

Supplemental Guidance National Environmental Policy Act Compliance for High-Voltage Electric Transmission Lines

This supplemental guidance reiterates and clarifies existing Bureau of Land Management (BLM) National Environmental Policy Act (NEPA) policy to assist offices that are processing right-of-way (ROW) applications for high-voltage [100 kilovolts (kV) or larger] electric transmission lines.

Applicant's Interests and Objectives

Though the NEPA document must describe the BLM's purpose and need, the applicant's interests and objectives (including any constraints or flexibility with respect to their proposal) help to inform the BLM's decision and should be taken into account in the NEPA process. The BLM should describe the applicant's interest and objectives in the NEPA document in the background section. The BLM should use information submitted by applicants relating to their interests and objectives to craft an appropriate and reasonable description of these interests and objectives in the NEPA document. Additionally, the BLM should include any determination made by an authority responsible for transmission planning or oversight regarding the public need for the project (e.g., Certificate of Public Convenience and Necessity from a Public Utility Commission).

Purpose and Need and Decision(s) to Be Made

The BLM's purpose and need statement describes the underlying problem or opportunity to which the BLM is responding and what the BLM is trying to accomplish by the action. The purpose and need statement in a NEPA document must describe the BLM's purpose and need for action, not the applicant's purpose and need or interests and objectives (BLM H-1790-1, Section 6.2). For most high-voltage electric transmission line projects, the BLM's purpose and need for action will arise from the BLM's responsibility under the Federal Land Policy and Management Act of 1976 (FLPMA) to respond to a ROW application requesting authorization to use public lands for the construction, operation, maintenance, and decommissioning of a transmission line.

Additionally, the BLM should include a description of the decision(s) to be made in the BLM purpose and need statement to help establish the scope of the NEPA analysis (BLM H-1790-1, Section 6.2), as well as other laws, regulations, and policies that influence the scope of the analysis. In responding to a ROW application, the BLM may decide to grant the proposed ROW, grant the ROW with modifications, or deny the ROW. In accordance with the ROW regulations, modifications may include modifying the proposed use or changing the route or location of the proposed facilities (43 CFR 2805.10(a)(1)).

The following is an example of a BLM purpose and need statement. The BLM expects changes in the statement, as written, based on project-specific circumstances including appropriate

reference to land use plans (LUP) or other management objectives or policies for an area. In some situations, distinguishing the “purpose” from the “need” as two separate aspects of the BLM purpose and need statement may provide an opportunity to clearly state why the BLM is proposing an action (BLM H-1790-1, Section 6.2).

Example:

In accordance with FLPMA (Section 103(c)), public lands are to be managed for multiple use taking into account the long-term needs of future generations for renewable and non-renewable resources. The Secretary of the Interior is authorized to grant rights-of-way on public lands for systems of generation, transmission, and distribution of electric energy (Section 501(a)(4)). Taking into account the BLM’s multiple-use mandate, the purpose and need for the proposed action is to respond to a FLPMA ROW application submitted by [Company X] to construct, operate, maintain, and decommission a [XXXkV] power transmission line on public lands administered by the BLM in compliance with the FLPMA, BLM ROW regulations, and other applicable Federal laws and policies.

The proposed action would, if approved, assist the BLM in meeting the purpose of the Energy Policy Act of 2005 (Title III, Section 368), which directs the Secretary to both designate energy corridors and seek to expedite applications to construct transmission lines within such corridors in order “to take into account the need for upgraded and new transmission and distribution facilities to (1) improve reliability; (2) relieve congestion; and (3) enhance the capability of the national grid to deliver electricity.” The proposed action would, if approved, also assist the BLM in meeting more recent Federal directives aimed at modernizing our Nation’s electric grid (Title XLI of the Fixing America’s Surface Transportation (FAST) Act of 2015 (Pub. L. No. 114-94); the Presidential Memorandum on Transforming our Nation’s Electric Grid Through Improved Siting, Permitting, and Review, issued on June 7, 2013).

The BLM will decide whether to grant the proposed ROW, grant the ROW with modifications, or deny the ROW. Modifications may include modifying the proposed use or changing the route or location of the proposed facilities (43 CFR 2805.10(a)(1)).

Where the BLM is a lead or joint lead agency for NEPA compliance, joint lead and/or cooperating Federal agencies may have their own Federal action (decision to be made) and may therefore need to include their own purpose and need statement(s) within the NEPA document. The BLM must coordinate with joint lead and cooperating agencies early to ensure that the BLM includes the purpose and need and statement(s) about other agency’s decision(s) in the NEPA document.

In instances where the BLM is a cooperating agency for NEPA compliance, the BLM must identify the purpose and need for BLM action and the BLM decision to be made as early as possible in the process and will request that the lead Federal agency incorporate both into the NEPA document.

Alternatives

In accordance with the NEPA, the BLM must explore alternative means of meeting the purpose and need for the action. The BLM's purpose and need, informed by the applicant's interests and objectives, will help determine which reasonable alternatives the BLM must analyze in detail through the NEPA process while also providing a basis for eliminating alternatives from detailed analysis. For a high-voltage electric transmission line ROW application, alternatives will at a minimum include granting the application (the Proposed Action) and denying the application (the No Action Alternative). Note that granting the application, in some cases, also may require approving a LUP amendment. In addition to these alternatives, the BLM must consider other reasonable alternatives through the NEPA process that meet the purpose and need for the action (BLM NEPA Handbook, H-1790-1, Section 6.6.1). Alternatives should be developed to address unresolved resource conflicts, including those resource conflicts that are not under BLM authority to resolve. In determining the scope of alternatives to consider, the focus should be on what is "reasonable" rather than on whether the applicant approves or expresses concerns with carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from a technical and economic standpoint, rather than simply desirable from the standpoint of the applicant (Question 2a, Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981*). The nature and number of alternatives analyzed in detail in the NEPA process will vary by project.

Potential alternatives for transmission line ROWs typically include modified routes (including Federal and non-Federal lands, within and outside designated utility corridors, modified separation distances) and modified project design (e.g., varied structure types, buried line construction, modified pole spacing, varied structure color). The BLM may eliminate an alternative from detailed analysis for a variety of reasons (BLM NEPA Handbook Section 6.6.3). Alternatives carried forward for detailed analysis through the NEPA process should do all of the following:

- Meet the underlying purpose and need for the proposed action;
- Be technically and economically feasible (as informed by the applicant's interests and objectives and verified by technical experts (discussed in greater detail below));
- Address and minimize identified issue(s);
- For an identified resource issue, cause measurably fewer adverse environmental effects (i.e., fewer detrimental effects, severe effects, or shorter-term effects) than the proposed route; and
- Be in conformance with the existing management prescriptions for the area as set forth in the governing LUP, unless the authorized officer determines that it is appropriate to consider a LUP amendment.

The BLM must develop a well-supported rationale when deciding whether to analyze or eliminate potential alternatives from detailed analysis (BLM NEPA Handbook Section 6.6.3). The NEPA document must disclose all reasons that support the BLM's decision to eliminate an alternative from detailed analysis. The determination of whether and how a given alternative is carried forward for analysis in the NEPA process will vary by project.

The BLM must independently evaluate the information submitted by an applicant regarding the proposed action, interests and objectives, potential alternatives, and any constraints with respect to the proposal (40 CFR 1506.5(a)). Early in the process, the BLM should seek the assistance of other Federal, State and/or local agencies, and/or an independent contractor (only with a disclosure statement that specifies that the contractor has no financial or other interest in the outcome of the project) in evaluating such information. For example, the Department of Energy, Federal Energy Regulatory Commission, or Department of Agriculture, Rural Utilities Service can help assess the technical and/or economic feasibility of project proposals and potential alternatives, as well as confirm information provided by project applicants. For technical assistance from other agencies, Field office staff should coordinate with their respective state office to request coordination assistance from the Washington Office Branch of Rights-of-Way.

Alternatives for Routes on Non-Federal Land

The BLM may analyze, through the NEPA process, alternative routes that include non-Federal lands if it is reasonable to do so (Question 2b, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981*). If such routes are technically and economically feasible, result in measurably less environmental effects, and cannot be eliminated from detailed analysis for other valid reasons, they should be fully analyzed as alternatives in the NEPA process. In some cases, however, a non-Federal land alternative may be considered in the pre-application meeting, but deemed to not be practical from a technical and/or economic standpoint. In the event that the BLM considers alternatives in a pre-application meeting but the BLM does not carry forward these alternatives for detailed analysis, the NEPA document should summarize the alternatives and identify the rationale supporting why the BLM did not pursue them further. Applicants are encouraged to schedule pre-application meetings under 43 CFR § 2804.10.

Alternatives for Routes on BLM-managed Lands

For most high-voltage electric transmission line ROW applications, the BLM may identify multiple routes on BLM lands through internal and/or external scoping that meet the purpose and need for action and address unresolved conflicts concerning alternative uses of available resources. If such routes are technically and economically feasible, result in measurably less environmental effects, and cannot be eliminated from detailed analysis for other valid reasons, they should be fully analyzed as alternatives in the NEPA process.

For projects proposed in high conflict and/or sensitive resource situations (e.g., National Conservation Lands excluding designated wilderness), if the BLM proceeds with processing an application, the BLM will consider at least one alternative that would route the ROW outside of the high conflict and/or sensitive resource area (as feasible). If it is not possible to avoid the high conflict or sensitive resource area, then the BLM will analyze alternatives that include onsite mitigation and, if appropriate, offsite or regional mitigation in accordance with Departmental policy (Manual 600 DM 6) and current BLM mitigation policy.

The BLM will release a final mitigation manual and handbook subsequent to this IM, in conformance with the Presidential Memorandum of November 3, 2015, directing it to *'finalize a*

mitigation policy that will bring consistency to the consideration and application of avoidance, minimization, and compensatory actions or development activities and projects impacting public lands and resources.’ Until the final policy is released, the Bureau’s interim policy on mitigation is applicable (2013-WO-IM-142).

Alternatives for Modified Project Design

Buried Electric Transmission Line Construction - As stated earlier, the BLM should develop alternatives to address unresolved resource conflicts. The BLM does not expect that most high-voltage electric transmission lines will have unresolved resource conflicts that would justify analysis of an alternative of buried construction for the entire alignment of a proposed overhead transmission line project. In some circumstances (e.g., critical species habitat, highly visually sensitive lands, or technical, safety, or national security concerns), the BLM may consider analysis of a buried electric transmission line construction alternative to address site-specific issues. It is important to note that while buried electric transmission line construction may address certain site-specific resource issues, it may increase impacts to other resources. Environmental impacts resulting from buried electric transmission lines will vary by resource. Section 3 of “The Design, Construction, and Operation of Long-Distance High-Voltage Electricity Transmission Technologies” (Environmental Science Division, Argonne National Laboratory, Technical Memorandum ANL/EVS/TM/08-4) discusses general impacts by resource for buried electric transmission lines (http://corridoreis.anl.gov/documents/docs/technical/APT_61117_EVS_TM_08_4.pdf).

Varied Structure Types or Design - The BLM should fully analyze varied structure types (e.g., self-supporting lattice towers, H-frame structures, monopole structures, or structures supported by guy wires) as well as varied colorations (e.g., wood poles, galvanized steel, rust-colored corten steel, painted poles) as an alternative in the NEPA process, when such analysis responds to an unresolved resource issue identified during internal and/or external scoping and provided that the alternative would result in measurably fewer environmental effects than the proposed action. In deciding to eliminate alternatives from further analysis that result in minimal or no change in impacts, the BLM may incorporate by reference other documents or studies that found minimal to no change in impacts based on the modified structure type or design.

Data Collection to Support Decision-Making

As with all projects analyzed under the NEPA, the analysis of electric transmission lines must concentrate on the issues that are truly significant to the action in question, rather than amass needless detail (BLM NEPA Handbook Section 6.4). Although scoping may identify many issues, the NEPA document should focus on significant issues. This will include those issues related to significant or potentially significant effects. Entire resources are not issues by themselves; issues involve concerns over how a given proposal may affect a resource. The term “significant” has a specific meaning in the NEPA context. Additional information pertaining to the term (including a definition) can be found in Section 7.3 of the NEPA Handbook (H-1790-1).

The BLM’s description of the affected environment for electric transmission line projects must be no longer than is necessary to understand the effects of the proposed action and alternatives.

Data and analyses in a NEPA document must be commensurate with the importance of the impact; for impacts of lesser magnitude, offices may summarize, consolidate, or simply reference relevant materials (BLM H-1790-1, Section 6.7.1).

The effects analysis for electric transmission line projects must demonstrate that the BLM took a “hard look” at the impacts of the proposed action and alternatives. The level of detail must be sufficient to support reasoned conclusions by comparing the amount and the degree of change caused by the proposed action and alternatives (BLM H-1790-1, Section 6.8.1.2). A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information.

With high-voltage electric transmission line projects, the BLM, in coordination with cooperating agencies, consulting parties in the National Historic Preservation Act (NHPA) Section 106 process, and Tribes, should establish early in the process what constitutes an appropriate amount of data and analysis to support agency decisions on a proposed transmission line ROW. The BLM should coordinate data collection in support of decisions and other environmental compliance requirements and rely to the extent practicable on existing data. In some instances, offices will have substantial existing data and will use the data to the extent feasible to analyze and compare the impacts of the proposed action and alternatives. Based on the importance and/or level of concern over a given resource conflict, the BLM may determine that some limited on-the-ground data collection is necessary to support its decision making. The amount of data collected does not have to be uniform across all alternatives. See also the section below on coordination of NEPA and NHPA.

Incorporation by Reference

Incorporation by reference provides opportunities to reduce paperwork and redundant analysis in the NEPA process (BLM NEPA Handbook Section 5.2). Offices undertaking NEPA analysis for high-voltage electric transmission line projects should incorporate by reference other available documents or studies that cover similar issues, effects and/or resources rather than repeat them (e.g., regional mitigation strategies developed per current BLM guidance on mitigation, or studies that support conclusions on electric and magnetic fields, or the impacts of burying transmission lines). Offices may incorporate any material by reference, including non-NEPA documents, as long as the material is reasonably available for public inspection.

Identification of the Agency Preferred Alternative in EISs or Agency Preferred Alternatives, if more than one agency is involved

High-voltage electric transmission line projects require the project applicant to coordinate reviews and approvals of the project at various local, Tribal, State, and Federal permitting levels. These permitting reviews often do not run concurrently, which results in a more lengthy and costly overall permitting process. In many instances, the applicant may pass the cost of the permitting investment for these projects to the benefitting rate payers. This lack of efficiency between reviews for permitting adversely affects the applicant and potential rate payers alike.

Industry has indicated that one way for the BLM to lighten the burden of permitting in both time and cost is to identify an agency preferred alternative or alternatives at the draft environmental

impact statement EIS (DEIS) stage. Identification of an agency preferred alternative or alternatives, if the agency has one or more, at the DEIS stage is not required by Council on Environmental Quality (CEQ) regulations (40 CFR 1502.14 (e)) and in Section 9.2.7.3 of the BLM's NEPA Handbook, but is encouraged. When considering a project that requires a land use plan amendment, the BLM's planning regulations require that an authorized officer identify a preferred planning alternative at the DEIS stage (43 CFR 1610.4-7).

The BLM NEPA Handbook (Section 9.2.7.3) states, "The identification of a preferred alternative does not constitute a commitment or decision in principle, and there is no requirement to select the preferred alternative in the ROD [Record of Decision]." Identification of an agency preferred alternative at the DEIS stage will allow the applicant to concurrently continue, at its own risk, with other permitting processes that require it to identify a single permitting alignment. The BLM should, to the fullest extent possible, develop its NEPA document in coordination with other Federal, State, and local environmental reviews (40 CFR § 1502.25 and 1506.2). The time savings of allowing the permitting processes to proceed concurrently may result in overall cost savings for the applicant and ultimately the rate payer. For these reasons, the BLM authorized officer should carefully consider identifying an agency preferred alternative at the DEIS stage for high-voltage electric transmission line projects. Note that the proposed action of a project will not necessarily become the BLM's preferred alternative. In the cases of external applications or proposals, the BLM often determines that another alternative is preferred because it would best incorporate specific terms and conditions of approval (BLM H-1790-1, Section 9.2.7.3).

When an EIS is prepared jointly, the lead agency with responsibility for preparing the EIS and ensuring its adequacy is responsible for identifying the agency's preferred alternative (Question 4c, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981*). Whereas the BLM must work with cooperators and other interested parties to encourage consensus on a preferred alternative, the preferred alternative in the EIS represents the preference of the lead agency. Cooperators and other interested parties can express their preferences through scoping and comments on the DEIS. The BLM will occasionally prepare an EIS with another Federal agency as "joint lead" agencies (40 CFR 1506.2(b)). In such circumstances, the joint lead agencies must work towards reaching consensus about the preferred alternative. If consensus cannot be reached, we recommend that each joint lead agency clearly identify their preferred alternative and explain the basis for their preference and why consensus could not be reached (BLM H-1790-1, Section 9.2.7.3).

If the authorized officer does not identify an agency preferred alternative or alternatives in the DEIS, the BLM will notify the public as soon as the BLM identifies its preferred alternative (notification can be in advance of the Final EIS). Some options for announcement of an agency preferred alternative or alternatives between the DEIS and the release of the Final EIS include mailing/emailing/posting the announcement in a regular project newsletter, posting the announcement on the project website, or mailing the announcement to interested parties.

Coordination of the NEPA, National Historic Preservation Act Section 106 Compliance, and Tribal Consultation Responsibilities

For high-voltage electric transmission projects, state and field offices should refer to IM No. 2012-108 (Coordinating NHPA and National Environmental Policy Act Compliance) for guidance on ensuring coordination of the procedures for complying with the NEPA, NHPA Section 106, and meeting tribal consultation responsibilities. The Council on Environmental Quality and Advisory Council on Historic Preservation publication, *NEPA and NHPA: A Handbook for Integrating NEPA and Section 106* (March 2013), is another useful resource. Additionally, state and field offices should ensure they meet Tribal consultation requirements, consistent with guidance found in IM No. 2012-062 (Implementation of the Department of Interior Tribal Consultation Policy).

NEPA for Geotechnical Investigations

Project applicants may require, as part of project planning, geotechnical data to evaluate soil types in order to determine the appropriate tower foundations and anticipate construction timing and costs. In some instances, the project applicant will need this data prior to obtaining a final agency decision on the high-voltage electric transmission line ROW.

The analysis related to geotechnical data collection should generally be analyzed in the overall transmission line project environmental review document. However, in some specific instances the geotechnical data may be needed prior to completion of the environmental analysis and final agency decision(s) for the electric transmission line to support selection of tower types and finalization of the Plan of Development (POD).

In those specific instances, the BLM will require the project applicant to submit a separate ROW application and POD to request a short-term authorization to conduct geotechnical studies. The POD should identify any measures that the applicant is voluntarily implementing to minimize impacts. The BLM will give the ROW application for geotechnical studies a new serial number in the Legacy Rehost 2000 (LR2000) System, process the application independently of the larger project, and analyze it through a separate NEPA document. Offices must process these applications in accordance with the requirements of all applicable laws (i.e., NEPA, NHPA, and the Endangered Species Act). Offices can achieve NEPA compliance for these types of applications generally, though not always, through preparation of an environmental assessment or documentation of a categorical exclusion.

To expedite the processing of a short-term ROW application, the applicant and the BLM may utilize an existing cost recovery agreement (CRA), if one has been established for the corresponding high-voltage electric transmission line application. If using an existing CRA, the BLM must amend the existing CRA to include processing and/or monitoring of the geotechnical investigation application and update the cost estimate to reflect costs for processing the geotechnical investigation application.