

January 16, 2024

Submitted electrically via www.regulations.gov.

U.S. Department of Energy
Office of NEPA Policy and Compliance (GC-54)
1000 Independence Ave. S.W.
Washington, D.C. 20585

RE: Comments of the American Public Power Association on the National Environmental Policy Act Implementing Procedures for the Department of Energy; 88 Fed. Reg. 78681 (November 16, 2023); Docket Id. No. DOE-HQ-2023-0063

Dear Ms. Abravanel:

The American Public Power Association (APPA or Association) appreciates the opportunity to submit comments in response to the U.S. Department of Energy's (DOE or Agency) notice of proposed rulemaking to amend the implementing procedures governing compliance with the National Environmental Policy Act (NEPA).¹ APPA is generally supportive of the proposed addition of categorical exclusions (CE) for specific energy storage systems and revisions to categorical exclusions for upgrading and rebuilding transmission lines and solar photovoltaic (PV) systems.

APPA is the national service organization representing the interests of more than 2,000 not-for-profit community- and state-owned electric utilities that together provide electricity to approximately 49 million Americans and employ approximately 96,000 people. The Association advocates and advises on electricity policy, technology, trends, training, and operations. Association members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

Introduction and Background

The power sector is undergoing a rapid and unprecedented transition to lower and non-emitting generation resources. As a result, public power utilities own and operate an increasing share of renewable generation, such as wind, solar, and hydropower, as well as conventional fossil fuel-fired generation, such as coal, natural gas, and nuclear. The diverse generation portfolio requires building, operating, and maintaining the transmission and distribution facilities to bring electricity to customers and a wide range of entities that depend on resilient and reliable energy infrastructure, all while meeting an obligation to provide reliable, affordable, and sustainable power. A resilient and reliable electric grid that affordably keeps the lights on is the cornerstone

¹ 88 Fed. Reg. at 78,681 (November 16, 2023) (Proposed Rule).

of American social, economic, energy security, and national security needs. To maximize the potential of clean energy and grid resilience initiatives and the pace at which they are deployed, NEPA review and permitting processes must be accelerated.

Public power utilities support energy infrastructure permitting reforms to streamline federal permitting and siting processes and eliminate excessive regulatory barriers to ensure predictable and timely decisions from relevant federal agencies. As public power utilities pursue diverse energy infrastructure projects and upgrade the grid, streamlined and efficient reviews are critical. In our members' experience, preparing a NEPA review can add significant time and costs to a project, thereby delaying energy infrastructure projects needed to deliver power from renewable energy sources or adding costs to a transmission line repair. These costs are borne directly by public power utility customers. Public power utilities are not-for-profit entities of state and local government that do not have shareholders, and all additional costs are passed on to customers.

The Council on Environmental Quality (CEQ) regulations implementing NEPA require federal agencies to develop their own NEPA implementing procedures to apply the CEQ regulations to their specific programs and decision-making processes.² NEPA mandates federal agencies provide a detailed statement on the environmental impacts of proposed major federal actions significantly affecting the quality of the human environment. DOE is proposing revisions to its NEPA procedures, including three review types for proposed actions: environmental impact statement, environmental assessment, and categorical exclusions. CEs typically do not significantly impact the human environment and thus do not necessitate an environmental assessment or environmental impact statement. To apply a categorical exclusion, the DOE must ensure that (1) the proposed action fits within a listed categorical exclusion, (2) there are no extraordinary circumstances that could significantly impact the environment and necessitate further assessment, and (3) the proposal has not been improperly divided to fit the definition of a categorical exclusion.

Implementation of the Fiscal Responsibility Act Amendments to NEPA

Over time, various Administrations and Congress have acknowledged and taken steps to enhance and expedite the NEPA process. Recently, bipartisan amendments to NEPA have offered federal agencies more straightforward guidance on implementing the statute. These amendments aim to improve the process for all project types. The 2023 Fiscal Responsibility Act (FRA) included several significant amendments to the procedural requirements for environmental reviews under NEPA.³ The FRA amendments limit the definition of "major federal action" and the scope of alternatives to be considered; provide details on when environmental assessments are required

² 40 C.F.R. §1507.3.

³ Fiscal Responsibility Act of 2023, Public Law 118-5 (June 3, 2023).

and the appropriate level of review; include time and page limits for environmental impact statements (EISs) and environmental assessments (EAs) and a new mechanism to seek judicial review where an agency fails to comply with the deadlines for an EIS or EA; improve agency coordination by designating a lead agency and relevant roles/procedures for unified federal reviews; and establishes a process for the adoption of another agency's CEs. APPA supports these statutory amendments to NEPA and urges DOE to work expeditiously to make any necessary changes to its regulations and practices to implement these reforms. Specifically, DOE should implement the FRA changes to the definition of "major federal action." For NEPA to apply, the proposed action must be both a "major federal action" and have significant effects. As defined in the FRA, a "major federal action" is limited to [an] action subject to "substantial Federal control and responsibility" and excludes non-federal projects over which the government has no or minimal involvement and where it cannot control the outcome of the project.⁴

APPA supports the changes to the CE for upgrading and rebuilding existing power lines and solar photovoltaics (B4.13, B5.16) and the new CE for energy storage systems (B4.14).

APPA supports the greater use of CEs as this practice is consistent with the original intent of NEPA regulations and guidance. Still, more importantly, greater use of CEs will expedite permitting for "low-impact" projects with no significant environmental effects. Expanding the use of CEs will conserve agency resources for actions that are otherwise more complex and require further environmental review. DOE's proposed changes seek to leverage its experience, current technologies, regulatory requirements, and industry practices.

The Proposal includes three revisions. First, DOE proposes to revise the categorical exclusions in its NEPA implementation regulations for upgrading and rebuilding existing powerlines. The current categorical exclusion applies to upgrading or rebuilding existing powerlines "approximately 20 miles in length or less."⁵ The proposed changes remove the mileage limitation, add new conditions, and add options for relocating within an existing right of way or previously disturbed or developed lands.⁶ DOE noted that upgrading and rebuilding powerlines can mitigate adverse environmental impacts, for example, by relocating small segments of the existing line to avoid sensitive environmental resources.⁷ Additionally, DOE noted these actions can improve the resilience of the powerlines.

By 2050, the United States will need to increase its intra- and inter-regional transmission capacity by three to four times and replace all existing grid infrastructure to successfully

⁴ Sec. 111; 42 U.S.C. § 4336e.

⁵ 88 Fed. Reg. at 78,684.

⁶ *Id.*

⁷ *Id.*

integrate clean energy technologies into the grid and transport clean electricity from where it is produced to demand centers.⁸ There is broad consensus among industry and academia that the United States will need to increase its intra-and inter-regional transmission capacity in the coming decades to successfully integrate clean energy technologies and accommodate increased load from transportation electrification. For this reason, APPA supports the removal of the existing mileage limits, which means that more projects that public power utilities are building can utilize this CE and benefit from a streamlined environmental review. Providing more flexibility for upgrading and rebuilding existing powerlines will enable faster delivery of critical objectives such as enhancing reliability and mitigating wildfire risk. New and upgraded transmission lines are also important to achieving federal, regional, state, and private sector decarbonization and electrification goals.

Second, DOE proposes to add a new CE for the “construction, operation, upgrade, or decommissioning of an electrochemical-battery or flywheel energy storage system within a previously disturbed or developed area or within a small area contiguous to a previously disturbed or developed area.”⁹ APPA supports the new CE for specific energy storage systems. In response to public comments that the CE be written broadly to include other energy storage systems, DOE asserted it “has not identified sufficient information to conclude that compressed air energy storage, thermal energy storage (e.g., molten salt storage), or other technologies normally do not present the potential for significant environmental impacts.”¹⁰ APPA encourages DOE to extend this CE to other storage technologies, such as aboveground (non-geological) storage, as the environmental risks of such storage are notably smaller than for underground storage, and consider iron-air batteries which are currently under development, including those that DOE is funding through various demonstration projects. Energy storage has the potential to reduce the scale of renewable overbuilding required to manage intermittency, which in turn can reduce the land use requirements of the energy system and minimize impacts on communities and ecosystems. Additionally, energy storage can help improve grid resiliency and reliability.

Third, DOE proposes to revise the CE in its NEPA implementation regulations for solar PV systems. The current CE covers installing, modifying, operating, and removing solar PV systems located on a building, other structures, or land within a previously disturbed or developed area,

⁸ Dept. of Energy, Notice of Intent and Request for Information: Designation of National Interest Electric Transmission Corridors, 88 Fed. Reg. 30956, 30958 (May 15, 2023) (citing Eric Larsen, et al., Princeton University, Final Report Summary, Net-Zero America: Potential Pathways, Infrastructure, and Impacts (Oct. 29, 2021), [https://netzeroamerica.princeton.edu/img/Princeton%20NZA%20FINAL%20REPORT%20SUMMARY%20\(29Oct 2021\).pdf](https://netzeroamerica.princeton.edu/img/Princeton%20NZA%20FINAL%20REPORT%20SUMMARY%20(29Oct%202021).pdf));

⁹ 88 Fed. Reg. at 78,685.

¹⁰ 88 Fed. Reg. at 78,686.

typically less than 10 acres. DOE proposes to replace the term “removal” with “decommissioning.” DOE asserted that decommissioning includes recycling and other actions that occur when a utility facility is out of service. DOE also proposes to remove the acreage limitation for proposed projects, allowing the CE to apply to systems generating up to hundreds of megawatts. DOE reasoned that acreage is not a reliable indicator of potential environmental impacts. APPA agrees and supports the proposed categorical exclusion for solar PV, including its elimination of an acreage limit. Imposing an arbitrary size limit could discourage site-specific design practices or standards that aim to improve a project’s ecosystem and social and/or cultural benefits, which may increase the total land area of solar development. When solar energy systems are designed and maintained thoughtfully in terms of site location and site-level design, they can lead to positive outcomes for the environment and the community.

Conclusion

APPA appreciates the opportunity to comment on the Proposed Rule, and we support the proposed categorical exclusion and conformance changes in the Proposed Rule. The proposed changes are reasonable, comply with DOE’s statutory obligations under NEPA, and represent a commendable step towards expediting the permitting and development of a reliable grid. APPA encourages DOE to expeditiously complete the proposed rulemaking consistent with our recommended suggestions.

Please contact Ms. Carolyn Slaughter at 202-467-2900 or ask CSlaughter@PublicPublic.org if you have any questions regarding the enclosed comments.

Sincerely,

A handwritten signature in black ink that reads "Carolyn Slaughter". The signature is written in a cursive, flowing style.

Senior Director, Environmental Policy
American Public Power Association