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C E N T E R

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Attn: Liza Reed

Submitted via email and regulations.gov

Re: Comments of the Niskanen Center on Coordination of Federal Authorizations for Electric Transmission Facilities, Docket No. DOE-HQ-2023-0050, 88 Fed. Reg. 55826 (Aug. 16, 2023)

The Niskanen Center (“Niskanen”) welcomes the opportunity to provide commentary in response to the U.S. Department of Energy’s (“DOE”) Notice of Proposed Rulemaking and Request for Comment on the Coordination of Federal Authorizations for Electric Transmission Facilities, DOE-HQ-2023-0050, 88 Fed. Reg. 55826 (Aug. 16, 2023) (the “NOPR” or the “Proposed Rule”), or more specifically on the proposed establishment of the Coordinated Interagency Transmission Authorizations and Permits Program (“CITAP”).

Niskanen is a nonpartisan 501(c)(3) think tank and advocacy organization committed to robust markets and targeted, evidence-based public policies. Niskanen aims to establish a

purposeful federal role in electricity transmission infrastructure siting and permitting to enable a repeatable, scalable process for the development of critical interstate transmission lines. Our approach encompasses original research, analysis, coalition building, engagement with congressional and regulatory bodies, and legal advocacy, including agency comments, amicus briefs, and litigation.

Niskanen commends DOE for the thoughtful and comprehensive drafting of the NOPR and associated proposed regulations. It is widely recognized that the absence of efficient and clear federal permitting approval processes presents a significant barrier to transmission development.¹ If properly vetted and executed, DOE’s proposed rule to establish the CITAP Program and Integrated Interagency Preapplication (“IIP”) Process could significantly expedite project timelines and alleviate the bottleneck of urgently-needed interstate grid expansion. As such, Niskanen fully supports DOE’s proposed rule. Through this comment, we offer suggestions on how to further enhance the likelihood that the rulemaking will result in a more effective, efficient, and transparent process, benefitting project proponents, government agencies, and stakeholders alike.

I. There is an Urgent Need for DOE’s Proposed Rule.

It is well established by industry, academia, and public policy energy experts that our nation needs increased transmission development, and that we need it now. The DOE’s triennial National Transmission Needs Study² “review[ed] publicly available data and over 50 different industry reports published in the past five years that consider current and anticipated future needs given a range of electricity demand, public policy, and market conditions.”³ The DOE Needs Study concluded “that all combinations of new generation will require increased transmission deployment to remove expected constraints and congestion that would negatively impact consumers and bring new generation to market, but to differing degrees.”⁴ One of these

¹ See generally *The Challenges of Decarbonizing the U.S. Electric Grid by 2035*, Harvard Belfer Center Policy Brief (Feb. 2022), available at:

<https://www.belfercenter.org/publication/challenges-decarbonizing-us-electric-grid-2035>

² *Draft National Transmission Needs Study*, Department of Energy, 88 Fed. Reg. 13811 at. ii (report dated Feb. 2023; published in Fed. Reg. Mar. 6, 2023) (“DOE Needs Study”), available at:

<https://www.energy.gov/sites/default/files/2023-02/022423-DRAFTNeedsStudyforPublicComment.pdf>.

³ *Id.* at ii.

⁴ *Id.* at 106.

conclusions, with moderate load but high clean energy assumptions enabled by recently enacted laws (*i.e.*, fair and reasonable assumptions), found that “47,300 GW-mi of new transmission will be needed nationwide by 2035 to meet the scenario conditions of this group, *a 57 percent growth in today’s transmission system.*”⁵ Transmission is also essential infrastructure to enable the energy transition and meet the Biden Administration’s goals of 50% emissions reductions by 2030⁶. Princeton’s Net Zero America study of decarbonization scenarios found that in net-zero futures *an estimated increase in transmission capacity 2 to 5 times that of 2020 levels would be needed in order to reach zero emissions.*⁷ This combined with the fact that the rate of transmission development has slowed compared to the early 2010s⁸ makes it all the more urgent for federal regulators to streamline siting and permitting processes.

Complicated and protracted federal permitting processes often impede major transmission projects, as they attempt to navigate a multiplicity of government agencies’ requirements. The absence of cohesive interagency coordination can result in excessive regulatory hurdles and duplicative processes.⁹ As an example, the Suniza Transmission line connecting New Mexico with Arizona by way of a 500 kV high voltage line took 17 years to site

⁵ *Id.* (emphasis added).

⁶ *FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies*, The White House (April 22, 2021), available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>

⁷ *Net-Zero America: Potential Pathways, Infrastructure, and Impacts, Final Report Summary*, Princeton University at 27-29 (Oct. 29, 2021), available at [https://netzeroamerica.princeton.edu/img/Princeton%20NZA%20FINAL%20REPORT%20SUMMARY%20\(29Oct2021\).pdf](https://netzeroamerica.princeton.edu/img/Princeton%20NZA%20FINAL%20REPORT%20SUMMARY%20(29Oct2021).pdf); see also *How Are We Going to Build All That Clean Energy Infrastructure?: Considering Private Enterprise, Public Initiative, and Hybrid Approaches to the Challenge of Electricity Transmission*, at 6-7, Niskanen Center (Aug. 2021) (discussing Princeton Report’s findings on the scale of needed change), available at: https://www.niskanencenter.org/wp-content/uploads/2021/08/CleanEnergyInfrastructure_Report_08.19.21.pdf

⁸ *Fewer New Miles: The Us Transmission Grid In The 2010s*, Grid Strategies LLC (Aug. 2022), available at:

https://gridprogress.files.wordpress.com/2022/08/grid-strategies_fewer-new-miles.pdf

⁹ *Building Electric Transmission Lines: A Review of Recent Transmission Projects*, at vii, Lawrence Berkeley National Lab (Sept. 2016), available at:

<https://eta-publications.lbl.gov/sites/default/files/lbnl-1006330.pdf>

and permit.^{10,11} At one stage, after the Bureau of Land Management had authorized a project right of way 5 years after the initial proposal, concerns voiced by the Department of Defense necessitated the submission of a revised application and route modification.¹² If there had been more efficient and transparent interagency coordination, years could have potentially been shaved off of Sunzia’s project timeline. By introducing this Proposed Rule, the DOE addresses such permitting challenges in interstate transmission development, paving the way to modernize America’s aging power grid and mitigate developmental uncertainties.

II. Ensuring Success and Legal Durability of the IIP Process through Transparency and Meaningful Stakeholder Engagement.

In order for DOE’s Proposed Rule to truly “ensure that all necessary information is provided to relevant Federal entities in a timely and coordinated fashion,”¹³ and “identify as early as possible potential environmental and community impacts associated with a proposed project,”¹⁴ it is imperative that DOE institutionalize transparent, efficient intergovernmental communication and information dissemination. It is also crucial that early and meaningful engagement with potentially-affected stakeholders, communities of interest, and Indian Tribes be more formally prioritized. As highlighted in one of Niskanen’s transmission reports,¹⁵ “[a] commitment to process would undergird planning, paying, permitting, and participation and

¹⁰ *Application for Transportation and Utility Systems on Federal Lands Amendment to Right-of-Way Grant NM-114438 SunZia Transmission, LLC*, at A-2, Bureau of Land Management (December 2020) (noting that Sunzia submitted its application for a right-of-way for the proposed project in September of 2008), available at: https://eplanning.blm.gov/public_projects/2011785/200481766/20041455/250047648/SunZia%20Revised%20ROW%20Application%20Attachment%20A%20_2020-12-18.pdf

<https://finance.yahoo.com/news/14-years-sunzia-transmission-project-045900723.html>

¹¹ *The U.S. ‘Fast-Tracked’ a Power Project. After 17 Years, It Just Got Approved*, The Wall Street Journal (May 18, 2023) (noting that plans for the project “were first laid in 2006, [when] Taylor Swift had just released a debut album and George W. Bush was president.”), available at: <https://www.wsj.com/articles/the-u-s-fast-tracked-a-power-project-after-17-years-its-nearing-approval-1a7edb86>

¹² *Powered by wind, this \$10B transmission line will carry more energy than the Hoover Dam*, Associated Press (Sept. 1, 2023), available at: <https://apnews.com/article/renewable-energy-line-sunzia-arizona-california-a541af36657a299a1a0822e75f943b9f>

¹³ NOPR at 55829.

¹⁴ NOPR at 55828.

¹⁵ *How Are We Going to Build All That Clean Energy Infrastructure?*, Niskanen Center (Aug. 2021) (discusses the traditional 3Ps of planning, permitting, and paying as well as 2 new “Ps”: participation and process).

would focus on how they interact for successful completion of lines... A federal agency, for example, could study and perhaps even standardize a process, socializing or requiring best practices and knowledge sharing with stakeholders.”¹⁶ As further stated on the importance of meaningful ‘participation’ in that same report: “[c]onstructive project development efforts often involve early and continuous community engagement. Inclusive, “smart from the start,” sustained interaction should educate, build trust, and incorporate local input.”¹⁷

One of the most effective ways to achieve these goals from the outset is to have a publicly-available docket and engagement standards for the IIP and CITAP process. A public docket would not only promote efficient and well-informed decision-making, it would also alleviate some of the administrative burdens and potential bottlenecks arising from IIP and CITAP implementation. This, coupled with some of the reasonable stakeholder engagement requirements proposed below, will lessen the likelihood of protracted litigation, miscommunication, and inequitable siting practices to occur. These recommendations reinforce a general principle noted in a recent expert report for transmission developers on best siting practices: “the more time you spend engaging with the public, the less time you spend litigating.”¹⁸

A. A Public Docket Fosters Efficient and Well-informed Decision-making.

As currently proposed, a nonpublic docket invites not only significant lags in communication, but also a dearth of valuable information and engagement from impacted stakeholders. Moreover, complex governmental decision making—the results of which can and will dramatically impact the lives of many and the environment—occurring behind closed doors is far afield from what could be considered governmental best practice. A public IIP docket would take significant strides towards ensuring real-time, effective communication among relevant governmental and non-governmental entities and ensuring that project proponents engage with impacted landowners and communities in a fair and transparent manner. A comparable, informative example of this is FERC’s pre-filing docket and public dockets

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 11.

¹⁸ Americans for a Clean Energy Grid, Report: Recommended Siting Practices for Electric Transmission Developers, p. 2 (Feb. 13, 2023), *available at*: <https://cleanenergygrid.org/wp-content/uploads/2023/02/Recommended-Siting-Practices-for-Electric-Transmission-Developers-ACEG-February-2023.pdf>

generally.¹⁹ DOE's adoption of a similar public docket would offer substantial benefits in the IIP process.

A public docket would ensure that proposed projects are subject to increased scrutiny early in the process. Consequently, concerns or issues raised (that could not or would not be raised on the currently proposed nonpublic docket) could be addressed proactively, resulting in fewer delays later in the process, including after an NOI is issued. A transparent IIP and CITAP process would also help to demystify an incredibly complex regulatory process for regulators, industry, and impacted stakeholders. Such an adoption could expedite the IIP process, thereby potentially accelerating the execution of critical infrastructure projects. E.g., when an agency or project proponent files something on a proposed project's docket, it is automatically distributed to all relevant parties on said docket, including relevant Federal agencies. And of course any *legitimate* requests that a document filed be deemed confidential or privileged,²⁰ such a request would be honored by DOE and unavailable to the wider public.

A public docket would also enable evaluation of the effectiveness of specific components of CITAP and the program overall. Much like FERC dockets and state public utility commission dockets, a public docket for CITAP could serve as a repository for applicant proposals, DOE reviews and decisions accepting or rejecting applicants for program participation, notices tracking participants' steps and agency actions throughout the IIP and CITAP process, and stakeholder input, where applicable. The public record established via such a docket would assist DOE and all stakeholders in assessing whether CITAP meets its intended goals, what aspects of CITAP could be improved, and what changes might strengthen the program moving forward. By embracing a public docket such as FERC's pre-filing, DOE stands to streamline project reviews, bolster impacted stakeholder engagement and information-sharing, and expedite the permitting process of proposed projects.

B. Early and Meaningful Engagement is Crucial for Success.

As demonstrated by the language permeating the Proposed Rule, early, meaningful engagement with potentially impacted stakeholders and Tribes is crucial for the success of any

¹⁹ See <https://www.ferc.gov/media/pre-filing-environmental-review-process> (includes pre-filing process flowchart); see generally FERC's eLibrary, linking to pre-filing and other dockets, available at: <https://elibrary.ferc.gov/eLibrary/search>.

²⁰ See, e.g. 10 C.F.R. § 1004.13. FERC's regulation on requests for privileged treatment for documents submitted may be informative. See 18 C.F.R. § 388.112.

permitting and siting process.²¹ Engaging stakeholders early in the project lifecycle allows project proponents to identify and address potential challenges, thereby reducing risks and uncertainties that could jeopardize project fruition. While the DOE endeavors to instill this principle by mandating a 'public engagement plan', the current language falls short. The plan aims to “provide relevant Federal entities an opportunity to provide input into the project proponent’s engagement efforts, and **to ensure that the project proponent engages with all communities of interest and Indian Tribes that could be affected by the proposed qualifying project.**”²² Yet, alarmingly, the Proposed Rule stops short of imposing any notification or consultation requirements on a project proponent to actually engage “early” or in any “meaningful” way with impacted parties or communities of interest. In fact, no impacted party consultation requirements are formally triggered until *after* the end of the IIP process during the subsequent NEPA scoping period. This is too little too late for potentially-impacted stakeholders and communities to meaningfully engage—and for the project proponent and government entities to solicit and include valuable feedback and insight gleaned from such an exchange. Thus, Niskanen proposes the adoption of language along the following lines within the rule to ensure basic notification of potentially impacted parties and engagement:

(g)(3) Upon the issuance of a notice that an initiation request meets the requirements of a qualifying project, the prospective applicant must:

- (1) Within seven business days establish the dates and locations at which the prospective applicant will conduct meetings with stakeholders.
- (2) Within 14 days, notify all stakeholders not already notified, including all affected landowners as defined in § 900.2 of this section.
- (3) Within 30 days, submit a stakeholder mailing list to DOE.
- (4) On a monthly basis, file status reports detailing the applicant's project stakeholder engagement activities and communications.

²¹ See, e.g. NOPR at 55853 (“considering [...] the need for [...] early and meaningful consultation with potentially affected Indian Tribes and public engagement with potentially-affected stakeholders and communities of interest.”); 55834 (for “entities involved [to] have meaningful opportunities to identify issues of concern prior to the close of the IIP Process.”).

²² NOPR at 55832 (emphasis added).

III. Revisions for Additional Clarity on Specific Proposed Definitions.

Niskanen offers general comments and suggested revisions to the proposed regulation §900.2, Definitions (additions underlined; deletions struck through) below for additional clarity and effectiveness.

A. ‘Affected Landowner’

The DOE's proposed definition encompasses many landowners potentially impacted, but Niskanen asserts that some revisions are advised for clarity and to ensure the capture of those most affected. For example, the inclusion and identification²³ of ‘affected landowners’ as-currently defined within .25 miles of a ‘study corridor’ hypothetically *could* include several such corridors for a single proposed project (given the need to review alternate routes), each corridor being up to a mile wide.²⁴ This definition is nebulous, thus potentially impracticable and overly burdensome. The current definition also acknowledges landowners who are proximate to or significantly impacted by construction, but it omits those affected by other project facets like access roads and staging areas. Taking this into account, Niskanen recommends the following revised definition:

Affected landowner means an owner of real property interests who is usually referenced in the most recent county or city tax records, and whose real property:

- (1) Is located within either 0.25 miles of a proposed ~~study corridor~~ project right of way and alternative routes of a qualifying project or at a minimum distance specified by state law, whichever is greater; or
- (2) Contains a residence within 3,000 feet of a proposed construction work area for a qualifying project; or
- (3) Is directly affected (i.e., crossed or used) by the proposed activity, including all facility sites, rights-of-way, access roads, staging areas, and temporary workspaces.

B. ‘Communities of Interest’

DOE has largely delegated how to precisely define ‘Communities of Interest,’ and thus any corresponding obligations, to the project proponent. It is unclear what is meant by or what the scope is of “disadvantaged,” “fossil energy,” “rural”, “geographically proximate,” or

²³ See e.g. NOPR at 55848, Proposed 900.6(f)(10) for *Resource Report 1*, requiring a project applicant to “[p]rovide the names and mailing address of all affected landowners to certify that all affected landowners have been notified.”

²⁴ NOPR at 55844 (defining ‘study corridor,’ which is “not to exceed one mile in width”).

“communities with environmental justice concerns,” and such terms consequently are open to varied interpretations, potentially leading to confusion or missteps in the IIP and CITAP process and potential litigation. For instance, the NOPR does not clarify the meaning of “environmental justice,” leaving project proponents without guidance on how to properly identify a community with “environmental justice concerns,”²⁵ or how to uphold any related obligations.²⁶ By way of further example, “geographically proximate” would benefit from more precise parameters, such as being within ‘.25 miles from a proposed route or alternative route.’ DOE should provide further clarity and guidance to narrow these definitions in a way that identifies groups most vulnerable to adverse impacts from a proposed project, helping ensure those most impacted will have access to and potential input in relevant federal proceedings.

C. ‘Qualifying Project’

Niskanen commends DOE on its proposed qualifying project scope, as it captures a subset of transmission projects that in all likelihood will have a significant impact on the nation’s transmission network. It is essential that DOE clearly define the parameters of what a ‘qualifying project’ is to ensure not only clarity and consistency for potential project proponents considering the IIP process, but also for strengthened legal durability. Currently, CITAP eligibility predominantly encompasses high-voltage electric transmission lines that are expected to require an environmental impact statement (EIS) under NEPA.²⁷ Such projects are also likely to face permitting complexities and delays in the absence of an effective coordinating mechanism such as the proposed IIP and CITAP process. The 230 kv eligibility voltage threshold is a reasonable threshold and reflective of the existing project landscape. For instance, in a recent industry report examining 36 “shovel ready” transmission projects across the country,²⁸ the vast majority of the projects meet the 230 kV eligibility threshold proposed by the DOE.²⁹ Ongoing program

²⁵ NOPR at 55843.

²⁶ *See, cf. Applications for Permits To Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205, at nt. 39 (2022), 88 FR 2770 (December 15, 2022) (noting how FERC at the time identified potential environmental justice communities utilizing U.S. Census American Community Survey data).

²⁷ NOPR at 55843.

²⁸ Zimmerman, Goggin, and Gramlich. *Ready-to-go Transmission Projects 2023*, at 8-9, Americans for a Clean Energy Grid (Sept. 2023), available at: https://cleanenergygrid.org/wp-content/uploads/2023/09/ACEG_Transmission-Projects-Ready-to-Go_September-2023.pdf

²⁹ NOPR at 55843 (defining ‘qualifying project’ in part as transmission line 230kV or above).

experience and assessment will illuminate whether CITAP's aims could be better served by raising or otherwise modifying this threshold.

Niskanen also believes that the definition of 'qualifying project,' should be expanded to explicitly contemplate proposed projects that require the preparation of an environmental assessment (EA) as well as an EIS, as follows:

- (ii) Which is expected to require preparation of an environmental impact statement (EIS) or an environmental assessment (EA) pursuant to NEPA to inform an agency decision on a Federal authorization;

Such a revision would need to consistently permeate the proposed rule. For example, in §900.11:

- (a) For a qualifying project that is accepted for the Integrated Interagency Pre-Application (IIP) Process under §900.5, DOE shall serve as the lead agency to prepare an environmental impact statement (EIS) or environmental assessment (EA) to serve the needs of all relevant entities.

It is possible that some complex projects that require an EA would benefit from inclusion in the IPP Process and CITAP Program, and there is little rationale not to be inclusive of such potential projects from the outset.

Some additional clarity is also needed prior to the finalization of the proposed rule on the other specific criteria for what is—and what is not—a qualifying project that is 'regionally or nationally significant'. The NOPR lacks specificity on what DOE would take into consideration in determining whether a project is "regionally or nationally significant."³⁰ Some guidance or clarification from DOE on such potential factors for consideration would be beneficial for project proponents and DOE itself. Drawing from the public benefits expected from increasing the pace of transmission deployment as stated in the NOPR,³¹ DOE could include a provision along the lines of the below to help guide project proponents and the process:

- (3) In making a significance determination outlined in section (1) of this provision, DOE may take into account regional or national public benefits, including:
 - (i) a reduction in the congestion costs for generating and delivering energy;
 - (ii) a mitigation of weather and variable generation uncertainty;
 - (iii) an enhanced diversity of supply;

³⁰ NOPR at 55843.

³¹ NOPR at 55837.

- (iv) any reduced or avoided carbon emissions from the increased use of clean energy; and
- (v) an increased market liquidity and competition.³²

D. Resource Report 11

Lastly, DOE’s proposed rule on Alternatives via Resource Report 11 would benefit from clarifying language and revisions. First, the phrase “examine or not examine”³³ in the following provision, “[t]his report must also include all the alternatives identified by the proponent, including those the proponent chose not to examine or not examine in greater detail,”³⁴ creates ambiguity. If a project proponent merely identified a potential alternative, arguably they “examined” said alternative. To avert potential waste of resources and over-detailing in Resource Report 11, Niskanen suggests the following revisions:

This report must also include all the alternatives identified and examined beyond mere identification by the proponent, ~~including those the proponent chose not to examine or not examine in greater detail.~~

Additionally, paragraph (3) of this Resource Report is ambiguous. Specifically, the term “initial screening” is a little perplexing as it doesn’t appear anywhere else in the NOPR other than this section. If DOE means the “initiation request” or “initial meeting” outlined in §900.5, it should explicitly state as such. And if by “alternative routes or locations considered,” DOE means to reference the “potential study corridors or potential routes for the proposed qualifying” noted as part of the initiation request to DOE under §900.5(b) and (c), it should include consistent language and references. It is also unclear what is meant by “and include the analysis in the thirteen environmental reports.” This is unclear because the only report of the 13 resource reports required by the NOPR to include an alternatives analysis is resource report 11. If DOE wants an alternatives analysis in other resource reports, it should specifically state as such under that resource report’s section. With these assumptions in mind, Niskanen proposes the following revision to paragraph 3:

(3) Describe alternative routes or locations considered for the proposed transmission line and related facilities during the initiation request ~~initial screening for the project and include the analysis in the thirteen environmental reports;~~

³² NOPR at 55837.

³³ NOPR at 55852.

³⁴*Id.*

The subparagraphs (i) and (ii) of this section could also be sharpened for clarity. Mandating proponents to describe environmental characteristics of unexamined route alternatives paradoxically necessitates such an examination. Revisions to this section are thus highly recommended to ensure clarity and consistency.

IV. Conclusion

Niskanen applauds the DOE for its meticulous and thoughtful efforts in crafting the NOPR and the accompanying proposed regulations. Niskanen's comments aim to provide constructive feedback for an even more robust, transparent, and streamlined process that stands to benefit all parties, including project proponents. With careful evaluation and implementation, the IIP Process and CITAP Program have the potential to markedly accelerate projects and facilitate the urgent expansion of the interstate grid.

Respectfully submitted,

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