



October 2, 2023

To: Grid Deployment Office, U.S. Department of Energy

Re: Coordination of Federal Authorizations for Electric Transmission Facilities, 88 Fed. Reg. 55826 (DOE-HQ-2023-0050)

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)¹ respectfully submits the following comments to the Department of Energy (DOE) regarding *Coordination of Federal Authorizations for Electric Transmission Facilities* (NOPR).² Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

DOE proposes to revise the Integrated Interagency Preapplication (IIP) process promulgated under 16 U.S.C. § 824p(h) to expedite the federal authorization of transmission projects.³ In the revised IIP process, after the “initial” meeting between a project proponent and federal agencies, the project proponent would submit resource reports so that the agencies can present any concerns at the “review” meeting.⁴ Project proponents would submit final versions of these reports incorporating agencies’ feedback before the IIP process “close-out” meeting.⁵ After these three meetings, the project proponent can apply for the necessary federal authorizations.⁶

These comments recommend three improvements to the IIP process:

- For the proposed transmission project and alternatives, DOE should require project proponents to comprehensively estimate resulting changes to greenhouse gas (GHG) emissions and local air pollution. The NOPR clearly requires project proponents to estimate changes to power-sector GHG emissions—but the NOPR is ambiguous as to local air pollutants and non-power-sector GHG emissions (e.g., upstream methane emissions). For criteria pollutants, DOE should require proponents to estimate changes and impacts even when total levels remain below the Clean Air Act’s National Ambient Air Quality Standards, because the Environmental Protection Agency (EPA) has recognized that there is no safe level of exposure.
- The NOPR requires project proponents to summarize impacts to communities of interest, which DOE proposes to define to include at least seven types of communities. To help project proponents identify communities accurately, DOE should provide administrable criteria. For example, DOE should underscore that, in accordance with DOE guidance, project proponents must locate “disadvantaged” communities using the Climate and Economic Justice Screening

¹ This document does not purport to present the views, if any, of New York University School of Law.

² *Coordination of Federal Authorizations for Electric Transmission Facilities*, 88 Fed. Reg. 55826 (Aug. 16, 2023) [hereinafter NOPR].

³ *Id.* at 55828.

⁴ *Id.* at 55829.

⁵ *Id.*

⁶ *Id.*

Tool. DOE should also establish a mechanism to receive and evaluate communities' evidence that they are "communities with environmental justice concerns."

- DOE should revise its proposed IIP process to provide for early public comments. As with early review by permitting agencies, providing this community and expert input would allow transmission projects to be built more quickly, because pitfalls could be identified at the pre-application stage. And, absent such a mechanism, there is a risk that the range of reasonable alternatives and discussion of environmental impacts would be effectively finalized before the public has weighed in.

I. DOE Should Clarify That Project Proponents Must Comprehensively Estimate How the Proposed Transmission Project Would Affect Emissions of Greenhouse Gases and Local Air Pollutants.

In the Air Quality and Noise Report (one of the 13 required resource reports examined at the review meeting), DOE proposes that project proponents must "[e]stimate emissions from the proposed project and the corresponding impacts," including "the reasonably foreseeable change in greenhouse gas emissions from . . . existing, proposed, and reasonably foreseeable generation resources . . . that may connect to the project or interconnect as a result of the line, if any, as well as any other modeled air emissions impacts."⁷ DOE also proposes that project proponents must "[e]stimate the reasonably foreseeable effect of the project on indirect emissions."⁸ These estimates would be required not only for the proposed transmission project but also for the alternatives.⁹

DOE's interest in obtaining estimates of how proposed transmission projects would affect GHG emissions from existing, proposed, and reasonably foreseeable generation resources is entirely appropriate. While more transmission is necessary for the clean energy transition, the effect of any particular transmission project on emissions will depend on project-specific factors.¹⁰ Section I.A supports this provision of the NOPR by describing how these estimates are reasonably available to project proponents.

Yet, as described in Section I.B, DOE should better ensure that project proponents comprehensively estimate changes to both GHG emissions and local air pollution. The NOPR does not necessarily require applicants to estimate changes to local air pollution, only GHG emissions. Separately, the NOPR's requirement that project proponents "[e]stimate the reasonably foreseeable effect of the project on indirect emissions" is too vague. DOE should clarify that project proponents must estimate how the proposed transmission project would affect indirect upstream GHG emissions such as methane leakage. Finally, the need to estimate and describe impacts from changes to criteria pollutants should not depend on whether they remain below the Clean Air Act's National Ambient Air Quality Standards.

⁷ *Id.* at 55851.

⁸ *Id.*

⁹ *Id.* at 55852.

¹⁰ JUDY W. CHANG ET AL., BRATTLE GRP., THE BENEFITS OF ELECTRIC TRANSMISSION: IDENTIFYING AND ANALYZING THE VALUE OF INVESTMENTS 54 (2013), <https://perma.cc/Y3N6-TEMW> ("Not every proposed transmission project will necessarily provide environmental benefits. Some transmission investments can be environmentally neutral or even displace clean but more expensive generation (e.g., displacing natural gas-fired generation when gas prices are high) with lower-cost but higher-emission generation.").

A. The power-system emissions of a transmission project are reasonably foreseeable.

The NOPR would require project proponents to estimate how transmission projects would affect GHG emissions from existing generation resources, proposed generation resources, and generation resources that would foreseeably connect to the grid due to the new transmission capacity.¹¹ This requirement is appropriate because, among other reasons, providing DOE with these important data would be relatively easy for project proponents. Historically, FERC has required, and both DOE and FERC have received, such emissions estimates from transmission developers. Power-system emissions estimates are applicant- and DOE-accessible through readily available modeling software.

1. Developers have previously provided estimates of power-system emissions impacts from transmission projects.

In the past, developers have modeled power-system emissions impacts and submitted these data and analyses to both DOE and FERC. For example, in 2015, DOE received information about the emissions impacts of the Plains & Eastern Clean Line, a proposed transmission project stretching from Oklahoma to Tennessee.¹² This project aimed to bring electricity generated from wind farms in the central United States to load centers in the South and Southeast.¹³ The developer submitted modeling results of the estimated impacts on SO₂, NO_x, CO₂, and mercury emissions, broken out by Tennessee, Arkansas, and the rest of the Eastern Interconnection.¹⁴

And, despite having had little opportunity to exercise transmission-siting authority, FERC also has a history of requesting and receiving estimates of power-system emissions impacts from transmission project developers. In 2008, an applicant asked FERC to exercise Section 216 backstop-siting authority for the proposed Devers-Palo Verde No. 2 Project, which involved building a transmission line from California to Arizona.¹⁵ The Commission requested additional environmental information from the applicant, including “[a]ir emission levels (e.g., carbon dioxide, oxides of nitrogen, and particulates) based upon the expected changes in the type, level, and location of electric generation associated with the project.”¹⁶ FERC cautioned that “[t]his information is necessary for the Commission to conduct its environmental review of the proposed facility as required by [Section 216 of the FPA]” and, “[w]ithout this information, the pre-filing phase of the proceeding will be incomplete.”¹⁷ The applicant complied with FERC’s request by submitting modeling results showing how the project would cause power plants in California and Arizona to increase or decrease their output and how these shifts would affect emissions of SO₂, NO_x, and CO₂.¹⁸

These historical examples confirm that power-system emissions impacts from proposed transmission projects are foreseeable for developers.

¹¹ NOPR, 88 Fed. Reg. at 55851.

¹² CLEAN LINE ENERGY PARTNERS, PLAINS & EASTERN CLEAN LINE: 1222 PROGRAM – PART 2 APPLICATION, 1-1, 3-8 to 3-10 (2015), <https://perma.cc/WC2H-4VRY> [hereinafter PLAINS & EASTERN CLEAN LINE APPLICATION].

¹³ *Id.* at 2-1.

¹⁴ LEIDOS ENGINEERING LLC, PLAINS & EASTERN CLEAN LINE BENEFIT ANALYSIS 2 (2015), <https://perma.cc/23TH-Y8R9>.

¹⁵ Initial Filing of Southern California Edison Company for the Devers-Palo Verde No. 2 Project at 1, *Pre-Filing and Application for Electric Transmission Facilities*, Docket No. PT08-1-000 (May 16, 2008) (Accession No. 20080516-4009).

¹⁶ Pre-Filing Request for Additional Information at 18, *Pre-Filing and Application for Electric Transmission Facilities*, Docket No. PT08-1-000 (Dec. 8, 2008) (Accession No. 20081208-3038).

¹⁷ *Id.* at 1.

¹⁸ Responses to Request Dated December 8, 2008, Enclosure 2, at 2, 9–231, *Pre-Filing and Application for Electric Transmission Facilities*, Docket No. PT08-1-000 (Feb. 6, 2009) (Accession No. 20090218-0134).

2. Readily available modeling software can estimate power-system emissions impacts from transmission projects.

Developers were able to provide estimates of power-system emissions for the aforementioned projects because software with these modeling capabilities is readily available. Both production-cost models and capacity-expansion models can generate these estimates. Each type of model is capable of forecasting how adding new transmission capacity would affect power generation and emissions throughout the grid.

Production-cost models simulate the operation of the power system by computing the least-cost dispatch scenarios that meet anticipated load.¹⁹ In other words, they reveal which power plants would be generating electricity and how much. Outputs from this family of models include sub-hourly unit-level generation and the resulting emissions, which the models produce by applying plant-specific emission factors to the dispatch scenarios.²⁰ Because these emissions estimates are a simple extension of the predicted dispatch scenarios, they are as credible as the models' other outputs that flow from anticipated dispatch scenarios, such as locational marginal prices and reliability.

Moreover, production-cost models would allow developers to estimate emissions impacts that reflect not only the existing generation fleet, but also the generation resources that would be built or become interconnected to the grid as a result of a proposed transmission project. To do this, the developer would generate scenarios of the resources expected to be built or interconnected and plug the resources into the production-cost model as additional inputs. For example, a developer could reasonably anticipate (and then feed into a production-cost model) that a transmission project built between a load center and an area with an excellent wind resource would enable the development of wind turbines, in an amount that reflects the transmission capacity of the proposed project.²¹ Or a developer could look at the interconnection queue to see which projects are planned.

Alternatively, a developer could use one of the many available capacity-expansion models to simulate the optimal build-out of generation resources in light of the new transmission line and use these results as inputs for a production-cost model. Capacity-expansion models jointly minimize investment costs and expected production costs given assumptions about technology costs and performance, fuel costs, electricity demand, and other variables.²² Put more simply, they compute the cheapest way to meet the demand for electricity, including through the build-out of new generation resources. It would also be possible to estimate power-system emissions impacts from a transmission project using only a capacity-expansion model that includes dispatch scenarios and emissions factors, without the need for a production-cost model.²³

¹⁹ DEP'T OF ENERGY, POWER SECTOR MODELING 101 at 19, <https://perma.cc/7ZUS-ZVPT> [hereinafter POWER SECTOR MODELING 101].

²⁰ *Id.* at 20.

²¹ *E.g.*, PLAINS & EASTERN CLEAN LINE APPLICATION, *supra* note 12, at 2-2 ("The increased demand for transmission capacity on the Project proposed by Clean Line is unquestionable. Clean Line recently conducted an open solicitation for transmission service requests over the Project. Clean Line received 29 requests from 15 different transmission customers. Together, these customers requested 17,091 MW of transmission service, or 392% of the Project's total 4,355 MW of West-East transfer capacity. The increased demand for interregional capacity to connect wind-rich zones with load-centers exists today." (emphases omitted)).

²² POWER SECTOR MODELING 101, *supra* note 19, at 10.

²³ *See id.* at 11.

Two examples of commercially available production-cost models are PROMOD and PLEXOS.²⁴ The Midcontinent Independent System Operator (MISO) uses both to analyze grid operations under different economic and policy-driven scenarios.²⁵ MISO recently forecasted (through these models or others) that a tranche of proposed transmission lines would result in billions of dollars of benefits from reduced CO₂ emissions.²⁶ PJM Interconnection uses PROMOD to model the benefits of transmission expansion.²⁷ Capacity-expansion models include the Environmental Protection Agency’s (EPA) Integrated Planning Model, the National Renewable Energy Laboratory’s Regional Energy Deployment System (which is open source), GenX (also open source), and Hitachi Energy’s Capacity Expansion.²⁸ PLEXOS, one of the production-cost models described above, also has capacity-expansion capabilities.²⁹ Capacity expansion models are a reputable way to forecast outcomes in the power system; for example, in EPA’s recent proposed rule on emissions standards for light- and medium-duty vehicles, the agency used the Integrated Planning Model to estimate power-system emissions from increased adoption of electric vehicles.³⁰

These modeling tools are widely available and readily deployable. They confirm that project proponents can easily comply with DOE’s proposed requirement to estimate changes to GHG emissions.

B. DOE should require project proponents to estimate changes to local air pollution and upstream GHGs.

Although the NOPR’s directive to estimate changes to power-system GHG emissions is an important first step, DOE should be equally clear that project proponents must estimate (1) changes to power-system local air pollution and (2) non-power-system GHG emissions, such as upstream methane leakage. The NOPR would require project proponents to “[e]stimate . . . other modeled air emissions impacts” and “[e]stimate the reasonably foreseeable effect of the project on indirect emissions,” yet the extents of these obligations are ambiguous. Regarding “other modeled air emissions impacts,” it is unclear whether project proponents must do more than submit whatever air modeling they happen to have already performed. And, regarding “indirect emissions,” project proponents may not know exactly what this phrase encompasses.

Accordingly, DOE should explicitly state that project proponents must model not only changes to power-system GHG emissions, but also changes to local air pollution. These emissions are reasonably foreseeable for the reasons discussed in Section I.A. And DOE should clarify that the obligation to

²⁴ *Id.* at 21; *see PROMOD*, HITACHI ENERGY, <https://www.hitachienergy.com/us/en/products-and-solutions/energy-portfolio-management/enterprise/promod> (last visited July 26, 2023); *PLEXOS*, ENERGY EXEMPLAR, <https://perma.cc/H8R7-QAKP>.

²⁵ MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, PLANNING MODELS USED BY MISO 14 (2018), <https://perma.cc/6SYS-P5LM>.

²⁶ MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, MISO TRANSMISSION EXPANSION PLAN: MTEP21 ADDENDUM - LRTP TRANCHE 1 REPORT OVERVIEW 13 (2022), <https://perma.cc/A5NQ-6FHR>.

²⁷ PJM INTERCONNECTION, MARKET EFFICIENCY STUDY PROCESS AND RTEP WINDOW PROJECT EVALUATION TRAINING 7, 16 (2022), <https://perma.cc/K8FU-K62P>.

²⁸ POWER SECTOR MODELING 101 at 12; *Post-IRA 2022 Reference Case*, ENV’T PROT. AGENCY (Apr. 5, 2023), <https://www.epa.gov/power-sector-modeling/post-ira-2022-reference-case>; *Regional Energy Development System Model*, NAT’L RENEWABLE ENERGY LAB’Y, <https://www.nrel.gov/analysis/reeds/> (last visited July 26, 2023); *GenX Documentation*, MIT ENERGY INITIATIVE AND PRINCETON UNIVERSITY ZERO LAB, <https://genxproject.github.io/GenX/dev/> (last visited July 26, 2023); *Capacity Expansion*, HITACHI ENERGY, <https://www.hitachienergy.com/us/en/products-and-solutions/energy-portfolio-management/enterprise/capacity-expansion> (last visited July 26, 2023).

²⁹ *PLEXOS*, ENERGY EXEMPLAR, <https://perma.cc/H8R7-QAKP>.

³⁰ *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, 88 Fed. Reg. 29184, 29303 (proposed May 5, 2023).

estimate indirect emissions includes changes to emissions that occur upstream of generation resources. One significant category of upstream emissions is leaked methane from natural gas infrastructure. To the extent that a transmission project would affect generation at natural gas facilities, it would also affect upstream methane leakage.

Further, DOE should explicitly delineate that project proponents must describe changes to and effects from criteria pollutants (i.e., particulate matter, ozone, carbon monoxide, lead, SO₂, and NO_x) even when total emissions remain below the Clean Air Act's National Ambient Air Quality Standards (NAAQS). EPA has consistently recognized that criteria pollutants are non-threshold pollutants, meaning there is no safe level of exposure.³¹ Further, under administrations of both parties, EPA has calculated the potential health benefits of sub-NAAQS reductions in criteria pollutants.³² For example, in EPA's final regulatory impact analysis for the Mercury and Air Toxics Standards in 2011, EPA stated that "[i]t is important to emphasize that NAAQS are not set at a level of zero risk" and "[a] large fraction of the PM_{2.5}-related benefits associated with this rule occur below the level of the [NAAQS]."³³ Sub-NAAQS changes in criteria pollutants are especially significant for certain sensitive populations that may be more prevalent in environmental justice communities, such as children with asthma.³⁴

II. DOE Should Provide Additional Guidance on How to Identify Communities of Interest.

The NOPR proposes that, in the Communities of Interest Report, project proponents must "identify and describe the potential impacts of constructing, operating, and maintaining the project on communities of interest,"³⁵ which are defined to "include disadvantaged, fossil energy, rural, Tribal, indigenous, geographically proximate, or communities with environmental justice concerns that could be affected by the qualifying project."³⁶ But the NOPR does not propose to define "disadvantaged," "fossil energy," "rural," or "environmental justice concerns."

To ensure that project proponents appropriately identify communities of interest and associated impacts, DOE should set administrable criteria that would allow applicants to locate the relevant communities.³⁷ For example, DOE should make clear to project proponents, whether in the preamble to the final rule or otherwise, that DOE guidance "recognizes as disadvantaged those census tracts identified by the White House [Climate and Economic Justice Screening Tool]."³⁸

Additionally, because no tool can comprehensively reflect the circumstances of any given community, DOE should consider allowing communities to self-identify as a "community with environmental justice concerns" (or another type of Community of Interest), as the innovative Illinois Solar for All initiative

³¹ Kimberly M. Castle & Richard L. Revesz, *Environmental Standards, Thresholds, and the Next Battleground of Climate Change Regulations*, 103 MINN. L. REV. 1349, 1391 (2019).

³² *Id.* at 1391–40.

³³ ENV'T PROT. AGENCY, EPA-452/R-11-011, REGULATORY IMPACT ANALYSIS FOR THE FINAL MERCURY AND AIR TOXICS STANDARDS at ES-4 (2011), <https://perma.cc/7E82-KCNC>.

³⁴ LAURA A. FIGUEROA & SARAH LADIN, INST. FOR POL'Y INTEGRITY, THE PUBLIC INTEREST REVIEW FOR LNG-RELATED AUTHORIZATIONS 48 (2022), <https://perma.cc/G93W-6K9F>.

³⁵ NOPR, 88 Fed. Reg. at 55851.

³⁶ *Id.* at 55843.

³⁷ In Section III, we recommend that DOE incorporate a formal public comment mechanism into its IIP process. In the absence of doing so, the proposed Community of Interest Report is one important example of how the project proponent will miss an opportunity to incorporate early feedback on these important impacts or address nascent concerns in a manner that can expedite project approvals.

³⁸ DEP'T OF ENERGY, GENERAL GUIDANCE FOR JUSTICE40 IMPLEMENTATION VERSION 1.1 at 6 (2023), <https://perma.cc/6YW3-67UU>.

does for environmental justice communities.³⁹ The Solar for All program allows communities to use a variety of data sources to demonstrate eligibility, including expert testimony, community organizing, and news articles.⁴⁰ Historical events are also eligible data sources, which is important given that many existing screening tools are limited in their ability to assess prior environmental damage. Allowing communities to self-identify, or, at the very least, to petition for their designations, ensures that communities are not excluded because the existing identification tools or methods are unable to capture localized harms. It would be most appropriate for DOE, not the project proponent, to adjudicate whether a community should be considered as having environmental justice concerns in light of the submitted evidence.

III. DOE Should Provide an Opportunity for Public Comment During the IIP Process.

As proposed, the IIP process would ensure that relevant governmental entities can identify issues of concern before project proponents apply for the necessary authorizations, which would help avoid pitfalls during the application process.⁴¹ Yet relying exclusively on agencies' review of project proponents' resource reports would inevitably overlook issues that would have been identified by members of the public, who often have the benefit of local knowledge, or by other subject matter experts. To take just one example, it would be odd if communities had no opportunity to be heard during the IIP process on whether the project proponent had accurately identified all communities of interest.⁴² Accordingly, DOE could better avoid permitting pitfalls by establishing an opportunity for public comment that agencies would be able to review before the second IIP meeting (the review meeting).

Further, in the absence of a formal opportunity for public comment during the IIP process, participating agencies may reach consensus on certain issues at the pre-application stage—reducing the efficacy of later public comments. If so, this would defeat the purpose of the comment opportunities under NEPA and other authorizing, relevant statutes. This may be especially true for the project proponents' Alternatives Report, as agencies may view the alternatives analysis as complete once they ratify it during the IIP process. Moreover, even if the IIP process does not result in a *fait accompli*, allowing for early public comments would foster trust in the decisionmaking process and help avert any perception that the project's design was finalized at the pre-application stage. In contrast, communities may distrust the outcome of the IIP process if they must rely on project proponents to voice communities' concerns.

Allowing for public participation would also bring the IIP process into closer alignment with the pre-filing process for natural gas infrastructure at FERC, which is a formal docket that the public can weigh into and give critical, formal feedback on alternatives and impacted resources.⁴³ As FERC staff recently explained in a workshop about their pre-filing process:

The primary goal of the pre-filing process is to get the public involved early in the development of the project. . . . Involving people early in the review process is meant to identify . . . concerns sooner rather than later so the company can work towards addressing them in its formal application. . . . [R]esource reports addressing the stakeholder input is one of the main goals of the pre-filing process, and it's facilitated by the submittal of comments. . . . [M]ost of our staff is based in Washington, DC, and we have

³⁹ See 20 Ill. Comp. Stat. Ann. 3855/1-56.

⁴⁰ *ILSFA Environmental Justice Community Self-Designation Application*, ILL. POWER AGENCY, <https://www.illinoisfa.com/designate-your-community/> (last visited July 26, 2023).

⁴¹ NOPR, 88 Fed. Reg. at 55829.

⁴² See *supra* Section II.

⁴³ See 18 CFR § 157.21; *Frequently Asked Questions: Gas Pre-Filing*, FERC, <https://perma.cc/QE66-37QA> (“Comments on the proposed project may be submitted in written form . . .”).

experts across many different expertise . . . , but we often don't know a community as well as the local people that live there.⁴⁴

Given the many similarities between the IIP process and FERC's pre-filing process, it would be reasonable to allow for the same opportunities for public feedback.

Additionally, early public comment makes sense because the NOPR recognizes that, by the time project proponents begin the IIP process, they may already be in contact with affected communities.⁴⁵ And, because DOE proposes to create and share a consolidated administrative docket,⁴⁶ there is an obvious way for the public to view the resource reports and provide feedback.

In sum, amending the IIP process to allow for public participation would round out the administrative record available to agencies when they come together at the same table to review the resource reports. There are many reasons that proposals to build transmission are stalled or abandoned, and, by receiving public input during the IIP process, DOE has the opportunity to take some of those off the table to ensure that critical projects are fast tracked in a legally durable manner, and with a robust administrative record. By allowing agencies to understand any public concerns at this early stage, DOE could potentially protect transmission projects against delays and piecemeal administrative snags.

Sincerely,

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⁴⁴ Fed. Energy Reg. Comm'n Off. of Pub. Participation, *FERC OPP WorkshOPP: Public Participation in the Natural Gas Pre-Filing Review Process* (July 24, 2023), <https://www.youtube.com/watch?v=VEax3Muy8js> (statement of David Hanobic, Outreach Coordinator, Office of Energy Projects).

⁴⁵ NOPR, 88 Fed. Reg. at 55845 (requiring the project proponent to provide “[a] summary of prior outreach to communities of interest and stakeholders including . . . [a] description of what work already has been done, including stakeholder and community outreach and public engagement related to project engineering and route planning” to initiate the IIP process).

⁴⁶ *Id.* at 55830 (“DOE proposes to simplify the development of an administrative record by incorporating the IIP Process administrative file into a single docket that contains all the information assembled and utilized by the relevant Federal entities as the basis for Federal and related reviews.”).