

INTERPRETIVE GUIDANCE ON THE REQUIREMENTS OF 10 C.F.R. § 205.322

This guidance is intended to clarify the Department of Energy (DOE)'s interpretation of 10 C.F.R. § 205.322, which sets forth the contents of an application for a Presidential permit issued by DOE under Executive Order (E.O.) 10485, as amended by E.O. 12038. Anyone seeking to construct, operate, maintain, or connect an electric transmission facility crossing the borders of the United States must first obtain a Presidential permit. Section 205.322 requires that an application for a Presidential permit provide, among other things:

- a) “Information regarding the applicant” (e.g., name, contact information, foreign government ownership or contractual relationships);
- b) “Information regarding the transmission lines to be covered by the Presidential Permit” (e.g., technical descriptions, including particular information for overhead and underground or underwater interconnections, maps, and if applicable, bulk power system information);
- c) “Information regarding the environmental impacts . . . for each routing alternative” (e.g., a statement of environmental impacts of the proposed facilities, a list of known Historic Places, details regarding the minimum right-of-way width for the transmission line and the rationale for its selection, and a list of local threatened or endangered wildlife or plant life);
- d) “A brief description of all practical alternatives to the proposed facility and a discussion of the general environmental impacts of each alternative;” and
- e) “The original of each application shall be signed and verified under oath by an officer of the applicant, having knowledge of the matters therein set forth.”

10 C.F.R. § 205.322.

This information is used by DOE to determine whether the issuance of a Presidential permit is consistent with the public interest. DOE makes that determination by evaluating the electric reliability impacts, the potential environmental impacts, and any other factors that DOE may also consider relevant to the public interest. DOE's general practice is to begin processing an application when it includes the information required in §§ 205.322(a), (b)(1), and (b)(2), and (e), and information regarding environmental impacts for alternative routes and descriptions of practical alternatives as described in §§ 205.322(c) and (d). Such information must be sufficient to enable DOE to understand the applicant's proposal and commence an informed review under the National Environmental Policy Act (NEPA). In addition, if the application does not include the technical studies described in § 205.322(b)(iii) at the time of filing, the applicant must supplement its application to include such studies when reasonably possible. Likewise, DOE requires an applicant to supplement its application, as soon as reasonably possible, with any additional information necessary for DOE to decide whether or not to issue a Presidential permit. Furthermore, all information contained in the application – or subsequently added to it – will be

made publicly available, and DOE will provide opportunities for the public to comment on any aspect of the application.

This guidance is intended specifically to clarify DOE's interpretation of the statement in § 205.322(b) that the application shall provide certain "bulk power system information;" the statement in § 205.322(c) that the application shall provide certain information "for each routing alternative;" and the statement in § 205.322(d) that the application shall provide certain information regarding "all practical alternatives to the proposed facility."

DOE's interpretation is based on its recognition that, in some circumstances, certain information described in § 205.322 may not be available to the applicant at the time an application is submitted to DOE. For example, § 205.322(b)(3)(ii) requires that the application provide information about the operation of the electrical system "with and without the proposed international interconnection." These technical analyses have in recent years been prepared – particularly for long, high voltage, high-capacity transmission facilities – by the relevant regional transmission operator or independent system operator in conjunction with the applicant. Such studies typically take many months to prepare, and the applicant usually does not have control over the schedule for their preparation. Thus, the applicant usually supplements the application with the addition of the technical studies after the initial filing. As long as these technical analyses fulfill the requirements of § 205.322(b) and are promptly added to the application when reasonably possible, this practice is permissible.

DOE's interpretation is also based on its commitment to initiate review of the environmental impacts of a Presidential permit application under NEPA early in the decisionmaking process. For example, DOE often prepares an Environmental Impact Statement (EIS) to analyze the potential impacts of long, high voltage, high-capacity transmission facilities, and DOE expects to gather and analyze its own information regarding alternative routes and facilities during its NEPA review. The early availability of information and identification of potential alternatives by the applicant facilitates development of the EIS. However, DOE regularly incorporates new information and alternatives throughout the EIS process. Indeed, DOE is required, for example, to consider reasonable alternatives identified in public comments during the scoping period for the EIS.

Sections 205.322(c) and (d) require an applicant to submit information regarding environmental impacts for alternative routes and descriptions of practical alternatives sufficient to enable DOE to understand the applicant's proposal and to commence an informed NEPA review. Information about environmental impacts described in § 205.322(c) facilitates DOE's NEPA review and assists DOE in determining if an EIS is needed. *See, e.g.*, 10 C.F.R. § 205.328. Under NEPA, DOE is responsible for describing the environmental impacts for a range of reasonable alternatives. Likewise, § 205.322(d) requires the applicant to provide information regarding practical alternatives to the proposed facility and this information facilitates DOE's NEPA review. Even if the applicant takes the position that no alternatives to the proposed facility are practical, and therefore includes no information about alternatives in its application, DOE is responsible for identifying the range of reasonable alternatives and will analyze the potential environmental impacts of those alternatives – and a "no action" alternative – in its EIS. Thus, while the permit applicant should identify alternative routes and any alternatives it deems

practical in the application, DOE reviews a range of alternatives and is not limited to only those alternatives identified by the applicant. Reasonable alternatives may arise at any time during DOE's review, for example, from public participation during scoping.

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