treated as Insurance Company

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing a rule ("Proposed Rule"), with request for comments, that provides for the treatment of a mutual insurance holding company as an insurance company for the purpose of Section 203(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), 12 U.S.C. 5383(e). The Proposed Rule clarifies that the liquidation and rehabilitation of a covered financial company that is a mutual insurance holding company will be conducted in the same manner as an insurance company. The Proposed Rule is intended to harmonize the treatment of mutual insurance holding companies under Section 203(e) of the Dodd-Frank Act with the treatment of such companies under state insolvency regimes.

DATES: Written comments on the Rule must be received by the FDIC no later than February 13, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Agency Web Site:* <http://www.fdic.gov/regulations/laws/federal>. Follow instructions for Submitting comments on the Agency Web Site.
- *Email:* Comments@FDIC.gov. Include "RIN 3064-AD89" in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275-3342 or (703) 562-2200.

FOR FURTHER INFORMATION CONTACT: R. Penfield Starke, Acting Assistant General Counsel, Legal Division, (703) 562-2422; Mark A. Thompson, Counsel (703) 562-2529.

SUPPLEMENTARY INFORMATION:

Attachment D

Clean Line Comments on Proposed 216(h) Regulations

Letter (undated) to Brian Mills

DOE Office of Electricity Delivery and Energy Reliability



Mr. Brian Mills
Office of Electricity Delivery and Energy Reliability (OE-20)
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

RE: Comments on Proposed 216(h) Regulations, Notice of Proposed Rulemaking

Dear Mr. Mills:

Clean Line Energy Partners LLC (Clean Line) respectfully submits the following comments to the Department of Energy (DOE) in response to proposed amendments to Section 216(h) of the Federal Power Act (FPA), as published in the Fed. Reg. 77432 (December 13, 2011). The proposed rule would require permitting entities to inform DOE of requests for authorizations required under Federal law for Qualifying Projects, as well as establish a process whereby applicants for Federal authorizations for interstate electric transmission facilities that are not Qualifying Projects can request DOE assistance in the Federal authorization process. The proposed rule provides for the selection of a Federal Lead Agency, a consolidated administrative record, the establishment of intermediate and final deadlines, and a date certain after which all permit decisions and related environmental reviews shall be completed, as practicable in compliance with Federal law.

Clean Line is actively developing high-voltage interstate electric transmission facilities for the purpose of connecting the best renewable energy resources in North America to major markets and demand centers. To successfully develop these multi-jurisdiction transmission facilities, Clean Line engages a substantial and widespread array of stakeholders, including Federal, state, and local entities. Clean Line has also submitted a proposal to the DOE and the Southwestern Power Administration (Southwestern) in response to the *Request for Proposals for New or Upgraded Transmission Line Projects Under Section 1222 of the Energy Policy Act of 2005* (EPAAct05), 75 Fed. Reg. 32940 (June 10, 2010).

Clean Line generally supports the proposed rule's goal of providing a timely coordination process for Federal authorization of transmission infrastructure, to the extent that process is uniform, consistent, transparent, and compliant with Federal law. The value of coordination is underscored by the participation of nine Federal agencies in the 2009 MOU. Clean Line supports codification of the coordination process in this rule; however, the applicability of this proposed rule is limited to projects under Section 1221 of the EPAAct05. The rule limits applicability [Sec. 900.2(c)] by excluding facilities constructed by Federal Power Marketing Administrations (PMAs). Congress authorized a second program under Section 1222 of the EPAAct05, allowing the Southwestern Power Administration and the Western Area Power Administration to partner with the private sector for to develop new and modify existing transmission infrastructure.. The DOE should expand the applicability of this proposed rule to



the Section 1222 program and further clarify that projects under Section 1221 and 222 could involve participation by a PMA. In addition, the American Recovery and Reinvestment Act provided bonding authority to the Western Area Power Administration. Clean Line encourages the DOE to ensure that partnerships entered into pursuant to this authority be included as a Qualified Project under this rule. This level of coordination would give private investment the regulatory certainty needed to make significant investments in the aging transmission infrastructure of this country.

Clean Line supports DOE serving as a Lead Agency in circumstances where they or PMAs are in a permitting role. The DOE should consider delegation of the environmental impact statement (EIS) to the Federal Energy Regulatory Commission (FERC), specifically in cases where linear infrastructure is involved. The FERC already has a pre-filing process in place for transmission lines and a staff with experience in siting and permitting interstate linear energy infrastructure projects. Better utilization of FERC processes to permit infrastructure would be very helpful to industry. Delegation of the EIS preparation would not alter DOE's final decision making authority with respect to the Record of Decision or other formal decisions on project participation.

The proposed rule [Sec. 900.2(a)] grants the Director of Permitting and Siting sole discretion over the applicability of Section 900 to Other Projects (those projects that are not Qualifying Projects). Clean Line believes that that this authority would be more appropriately assigned to the Assistant Secretary, Office of Electricity Delivery and Energy Reliability, or other such person that is subject to Senate confirmation.

Finally, the proposed rule establishes several timelines for various procedures, including permit decisions. Clean Line strongly supports establishing timeframes and the reasonable enforcement of the same, given compliance with appropriate regulations. These timeframes help provide investment certainty and forward progress during project development.

Sincerely,

/s/ Jimmy Glotfelty

Jimmy Glotfelty
Executive Vice President
Clean Line Energy Partners
1001 McKinney, Suite 700
Houston, Texas 77002
jglotfelty@cleanlineenergy.com

Attachment E

Department of Energy Delegation Order No. 00-004.00A

DEPARTMENT OF ENERGY
DELEGATION ORDER NO. 00-004.00A
TO THE FEDERAL ENERGY REGULATORY COMMISSION

1. DELEGATION. Under the authority vested in me as Secretary of Energy (“Secretary”) and pursuant to sections 642 and 402(e) of the Department of Energy Organization Act (Public Law 95-91, 42 U.S.C. 7252) (the “DOE Act”), I delegate to the Federal Energy Regulatory Commission (“Commission”) authority to take the following actions:
 - 1.1 On a nonexclusive basis to the Chairman,
 - A. Administer and manage the Commission's personnel (including members of the Senior Executive Service) as is not otherwise granted the Chairman by statute. This authority delegated to the Chairman for administration and management of the Commission's personnel shall include, but not be limited to:
 1. selection and appointment of personnel;
 2. performance appraisals and performance appraisal systems;
 3. compensation, promotions, awards, and bonuses;
 4. reorganizations, transfers of functions, reductions in force, and the standards governing such reductions;
 5. removals and disciplinary actions; and
 6. training, travel, and transportation.
 - B. Enter into, modify, administer, terminate, close-out, and take such other action as may be necessary and appropriate with respect to any procurement contract, interagency agreement, financial assistance agreement, financial incentive agreement, sales contract, or other similar action binding the Department of Energy to the obligation and expenditure of public funds or the sale of products and services that are related to the mission of the Commission. Such action shall include the rendering of approvals, determinations, and decisions, except those required by law or regulation to be made by other authority.
 - C. Serve as the Head of the Procuring Activity (HPA) for the Federal Energy Regulatory Commission.
 - D. Appoint Contracting Officers for the Commission.
 - E. Acquire, manage, and dispose of personal property held by the Commission for official use by its employees or contractors.
 - F. Approve acquisitions of automatic data processing and telecommunications equipment and services.

- 1.2 Carry out Part I of the Federal Power Act (Public Law 280, 66th Cong., 2d Sess., as amended), to the extent that such authority is not transferred to, and vested in, the Commission by section 402(a)(1)(A) of the DOE Act, provided that this paragraph delegates (A) section 4 of the Federal Power Act to the extent the Commission determines the exercise of such authority is necessary for it to exercise any function transferred to, and vested in, the Commission by this delegation, and (B) section 24 of the Federal Power Act (relating to the granting of entry, location, or other disposition of lands of the United States reserved or classified as power sites).
- 1.3 Carry out such functions as are necessary to implement and enforce the Secretary's policy requiring holders of Presidential permits authorizing the construction, operation, maintenance, or connection of facilities for the transmission of electric energy between the United States and foreign countries to provide non-discriminatory open access transmission services. In exercising this authority the Commission is specifically authorized to utilize the authority of the Secretary under Executive Order No. 10485, dated September 3, 1953, as amended by Executive Order No. 12038, dated February 3, 1978, and section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and such other sections of the FPA vested in the Secretary as may be relevant, to regulate access to, and the rates, terms, and conditions for, transmission services over permitted international electric transmission facilities to the extent the Commission finds it necessary and appropriate to the public interest. This authority is delegated to the Commission for the sole purpose of authorizing the Commission to take actions necessary to implement and enforce non-discriminatory open access transmission service over the United States portion of those international electric transmission lines required by the Secretary to provide such service. Nothing in this delegation shall allow the Commission to revoke, amend, or otherwise modify Presidential permits or electricity export authorizations issued by the Secretary.
- 1.4 Implement section 202(a) of the Federal Power Act (relating to dividing the country into regional districts).
- 1.5 Implement section 203 of the Federal Power Act (relating to the disposition, merger or consolidation of facilities and the acquisition of securities);
- 1.6 Implement section 204 of the Federal Power Act (relating to the issuance of securities and the assumption of liabilities);
- 1.7 Implement section 206(b) of the Federal Power Act (relating to the investigation and determination of the cost of production or transmission of electric energy), as the Commission determines appropriate to perform its functions;

- 1.8 Implement section 207 of the Federal Power Act (relating to adequate and sufficient interstate service);
- 1.9 Implement section 209 of the Federal Power Act (relating to use of boards composed of State representatives and cooperation with State commissions);
- 1.10 Implement section 304 of the Federal Power Act (relating to annual and periodic or special reports), as the Commission determines appropriate to perform its functions;
- 1.11 Implement section 305 of the Federal Power Act (relating to officers or directors benefiting from the sale of issued securities and to interlocking directorates);
- 1.12 Implement section 311 of the Federal Power Act (relating to investigations regarding the generation, transmission, distribution, and sale of electric energy), as the Commission determines appropriate to perform its functions;
- 1.13 Implement sections 1(b) and 1(c) of the Natural Gas Act (ch. 556, 52 Stat. 821 (1938)(15 U.S.C. 717)) (relating to certain exemptions from the provisions of the Natural Gas Act);
- 1.14 Implement section 3 of the Natural Gas Act with respect to the decision on cases assigned to the Commission by rule;
- 1.15 Implement section 5(b) of the Natural Gas Act (relating to the investigation and determination of the cost of production or transportation of natural gas), as the Commission determines appropriate to perform its functions;
- 1.16 Implement section 10 of the Natural Gas Act (relating to annual and periodic or special reports), as the Commission determines appropriate to perform its functions;
- 1.17 Implement section 12 of the Natural Gas Act (relating to officers or directors benefiting from the sale of issued securities);
- 1.18 Implement section 19 of the Natural Gas Act (relating to rehearings on orders);
- 1.19 Implement the Interstate Commerce Act (49 U.S.C. 1, et seq.) and other statutes which formerly vested authority in the Interstate Commerce Commission or the chairman and members thereof, as such statutes relate to the transportation of oil by pipeline, to the extent that such statutes are not transferred to, and vested in, the Commission by section 402(b) of the DOE Act, provided that this paragraph does not include any of the authority under section 11 of the Clayton Act (15 U.S.C. 21);

- 1.20 Issue orders, and take such other action as may be necessary and appropriate, to direct the Energy Information Administration to gather energy information pursuant to the Federal Energy Administration Act of 1974 or the Energy Supply and Environmental Coordination Act of 1974 to the extent necessary or appropriate to the exercise of regulatory functions of the Commission;
- 1.21 In reference to regulating the imports and exports of natural gas under the National Gas Act (ch. 556, 52 Stat. 821 (1938)(15 U.S.C. 717)), Executive Order No. 10485, as amended by Executive Order No. 12038, and section 301(b), 402(e) and (f) under the Department of Energy Organization Act (Public law 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq.),
- A. Approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports, except when the Assistant Secretary for Fossil Energy exercises the disapproval authority pursuant to the Delegation of Authority to the Assistant Secretary for Fossil Energy.
 - B. Carry out all functions under sections 4, 5, and 7 of the Natural Gas Act.
 - C. Issue orders, authorizations, and certificates which the Commission determines to be necessary or appropriate to implement the determinations made by the Assistant Secretary for Fossil Energy under the Delegation of Authority to the Assistant Secretary and by the Commission under this subparagraph. The Commission shall not issue any order, authorization, or certificate unless such order, authorization, or certificate adopts such terms and conditions as are attached by the Assistant Secretary for Fossil Energy pursuant to the Delegation of Authority to the Assistant Secretary of Fossil Energy.
- 1.22 Implement section 216(h) of the Federal Power Act, and specifically paragraphs (2), (3), (4)(A)-(B), and (5), to coordinate federal authorizations and related environmental reviews, and to prepare a single environmental review document, for electric transmission facilities in national interest electric transmission corridors designated pursuant to section 216(a) of the Federal Power Act for which an applicant has submitted an application to the Commission for issuance of a permit for construction or modification under section 216(b) of the Federal Power Act.
2. RESCISSION. Delegation Order 00-004.00 is hereby rescinded.

3. LIMITATIONS.

- 3.1 In exercising the authority delegated in paragraphs 1.1B through 1.1F in this Order, or redelegated pursuant thereto, the delegate(s) shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or delegate(s).
- 3.2 Nothing in this Order precludes the Secretary from exercising any of the authority delegated by this Order.
- 3.3 Except as provided in paragraph 1.14, this Order does not include the authority to carry out the functions delegated herein to the extent such functions are vested in the Secretary pursuant to his authority to regulate the exports or imports of natural gas or electricity, under section 402(f) of the DOE Act; provided that the Secretary may from time to time delegate to the Commission such other authority under section 3 of the Natural Gas Act as may be determined appropriate.
- 3.4 The Commission shall consult with the Administrator of the Energy Information Administration (“EIA”) with respect to the exercise of functions under paragraphs 1.7, 1.10, 1.12, 1.15, 1.16, and 1.20, as EIA considers appropriate.
- 3.5 Any amendments to this Order shall be in consultation with the Department of Energy General Counsel.

4. AUTHORITY TO REDELEGATE.

- 4.1 Except as expressly prohibited by law, regulation, or this Order, the Commission may delegate, this authority further, in whole or in part.
- 4.2 Copies of redelegations and any subsequent redelegations shall be provided to the Office of Management and Operations Support, which manages the Secretarial Delegations of Authority system.

5. DURATION AND EFFECTIVE DATE.

- 5.1 All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are ratified, and remain in force as if taken under this Order, unless or until rescinded, amended or superseded.
- 5.2 This Order is effective 5/16/06.

A handwritten signature in black ink, reading "Samuel W. Bodman". The signature is written in a cursive style with a large, prominent "S" at the beginning and a stylized "B" at the end.

Samuel W. Bodman
Secretary of Energy

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY**

**Regulations for Filing Applications and Review
of Transmission Line Projects under Section 1222
of the Energy Policy Act of 2005**

Docket No. _____

**BLOCK PLAINS & EASTERN CLEAN LINE
PETITION FOR RULES OF GENERAL APPLICABILITY
SECTION 1222 RULEMAKING**

I. INTRODUCTION

Pursuant to Rules of Practice and Procedure, BLOCK Plains & Eastern Clean Line: Arkansas and Oklahoma (hereinafter “BLOCK Clean Line), pursuant to the Federal Administrative Procedure Act, 5 USC 553(e), respectfully requests that the Department of Energy (hereinafter “Department”) conduct a rulemaking to develop rules of general applicability for implementation of Section 1222 of the Energy Policy Act of 2005 (EPAAct). 42 U.S.C. 16421. In light of jurisdictional issues, a similar Petition for Rulemaking is being submitted to the Federal Energy Regulatory Commission.

This Petition is being filed by U.S. mail to:

Office of General Counsel, GC-1
U.S. Department of Energy
1000 Independence Avenue S.W.
Washington, DC 20585

Courtesy copies are being sent via email to:

Patricia A. Hoffman, Assistant Secretary
patricia.hoffman@hq.doe.gov
Office of Electricity Delivery
and Energy Reliability
1000 Independence Avenue S.W
Washington, DC 20585

Angela Colamaria
Angela.Colamaria@hq.doe.gov
1222 Program
Office of Electricity Delivery and Energy Reliability (OE-20)
1000 Independence Avenue S.W
Washington, DC 20585

II. BACKGROUND

In 2006, the Federal Energy Regulatory Commission proposed regulations in accordance with Section 1221 of the Energy Policy Act of 2005 to implement filings requirements and procedures for entities seeking to construct electric transmission facilities. See FERC Docket RM06-12-000; see also 42 U.S.C. 16421, Pub. Law. No. 109.58, 119 Stat. 594 (2005). That docket remains active, and Section 1221 has yet to be used for a permit to site interstate electric transmission corridors.

However, an Application has been filed under Section 1222 of the Energy Policy Act of 2005 with the Department of Energy's Office of Electricity Delivery and Energy Reliability. Section 1222 is a third-party finance mechanism for areas designated under 216(a) of the Federal Power Act and for projects necessary to accommodate an actual or projected increase in demand for electric transmission capacity. 42 U.S.C. 16421. As of this date, there are no rules to implement filing requirements and procedures under Section 1222 of the Energy Policy Act of 2005 for parties seeking third-party finance for transmission facilities. As of this date, no agency

has provided Notice of a rulemaking proceeding for section 1222.¹

Jurisdiction for rulemaking may be at issue. Unlike section 1221, Section 1222 of the Energy Policy Act of 2005 contains no rulemaking mandate. There has been no specific delegation of the Secretary's general authority with regards to Section 1222 rulemaking. Based on the FERC's jurisdiction over the section 1221 rulemaking for filings requirements and procedures for entities seeking to construct electric transmission facilities, and the section 1222 applicability to new facilities in an area designated under section 216(a) of the Federal Power Act, FERC may have jurisdiction over the section 1222 filings requirements and procedures as well. The Secretary of the Department of Energy could well determine that this rulemaking is the Department's purview. Therefore, BLOCK Clean Line is filing this Petition for Rulemaking with the Department of Energy.

It is BLOCK Clean Line's goal to spur rulemaking to implement section 1222, and for these rules to apply to applications for transmission projects under Section 1222. There is an urgent need for rules because there has been an application to the Department of Energy's Office of Electricity Delivery and Energy Reliability (hereinafter "Department") proposing an interstate transmission line. The Department is proceeding forward with environmental review, need for the project and routing options, moving toward a determination whether to participate in the proposed project. This activity has been ongoing without the benefit of promulgated rules. The process chosen by the Department raises due process issues because there are no established rules, the Department's process severely limits public participation and transparency, restricts access to information, and thus far the Department offers no opportunity for public hearings, or intervention in a contested case. The process chosen by the Department also severely limits

¹ Upon information and belief, the Department of Energy's Office of Electricity Delivery and Energy Reliability may be preparing to initiate rulemaking, but there has been no Notice of Proposed Rulemaking issued.

building a record that would support any decision by the Department. There is no justification for operating without rules.

BLOCK Clean Line respectfully requests that the Department of Energy conduct a rulemaking to develop rules for implementation of Section 1222 of the Energy Policy Act of 2005 (EPAAct)(42 U.S.C. 16421), or in the alternative, a determination that it does not have jurisdiction in this matter and denial of this Petition.

III. COMMUNICATIONS

All communications with BLOCK Plains & Eastern: Arkansas and Oklahoma should be directed to:

Carol A. Overland overland@legalelectric.org
Legalelectric (612) 227-8638
1110 West Avenue
Red Wing, MN 55066

Dave Ulery dulery70@gmail.com
BLOCK Plains & Eastern: Arkansas and Oklahoma
P.O. Box 372 (479) 264-4150
Dover, AR 72837

Alison Millsaps truepriceperacre@gmail.com
BLOCK Plains & Eastern: Arkansas and Oklahoma
P.O. Box 755 (479) 331-2347
Dover, AR 72837-0755

IV. REQUEST FOR SECTION 1222 RULEMAKING

BLOCK Plains & Eastern Clean Line: Arkansas and Oklahoma requests that the the Department of Energy (hereinafter “Department”) conduct a rulemaking to develop rules for implementation of Section 1222 of the Energy Policy Act of 2005 (EPAAct)(42 U.S.C. 16421). As of this date, there have been no rules promulgated for review of a project proposed under

Section 1222 of the Energy Policy Act of 2005 (EPAAct)(42 U.S.C. 16421). There is now an urgent need for rulemaking.

This rulemaking request is now made because an application for a multi-state 600± kV DC 3,500 megawatt capacity transmission line has been filed with the Department of Energy's Office of Electricity Delivery and Energy Reliability under section 1222. There are no rules for review of this application. Nevertheless, the Department has already begun to conduct NEPA review and has now published a Notice of Application for "non-NEPA" section 1222 review of the Application.

BLOCK Clean Line notes multiple due process issues. The RFP for Section 1222 projects contained application requirements developed unilaterally by the DOE without rules. The only public process in this substantive review upon which a decision will be made is a 45 day comment period, one-half of that provided for environmental review. There are no public hearings proposed, despite DEIS public hearings that included one in Texas, fourteen in Oklahoma, fourteen in Arkansas, and one in Tennessee. There was no notice of an intervention deadline or address to send intervention requests, and no apparent opportunity for consultation. Information provided in the initial Application, an update, and a "Part II" Application is not all accessible on-line, Appendices are referenced but not available, and it is impossible to tell what materials are part of Department review. The criteria to be used for the Department's decision is that listed in section 1222 of the EPAAct and factors listed in its 2010 RFP. There is no authority or justification for use of these process decisions and substantive decisions and labeling it as "due diligence."

Further, in this Section 1222 process, Applicant Clean Line has made repeated threats of using federal eminent domain authority, provided for under Section 1221, but something not

contemplated by Section 1222. As recently as last week, speaking about the Missouri PSC impending denial of Clean Line's "Grain Belt Express" transmission line proposal, Clean Line publicly claimed that it was pursuing eminent domain authority in Arkansas:

If the PSC does reject the project, Lawlor said Clean Line won't give up. It could pursue federal eminent domain authority through the Energy Department, and approach it is pursuing in Arkansas after the state declined to approve another of its routes.

Attachment A, Missouri regulators may block wind transmission project, St. Louis Post-Dispatch, June 2, 2015. That link by Clean Line to this Section 1222 process heightens BLOCK Clean Line's process concerns.

The Department of Energy's Office of Electricity Delivery and Energy Reliability also handles Presidential Permits, a process that requires environmental review and a substantive decision to grant the permit. The Department's Office handles its Presidential Permit review using FERC Rules of Practice and Procedure. By analogy, this section 1222 review should receive at least that level of process and opportunities for public participation. There should also be section 1222 rules regarding application requirements and decision criteria promulgated before taking on a section 1222 Application and review. BLOCK Clean Line has requested a delay until rulemaking has been completed.²

Also by analogy, BLOCK Clean Line has attached the initial Section 1221 rules proposed by FERC, including 18 CFR Part 50, and amendment to 18 CFR Part 380, for consideration as a starting place for drafting. Attachment B, Notice of Proposed Rulemaking (selected pages), 115 FERC 61,334 (June 16, 2006). BLOCK Clean Line notes the 10 CFR Part 900 rulemaking initiated by the Department of Energy's Office of Electricity Delivery and Energy Reliability.

² Block Clean Line has also Petitioned the Department's Office of Electricity Delivery and Energy Reliability for an extension of the comment deadline, public hearings, and has filed a Motion to Intervene, all in an effort to secure due process.

Attachment C, Notice of Proposed Rulemaking, Coordination of Federal Authorizations for Electric Transmission Facilities, 76 FR 77432. Clean Line, the Applicant in the proceeding now before the Department, without rules, filed a comment in that coordination rulemaking proceeding requesting applicability be expanded to include Federal Marketing Administrations (PMAs) rather than expressly exclude them, where the DOE declined to amend its proposal to be applicable to Section 1222 as requested by Clean Line. Attachment D, Clean Line, Comments on Proposed 216(h) Regulations, Letter to Brian Mills, DOE Office of Electricity Delivery and Energy Reliability (undated).

V. JURISDICTION

Admittedly, there are jurisdictional questions regarding Section 1222 rulemaking. Rulemaking was specifically mandated in Section 1221 and delegated to FERC. 16 USC 824p(7)(a). In Section 1222, there are no similar provisions mandating rulemaking, and there has been no rulemaking promulgated. However, Section 1222 is applicable to new facilities “located in an area designated under section 216(a) of the Federal Power Act. 42 USC 16421(b)(1)(A).

Some rulemaking requirements and authority over siting and environmental review of energy facilities were delegated to FERC by the Secretary. Attachment E, Department of Energy Delegation Order No. 00-004.00A; see 18 CFR Parts 50 and 380. That Delegation Order states:

Implement section 216(h) of the Federal Power Act, and specifically paragraphs (2), (3), (4)(A)-(B), and (5), to coordinate federal authorizations and related environmental reviews, and to prepare a single environmental review document, for electric transmission facilities in national interest electric transmission corridors designated pursuant to section 216(a) of the Federal Power Act for which an applicant has submitted an application to the Commission for issuance of a permit for construction or modification under section 216(b) of the Federal Power Act.

Department of Energy Delegation Order No. 00-004.00A, p. 4, para. 1.22.

The Secretary's Delegation Order also delegates to FERC authority to:

Carry out such functions as are necessary to implement and enforce the Secretary's policy requiring holders of **Presidential Permits** authorizing the construction, operation, maintenance, or connection of facilities for the transmission of electric energy between the United States and foreign countries to provide non-discriminatory open access transmission services... This authority is delegated to the Commission for the sole purpose of authorizing the Commission to take actions necessary to implement and enforce non-discriminatory open access transmission service over the United States portion of those international electric transmission lines required by the Secretary to provide such service.

Id., p. 2, para. 1.3 (emphasis added).

As above, the DOE's Office of Electricity Delivery and Energy Reliability reviews Presidential Permits, and utilizes FERC Rules of Practice and Procedure to process these applications. The DOE's Office of Electricity Delivery and Energy Reliability is also the office handling the Section 1222 Application, the only Application under Section 1222.

Like the Commission, the DOE's Office of Electricity Delivery and Energy Reliability has authority to initiate rulemaking. See e.g., Attachment B, Notice of Proposed Rulemaking, Coordination of Federal Authorizations for Electric Transmission Facilities, 76 FR 77432. The 10 CFR Part 900 rulemaking initiated by the Department of Energy's Office of Electricity Delivery and Energy Reliability was regarding coordination of Section 1221 proposed interstate transmission facilities. Clean Line's comment in that proceeding requesting applicability be expanded to include Section 1222 Federal Marketing Administrations (PMAs) projects rather than expressly exclude them, where the DOE declined to amend its proposal to be applicable to Section 1222 as requested by Clean Line. Attachment C, Notice of Proposed Rulemaking, Coordination of Federal Authorizations for Electric Transmission Facilities, 76 FR 77432.

FERC and the DOE's Office of Electricity Delivery and Energy Reliability both can initiate rulemaking, and arguably both have authority to initiate rulemaking for Section 1222

rules. Section 1221 and Section 1222 are linked in the Energy Policy Act of 2005. Pub. Law. No. 109.58, 119 Stat. 594 (2005). The DOE's Office of Electricity Delivery and Energy Reliability handles both Presidential Permits and Section 1222 Applications, utilized FERC Rules of Practice and Procedure, and is well acquainted with public participation and due process, rules, and rulemaking. Rulemaking is essential.

VI. REQUEST FOR RULEMAKING

BLOCK Clean Line requests that the Department of Energy conduct a rulemaking to develop rules for implementation of Section 1222 of the Energy Policy Act of 2005 (EPA)(42 U.S.C. 16421), or in the alternative, , determine that it does not have jurisdiction in this matter and deny the Petition.

Respectfully submitted,

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