

August 20, 2018

Submitted via *Federal eRulemaking Portal* to Docket No: CEQ-2018-0001

Edward A. Boling  
Associate Director for NEPA  
Council on Environmental Quality  
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Re: Request for Comments on the Council on Environmental Quality advance notice of proposed rulemaking to update regulations for implementing provisions of the National Environmental Policy Act; 83 *Fed. Reg.* 28591 (June 20, 2018)

To Mr. Boling:

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to the request by the Council on Environmental Quality (CEQ) for public input on its intent to update its National Environmental Policy Act (NEPA) implementing regulations (83 *Fed. Reg.* 28591, June 20, 2018). NRECA supports CEQ's efforts to ensure a more efficient, timely, and effective NEPA process consistent with the original intent of the law. NRECA is a member of the Utility Water Act Group (UWAG) and the Energy and Wildlife Action Coalition (EWAC), and these comments hereby endorse and incorporate by reference the comments submitted by those organizations.

NRECA is the national service organization for America's electric cooperatives. NRECA represents the interests of the nation's more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. Electric cooperatives are member-owned, not-for-profit small businesses serving consumer-members facing significant economic challenges, especially in rural areas. They are driven by their purpose to power communities and empower their members to improve their quality of life. Affordable electricity is the lifeblood of the American economy, and for 75 years electric co-ops have been proud to keep the lights on. Given their critical role in providing affordable, reliable, and universally accessible electric service, electric cooperatives are vital to the economic health of the communities they serve.

NRECA's member cooperatives include 63 generation and transmission (G&T) cooperatives and 834 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. The G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives, those cooperatives that provide power directly to the end-of-the-line consumer-owners. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. Collectively, electric cooperatives own and maintain 2.6 million miles or 42 percent of the nation's electric distribution lines serving 56 percent of the nation and 88 percent of all counties.

The CEQ's NEPA regulations provide uniform standards for the implementation of NEPA, which federal agencies must comply with to ensure proper consideration is given to the environment prior to undertaking any major proposed actions. It is often necessary for NRECA members to obtain federal permits from the US Army Corps of Engineers (Corps), Bureau of Land Management (BLM), US Fish and Wildlife Service (FWS) and others to construct and maintain electric infrastructure. In addition, many NRECA members have existing loans and/or frequently apply for additional financial assistance offered by the US Department of Agriculture's Rural Development program – the Rural Utilities Service (RUS).

NEPA environmental reviews often add significant and unreasonable costs and delays to infrastructure projects due to overly broad and/or lengthy requirements. For example, linear infrastructure projects typically must navigate environmental reviews and permitting processes with multiple federal agencies with separate decision-making authority and often counter-viewpoints. As such, it is important to NRECA and its members that revisions to NEPA implementing regulations are appropriately focused and streamlined to reduce burdens. Below, NRECA provides the following recommendations on ways the CEQ should update and clarify its NEPA regulations. Our comments address specific questions posed in the advance notice of proposed rulemaking.

**1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?**

NRECA believes NEPA environmental reviews and authorization processes should be conducted in a coordinated, consistent, predictable, and timely manner. In many cases, NRECA member projects are delayed due to a lack of timely communication and coordination between the Lead Agency and other cooperating or participating federal agencies. To improve decision-making involving multiple federal agencies, the CEQ should develop and follow the "One Federal Decision" framework, as directed by Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure (August 15, 2017). The framework should require a single environmental review document and a single Record of Decision (ROD) coordinated, following set permitting timelines, by the Lead Agency. To further reduce inefficiencies, the CEQ should develop guidance for federal agencies on how to apply "One Federal Decision." This should clearly define the roles and responsibilities for each agency involved in the NEPA process.

**2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?**

NRECA supports revisions to the CEQ's NEPA regulations that will make the NEPA process more efficient by either adopting or incorporating by reference earlier environmental analyses and documentation completed by Federal, State, tribal, or local governments. This would help reduce redundancies and provide the Lead Agency with relevant information to support more timely decision-making. To better facilitate the use of prior environmental analyses and documentation, agencies could assess such information and determine its usefulness during the scoping period.

**3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?**

To ensure optimal interagency coordination of environmental reviews and authorization decisions, NRECA recommends that the CEQ revise its regulations to require transparent project tracking between the federal agencies, as well as the applicant. NRECA suggests that the CEQ pursue technological tools which facilitate improved environmental review milestone scheduling, communication, and coordination. Project tracking should be consistent with the application of Executive Order 13807 and the 2005 Fixing America's Surface Transportation Act (FAST Act). While generally a valuable tool, many electric cooperative projects may not meet the criteria to be tracked through the FAST Act Permitting Dashboard. NRECA recommends that the CEQ ensure that any project tracking improvements allow for smaller projects (*e.g.*, infrastructure projects that may not meet the definition of "major" project per Executive Order 13807 or meet the criteria for becoming a FAST Act covered project) to be identified and tracked by all federal agencies responsible for reviewing and approving the proposed action.

Further, Environmental Assessment (EA) and Environmental Impact Statement (EIS) analyses can take several years to complete, delaying work vital to keeping the lights on, public safety, and reducing wildfire risk. However, Categorical Exclusions (Cat. Exs.), in the absence of extraordinary circumstances, allow for timelier review and approval of actions without complex documentation requirements. Many federal agencies are not fully utilizing Cat. Exs. to satisfy, where appropriate, their NEPA obligations. NRECA recommends that the CEQ also revise its NEPA regulations to more strongly encourage the expanded use and additional adoption of Cat. Exs. by federal agencies. This would streamline and expedite environmental reviews and decision-making processes, while providing electric cooperatives timelier access to their facilities.

**4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?**

NRECA generally supports shortening the lengthy environmental review process while still protecting the environment by setting firm time and page limits to which federal agencies will be held accountable. NRECA recommends that the CEQ revise its NEPA regulations to formally adopt time and page limits for EISs and EAs, or at a minimum reiterate the expectation regarding reasonable lengths. For example, environmental document length should be commensurate with the scope of the federal action. The CEQ should also ensure that there is a clear, straight-forward process that allows for more complex or controversial projects to deviate from these page and time limits. Overall, NRECA recommends that any revisions made to page length and time limits for completion do not pose a threat to successful defense of federal actions in the event of litigation.

**7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?**

- a. **Major Federal Action:** The CEQ should revise the definition of major federal action to give independent meaning to the term major and more clearly define what constitutes a major federal action. More specifically, the CEQ should provide meaningful guidance on the type of federal

government involvement in a non-federal, private project that would subject the private project to NEPA review and approval. A major federal action could be defined where certain thresholds are exceeded, such as dollar amount (*e.g.*, total investment in the project (*i.e.*, \$200 million) as defined by the FAST Act or annual effect on the economy (*i.e.*, \$100 million) for regulatory actions as defined in Executive Order 12866, Regulatory Planning and Review (October 4, 1993)). The revision to the definition should be in a manner consistent with NEPA's plain language, its legislative history, and Supreme Court decisions. This would entitle the regulation to substantial deference under traditional standards of judicial review<sup>1</sup> and improve uniformity and predictability across the country. Well-reasoned reform of NEPA analysis on this issue and practical guidance in the form of workable distinctions would save everyone a lot of time and money.

- b. *Effects – Indirect:*** NRECA supports the comments presented by UWAG and EWAC that the CEQ should revise the definition of indirect effects to limit the effects analysis to only those effects within the legal control of the federal agency or within the scope of the agency's authority that are reasonably foreseeable and proximately caused by the agency action. NRECA recommends that the CEQ apply these limits regardless of whether the indirect effect is at, upstream of, or downstream of, the site of the proposed agency action. Further, the CEQ should remove language from the indirect effects definition that suggests growth inducing effects should be analyzed. Such effects are generally not proximately caused by a proposed action and are not typically within the legal control of the federal agency. More importantly, most non-federal applicant projects subject to NEPA review and approval, including the construction and maintenance of electric infrastructure, are to *accommodate* growth, not *induce* growth.
- e. *Scope:*** Often, challengers to the NEPA process argue that federal agencies should consider a broader scope of analysis, analyzing effects well beyond the agency's control and jurisdiction. The CEQ should confirm and emphasize that the scope of analysis should be tailored to the specific federal action under NEPA review, including limiting the analysis to only those effects caused by and/or under the regulatory authority of the agency.<sup>2</sup> In addition, the scope of analysis of any alternatives should only include those actions that are actually available and practicable to implement. By setting clear and appropriate limits on scope, federal agencies save time and resources by focusing on making informed decisions that are based on potential environmental impacts over which the agency has control. These revisions would also protect federal agencies and applicants whose proposed actions are subject to NEPA review from unnecessary delay, burden, and litigation risk over hypothetical or tangential environmental impacts. The CEQ's confirmation of what an appropriate scope of review is for federal agencies is critical to efficient and timely NEPA reviews and authorizations necessary to allow important electric cooperative infrastructure to be constructed and maintained.

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<sup>1</sup> See: *NEPA after Andrus v. Sierra Club: The Doctrine of Substantial Deference to the Regulations of the Council on Environmental Quality*, 66 Va. L. Rev. 843 (1980) (providing history on NEPA and the CEQ).

<sup>2</sup> See: 40 CFR 1507.3 and *Dep't of Transp. v. Public Citizen*, 541 US 752, 767-70 (2004).

**12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?**

NRECA recommends that the CEQ revise its regulations to more strongly encourage the use and incorporation by reference of NEPA tiering to programmatic environmental reviews or other broader-scope EISs. NEPA tiering would prevent duplicative analyses and processes thereby, streamlining environmental reviews and authorization decisions. Also, the CEQ should broadly support the use of programmatic reviews. These types of reviews should be considered where a federal agency is reviewing and approving several similar proposed actions or projects in a region or nationwide (*e.g.*, a large-scale utility corridor project) or a suite of ongoing, proposed or reasonably foreseeable actions that share a common geography or timing, such as multiple activities within a defined boundary like a federal land or facility. These revisions will help NRECA members meet the nation's growing energy needs, including timely construction and maintenance of electric infrastructure.

**Conclusion**

NRECA appreciates the opportunity to provide comments on ways the CEQ can update and clarify its NEPA regulations to increase the efficiency and effectiveness of the NEPA process. NRECA and its members believe that the abovementioned revisions will enable the continued protection of the environment, while contributing to the economic health of rural communities through more consistent and timely completion of environmental reviews and approvals. We welcome a chance to discuss our recommendations further with your team and look forward to continuing to work with the CEQ to improve its NEPA regulations.

If you have any questions regarding these comments, please contact me at [Janelle.Lemen@nreca.coop](mailto:Janelle.Lemen@nreca.coop).

Respectfully,



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