



OFFICE OF PUBLIC PARTICIPATION
FEDERAL ENERGY REGULATORY COMMISSION

Explainer

Siting Interstate Electric Transmission Facilities

Docket No. RM22-7-000, Order No. 1977



Office of Public Participation Explainer Series

The Federal Energy Regulatory Commission's (FERC) mission is to assist consumers in obtaining reliable, safe, secure, and economically efficient energy services at a reasonable cost through appropriate regulatory and market means, and collaborative efforts.

In 2021, FERC established the Office of Public Participation (OPP) to empower, promote, and support public voices at FERC. OPP achieves this mission through direct outreach and education to help people understand:

- *How FERC works*
- *What industry/program areas FERC covers*
- *How to participate in FERC proceedings*

OPP assists landowners, Tribal governments and members, local communities, small businesses, teachers and students, environmental advocates, and anyone else affected by and interested in FERC proceedings by providing information on individual proceedings and responding to requests for technical assistance. OPP will not assist in the actual drafting of pleadings and other submissions, but it can provide guidance and instruction on how to effectively intervene, comment, file motions, or seek rehearing.

OPP creates educational materials to assist the public in navigating and understanding FERC proceedings, topics, and participation. These educational materials include explainers, participation guides, and informational flyers on numerous key topics of public interest. Visit www.ferc.gov/OPP/handouts for all of OPP's resources.

Explainers summarize FERC actions and should not be relied upon as a legal document. Explainers are informational materials created for non-technical audiences and explain complex energy market and technical concepts for a wider audience. They also provide summaries of major rulemakings in way that make their impacts understandable and relevant to the American public.

OFFICE OF PUBLIC PARTICIPATION
FEDERAL ENERGY REGULATORY COMMISSION
Published July 2024



www.FERC.gov/OPP
Email: opp@ferc.gov
Phone: 202-502-6595



Follow OPP on social media



On May 13, 2024, the Federal Energy Regulatory Commission (FERC) issued a final rule (Order No. 1977) to update its regulations on applications for permits to site interstate electric transmission facilities. This explainer provides an overview of Order No. 1977.

This explainer is organized into six sections:

- Key Decisions of the Final Rule
- Introduction
- FERC's Transmission Siting Authority
- Explanations of Order No. 1977 Decisions
- FAQs
- Glossary

The full text of the final rule is available in the Order No. 1977 Final Rule. The updated regulations will take effect on July 29, 2024.¹

Key Decisions of the Final Rule

The final rule updates FERC's existing regulations which govern applications for permits to site electric transmission facilities under Section 216 of the Federal Power Act (FPA), as amended by the Infrastructure Investment and Jobs Act of 2021 (IIJA). The final rule includes the following key decisions:

- FERC declined to adopt changes to when the FERC pre-filing process may begin in relation to state processes.
- FERC established a voluntary Applicant

Code of Conduct for applicants to demonstrate good faith efforts to engage with affected landowners.

- FERC determined that applicants must develop, as part of a Project Participation Plan, an Environmental Justice Public Engagement Plan and a Tribal Engagement Plan. These plans must describe applicants' planned and completed outreach to environmental justice communities and Indian Tribes, respectively.
- FERC modified the project notification requirements for applicants, including expanding publication requirements beyond newspapers and requiring project notification by mail in other languages under certain circumstances.
- FERC updated existing reporting about affected environmental resources and added three new Resource Reports, requiring applicants to address a proposed project's impacts on air quality and environmental noise, environmental justice, and Tribal resources.

If you have questions regarding the final rule or need assistance accessing the Commission's administrative record or web resources, please contact the Office of Public Participation (OPP) at OPP@ferc.gov or by phone at (202) 502-6595.

¹ At the time of publication of this explainer, FERC received requests for rehearing and clarification, which it will need to address. OPP will update this explainer as necessary based on the outcomes of those proceedings.

Introduction

Historically, individual states authorize and issue permits for the siting of electric transmission facilities. However, the Energy Policy Act of 2005 established a limited federal role by adding Section 216 to the FPA. Under Section 216, federal siting authority for electric transmission facilities is shared between the Department of Energy (DOE) and FERC. Section 216 directs DOE to study electric transmission congestion and authorizes DOE to designate National Interest Electric Transmission Corridors (NIETCs). NIETCs are geographic areas that DOE identifies as experiencing, or expected to experience, capacity constraints or congestion that negatively affect consumers. Section 216 authorizes FERC, under certain conditions, to issue permits to build or modify electric transmission facilities in NIETCs.

Following the passage of the Energy Policy Act of 2005, DOE designated two NIETCs and FERC issued regulations on application filing requirements and procedures for entities seeking permits to construct interstate electric transmission facilities. However, by 2011, federal court decisions had vacated key aspects of DOE and FERC efforts to implement their respective authorities under Section 216. After these court decisions, DOE has not designated any NIETCs, and FERC has not received any Section 216 permit applications.

In November 2021, the IIJA amended Section 216. Specifically, the IIJA clarified that FERC may issue a permit to an applicant if a state has denied a siting application. The IIJA also amended Section 216 to require FERC to determine that the permit holder has made good

faith efforts to engage with landowners and other stakeholders if the permit holder needs to exercise eminent domain authority to acquire land. If FERC finds that transmission developers have made good faith efforts, FERC will provide authorization and issue eminent domain authority to the developers. Then, any eminent domain proceeding would take place in court.

On May 8, 2024, DOE announced a preliminary list of 10 NIETCs located throughout the country.² Before finalizing any NIETCs, DOE will refine the boundaries of potential NIETCs, conduct a National Environmental Policy Act (NEPA) analysis of the environmental impacts of the NIETC designations, and seek public comment throughout DOE's designation process.

FERC's Transmission Siting Authority

Section 216 of the FPA sets forth five limited conditions where siting electric transmission facilities may fall under FERC's jurisdiction. The final rule amends FERC's regulations to reflect the IIJA's amendments to certain conditions triggering FERC's jurisdiction when a proposed project is within an NIETC. FERC may issue a permit to construct or modify electric transmission facilities within an NIETC in one of the following conditions:

1. a state does not have the authority to either approve the siting of the facilities or to consider the interstate or interregional benefits;
2. the applicant is a transmitting utility that does not qualify to apply in a state because the applicant does not serve end-use customers in the state;

² See DOE's National Interest Electric Transmission Corridor Designation Process webpage at www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process.

3. a state has not made a determination on an application within one year of the application filing or the designation of the relevant NIETC, whichever is later;
4. a state has conditioned its approval such that the proposed project will not significantly reduce capacity constraints or is not economically feasible; or
5. a state has denied an application.

Explanations of Order No. 1977 Decisions

Commission Jurisdiction and State Siting Procedures

Prior to Order No. 1977, FERC's Notice of Proposed Rulemaking (NOPR) proposed to allow FERC's pre-filing process to take place simultaneously with states' processing of applications.³ But the final rule does not adopt this proposal. This decision is based on concerns raised by states and other stakeholders in public comments on the NOPR. FERC decided

that separate processes ensure the appropriate balance between efficiency and respect for states' authority in siting transmission infrastructure.⁴ The final rule establishes that applicants must first proceed through the appropriate state application process. Applicants will be allowed to begin FERC's mandatory pre-filing process only if they meet one of the five conditions above. If an applicant seeks to begin FERC's pre-filing process based on a state's delay, the applicant must wait at least one year after beginning the state application process.

Good Faith Efforts to Engage with Landowners and Other Stakeholders

The IIJA established that FERC must determine that the applicant has made good faith efforts to engage with landowners and other stakeholders. This determination is a precondition to an applicant receiving eminent domain authority. Applicants may demonstrate their good faith efforts to engage with landowners and other stakeholders by following the final rule's voluntary Applicant Code of Conduct.



³ See *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (2022) (NOPR), errata notice, 182 FERC ¶ 61,020 (2023).

⁴ See *Applications for Permits to Site Interstate Electric Transmission Facilities*, 187 FERC ¶ 61,069 (2024) (Final Rule) at page 53.

Among other items, the Applicant Code of Conduct includes the following guidelines:

- Providing project information to affected landowners within three business days of first contact, including the most recent copy of FERC’s *Landowner Bill of Rights in Federal Energy Regulatory Commission Electric Transmission Proceedings*;⁵
- Maintaining logs of discussions with affected landowners; and
- General prohibitions against misconduct when communicating with landowners.

An applicant that chooses not to comply with the Applicant Code of Conduct must propose an alternative method and explain why that alternative is an equal or better way of meeting the good faith efforts standard under Section 216. The final rule explains that applicants bear the burden to demonstrate good faith efforts in their engagement with other stakeholders.⁶

Stakeholder Participation: Environmental Justice Public Engagement Plan and Tribal Engagement Plan

FERC’s existing regulations require applicants to develop and file a Project Participation Plan during the pre-filing and application review processes. This ensures that stakeholders have access to timely and accurate information about the proposed project and permitting process. The Project Participation Plan must identify specific tools and actions to facilitate stakeholder communications and public information, including a regularly updated website.⁷

The final rule requires that the Project Participation Plan includes an Environmental Justice Public Engagement Plan and a Tribal Engagement Plan. These additional plans require that applicants specify the targeted outreach methods they will use to engage environmental justice communities and Tribes, summarize past comments received before entering the pre-filing process, and discuss how applicants will engage Environmental Justice communities and Tribes about mitigation measures. The Environmental Justice Public Engagement Plan also requires applicants to describe their efforts to identify, engage, and accommodate people with limited English proficiency.⁸

General Permit Conditions

FERC’s existing regulations include a list of general conditions that would apply to any permit issued to construct or modify electric transmission facilities. In balancing FERC’s commitment to encouraging transmission infrastructure development with its obligation to respond to the concerns of stakeholders, the final rule adds a new condition that explains when construction would be allowed to start. Specifically, FERC staff will not authorize construction to begin if: (1) the time for filing a request for rehearing has not expired; or (2) a timely request for rehearing is filed that raises opposition to the project’s construction, operation, or need. In the event a request for rehearing is filed, construction will not be authorized until the request is no longer pending before FERC, the record of the proceeding is filed with the court of appeals, or 90 days has passed since the date that the request for rehearing was denied in accordance with 16 U.S.C 825(a). The 90-day condition is met if FERC declines to act within 30 days of receiving a request for rehearing.

5 See Appendix A of *Applications for Permits to Site Interstate Electric Transmission Facilities*, 187 FERC ¶ 61,069 (2024) at page 257.

6 *Applications for Permits to Site Interstate Electric Transmission Facilities*, 187 FERC ¶ 61,069 (2024) (Final Rule) at 79.

7 *Applications for Permits to Site Interstate Electric Transmission Facilities*, 187 FERC ¶ 61,069 (2024) (Final Rule) at 160.

8 *Applications for Permits to Site Interstate Electric Transmission Facilities*, 187 FERC ¶ 61,069 (2024) (Final Rule) at 109.



Tribal Resources, Environmental Justice, and Air Quality and Environmental Noise Resource Reports

Resource Reports are detailed documents that applicants must submit to FERC as part of the environmental review process under NEPA. These reports are required to include information on various environmental, cultural, and socioeconomic aspects of proposed transmission projects. In the final rule, FERC requires applicants to include three new Resource Reports: *Tribal Resources*, *Environmental Justice*, and *Air Quality and Environmental Noise*.

Tribal Resources

The new *Tribal Resources* Resource Report consolidates existing requirements describing the proposed project's effects on Indian Tribes, Tribal lands, and Tribal resources. The report also includes new requirements that the applicant identify potentially affected Tribes and describe the impacts of project construction, operation, and maintenance on Tribes and Tribal interests. The final rule requires the applicant to describe any proposed mitigation measures to avoid or minimize impacts on Tribal resources as well as any input received from Tribes on the proposed measures.

Environmental Justice

In the new *Environmental Justice* Resource Report, the applicant must use current guidance and data to identify environmental justice communities within the area of potential project effect. The applicant must describe the impacts of project construction, operation, and

maintenance on those communities. In addition, this report must discuss cumulative impacts, explain any proposed mitigation measures, and describe any community input received on the proposed mitigation measures.

Air Quality and Environmental Noise

In the new *Air Quality and Environmental Noise* Resource Report, the applicant must estimate emissions and noise from the proposed project and any corresponding impacts on air quality and the environment. The report must also describe any proposed mitigation measures. In addition, the final rule establishes an operational noise limit for proposed substations and related facilities at nearby noise-sensitive areas, such as schools, hospitals, or residences.

Updates to Existing Resource Reports

In addition to the three new Resource Reports, the final rule also updated and clarified requirements to provide additional information for the 11 existing Resource Reports: *General Project Description*; *Water Use and Quality*; *Socioeconomics*; *Geologic Resources*; *Fish, Wildlife, and Vegetation*; *Cultural Resources*; *Soils*; *Design and Engineering*; *Land Use, Recreation, and Aesthetics*; *Alternatives*; and *Reliability and Safety*. For example, the final rule revises the Land use, recreation, and aesthetics Resource Report to require more information describing the proposed project's visual impacts. The applicant must identify the area of potential visual effects, describe specific visual characteristics of the affected lands and waters, and provide visual aids. The applicant must also identify, and justify the selection of, the tools or methodologies it uses to develop the required information on visual effects.

FAQs

Q. What is a National Interest Electric Transmission Corridor?

A. A National Interest Electric Transmission Corridor (NIETC) is a geographic area that the Department of Energy identifies as experiencing, or expected to experience, transmission capacity constraints or congestion that negatively affect consumers. An NIETC designation allows for federal financing assistance and public-private partnerships under DOE-sponsored programs to facilitate the development of transmission facilities. An NIETC designation is also a prerequisite to FERC's authority to issue permits for the siting of transmission lines under certain conditions. To learn more about the NIETC designation process, visit DOE's National Interest Electric Corridor Designation Process webpage: www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process.

Q. Why does FERC think these changes in transmission siting requirements are important?

A. The changes in the final rule keep FERC's regulations in line with Congress's amendments to the FPA through the IIJA. In addition, the United States is at a critical juncture in updating its energy infrastructure. Currently, there are several challenges in transitioning to renewable energy, one being the lack of transmission facilities to deliver that energy to much of the country. As new transmission facilities are constructed, FERC wants all applicants to have a clear understanding of their obligations to all stakeholders and make good faith efforts to engage with all stakeholders. Additionally, FERC wants all stakeholders to have the necessary resources to fully participate in the process. These resources include informing all stakeholders of their rights and providing stakeholders with participation options to make their concerns known to FERC.

Q. I am interested in FERC's role in transmission siting on Tribal lands. Are there more resources that describe Tribal participation at FERC?

A. As noted in its *Policy statement on Consultation with Indian Tribes in Commission Proceedings*, FERC recognizes the unique relationship between the United States and Tribes as defined by treaties, statutes, and judicial decisions. FERC is committed to promoting a government-to-government relationship between itself and federally-recognized Tribes. For more information on FERC's Tribal relations, as well as FERC's *Policy Statement on Consultation with Indian Tribes in Commission Proceedings*, visit FERC's Tribal Relations webpage: www.ferc.gov/tribalrelations.

Q. Why should I consider this final rule to be important to me and how can I participate in the process?

A. FERC may consider applications for transmission facilities in your area if they are within designated NIETCs and meet the statutory criteria described above. These proposed projects may enable more interconnection of energy facilities and provide access to lower cost generation resources, or they may impact your property or community in ways that concern you, or you may just want to find out more about a proposed project. During FERC's pre-filing and application processes, landowners and any member of the public have numerous opportunities to comment on a project and participate in the proceeding. Once pre-filing requests and applications for the siting of transmission facilities are filed with FERC, the Office of Public Participation (OPP) can help direct you to the docket, show you where to find more information, and help you participate by comment or intervention. For more information, please visit OPP's webpage at www.ferc.gov/OPP.

Glossary

Applicant – a project proponent that files an application with FERC requesting authorization to build or modify energy infrastructure projects under FERC jurisdiction. Upon FERC’s approval, the applicant receives a permit and becomes a permit holder.

Eminent Domain – a right given to a permit holder by law to use private land for FERC-authorized use with a court determining compensation. Under Section 216 of the FPA, permit holders may acquire a necessary right-of-way to construct or modify, and operate and maintain, the electric transmission facilities if they cannot acquire the right-of-way by contract or are unable to agree with the owner of the property to paid compensation for the necessary right-of-way.

Environmental Justice Community – any community that has been historically marginalized and overburdened by pollution. Environmental justice communities include, but may not be limited to, minority populations, low-income populations, or Indigenous peoples.

Federal Power Act (FPA) – a federal law that grants FERC jurisdictional powers to govern the wholesale transmission and sale of electric power, the interstate transmission of gas and oil, the siting and construction of interstate natural gas pipelines and facilities, and licensing of hydroelectric projects.

Final Rule – new regulatory requirements issued by a federal agency. A final rule also establishes an effective date, identifies issues raised by commenters in response to the Notice of Proposed Rulemaking (see definition below), and provides the agency’s response.

Indian Tribe – an Indian Tribe that is recognized by treaty with the United States by federal statute, or by the U.S. Department of the Interior in its periodic listing of Tribal entities in the Federal Register in accordance with 25 CFR 83.6(a), and whose Tribal interests may be affected by the development and operation of proposed transmission facilities.

Infrastructure Investment and Jobs Act of 2021 (IIJA) – a federal law focused mainly on transportation, broadband, and energy infrastructure.

National Environmental Policy Act (NEPA) – a federal law requiring agencies to evaluate the environmental effects of major actions prior to making decisions.

Notice of Proposed Rulemaking (NPR) – a document issued by a federal agency that describes proposed new rules and regulations or proposed changes to existing rules and regulations. The document solicits public comments on proposed new rules or proposed changes to agency regulations.

Stakeholder – any federal, state, interstate, or local agency; any Indian Tribe; any affected landowner; any environmental justice community member; or any other interested person or organization who may be affected by an energy infrastructure project.



OPP

Federal Energy Regulatory Commission

Website: www.FERC.gov/OPP

Phone: 202-502-6595

Email: OPP@FERC.gov

Follow OPP on social media:



[OPP.FERC](https://www.facebook.com/OPP.FERC)



[@FERC_OPP](https://twitter.com/FERC_OPP)



[ferc_opp](https://www.instagram.com/ferc_opp)



[@ferc](https://www.youtube.com/@ferc)



www.ferc.gov/OPP



www.ferc.gov/explainer-siting-interstate-electric-transmission-facilities