



January 2, 2024

DOE NEPA Implementing Procedures, RIN 1990-AA48

Comments of the National Association of State Energy Officials (NASEO) on the Notice of Proposed Rulemaking Regarding National Environmental Policy Act (NEPA) Implementation Procedures.

These comments are submitted on behalf of the National Association of State Energy Officials (NASEO). NASEO represents the governor-designated State Energy Directors and their offices from each of the 56 states, territories, and the District of Columbia. State Energy Offices work on a wide range of energy policy issues, implement programs, and advise elected and non-elected officials. In particular, State Energy Offices work on accelerating the deployment of a wide range of clean energy resources, that when combined with firm power resources facilitate grid resilience, reliability, and affordability; decarbonization; and improved energy access. State Energy Offices and NASEO have extensive experience in addressing NEPA issues associated with comprehensive federal programs including, but not limited to, annual appropriations, oil overcharge refunds, implementation of the American Recovery and Reinvestment Act (ARRA) of 2009, the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA). Individual states have engaged on NEPA-related issues on federally supported projects in their states and where federal lands are involved. In addition, State Energy Offices are often directly involved in state equivalent NEPA statutory implementation.

Categorical exclusions are a key element in project development and implementation and have been for many years. These categorical exclusions are crucial in accelerating projects that would otherwise face unnecessary delays. NASEO supports the proposed rule that would establish new categorical exclusions for energy storage, expand categorical exclusions for solar systems and expand categorical exclusions for upgrading and rebuilding transmission lines. NASEO respectfully recommends that the U.S. Department of Energy (DOE) consider expanding the proposed categorical exclusions to other categories.

We agree that the elimination of the length consideration for electric transmission line expansion makes sense and that encouraging reconductoring with higher capacity low resistance cable or other load-enhancing technologies is critical; however, the proposed language leaves a degree of uncertainty. One option could be to adopt the following language: “Categorical exclusions shall apply to all electric transmission facilities of any length, unless good cause is

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shown that transmission lines over 200 miles in length do not meet the standards of a categorical exclusion.” Such language could apply to additions, modifications, upgrading and rebuilding. For the modification to support energy storage, as defined as “electrochemical-battery or flywheel energy storage system,” DOE might consider adding, “and any other energy storage system that is technologically feasible or was developed either by a DOE Laboratory or through financial support from the federal government.” Other safeguards exist within the DOE NEPA implementing regulations, but this change would have the advantage of not requiring DOE to undertake the NOPR process on a continuing and time-consuming basis.

Categorical exclusions for energy efficiency or for the conservation of water and energy should be the easiest to support, as indicated in Appendix B, B5.1. NASEO supports these exclusions and suggests that the list of examples, even though it is not limiting, should be expanded. They should at least include all of the measures allowed under the existing U.S. State Energy Program (SEP) (see especially, 42 U.S.C. Section 6322(d)) and the Low-Income Weatherization Assistance Program. We recommend further consultation with DOE’s Energy Efficiency and Renewable Energy Office and the State and Community Energy Programs Office to enhance this list.

NASEO supports the proposed categorical exclusion for solar photovoltaic systems, but again suggests expanding the non-exclusive list.

NASEO would like to take the opportunity to suggest to the U.S. Department of Energy to stand up a broader state-federal “permitting collaborative” comprised of state and federal energy decision-makers to address these and other issues related to permitting energy infrastructure.

We appreciate the opportunity to provide these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DTerry', with a stylized flourish at the end.

David Terry
NASEO President

cc: State Energy Directors