NISKANEN CENTER

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NEPA Rulemaking Comments
Office of NEPA Policy and Compliance (GC-54)
U.S. Department of Energy
1000 Independence Avenue, SW
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Submitted electronically via regulations.gov

Re: Comments of the Niskanen Center on the National Environmental Policy Act Implementing Procedures, Docket No. DOE-HQ-2023-0063, 88 Fed. Reg. 78681 (Nov. 16, 2023)

The Niskanen Center ("Niskanen") welcomes the opportunity to express support for the U.S. Department of Energy's ("DOE") Notice of Proposed Rulemaking and Request for Comment on the National Environmental Policy Act Implementing Procedures, DOE-HQ-2023-0063, 88 Fed. Reg. 78681 (Nov. 16, 2023) (the "NOPR" or the "Proposed Rule"), or more specifically, on the proposed revisions to certain categorical exclusions. Overall, Niskanen believes that updating the categorical exclusions as proposed to better reflect current technologies and industry practices will help facilitate the transition to a more efficient, resilient, and clean grid, while retaining vital environmental and community safeguards.

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 energy infrastructure siting and permitting to enable a repeatable, scalable process for the development of critical infrastructure in a principled manner, including 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.

I. The Urgent Need for Transmission and 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 Study[1] is "an assessment of publicly available data and more than 120 recently published reports that consider current and anticipated future needs given a range of electricity demand, public policy, and market conditions."[2] 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."[3] One of these conclusions, with moderate load but high clean energy assumptions enabled by recently enacted laws (*i.e.*, fair and reasonable assumptions), found that "*54,500 GW-mi of new within-region transmission will be needed nationwide by 2035* to meet the scenario conditions of this group, a *64% increase from today's transmission system.*"[4] Transmission is also essential infrastructure to enable the energy transition and meet the Biden Administration's goals of 50% emissions reductions by 2030.[5]

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[1] United States Department of Energy, "National Transmission Needs Study," October 2023. (report dated Oct. 2023; notice of availaibilty published in Fed. Reg. Nov. 13, 2023) ("DOE Needs Study"), *available at:* https://www.energy.gov/sites/default/files/2023-12/National%20Transmission%20Needs%20Study%20-%20Final_2023.12.1.pdf

[2] *Id.* at ii.

[3] *Id.* at 143.

[4] *Id.* (emphasis added).

[5] *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/

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 to reach zero emissions.*[6] This, combined with the fact that the rate of transmission development has slowed compared to the early 2010s[7] makes it all the more urgent for federal regulators to streamline siting and permitting processes, including by making sensible amendments and targeted, thoughtful expansions of categorical exclusions. By introducing this Proposed Rule, the DOE takes an important step toward addressing ongoing challenges in transmission development, paving the way to modernize America's aging power grid, mitigate developmental uncertainties, and ensure increased reliability while aligning with the nation's broader environmental and energy objectives.

II. DOE's Proposed Rule is Sensible and will Enhance Grid Efficiency and Sustainability.

Niskanen commends DOE for the thoughtful and comprehensive drafting of the NOPR and associated proposed regulations on categorical exclusions. The targeted use of categorical exclusions is an important tool for urgently needed energy infrastructure development[8] and streamlining relevant permitting processes. In particular, we support removing the 20-mile limitation[9] and adding relocation flexibilities to the categorical exclusion for upgrading and rebuilding existing transmission lines under B4.13.[10] The elimination of an arbitrary mileage

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[6] *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; 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

[7] *Fewer New Miles: The Us Transmission Grid In The 2010*s, Grid Strategies LLC (Aug. 2022), *available at:* https://gridprogress.files.wordpress.com/2022/08/grid-strategies_fewer-new-miles.pdf

[8] See"National Transmission Needs Study at 142-144 (summarizing future needs through capacity expansion modeling results analysis). .

[9] *See* current regulation, 10 C.F.R. § Pt. 1021, Subpt. D, App. B, B4.13 (categorical exclusion includes "[u]pgrading or rebuilding approximately 20 miles in length or less of existing electric powerlines").

[10] NOPR at 78684.

threshold along existing rights-of-way is a sensible and meaningful change. DOE's acknowledgment that the presence of any environmentally sensitive resources is "more pertinent" to a significance determination than any length of an existing powerline indicates DOE understands where the analysis of a proposed upgrade or rebuild is genuinely needed to help ensure little to no adverse community or environmental impacts.[11] This amendment will enable important, existing powerlines to enhance reliability, resiliency, and efficiency, as well as integrate more renewable energy and other generation sources into the grid—while reducing the need for unnecessary new infrastructure.[12]

Niskanen further endorses establishing a new categorical exclusion for electrochemical battery and flywheel storage systems under B4.14 in a previously disturbed or developed area.[13] However, recognizing the critical role of energy storage in achieving a high-penetration, clean energy grid,[14] it is crucial to consider the environmental and community impacts of such developments meticulously. With this in mind, while supporting this initiative in previously disturbed areas, Niskanen advises caution in the proposed extension to undisturbed areas. While the proposed siting conditions regarding the categorical exclusion's application to areas *outside* a previously disturbed area—limiting it to a "small contiguous area"[15]—do provide some reasonable constraints, they fall short of justifying extending this exclusion to undisturbed areas. DOE acknowledges that most "energy storage systems typically require 15 acres or less and would be sited close to energy, transmission, or industrial facilities."[16] However, as DOE has found elsewhere, "acreage is not a reliable indicator of potential environmental impacts,"[17] and development on undisturbed land could entail significant costs for the environment and the surrounding community. DOE should provide additional support and guidance on the potential inclusion of this provision to undisturbed areas.

Additionally, as DOE seems to understand, limiting the new categorical exclusion to electrochemical batteries and flywheels may preclude other promising storage solutions. We

[11] NOPR at 78684.
[12] NOPR at 78684.
[13] NOPR at 78685.
[14] *See* Blair, Nate, Chad Augustine, Wesley Cole, et al. 2022. *Storage Futures Study: Key Learnings for the Coming Decades* at 1. Golden, CO: National Renewable Energy Laboratory. NREL/TP-7A40-81779. https://www.nrel.gov/docs/fy22osti/81779.pdf
[15] As discussed in 10 CFR 1021.410(g)(2); NOPR at 78691.
[16] NOPR at 78685.
[17] NOPR at 78686.

encourage DOE to consider explicitly adding technologies, such as the noted compressed air storage, thermal energy storage, and other potential technologies,[18] if interested parties provide sufficient analytic support on the docket.

Lastly, Niskanen supports the proposal to eliminate acreage limits for solar photovoltaic installations under B5.16, as similar to the findings leading to the amendment of B4.13, it appropriately reflects that potential adverse impacts relate more to the presence of sensitive local resources rather than absolute size. DOE's retention of reviews of extraordinary circumstances and integral elements ensures continued environmental protection.

Thank you for the opportunity to provide comments in support of these proposed amendments. We believe the changes will help facilitate important project development while ensuring responsible environmental stewardship. Please do not hesitate to contact me if I can provide any additional perspective from the Niskanen Center.

Respectfully submitted,

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[18] *See, e.g.* T.M.I. Mahlia, T.J. Saktisahdan, A. Jannifar, M.H. Hasan, H.S.C. Matseelar, *A review of available methods and development on energy storage; technology update*, Renew. Sustain. Energy Rev., 33 (2014), pp. 532-54. https://doi.org/10.1016/j.rser.2014.01.068.