Americans for a Clean Energy Grid

Americans for a Clean Energy Grid Comments on the Department of Energy's Grants to Facilitate the Siting of Interstate Electricity Transmission Lines Request for Information (RFI)

Americans for a Clean Energy Grid (ACEG)—a not-for-profit public interest advocacy organization that brings together a diverse coalition of stakeholders focused on the need to expand, integrate and modernize the high-capacity grid in the United States[1]—appreciates this opportunity to provide input to the Department of Energy (DOE) on its request for information regarding its implementation of Section 50152 of the Inflation Reduction Act[2] (IRA).[3] This provision provides $760 million through September 30, 2029 for: (1) grants to siting authorities to carry out eligible activities that will facilitate the siting and permitting of certain interstate onshore and offshore electricity transmission lines; and (2) grants to siting authorities, or other state, local, or Tribal governmental entities, for economic development activities in communities that may be affected by the construction and operation of these transmission projects. The funding is to be used to support the construction of new or upgraded electric transmission facilities and facilitate the siting of transmission facilities, in a manner that is consistent with affected community priorities, including considerations of environmental and energy justice, equity, and job quality, and Tribal cultural resources. ACEG commends DOE for seeking public input on how to effectively distribute and use the grant funds.

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[1] The ACEG coalition includes: multi-state utilities that develop, own, and operate transmission; trade groups that include transmission owners and transmission equipment manufacturers among their members; renewable energy trade groups, developers, and advocates; environmental and labor advocacy organizations; buyers of energy; and energy policy experts. ACEG seeks to educate the public, opinion leaders, and public officials about the needs and potential of the transmission grid. These comments do not necessarily reflect the views of individual members.

[2] Inflation Reduction Act, Public Law 117-169 (August 16, 2022).

[3] Department of Energy, *Request for Information: Grants to Facilitate the Siting of Interstate Electricity Transmission Lines* (January 13, 2023) ("Notice").

I. Background

Electricity is an essential service, and nearly all aspects of modern life depend on a robust and reliable power grid. But our nation's existing grid is neither technically nor locationally sufficient to meet our modern needs. According to the American Society for Civil Engineers, most of the nation's transmission and distribution lines were constructed in the 1950s and 1960s and have a 50-year life expectancy, meaning they have reached or surpassed their intended lifespan.[4] Simply replacing old lines will not resolve current and expected future problems, however. Real-world experience suggests that generation shortfalls resulting from severe weather and other threats are occurring with greater intensity and frequency, and these events tend to be at their most extreme in areas lacking fully interconnected power systems.[5] Transmission can address such capacity shortfalls by enabling imports from areas less affected by the weather events.

Similarly, a recent report by national security experts noted, "Our electricity grid's resilience—its ability to withstand shocks, attacks and damages from natural events, systemic failures, cyber-attack or extreme electromagnetic events, both natural and man-made—has emerged as a major concern for U.S. national security and a stable civilian society."[6] The report described large scale transmission as a solution noting that

> Transmission buildout is critical to resilience as it can relieve line overloading—or 'congestion' . . .—on the existing system, lessening the compounding risks that come with a strained grid that could then be tested by an extreme weather event or an attack incident. Moreover, by enabling further development of renewable energy resources over wider geographic areas, well-planned transmission expansion can make targeted attacks on the grid more difficult to plan and carry out.[7]

Despite the wide recognition for the need to expand and modernize transmission, the rate of construction has fallen behind the pace needed to meet our present and future reliability needs and our climate goals. Indeed, in the last decade, regionally planned transmission investment has decreased by 50% and almost no new interregional lines

[4] American Society of Civil Engineers, "Policy Statement 484 - Electricity Generation and Transmission Infrastructure," Adopted by the Board of Direction on July 13, 2019.

[5] Goggin, Michael, Transmission Makes The Power System Resilient To Extreme Weather, 2021.

[6] National Commission on Grid Resilience, "Grid Resilience: Priorities for the Next Administration," at 1, 2020.

[7] *Ibid*., at 42.

have been planned.[8] Even when lines get built, transmission projects can take at minimum 5-10 years to plan, develop, and construct,[9] and in some cases have taken over 15 years to receive permits and begin construction.[10]

There are several roadblocks to building transmission in a timely manner—one of the largest being siting and permitting. Lengthy permitting processes, balkanized siting laws, under-resourced siting and permitting staff, lack of effective community engagement, and public opposition all contribute to extended siting and permitting processes and prevent steel from being laid into the ground. While there is no silver bullet to resolving the issues around siting and permitting, DOE's Siting of Interstate Electricity Transmission Line Facilitation program provides an important opportunity to facilitate speedier siting and permitting processes by supporting the siting authorities that must authorize the lines and the local communities that may be impacted by the construction.

II. Comments on Supporting Siting Authorities

The composition and structure of siting authorities varies across the nation from autonomous tribal governments (which may also necessitate federal government involvement), to state utility commissions or siting boards, to local governments or local zoning authorities.[11] Though the composition varies, they face several common challenges:

- Many siting authorities have limited resources to review transmission applications and to facilitate effective community engagement;

- As transmission has a long life-span and is a natural monopoly, siting authorities may lack technical expertise needed to assess the application. This is especially difficult for siting agencies with authority over limited land area as their staff may only consider a single transmission project over the course of their career, which not only means they may lack the technical expertise entering into a project review, but also that they will have limited ability to apply the expertise that they do gain to future projects;

[8] Pfeifenberger et al., Cost Savings Offered by Competition in Electric Transmission at 1, April 2019.

[9] Pfeifenberger, Johannes and John Tsoukalis, "Transmission Investment Needs and Challenges" at 13, June 2021.

[10] *E.g.* Permit applications for the Gateway South line were submitted in November 2007, but the project did not begin construction until June 2022.

[11] *See, e.g.* Smith, William H, *Mini Guide on Transmission Siting: State Agency Decision Making*, National Council on Electricity Policy (Dec. 2021) (NCEP Mini Guide).

- High-capacity transmission lines may cross jurisdictions and be subject to multiple siting applications with different regulatory requirements. This balkanization makes it difficult for siting authorities to collaborate and to assess whether the applicant is providing consistent data across jurisdictions; and

- Each transmission project faces its own unique challenges – including different geographic considerations and different impacted communities each with their own concerns.

IRA Section 50152(b)(1) authorizes DOE to support siting authorities by funding:

> (A) Studies and analyses of the impacts of the covered transmission project.
>
> (B) Examination of up to three alternate siting corridors within which the covered transmission project feasibly could be sited.
>
> (C) Participation by the siting authority in regulatory proceedings or negotiations in another jurisdiction, or under the auspices of a Transmission Organization (as defined in section 3 of the Federal Power Act (16 U.S.C. 796)) that is also considering the siting or permitting of the covered transmission project. [subject to a 50% cost share]
>
> (D) Participation by the siting authority in regulatory proceedings at the Federal Energy Regulatory Commission or a State regulatory commission for determining applicable rates and cost allocation for the covered transmission project. [subject to a 50% cost share]
>
> (E) Other measures and actions that may improve the chances of, and shorten the time required for, approval by the siting authority of the application relating to the siting or permitting of the covered transmission project, as the Secretary determines appropriate.

Based on these parameters, DOE should consider using the funds for the following specific activities:

- *Supporting Interjurisdictional Collaboration to Site Interstate Lines* (Section 50152(b)(1)(E)): The balkanization of siting authorities adds significant complexity to an already complex process. One way to streamline siting processes is to work with states, Tribal governments, and localities to identify

ways to improve uniformity in the data and analyses that project applicants must provide to each jurisdiction. This will help improve the process for the developer that is applying for siting authorization and will allow jurisdictions to collaborate in reviewing the applications, including by sharing resources such as technical experts. There are several ways that DOE can help facilitate inter-jurisdictional collaboration. On a project-to-project level, DOE could offer technical support to review existing regulatory requirements and help siting authorities identify ways to streamline and coordinate their procedures so that the processes either run concurrently or are coordinated such that they are completed within a fixed period of time; these schedules could also be concurrent with any relevant federal siting and permitting process. Alternatively, DOE could develop, with input from existing siting authorities, a model transmission siting application that establishes consistent data and analysis requirements.

Additionally, DOE should revisit Section 1221 of the Energy Policy Act of 2005, which provided Congressional consent for three or more contiguous states to enter into an interstate compact, subject to approval by Congress, to establish regional transmission siting agencies to facilitate siting of future electric energy transmission facilities within those states, and to carry out the electric energy transmission siting responsibilities of those states.[12] Although DOE developed a compact framework in 2013,[13] it has not been implemented widely. Given the renewed urgency to build high-capacity, integrated transmission, the interstate compact model may now be more viable.[14] DOE could use grant funds to provide management and operational support to states interested in developing an interstate compact.

- *Supporting Studies and Analysis* (Section 50152(b)(1)(A)): Regional and local entities have identified a need for independent studies that assess the local economic benefits of specific proposed transmission lines, especially the benefits of transmission investment in Tribal and rural areas, and communities that have been previously overburdened by infrastructure. DOE could assist in filling this gap by issuing a request for proposals and funding a pool of technical experts that can provide the needed analyses and submit their findings to the relevant planning and siting authorities. Such support should be provided during the preliminary phases of planning while there is time to consider alternatives and the opportunity for regional and local entities to engage in the planning processes. Waiting to conduct studies and analyses until after all pertinent

[12] Codified at 16 U.S. Code § 824p(i).

[13] Department of Energy, Electric Transmission Line Siting Compact.

[14] *See, e.g.* National Governor's Association, Transmission Siting and Permitting: How Governor Leadership Can Advance Projects (2023) (encouraging governors to pursue the use of regional compacts and multistate agreements to streamline planning and siting complex interstate projects).

decisions have been made can increase litigation risks, raise the overall costs of projects, and delay project timelines.

- *Building capacity of siting authorities to address transmission line applications* (Section 50152(b)(1)(E)): The IRA outlines several potential ways to increase capacity within siting authorities, including by providing funding for siting authorities to participate in federal or other state proceedings. While this is a worthy use of the funds, ACEG encourages DOE to also consider ways to maximize the investment by:

    - providing free technical analysis and community engagement trainings for siting staff,[15]

    - supporting a pool of technical and policy experts that can assist siting offices with reviewing applications, and

    - funding regional partnerships that would provide education and support to siting authorities to participate effectively in regional transmission planning and FERC processes.[16]

III. Comments on Grants for Economic Development Activities in Communities That May Be Affected by the Construction and Operation of These Transmission Projects

ACEG appreciates the IRA's support for local economic development activities for communities that may be affected by the construction and operation of large-scale transmission projects. As explored in ACEG's recently released paper, *Recommended Siting Practices for Electric Transmission Developers*,[17] communities where infrastructure is sited must live with the impacts of the transmission lines, and the idea that the project will contribute to national goals may not sufficiently mitigate the impact of these projects.

[15] Examples of potential training subjects include: specific infrastructure and engineering considerations related to transmission, infrastructure cost analysis, latest in transmission technology, reconductoring versus building new, analyzing a cost benefit analysis for transmission, alternative siting options, minimizing visual and landscape impacts, fostering effective community engagement, cultural competency training, environmental justice training. Because siting authorities may lack resources to send their staff to trainings, DOE should consider using a portion of the funding to provide participatory stipends to cover the cost of travel and time spent participating in the training.

[16] As an example of a successful regional partnership, DOE should look to the Consumer Advocates of PJM States, which has a full time Executive Director and consistent funding to help assist state consumer advocates in the PJM states to engaging in market and transmission matters at PJM. In this case, DOE could use the grant money to provide management and technical support to regional partnerships.

[17] Elisabeth Blaug and Nils Nichols, *Recommended Siting Practices for Electric Transmission Developers*, Americans for a Clean Energy Grid (Feb. 2023) (copy attached).

One environmental group cited in the paper noted, "*Societal values are abstract, especially when a person is asked to give up something concrete.*"[18]

Direct or indirect assistance to communities can help promote good will, can build support for a project, can be an effective tool to assist environmental justice communities, and can be an effective way of mitigating potential litigation. Because the costs of developer-funded programs ultimately land on utility ratepayers, DOE's Siting of Interstate Electricity Transmission Line Facilitation program is a helpful mechanism to support impacted communities while limiting the impact of the transmission projects on ratepayers.

It is vitally important that the communities self-identify which activities and programs funded by DOE would benefit their communities. Another factor to be considered is that impacts and needs associated with development may not arise until after the project has been put into service, so there may be a benefit to allocating some resources to community support after siting and permitting, and even construction, has been completed. That said, many communities, especially those with the greatest needs, do not have the resources to investigate and apply for federal funding; nor do siting authorities, or other state, local, and Tribal governmental entities have resources to invest in developing individual funding application protocol and processes or to manage the funding.[19] Additionally, it is important that DOE deploy the funding in an equitable manner.

Based on these considerations, ACEG encourages DOE to develop a formulaic funding approach to reduce the burden on communities that would benefit from the program and the siting authorities, or other state, local, and Tribal governmental entities that will be managing the funds. Such a funding approach should be based on a simple application and fund management process and could:

- Be based on a dollar per project mile formula with additional consideration if impacted communities have been identified as an environmental justice community or contain culturally significant resources. DOE should automatically reserve pots of funding as eligible projects are identified based on the projected length of the line and the number of communities that may be impacted by the line. Although the IRA limits *disbursement* for economic development activities: (1) to a

[18] *Id.* at 10.

[19] *See, e.g.* Exec. Order No. 14091 § 5, 88 Fed. Reg. 10,825 at 10,830 (Feb. 16, 2023)("Underserved communities often face significant barriers and legacy exclusions in engaging with agencies and providing input on Federal policies and programs that affect them. Agencies must increase engagement with underserved communities by identifying and applying innovative approaches to improve the quality, frequency, and accessibility of engagement.")

siting authority upon approval of the applicable covered transmission project and, (2) to any other state, local, or Tribal governmental entity upon commencement of project construction,[20] the law contains no limitations on when DOE can make the *determination* that funding will be available. As such, DOE should consider designating funding as soon as an eligible project applies for siting authorization, with disbursement conducted pursuant to the IRA guidelines;

- Leverage existing relationships with impacted communities to make them aware of the funding opportunities (e.g. recruit environmental justice groups to share the information, integrate information sharing into existing developer or siting authority engagement processes);

- Support innovative community partnerships to help finance the development of transmission lines;[21]

- Provide for the communities to elect either periodic or lump-sum funding as project needs may vary and the siting and permitting timing is unknown;

- Allow for communities to elect which phase of the project the funding will be used (e.g. during construction or after the project is finished).

[20] IRA § 50152(c)(3).

[21] For example, Southern California Edison recently entered into a financing arrangement with the Morongo Band of Mission Indians through which the Tribe has the option to finance a portion of a building a replacement transmission line in exchange for the benefitting from the capacity rights of the line. This arrangement was modeled after Citizen's Energy Corporation's partnership arrangements where Citizen's Energy partners with utilities to build energy infrastructure and returns a portion of the profits to the communities impacted by such infrastructure. More information on both of these arrangements is available in the ACEG webinar: Transmission Time: Innovative Partnerships for Accelerating Transmission Buildout (Sept. 29, 2022)

IV. Conclusion

ACEG again commends DOE for seeking stakeholder input on ways to improve the Siting of Interstate Electricity Transmission Line Facilitation program and encourages DOE to consider and incorporate the recommendations provided herein.

Sincerely,

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AMERICANS FOR A CLEAN ENERGY GRID

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Recommended Siting Practices for Electric Transmission Developers

Americans for a Clean Energy Grid

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About This Report

Infrastructure siting, including for transmission, has a long and complicated history with well-publicized examples of poor community engagement and bad faith dealings with landowners that have engendered mistrust and skepticism about developers' motives. Such dealings, and the stories of such dealings, generate opposition to transmission lines that can slow down and increase costs of projects. But there are also many examples of developers who are committed to fair dealing and who approach landowners, communities, and tribes with respect—examples that have led to the successful construction of transmission lines needed to improve reliability, resilience, and access to diversified generation sources. In furtherance of its mission to educate all Americans to the critical importance of expanding, modernizing, and integrating the high-capacity transmission grid, ACEG is issuing this paper as a starting point for longer conversations on practices that can help build trust and establish successful relationships that facilitate and expedite transmission siting.

ACEG contracted the expert services of **Elisabeth Blaug and Nils Nichols** to draft this paper as both their professional and personal experience with siting infrastructure gives them considerable insight into the complexity of siting transmission. Both Ms. Blaug and Mr. Nichols served as attorneys at the Federal Energy Regulatory Commission, where they addressed, among other things, permitting and siting issues for natural gas facilities. Further, as a landowner in West Virginia, Mr. Nichols has had numerous interactions with energy infrastructure developers, including developers of electric transmission lines. Mr. Nichols founded and led a large landowner group where he successfully negotiated natural gas leases with favorable landowner provisions.

Ms. Blaug and Mr. Nichols developed this paper by interviewing a diverse set of stakeholders and interests including landowner representatives, representatives of tribal governments, federal and state regulators, utilities and transmission developers, and environmental groups, and by sharing the first draft with an even broader group for their review and input. ACEG thanks all of the organizations and individuals who assisted in the development of this paper by willingly providing their time and expertise and speaking candidly on this highly sensitive topic.

Introduction

New and upgraded high capacity electric transmission lines can extend over hundreds of miles, cross multiple states, and impact a diverse set of governments, communities, and landowners. The siting choice determines who may be potentially affected and whose acceptance of the line is important to the success of a project. This paper is a first step at identifying practices developers should consider when siting a transmission line and engaging with tribal governments, community groups, and landowners with impacted property or interests and with the people and communities located in the vicinity of a project. Specifically, this paper discusses:

1. co-locating transmission in existing rights-of-way;
2. fundamentals and recommended practices to establishing successful relationships with landowners and impacted communities;
3. specific considerations when working with tribal governments and communities and environmental justice communities; and
4. compensation strategies for use of landowner property.

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1. Executive Summary

The North American high capacity electric transmission system must be modernized, expanded, and improved,[1] but there are significant impediments to timely building lines, including a decentralized siting and permitting process with different state and local siting requirements and potential public opposition to the construction of new and upgraded high capacity electric transmission lines and associated facilities (transmission lines or transmission facilities). Project developers on one hand, and landowners and the broader public on the other hand, must successfully engage if the needed projects are to be built.

This is a challenging task. Proposed transmission lines can engender strong opposition, whether because of the visible nature of the facilities or because of potential or perceived environmental, cultural, social, or other impacts. Opposition might also be driven by historical instances in which the public has been excluded from the decision-making process, or only given superficial opportunities for input.

As to the decision-making process, infrastructure development generally proceeds with the developer identifying the need for the project, often in concert with regional transmission planning processes or state energy goals, and then proposing what it considers to be the best way to meet that need. The developer determines the design for the project, the route, and the schedule. Broadly considered, there are legitimate reasons for this process. While the project must serve a valid public purpose, it has traditionally been the purview of the developer who will fund, construct, and operate the project to identify such need and ensure that the project is a sound business decision. The design and route may be dictated by the location of generation, load, and interconnections, as well as technical, reliability, and economic requirements. The schedule may turn on the development of generation resources or the completion of other projects. All of these decisions depend on data that developers traditionally own or have access to.

There are also valid reasons for public dissatisfaction with the traditional model of decision-making. Landowners from whom easements are required must allow the use of their property for a project they did not request, may not want, and may not see the benefit to or believe is needed. Impacted landowners, communities, and government may have suffered, or may believe that they will suffer, adverse consequence from the diminution of economic, scenic, cultural, and environmental values, and monetary compensation may not adequately counterbalance this loss. Compounding these fears are historical, and some developers' current, practices by which certain governments, communities, and landowners have limited influence over the decisions that will affect them. From the viewpoint of residents and communities affected by the project, these issues can add up to viewing a transmission line as subtracting rather than adding to their lives.

There is no villain in this story.

However, there are multiple and complex interests that must be addressed and reconciled to

facilitate the addition of new transmission lines. As the proponent of projects, it falls to developers to take the lead. Although legislation[2] and regulations[3] have been proposed to address some of these issues, it is important to note that transmission developers have actively and voluntarily cultivated positive practices for working with landowners and communities.

It is those positive practices that this paper aims to explore — in particular practices for engaging with governments, communities, and landowners that will also benefit transmission developers that are building the project and more broadly serve all project stakeholders including electricity consumers for whom the project is being built.

"The greater good resulting from a project is not at the forefront of people's minds when they must live with the transmissions lines for a hundred years." – State Utility Regulator

Early and Consistent Engagement

Developers should engage affected governments, landowners, and communities early and throughout the life of the project — even after completion — so they can stay informed and have opportunities to provide meaningful input.

- Cultivate support by meeting with local officials and community leaders who can share community concerns and provide a direct line of communication to landowners and the public.
- Timely disseminate information on issues of concern such as route selection, potential property value impacts, which landowners/land users may be eligible for compensation and how that value will be determined or negotiated, the construction timeline, potential health and safety issues, and the regulatory approval process.
- Timely inform stakeholders about the need for, and the benefits of, the proposed facilities, including: a more resilient and reliable energy grid, increasing the generation mix to meet policy goals, and access to lower cost power.
- Foster regular interactions to keep impacted governments, communities, and landowners informed and to assess and address any potential concerns, including, for example, by modifying project specifications or routes to minimize community or property impacts or providing explanations for why modifications are not appropriate.

"The more time you spend engaging with the public, the less time you spend litigating." – Federal Agency

Treat Communities and Landonwers Fairly and Respectfully

- Project representatives should be professional and knowledgeable and should listen and respond respectfully to community and landowner questions and concerns.

- Representatives should be trained to ensure that their actions reflect the appropriate skills and ethical values.
- Maintain a consistent community point of contact throughout the planning, construction, and post-operational stages.

Tribal Government Consultation and Tribal Community and Environmental Justice

Be sensitive to the needs of tribal governments and communities, and environmental justice communities and incorporate those needs into project development.

- Use appropriate tools to identify potentially affected tribal governments, tribal communities, and environmental justice communities.
- Identify leaders who can provide trusted voices and assist with the identification of community needs and listen and respond to those needs.
- Tribal government engagement must reflect the tribes' status as sovereign nations with individual governmental structures, decision-makers, cultural norms, and business practices.

Landowner Compensation

Affected landowners are partners in the project - consider compensation strategies to demonstrate the value of that partnership.

- Be flexible and innovative in compensating landowners and listen to landowners' concerns and suggestions for how to compensate for the infrastructure impacts.
- Consider different payment models for landowners along the route including: periodic payments; royalties; indirect benefits; structure payments; and also consider proximity or "good neighbor" payments for landowners whose property is near, but not on, the proposed route.

2. Background

We must expand, modernize, and more fully integrate the North American electric transmission system. Modernization is essential to improving the reliability and resiliency of our power supply and the grid. Electricity is an essential service and the ability to function as a society and an economy is directly dependent on reliable electricity, yet the grid is constantly at risk from natural events, cyberattacks, and other stressors. Transmission expansion can relieve overloading and provide access to diversified generation resources, minimizing grid strain that leaves it vulnerable to weather events and other shocks.

Additionally, policy choices and economic, environmental, and technical considerations, have made it imperative that the network be designed to incorporate increasing amounts of new renewable energy into the generation mix. Because most higher quality renewable resources are located far from load centers, transmission capacity must significantly increase; according to an Energy Systems Integration Group report, numerous studies conclude that a reliable power system that depends on high levels of renewable energy will require a doubling or tripling of the existing transmission system.[4]

Modernizing and expanding the grid faces significant challenges, including a fragmented regulatory process which primarily requires authorization at the state or local level, with federal approvals required in some cases.[5] Adding to this difficulty is public opposition which can delay the siting and permitting approval processes, thereby increasing costs that are ultimately borne by consumers and potentially even leading to project cancellation.

3. Landowner Concerns Regarding Electric Transmission Lines

Local efforts to oppose large infrastructure projects is increasing as, among other things, the country becomes more densely populated and land use assumes greater and greater importance. Proposed transmission lines in particular are frequently delayed for months or years as a result of public opposition, driving up costs to developers and, ultimately, to consumers.

The causes of public opposition are myriad and complex and should not be dismissed solely as NIMBYism (Not in My Backyard). Among other factors, there is a history of distrust between landowners and developers. Some of that distrust results from the inherent conflict between competing interests, but some can be attributed to past practices that have not been inclusive or well considered, and that have not reflected the interests of landowners or impacted communities. Overcoming or reducing that distrust is important to minimizing public opposition.

"Some project developers live in a bubble and seem oblivious to the fact that their interests conflict with the interests of landowners." – Environmental Group

While each project has unique challenges, there are certain issues that are common to proposed transmission lines. These concerns typically center on: potential diminishment of property values; aesthetic concerns; potential health impacts; potential environmental impacts; opposition to eminent domain; a desire to reduce the visibility of transmission lines by burying them underground; the use of alternatives such as conservation to negate the need for the project; potential harm to the local economy; and a lack of local benefits.

"Eminent domain vastly changes the relationship dynamic between a developer and a landowner; the landowner knows they can be taken to court. This is why developers have to find common ground on compensation. We are out to NOT use condemnation." – Private Transmission Developer

Underpinning many landowner concerns is the inherent imbalance of power due to developers having the right to request the exercise of eminent domain and the traditional nature of the infrastructure decision-making process. The right to eminent domain refers to the governmental power to take private property for public use so long as the landowner is provided just compensation.[6] Eminent domain is often a highly litigious and contentious process,[7] and just compensation under the law may not be regarded as adequate compensation to the landowner whose property

is taken. Stakeholders from all sides agree that the primary goal for developers should be to site projects without using eminent domain. Even though eminent domain provides greater certainty in the short run, in the long run it creates discord and increases social and monetary costs.

With respect to the decision-making process, broadly speaking, development of transmission projects often follows a model in which the project developer, often in cooperation with regional planning processes or in alignment with state energy goals, identifies the need for the project and proposes a way to meet that need. The developer determines the design of the project, the route, and the schedule. The public, writ large, may engage through the regulatory approval process, which is often complex and requires substantial resources, and sometimes through meetings and presentations arranged by the developer. For landowners and affected communities the traditional process is often deeply unsatisfying because they are asked to participate only after key decisions have been made. This is significant because:

> "Researchers have found that the perceived fairness of decision-making and public-participation procedures can have an equal or greater impact on participant satisfaction than the substance of the decision. Key attributes of processes that meet procedural justice goals have been identified by researchers as follows: participants are able to express their views and influence outcomes, decisions are justified and rational, information is accessible, participation is open to all stakeholders, authorities are unbiased, multiple interests are satisfied, and there is sufficient feedback to participants."[8]

Landowner distress over their role in the decision-making process can be amplified if the developer is a for-profit entity (regardless of whether it is privately-held or publicly-traded), which is usually the case with transmission projects. The perception is that a distant entity has contrived a plan to use private land to the detriment of its owners for the developer's financial gain. This issue especially comes to the fore if the use of eminent domain is a possibility. Recognizing that there are challenges to doing so, developers should be thoughtful about ways to engage landowners in the decision-making process. Ultimately, the opportunity for public involvement is most meaningful if it is conducted prior to and during the process of developing the site plan while there is time for public input to shape those plans. This can create trust in the decision-making process and gain acceptance for the result, even if there is otherwise disagreement with the outcome.

"As someone who represents landowners, I see the unwillingness of developers to entertain route alternatives. They come to the process of landowner engagement with a cake that has been baked and then seek input on how much butter, flour and sugar should be used. By then it is too late. To believe in engagement, people must believe that it can lead to meaningful results."
– Energy and Environmental Attorney

4. Co-Location in Existing Rights-of-Way

One potential option to minimize the impact of siting projects is to co-locate the proposed facilities in existing rights-of-way, such as existing electric or gas transmission routes, or alongside highways, railroads, or drainage ditch setbacks. Developers of linear infrastructure projects, including electric transmission lines, natural gas pipelines, and liquids pipelines, routinely seek to co-locate facilities in existing rights-of-way where feasible.

While these efforts have been successful in some cases, there can be practical, operational, safety, financial, and/or legal impediments that prevent co-location. There are some promising developments, however.

Twenty years ago, Wisconsin passed legislation (Act 89[9]) that opened up highway and railway rights-of-way for transmission development. Since then, Wisconsin has sited 26 transmission projects in highway rights-of-way, including eight projects in interstate rights-of-way. The most significant of these was the Badger-Coulee transmission line that uses 100 miles of the Interstate 90/Interstate 94 corridor. Similarly, the Infrastructure Investment and Jobs Act (IIJA or Bipartisan Infrastructure Law) also added "maximizes existing rights-of-way" to the list of criteria the U.S. Department of Energy (DOE) may consider when designating a transmission corridor in the national interest.[10]

Like highways, rail corridors provide another opportunity to co-locate transmission with existing infrastructure. However, railroad rights-of-way are historically private property that is accessible through easement or licensing agreements between single counter-parties – agreements that would benefit from developers engaging in open and transparent communications and fair negotiations. Keeping safety as the top priority, underground HVDC can be hosted in a relatively small space with minimal impact on train operations or communications. For example, the SOO Green HVDC project, designed to bring renewable energy from Iowa to Illinois, proposes to run about 350 miles along rights-of-way belonging to multiple railroads, while also addressing the interests of adjacent landowners and affected stakeholders with negotiated good neighbor agreements.

"Expanding high voltage electric transmission facilities within rail pathways could prove instrumental in bringing greater amounts of remote renewable resources to market. Railroads can contribute to the expansion and integration of the nation's electric grid and the exploitation of its vast clean energy resources, without negatively affecting safety, operations, or other appropriate uses of the real estate." – Transportation/Energy Coalition

In 2021, the U.S. Department of Transportation (DOT) issued guidance[11] to encourage greater use of existing highway rights-of-way for transmission siting. Furthermore, in order to make effective use of IIJA funding designated for

the build out of zero-emission transportation infrastructure, the DOT signed a Memorandum of Understanding with the DOE to create the Joint Office of Energy and Transportation.[12] The Joint Office is tasked in part with "constructing high-voltage . . . transmission pilots in the rights of way of the interstate system." Most recently, the April 2022 *NextGen Highways Feasibility Study* for the Minnesota Department of Transportation[13] reaffirmed that that in certain instances co-locating transmission in highway rights-of-way can be cost-effective.

Not only can co-location benefit landowners, but it can lower costs and shorten build times for developers. For example, when MISO, the regional transmission planner for many of the midcontinent states, developed the first tranche of its Long-Range Transmission Planning Portfolio, a key consideration in selecting final solutions was the ability for those solutions to use existing system rights-of-way.[14] MISO notes that "us[ing] existing routes, where possible, [] reduce[s] the need to acquire additional greenfield right-of-way. . . enables more efficient development and minimizes the environmental and societal impacts of infrastructure investment."[15]

Its plan underscores that shorter construction and implementation times are indispensable for member utilities to meet demand amid retirements and resource portfolio changes. Although it cannot be used in every instance, co-location, when feasible, demonstrates that what can be good for landowners can also be good for developers.

5. Landowner Engagement

There are various approaches to engaging with landowners and each developer must determine–including ideally by soliciting local feedback–what is appropriate for the needs and circumstances of the project. However, there are fundamental practices all developers should consider.

Engagement is Forever

Engagement spans the life of a project from inception to after completion. Engagement happens not only at public meetings and open houses, but in every interaction related to the project. It ranges from CEO meetings with regulators and local government bodies to construction manager meetings with a shopkeeper whose business will be affected by construction activities. Engagement is constant. It requires interacting with people affected by the project until their concerns are addressed.

Essentials

Certain behaviors are essential to establishing the relationships that create successful engagement: honesty, transparency, and building trust are common themes sounded by developers, environmental groups, and landowners. It is important that developers approach landowners with sensitivity, humility, and with appreciation of the relative equities. Developers should recognize that it is common for landowners to feel that the deck is stacked against them and that they lack a meaningful voice in decisions. To help support good faith and fair dealing with landowners and potentially impacted communities, developers should adopt a transparent community engagement process to provide information about the project, gather landowner and community feedback and concerns, and respond to questions/concerns, and should provide early information about the process and timeline to be followed to potentially affected landowners and communities.

"You build trust through constant dialogue with people and communities affected by a project and by having people in place who can make on-the-spot decisions. That might be the construction manager who can decide to relocate an access road or curtail construction activities on the weekend. Don't just say no to landowner requests. Sometimes moving a tower 15 feet makes a real difference." – Public Utility

Understand the Disconnect

Developers should understand that landowners may not share their enthusiasm for the project or concur with its desirability. There can be a significant disconnect between the parties with developers viewing a project as adding value and landowners viewing a project as subtracting value. The idea that the project will contribute to national goals is often an abstraction, or it may be a goal to which people are hostile. At a minimum, landowners may view the proposed project as

an unwanted intrusion into their lives, or one that negatively affects their property values and diminishes or destroys other important values.

> **"Developers should realize that landowners view the benefits of a project as diffuse and ephemeral. Societal values are abstract, especially when a person is asked to give up something concrete. To compensate, developers should have a significant ongoing presence in impacted communities. They should invest in what local people want, whether that is athletic fields or job training programs." – Environmental Group**

Select the Right People

Selection of the right people to be the face of the project is extremely important. Many traits are needed: people who are deeply knowledgeable about the project; who are engaged listeners; and who can empathize and relate, but not pander. The people that are the face of the project should genuinely be involved in the decision-making process, or in the alternative, the developer should establish a transparent method for how information gathered from the community will be shared upward with project decision-makers.

It is valuable to have voices that are familiar to the community and that are trusted. It is especially helpful to hire a local person as the outreach coordinator and to have a local office with a local phone number so people can stop by or call when they feel the need.

Dedicated Community Engagement Employees

Developers should consider having employees who are solely dedicated to community engagement. The community engagement employees should be included in the developer's decision-making process. Ideally, they will have extensive experience working in the affected communities.

One frustration that landowners voice repeatedly is having to deal with numerous developer employees and contractors. This can lead to many problems, including inconsistent information and the failure to adequately respond to landowner questions and concerns. Having a consistent point of contact is vitally important, but even more so when dealing with an especially sensitive matter, for example, such as crossing a state or national park. Developers should offer a single point of contact for the duration of the planning, execution, and post-construction phase of the project; to the extent a contact leaves the company, new contact information should be provided to the landowners and impacted communities as soon as possible.

> **"One of the best things we did was hire a trusted voice to engage with landowners. He is from the area, is well-liked, knows the local issues and politics, and has decades of experience working with communities in the region." – Public Utility**

"A land agent usually makes the initial contact with a landowner. Sometimes the land agent changes every few weeks. Other representatives, sometimes from the company and sometimes from contractors, also come to see us. Each person tells a different story. We end up not knowing what to think or believe." – Energy and Environmental Attorney

"We could not be certain of the exact area or which landowners would be affected because the specific route hadn't been determined. Our CEO went on the road and met with county commissioners along the likely route to explain the project and to address matters of interest to the community." – Public Utility

"Public engagement is like operating a political campaign quick response team. We monitor the media, digital and otherwise, to see what is being said. We let project employees and contractors know how to respond to these comments." – Transmission Developer

Landowner Bill of Rights

In its December 15, 2022 Notice of Proposed Rulemaking on Backstop Siting Authority, discussed below, the Federal Energy Regulatory Commission (FERC) proposed to require that developers provide landowners with a Landowner Bill of Rights that informs landowners of their rights in dealing with developers. Developers may wish to consider this concept for their projects. Topics might include information on the right to receive compensation; the right to access information about the project through, for example, a website; the right to participate in public meetings; and the right of a landowner to hire their own appraiser. Additionally, as many landowners cannot afford their own appraisers, companies should consider offering to fund a third party appraisal as part of the bill of rights.

Engagement Outreach Timing is a Balancing Act, But Earlier is Better

To ensure landowners have a voice in the decision-making process, developers should consider conducting outreach to local communities as soon as practicable. The decision of when to commence outreach will likely be guided by a number of factors, such as the relevant siting laws, whether a regional transmission organization has approved the project, and whether the project design is sufficiently advanced. Outreach should not be an afterthought; rather, an outreach process should be built into the project from the start and the developer should establish an outreach plan and timelines, even if not required to do so by the siting, permitting, or certificate application processes.

Meetings With Local Officials

Outreach typically takes place on multiple levels.

Developers should consider meeting with county commissioners and other officials along the proposed route at an early date, as they can provide a direct line of communication to the local community. Developers may also want to engage public relations teams to provide education and information on the project through the media and other resources.

Public Meetings

As noted, local opposition to transmission lines tends to involve issues such as impacts to property values, concern over potential health impacts, a desire to have the line buried, need for the project, and a lack of local benefits. Developers should consider convening public meetings or other interactions with local communities and landowners as early as practicable. Public meetings may also be required as part of permitting processes or certificate applications in certain jurisdictions. Public meetings of any kind can be a forum for developers to hear community concerns, provide initial thoughts on how to mitigate adverse impacts, and invite public input into how to minimize and mitigate adverse impacts. Once the areas of concern are understood, developers can convey relevant information and dispel misinformation and rumors.

For example, if the project runs through an area where burying transmission lines is not a viable option, developers might use the community meetings to provide transparent explanations for why that is so, including by providing relevant data on the comparable cost, legal and technical obstacles, and the environmental effects of burying lines. If health is a concern, there is credible research demonstrating there are no substantive health issues related to high-capacity lines at levels generally encountered by members of the public.[16] However, as the impact of a transmission line, including the impact on property values is highly fact and location dependent, it is important for the developers to listen to and address the concerns of the communities at issue rather than responding with generic missives. A well-coordinated and early effort to address landowner and community concerns and questions is key to minimizing potential opposition and is important to building critical trust and comfort, and a higher level of support for the project. People want to have a voice in the process.

"Find the sweet spot. Provide information early enough for landowners to know they might be affected, but not so late that there is no time to change the project.

Be Smart From the Start. Developers need to be transparent and engage with landowners before decisions are made. Set up a collaborative process to provide information. Engagement while there is time to shape the project is everything." – Policy Think Tank

1. Engagement Timing, Location and Number of Meetings

When not otherwise prescribed by public process requirements, determining the point in project evolution to hold public meetings may be more of an art, and it can be informed by input from trusted and knowledgeable local stakeholders. The most useful public meetings are timed so that

the project is far enough along that meaningful information can be shared with the public, yet early enough that the public can contribute to the process. Meetings should be held in accessible locations that, where possible, are located within the community; for example, holding the meeting in a community space is more favorable than a corporate boardroom in a different city. Consideration should be given to convening online meetings or meetings with call-in options as they can be held regardless of weather and without the need for travel. Developers should consider scheduling multiple meetings at different times of the day to accommodate community members with varying employment schedules and family responsibilities. If the meetings are in areas in which many people live whose native language is not English, attempts should be made to provide meeting notices and meeting content in languages that reflect the needs of the community, and interpreters should be available. Further, meetings should be designed with disability access including, for example, closed captioning or sign language interpreters. Consider how the meeting is publicized. Fewer people rely on printed announcements, such as in newspapers. The best option is likely a variety of print, online, and other options.

2. Meeting Format

Many developers will choose to hold informational meetings to introduce the public to the project and start answering questions. One approach is to follow a general meeting with smaller stations staffed with developer representatives who can address discrete aspects of the project in detail. All public input provided during a meeting should be noted and taken back to company representatives.

"My organization represents landowners. Developers should be aware that perception is everything. I attended a public meeting in which the developer showed up with the regulators, sat with them during the meeting, and went to dinner with them afterwards. The public walked away believing that the process was stacked against them." – Environmental Advocacy Group

Dissemination of Information

The timely dissemination of understandable and accurate information is essential because people may have limited experience with transmission lines or may have had negative experiences from the past construction of transmission or other infrastructure. In some cases, contacting landowners and other stakeholders may be required for state or federal permitting processes, though the processes may set the floor, rather than the ceiling, for the information to be shared.

Developers should ensure that landowners have access to information that allows them to understand pertinent topics. Why is the project needed? Why can't the transmission line be buried? How will the project impact property values? How will it impact health and safety? How will it impact the environment? How was the route chosen? What are the local benefits? What are the public benefits? The answers to these questions, and many others, need to be presented early and often. Developers should consider offering trusted sources of information, including

by engaging local experts and universities, for these education efforts, and should ensure that information is provided in the native language(s) used in that community.

"Discuss matters in laymen's terms. Most people don't understand the technical issues or the regulatory processes involved with transmission permitting and siting. Speaking plainly can help avoid the perception that the developer is trying to pull a fast one." – Environmental Group

1. Websites

Websites have become an essential element of public engagement. In addition to content, a website can provide links to resources that:

- demonstrate need for the project,
- show what alternatives were considered and state why the developer thinks those alternatives were not viable or preferred,
- illustrate the project route and any alternative routes under consideration,
- demonstrate construction techniques such as waterbody crossings or tower construction,
- contain meeting minutes including a written log of feedback provided by the community,
- describe the regulatory approval process, and
- address frequently-asked-questions.

Websites can also be used to provide practical information, such as meeting schedules and contact information for personnel who can answer questions. The outreach team should have a dedicated hotline and email address to which inquires can be directed. Websites may also be used to collect public input on issues relevant to the project.

2. Fact Sheets

Fact sheets that summarize information can be a valuable resource for landowners.

- A frequently-asked-questions fact sheet can cover many basic topics, including the identity of the developer, the project route, how to obtain more information, and contact information.
- A landowner compensation fact sheet can explain who is eligible for compensation, what compensation is being offered, how the compensation is calculated, payment options, and the timing of payment(s).
- An easement fact sheet can describe what the developer is seeking, the width of the easement, what uses the landowner can make of land during and after construction, and where any route maps, including interactive maps, can be found.
- A construction fact sheet can explain the timeline for construction, potential community impacts of construction (e.g. noise, traffic, etc.), and the company's plans to mitigate construction impacts.

Other fact sheets might describe the regulatory approval process and provide a copy, if relevant, of the developer's project code of conduct. Each fact sheet should include details on who to contact for more information.

3. Other Information

Developers may also find it useful to provide detailed information about other aspects of the project. This might include information about why the project is needed (e.g., the electricity will be used to meet growing demand or will displace higher cost generation). If possible, it should be demonstrated how the project will benefit the regions through which it will pass. Even though electricity may not be provided directly to an area, it may nonetheless provide benefits by lowering costs in the broader region, by increasing grid reliability, and by reducing regional air emissions. This information should explain why alternatives such as distributed generation or conservation efforts will not change the need for the project.

Demonstrate How the Route Was Chosen

How the proposed route is selected is often an issue of concern and controversy, and the process of route selection is typically opaque to landowners. If the public is not consulted about the route, then members of the public may conclude that the developer did not consider local input or that a better route could have been developed. Removing the mystery from this process is very important, and early engagement with landowners and impacted communities, before the route is determined, or at minimum when there are options and they can still be part of the process, is one of the easiest ways to gain support for, or at least reduce opposition to, a project. Each developer has its own process for planning the proposed route—GIS technology is commonly used to create layers of land use, topography, and other values to guide route selection. However, developers could benefit from opening this process to local voices, ideally during the route selection process, but certainly while there is still time to make route changes.

"Invest in a sophisticated communications team – this will reduce opposition and you can focus on the addressing the concerns of holdouts." – State Utility Regulator

Early consultation benefits all as it facilitates community input and investment into the project, and it can help control costs as changes to the route can become more costly the further the project gets to the implementation stage.

Developers can do much to alleviate concerns by implementing a process of walking interested people through the route selection, perhaps in sessions in which individuals sit down with the planners and work through the options on a screen. These sessions should be used as a give and take: developers can hear suggestions for how to locate transmission lines along property lines or across certain fields to reduce impacts to landowners and can also use this opportunity to explain their choices and potential impediments or barriers to making recommended changes. Developers and landowner and community representatives can also discuss how the project was, or could be, designed to minimize visual and environmental impacts, including, for example, maximizing routing through brownfield areas to the extent that does not disproportionately affect environmental justice communities.

Bring the Project to Life

Developers can help landowners increase their understanding by illustrating or bringing proposed projects to life. A developer may include on its website an interactive mapping component that allows users to locate the proposed facilities in relation to specific properties and other physical features. Satellite imagery can be used to show how regions have grown in population, thus creating additional demand for electricity and necessitating grid expansion. That imagery, along with GIS technology, can also be used to demonstrate how routing alternatives are or are not feasible. Videos, including those taken by drones, are useful for putting a route into perspective. Videos that demonstrate how transmission towers are constructed and lines are strung from tower to tower can minimize fears about project construction and safety. A reliability fact sheet can demonstrate how the project will improve grid reliability and why this is important to local citizens.

"At meetings we have a table where we use Google Earth to demonstrate the project route. People often come away understanding why the route is located where it is." - Public Utility

6. Land Agents

How developers' representatives engage with the public impacts the likelihood of success of a proposed project. Within a company, and certainly in the use of contractors, employees may have different bodies of knowledge about the electric transmission industry and about the specific project. It is important that representatives engaging with landowners on behalf of the developer be able to speak accurately, authoritatively, and consistently. Training can be essential to making this happen. As noted, certain issues and questions arise repeatedly in connection with proposed transmission lines, while others are unique to the project. Everyone on the team, including contractors, should be able to provide full and accurate answers to those questions and concerns.

> **"There is often a disconnect between what developers believe their land agents are doing and what the land agents are actually doing. Deception and high-pressure tactics are routine. Land agents often lack even basic knowledge about the project." – Environmental Group**

Among other things, team members should have a thorough understanding of the purpose and details of the project, how the route was selected, the broader context in which the project will provide benefits (e.g., reliability), the details of construction, health, safety, environmental impacts, and the regulatory approval process. Media and in-person contacts should be monitored so that new questions and issues can be immediately identified and appropriate responses can be disseminated among public-facing employees. This training should be repeated at intervals, especially as new issues arise, and if new employees join the team.

Land Agent Training

Developers should ensure that their land agents, also referred to as "landmen," possess the appropriate skills and ethical values to build strong relationships. The American Association of Professional Landmen defines a land agent as the "public-facing side" of an energy company who interacts and negotiates directly with landowners to acquire property rights.[17]

Some developers may have in-house land agents, but it is common to engage land agents on a contract basis, often through companies that specialize in this work. Given their role in acquiring easements, land agents are often the direct face of the project to landowners and the broader community. Land agents tasked with acquiring an easement may have many meetings and form a complex relationship with the landowner. The success of this engagement between the land agent and the landowner often determines success or failure in obtaining the necessary easements so it is essential that land agents be knowledgeable and ethical. For example, if a project crosses farm land, it is important that the land agent understands farming and the values of farmers.

Hire Well-Respected and Experienced Representatives for the Projects

Developers should hire land agents from highly reputable companies who provide contractors with experience specific to electric transmission lines. Another option is to select company employees to serve in this role if sufficient internal resources are available. For larger projects this may not be possible given that engagement with even a single landowner can be very time-consuming.

Compensation for Land Agents and Quality Control

The compensation scheme for land agents should be evaluated. If there is a financial incentive (through bonuses or otherwise) to acquire easements as inexpensively as possible, adverse consequences may result. Developers may consider pairing the land agent with a company representative at least periodically to ensure quality control. At a minimum, land agents should memorialize discussions with landowners and report on a regular basis.

"Our company regularly acquires land for new projects and land agent are our main point of contact with landowners. We contract for land agents from a company we use on a regular basis – that company trains the agents and when they come to us they receive additional training. We also have a project code of conduct that the agent must know – including signing an attestation that they have reviewed and familiarized themselves with the code – and then adhere to in their dealings with landowners. Every week we do a short, additional training that focuses on the latest variation in frequently-asked-questions. We have been very successful in obtaining easements by negotiation." - Private Transmission Developer

"As a lawyer in a rural area through which a transmission line was built, I had contact with various land agents, one of whom approached my client (Billy) about an easement for a transmission line that would twin an existing high-voltage line. Billy owned a long, narrow tract of ground. The doubling of the 200-foot right-of-way would require Billy's house to be demolished and diminish the value of his land. The land agent offered compensation that was less than Billy had spent to build his house 10 years before. The land agent explained that the number had been set by the CEO of the developer (a large investor-owned utility located in a distant city) and couldn't be changed. If Billy didn't take the offer, eminent domain would be used to take his property at less than the land agent's offer. I met with the land agent and presented a number that fairly reflected the value of what was being taken; the number was four times the land agent's offer. The land agent reiterated that the decision was set in stone, but agreed to see if there was 'flexibility.' We agreed to meet a week later. The next morning the land agent showed up at Billy's door with an agreement that doubled the original offer. Billy immediately accepted. The land agent had read Billy like a book. As Billy explained to me, the deal wasn't fair but he was afraid the CEO might change his mind and that he wouldn't get a fair deal in eminent domain because the company controlled the process."

– West Virginia Attorney

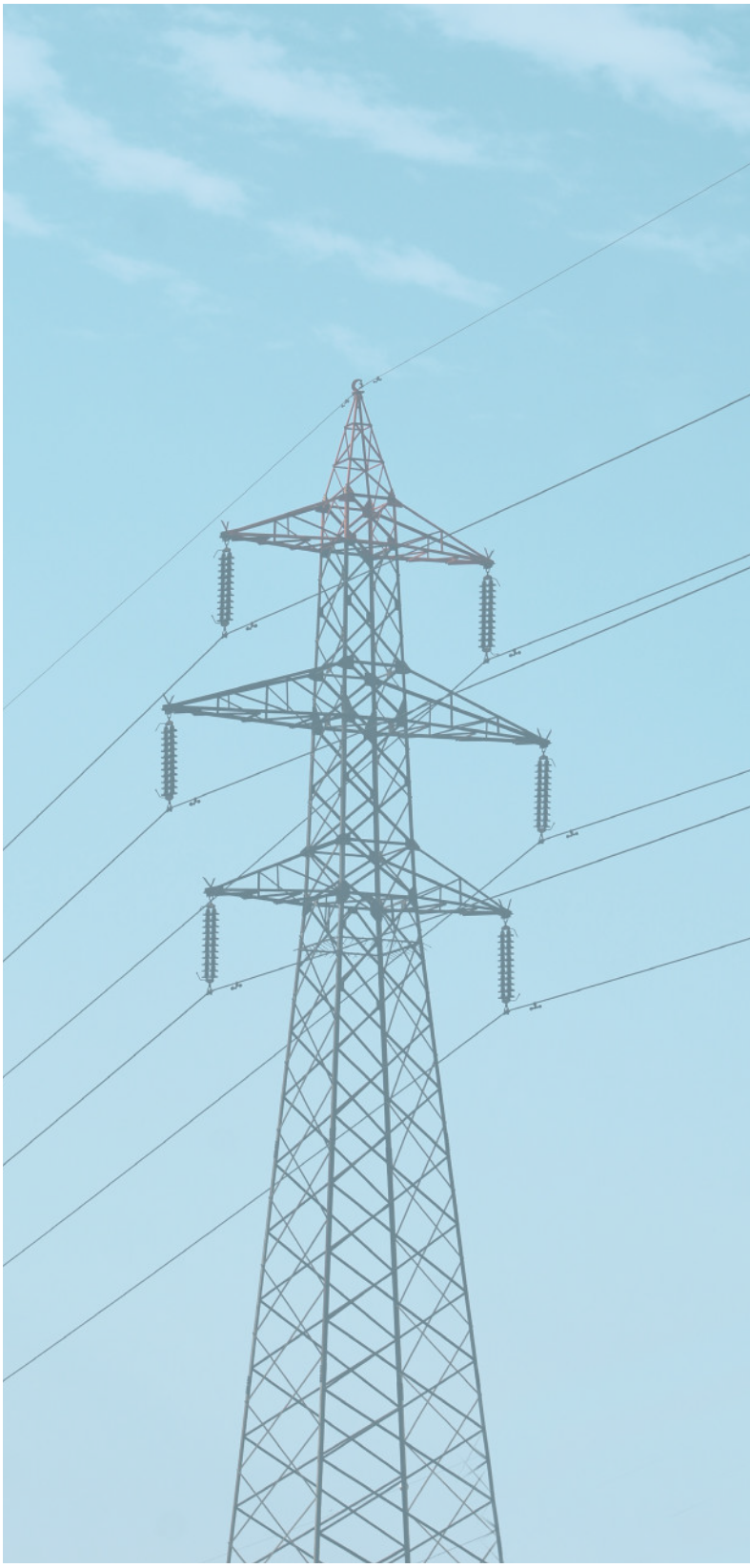
7. Code of Conduct

Companies typically have a code of conduct to guide their business practices and the activities of their employees and contractors. ESG metrics (Environment, Social, and Governance) also shape company activities. Having a code of conduct that is tailored to a proposed project may be a valuable way to focus company values. The code of conduct should apply to all company employees and representatives involved with the project, including land agents and subcontractors. The expected conduct should be spelled out in detail and in plain terms. Training should be provided and reinforced by follow-up training as necessary. Developers may wish to publish the code of conduct on the project website and perhaps even distribute it to landowners.

FERC's December 15, 2022 NOPR proposed an Applicant Code of Conduct that identifies a number of measures a developer may wish to follow to promote trust and fairness in landowner communications.[18] These include:

- keeping a communication log to memorialize discussions with landowners;
- providing the landowner with a document that describes the landowner's property;
- a description of the regulatory process; and
- a map of the proposed route.

The proposed Applicant Code of Conduct also states that developers' points of contact should, among other things, communicate respectfully and avoid harassing, coercive, manipulative, or intimidating communications, or using high-pressure tactics.



8. Tribal Engagement

As many transmission projects run through, or propose to run through, land that has important value to tribal nations, it is important that developers take the time to educate themselves on the historical significance of the land, surrounding areas, communities, and governments that could be impacted by their project and to design appropriate outreach and communication plans.

Due to the complex history of the federal and state governments and private entities with tribal nations, engaging successfully with tribal nations and tribal communities requires a deep understanding of, and sensitivity to, unique considerations of governance and tribal laws and policies, land ownership and use, and cultural interests and languages. Note that federal governmental agencies have specific consultation requirements, outside of developer outreach to tribes. Although developers cannot fulfill the government's consultation obligations, government consultation is also not an adequate substitute for developer engagement. Developers can and should engage tribes meaningfully outside of the federal consultation process.

What is a Tribal Nation?

A tribal nation is the governing body of a Tribe, Band, Pueblo, community, village or groups of Native American Indians, or Alaska Natives. Tribal nations are not "stakeholders;" rather, they are sovereign nations that pre-existed the formation of the United States, and they have both the authority to self-govern and a government-to-government relationship with the other sovereign governing bodies of the United States: the federal government and the state governments. Tribal nations have been recognized as sovereign since their first interaction with European settlers, who dealt with tribes as sovereign nations. Exchanges of land and guarantees of peace were handled by treaty, and since then, hundreds of treaties between tribal nations and the United States have been negotiated by Presidents and ratified by the Senate.

The U.S. government publishes a list of federally recognized tribes—which currently consists of 574 tribes over the lower 48 states and Alaska—each of which "are acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes."[19]

Unlike private ownership of land in the non-tribal world, the United States government has a responsibility, as trustee for Indian tribes, to hold permanent legal title to tribes' reservation lands, with tribes retaining the beneficial ownership rights to those lands. The Department of Interior Bureau of Indian Affairs (BIA) is responsible for the administration and management of lands held in trust for Indian tribes, and individual American Indians and Alaska Natives.

There are also approximately 400 non-federally recognized tribes, and over 60 state-recognized tribes, some of which are also federally recognized.[20]

Each tribal nation establishes its own form of government, either by election of members to a government council as provided in the tribal nation's constitution or by elders choosing the tribal nation's leaders in a traditional process. Because of the differing governing structures it is important to identify who the decision-makers are when interacting with a tribe. Most tribal nations give legislative authority to a tribal council, some of whom are elected.

What Tribal Land May be Impacted by a Transmission Project?

Similar to governance issues, tribal land and ownership of such land is a complex issue. Different categories of land—including reservation land, treaty land, and cultural and historical resources—come with their own attendant legal and consultative requirements. Land may be owned by the tribal government and/or by individual landowners, or communities may have certain rights to use or preserve the land. Developers are encouraged to gather background research on potential complexities before reaching out to tribal government representatives, tribal communities, and Native American landowners.

"Don't assume that avoidance is the correct approach when faced with routing a project across tribal lands. Many times tribes are on the opportunity side of a project and can bring a lot to the table." - Indian Law Practitioner

When determining how tribes may be impacted, locating Indian treaty boundaries is only a first step—developers must also be aware of each

tribe's reservation lands and other original homelands to which tribes retain ongoing cultural and spiritual connections. Although treaties with tribal nations vary widely in their terms and provisions, they commonly include a provision of land boundaries. Though the treaty land boundaries may sometimes include areas designated for hunting and fishing rights, there may also be land designated for such purposes outside the treaty or reservation boundaries. Additionally, tribes may have traditional cultural and religious properties or areas of significance that are located off a reservation.

"Unless a developer has the requisite staff, consider hiring professional expertise to navigate what can be a complex process. This could be a consultant or a member of a tribe with experience in consultation. At a minimum, a developer needs someone with established tribal relationships." – Energy Regulatory Attorney

Developers should also be aware of the history related to the General Allotment Act of 1887 by which certain reservation land was divided up and allotted to individual tribal members. After the death of the original allottee owner, tribal ownership was divided among heirs. As the land passed through each generation, the number of owners grew exponentially, resulting in the highly fractionated ownership of much Indian land today. Indeed, many allotted tracts have hundreds of individual owners. The federal allotment policies ended with the Indian Reorganization Act of 1934, which helped strengthen tribal sovereignty by increasing tribal self-governance and responsibility. Developers must understand the fractionated ownership and the checkerboard nature of land ownership patterns (i.e., trust lands, fee lands, and lands owned by tribes and individuals throughout a reservation).

Some additional issues to consider when developing tribal outreach and consultation plans, include:

1. BIA Right-of-Way Regulations

The BIA has extensive regulations governing rights-of-way over Indian Land which defer to the maximum extent possible to Indian landowner decisions.[21] While the BIA may need to approve a right-of-way due to a trust relationship, certain activities such as surveys of potential rights-of-way, do not require BIA approval. Tribes with an approved Tribal Energy Resource Agreement may grant rights-of-way over tribal lands for electric transmission lines without requiring BIA approval. The regulations otherwise establish numerous detailed distinctions and many specific requirements that are not present in dealing with non-tribal landowners.

It is impossible to catalog the many requirements in this paper, but a few illustrative examples include: 1) rights-of-way for electric transmission lines may not be made in perpetuity (BIA deems as reasonable a maximum term of 50 years); and 2) while assignments of rights-of-ways that are the result of a corporate merger, acquisition, or transfer by operation of law do not require consent and approval, all other assignments, including assignments to affiliated entities or companies, are not automatic.[22]

> "Tribal leaders can change on a regular basis as a result of elections; developers must keep on top of those changes and what they mean for a project." – Indian Law Practitioner

2. Specialized Knowledge

Tribes know what historic, archeological, religious, and cultural significance they attach to their lands; indeed, tribes may have information that is known only to them. Many tribes have belief systems that require the location, and even the existence, of traditional religious and cultural properties not be identified. As mentioned earlier, tribes may also have traditional cultural and religious properties of significance to them that are located off of treaty or reservation lands, but that either require certain environmental or permitting consultations or reviews, or for which reviews are recommended, before infrastructure is built there. Accordingly, developers should consider hiring members of affected tribes to provide support for engineering, archaeological, cultural, and other resources studies. Alternatively, developers may provide funding to tribes for such support. The developer and the tribe should have a funding agreement that ensures an avoidance of actual or perceived conflicts of interest.

3. Tribal Governments May Require Separate Engagement From Impacted Tribal Members or Communities

Tribes are sovereign nations with their own governments and constituencies. Respect their role as such. Consider early contact from your government affairs office (or similar) to communicate with relevant tribal government leaders. Just as the tribe will want to work with the decision-makers in your organization, you need to know who makes the decisions for the tribe. BIA maintains a Tribal Leaders Directory, an electronic, map-based, interactive directory, that provides contact information for each federally recognized tribe and its leadership. Initial contact letters should be sent to all relevant government entities including the tribal leadership, the Tribal Historic Preservation Officer, and any other relevant tribal resource officers.

Developers should establish a proactive consultation plan similar to the one adopted by the Department of Interior.[23] In addition to conducting consultations with tribal governments, developers should also develop and implement a community outreach plan to listen to and address concerns of potentially impacted landowners and land users. Their needs, concerns, and compensation interests may not be the same as those of the tribal government.

> "In the design stage walk the potential route with tribal personnel. They can confirm treaty areas and areas of cultural importance, and also identify areas of significance that may not show up on a map." – Federal Agency

Do Not Rely on One Map

There is no single source for identifying treaty areas, reservation lands, allotments, and areas

that are of cultural, historic, religious, and archaeological significance to tribes. Developers may need to consult a number of resources in order to identify tribes and tribal lands that could be affected by a transmission project, including land of tribes or tribal communities that do not have treaty or reservation lands located within a proposed route but that attach religious and cultural significance to properties within the route or in the surrounding area.

The National Park Service maintains the Native American Graves Protection and Repatriation Act Native American Consultation Database, which may be helpful in identifying tribes with an interest in a given geographical area. MAPS:GIS Windows on Native Lands, Current Places, and History provides maps on current and ancestral locations of Indian lands. The Library of Congress Land Cessions document website contains information on historic Indian lands. Other national and regional intertribal organizations, such as the National Congress of American Indians, the United South and Eastern Indian Tribes, and the National Association of Tribal Historic Preservation Officers also provide useful references.

Assistance

Developers should be sensitive to time and costs tribes may incur in working on a proposed project. A tribe may not have adequate human and financial resources to allow its representatives to respond quickly or travel. It may be necessary to provide compensation in order to obtain specific information and documentation regarding the presence, location, nature, and condition of cultural, historical, and religious sites. Reimbursement should be considered for assistance, including expert consultants, field visits, monitoring activities, research, documentation production costs, and travel.

Understand Cultural Norms

Developers should invest time and resources into educating and training their staff on historical sensitivities and appropriate cultural and linguistic practices so that interactions are conducted in a respectful manner. Behavior you may perceive as normal may be offensive to tribal members. For example, some tribes regard pointing a finger as offensive. A gentle handshake may be necessary as a sign of respect. It can be important to obtain approval before taking photographs.

Opinions or advice from people who are not members of the tribe may not be welcome. Do not assume that silence means assent — it may signal disagreement; it is important to verify views on an issue with the official tribal representatives. Deference towards tribal elders is essential and may include allowing them to speak first.

"Understanding cultural norms is important. Learn the tribe's preferred way of doing business and meeting protocols. For example, some tribes may pray before meetings. Discuss with tribal representatives what the process and substance of a meeting will be." – Federal Government Attorney

Cooperation and Innovation Help Bring a Project to the Finish Line

"Southern California Edison had…a right-of-way across the Morongo reservation for… more than fifty years. The right-of-way had expired, and Edison was interested in renewing the right-of-way, but also was interested in widening it in order to accommodate a new very important transmission project: the West of Devers line, which is a 48-mile line primarily in California going into Arizona…[and is] very important to bring the power from new renewable generation being built into the California market" – Hon. Suedeen Kelly, Former FERC Commissioner; Partner, Jenner & Block, Counsel to the Morongo Tribe

"Edison had approached the Morongo…what we had proposed was a straight payment for the right-of-way. That was not something tribe was interested in. …We came up with a structure where the tribe which ultimately formed an organization called Morongo Transmission would have an option to invest in the transmission line and they did not have to exercise that option until commercial operation. What we have is Edison building and owning the line and part of the electrons that go across that line are reserved for Morongo transmission…they have the right to earn on that investment and it was a valuable diversification for them." – Ms. Rebecca Furman, Director & Managing Attorney, Southern California Edison

"The opportunity to invest 200 million dollars in this endeavor has been very significant for the tribe. Morongo was able to do this because of the low-risk nature of this investment. Morongo is able to actually borrow a hundred percent of the investment…[but] it didn't have to. Edison had the opportunity to invest this 200 million in equity in the line that it gave up. It didn't to do that, but it made all the difference in the world to the tribe." – Kelly

"This worked out well for Morongo and for Edison and for our rate payers frankly because while we do keep in mind the interest of our shareholders, we are also cognizant, very cognizant of affordability issues…we do not want to be adding money to rate base we don't need to…so it really was a benefit to everyone all around. We had support for this line that was unprecedented in the world of building transmission." – Furman

Excerpted from the ACEG Transmission Time Webinar: Innovative Partnership for Accelerating Transmission Buildout (Sept. 29, 2022)

9. Environmental Justice

"It is too often presumed that increasing the level of engagement in a permitting process is synonymous with delaying the project. Rather, it has been shown that early engagement can facilitate more efficient completion of projects by facilitating a way to address potential concerns early, heading off issues that may otherwise lead to time-consuming lawsuits. Meaningful consultation would ensure that disadvantaged groups and communities will finally be given a voice in the process, allowing their concerns to be properly addressed in a timely and effective manner."

– U.S House of Representatives Sustainable Energy & Environment Coalition, Permitting Reform for the Clean Energy Future (November 2022)

While the practices discussed earlier in this paper apply to all landowners and communities, special consideration must also be given to environmental justice communities. Economically distressed communities and communities of color, including tribal communities, historically have borne a disproportionate share of the negative aspects of infrastructure development. Legal requirements to consider environmental justice have steadily increased in recent decades. The focus on environmental justice has been driven by state and federal laws, the latter including the Biden Administration's commitment to ensuring that all federal agencies develop programs, policies, and activities to address the disproportionately high and adverse health, environmental, economic, climate, and other cumulative impacts on environmental justice communities.

Regardless of the legal requirements, some developers have been voluntarily considering the impact of their projects on people and communities who have already been disproportionately impacted from prior development and pollution. All developers should consider incorporating environmental justice considerations into their project reviews.

What is Environmental Justice?

The U.S. Environmental Protection Agency (EPA) currently defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies."[24] EPA states that "fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies."[25] FERC's Backstop Siting NOPR states that "the term 'environmental justice community' includes disadvantaged communities that have been historically marginalized and overburdened by pollution. The term also includes, but may not be limited to, minority populations, low-income populations, or indigenous peoples."[26] It should be

noted that environmental justice requirements change or are updated with some frequency as consideration of this issue evolves. For example, as of February 2023, EPA and the White House Council on Environmental Quality are currently updating their environmental justice guidance and recommendations.

How Does Environmental Justice Impact a Project?

Developers should conduct an early review of project routes and early outreach to make pro-active determinations of whether their project could impact environmental justice communities, and to plan in advance to provide more support for such communities. Additionally, states and local jurisdictions sometimes have their own environmental justice requirements and the federal government has requirements that will come into play when obtaining federal permits. When a legal requirement, environmental justice considerations normally are addressed in the regulatory review of the project where developers are required to demonstrate how they have identified environmental justice communities, taken them into account in siting the project, and reduced or avoided harmful effects to those communities.

"It is important to work very closely with EJ communities to determine their needs and how to mitigate impacts. We rebuilt substations in urbanized EJ neighborhoods and hired local artists to design decorative walls around them. This was a source of satisfaction to the community." – Public Utility

"Identify the most effective voices for environmental justice communities, such as local NAACP leaders or organizations working with the low-income groups. Use structures that are in place and leverage groups in the area." – Federal Government Agency

Identify Environmental Justice Communities

Developer practices must be tailored to the requirements of the appropriate siting authority, but certain measures are routine. Developers should perform a socio-demographic study early in the siting process to identify potentially affected environmental justice communities. There are a number of tools for accomplishing this, including EJScreen, EPA's environmental justice mapping and screening tool that provides a nationally consistent dataset and approach for combining environmental and demographic socioeconomic indicators.[27] Similarly, the U.S. Census American Community Survey Data provides information for race, ethnicity, and property data at the state, county, and block group level.[28] Also several states offer their own environmental justice screening tools,[29] and may include in those tools communities that have self-identified as environmental justice communities.

Engage the Community and Community Leaders Early

Leaders of environmental justice communities should be engaged as early as possible and included in any stakeholder process so that their

concerns can be identified and addressed. It is not always easy to identify one spokesperson who speaks on behalf of the affected environmental justice community, especially as a community may be ethnically and linguistically diverse. Developers may need to be prepared to engage with representatives of multiple community interests; as such, it is important to create an inclusive process to obtain multiple viewpoints.

Recognize that EJ Community Needs May Be Different

Effective engagement requires purposeful efforts to connect with those communities and stakeholders that have historically faced barriers to participation in transmission permitting and siting. Developers must be sensitive to the fact that the needs of environmental justice communities may differ from the needs of other communities. For example, there may be linguistic differences, lack of transportation, lack of access to technology, or other barriers that preclude meaningful participation. Developers should tailor solutions to address these barriers and facilitate effective participation. Developers may need to provide logistical or financial assistance, choose meeting locations, times, and facilities that are local, convenient, and accessible (i.e., close to areas served by public transportation), offer child-care services, or provide translators.

Community Benefit Agreements

Community Benefit Agreements (CBA) that are crafted in partnership with environmental justice communities can be an effective tool to assist environmental justice communities. A CBA is a binding agreement between a developer and a community that outlines benefits the developer will provide to the community, but is it is essential that communities have an opportunity to identify the benefits they want. By way of example, CBAs can include guarantees to hire local workers, fund job training and educational services, and finance projects like community centers.

10. Compensation

Successful interactions between developers and landowners often turn on the issue of compensation for use of the landowner's property, including any terms and conditions the landowner may wish to impose on the use of his or her property.

Dividends of Succcessful Land Acquisition

The cost of acquiring land rights is typically a comparatively small part of overall project cost, relative to capital equipment and other costs. Success in expeditiously obtaining easements can pay dividends in multiple contexts. A well-executed acquisition program can reduce opposition to projects from the landowners who own the property on which the project must be constructed. Regulators generally look with approval on acquiring property rights by negotiation.

> **"As a regulated entity, prudency considerations overhang everything we do, including landowner compensation for easements. We also track our diversity spend and local spend to ensure they meet our goals." – Public Utility**

A developer that is able to successfully engage with landowners to acquire easements has obvious advantages from a regulatory perspective. Local opposition to transmission lines can turn into political opposition, and that can become regulatory opposition. Acquiring easements in a timely fashion can avoid delay. Project delay leads to cost overruns, which in turn can lead to project cancellation. At a minimum, delay increases the cost to the developer and ultimately to consumers, and creates uncertainty. Demonstrating good faith early on in voluntarily securing property rights with deliberate speed can determine the success or failure of a project.

The Appraisal Process

Developers typically retain independent appraisers to evaluate the value of each property prior to acquiring easements. Appraisers use various approaches to determining the fair market value of the land. One approach is to determine the value of the land if it were purchased outright. Another is to determine the value of the property prior to construction and its value once the transmission line is built, and the difference between the two is the value of the easement. Developers then use the appraisals to determine the compensation that they will offer to the landowner.

Shortcomings of Appraisals

While appraisals are a standard practice in acquiring easements, landowners can view appraisals as a crude tool that does not adequately compensate for the diminution of their property that comes from hosting a transmission line. From their perspective, the appraisal process looks at property in one dimension — an estimate of its economic value at a moment in time. Landowners do not necessarily value their property this way. For example, they may place a high value on the

aesthetic appearance of their land that is not captured by an appraisal. For others, the addition of infrastructure may overlay an industrial element on what they value for its undeveloped nature. Construction of a transmission line inevitably limits future uses of the property, but an appraisal takes future plans into account only if there is a present or near-term plan of development. Landowners can have strong emotional attachments to property that are difficult to value financially. For example, a transmission line may be perceived as destroying the historic nature of a family farm. The segmentation of forests or the taking of trees may cause damage for which monetary compensation is insufficient.

Landowners may also take issue with the underlying philosophy of appraisals. The Lincoln Institute describes this disconnect as follows: "A fundamental principle [of appraisals] is that the compensation is based on what the owner has lost, rather than the value to the utility or the value of the new use."[30] This limitation does not sit well with many landowners. If someone is to profit from the value of their land, landowners would like to capture their fair share of that value.

Land Compensation

There are various approaches to acquiring land rights to construct a project. Several options are explored below.

1. One-Time Payment

Some developers have expressed a preference for compensating easements through a one-time payment based on the appraisal because a lump sum payment enables them to capitalize the cost and avoid the processing of annual payments.

2. Periodic Payments

Some landowners, on the other hand, prefer periodic payments to the one-time, lump sum payment approach that is commonly used to acquire easements. A one-time payment can seem inadequate or transitory compared to the multi-year impact of hosting a transmission line. A regular, predictable revenue stream can have significant appeal. Further, it is not uncommon for properties to change hands and the ability to convey the periodic payment to a new owner can help overcome the perception that the value of the property has been compromised by the transmission line. Alternatively, the landowner may wish to retain the payment, particularly if the easement has little or no impact on property value.

The following example of how periodic payments compare to annual payments was provided by a private transmission development company.

Evaluating Upfront Payment Options Versus Annual Payment Option

Parcel ID#	xxxxxxxx
Easement Area	4.55 acres (1,320' x 150' wide)
Land Type	Cropland
Per Acre Value	$5,500
Market Value of Easement	$25,025
10% Premium	$ 2,503
No. Of Structures	1
Structure Value	$18,000
Total Landowner Comp.	$45,528

Upfront Payment Option

20% of Easement Consideration Paid at Signing	$5,506
80% of Easement Consideration Paid at Construction Start	$22,022
Structure Payment at Construction Start	$18,000
Total Landowner Compensation	$45,528

Annual Payment Option

20% of Easement Consideration Paid at Signing	$5,506
Paid at Construction Start — Year 1	
Annual Easement Payment* (Escalates at 2% Year)	$1,101
Annual Structure Payment (Escalates at 2% year)	$1,500
Total Landowner Compensation — Through Year 1	$8,107
Total Landowner Compensation — Through Year 15	$50,486
Total Landowner Compensation — Through Year 30:	$111,023

**Annual Easement Payment starts at 5% of the balance of the Total Easement Consideration owed (which is typically 80% of the Total Easement Consideration); Annual Structure Payments start at a fixed value of $1,500 in Year 1.*

3. Royalty Approach

Another option is to make a payment to the landowner similar to the royalties paid in, among others, the oil and natural gas industry. Oil and natural gas companies typically pay landowners an upfront sum to lease acreage and then a percentage of the revenue resulting from development of the property. Oil and natural gas companies bear the cost of development. This approach provides landowners with a stake in the venture that their property has made possible. Similarly, landowners whose land is used to locate wind turbines or solar arrays sometimes receive annual payments based on the value of production from those facilities. Compensation in each of these situations is fact based and can depend in part on the portion of land that is taken out of production for other purposes (e.g. in lieu of farming).

4. Indirect Benefits

Landowners, especially in rural areas, often have a wish list of projects for their property. They may need a pond to provide water for livestock, a new fence around a pasture, or a new road to reach inaccessible areas. Developers should consider whether they wish to negotiate indirect benefits with landowners. Free electricity to a house or barn, for example, can be a compelling benefit.

5. Structure Payments

Structure payments in which the landowner is compensated for the easement and for any structures that are located on the property are common. The underlying logic is that the landowner should be compensated for the loss of space, for the more intensive construction activity connected with constructing and maintaining

> *"To engage with local communities, we created a program in which any non-profit organization in the county through which our transmission line will pass can apply for a financial grant. The grants are especially popular with rural cemetery associations who struggle to find funds to maintain their grounds." – Private Transmission Developer*

> *"An abandoned coal mine was spewing acid mine drainage into a scenic river, significantly affecting the water quality and the recreational uses to which the river could be put. Funds were not available to remedy the problem. An energy company with operations in the region contributed the money to build and maintain a water treatment plant, cleaning up the river and making a long-term, highly-visible and widely-popular contribution to local communities and the environment." – Energy Attorney*

> *"When a landowner alliance was formed, I joined immediately. I felt I couldn't successfully negotiate a deal and I preferred to rely on people who knew more than me. I didn't have the resources to hire help and I remembered my daddy telling me that a lawyer with a pen can steal a lot more money than a robber with a gun." – Private Landowner*

"When an easement is acquired, the landowner should feel whole, not empty. . .Listen to what the landowner is asking for." – Environmental Advocacy Group

"We use the appraisal process to make an initial offer, starting at 110% of the fair market value of the land in easement. We make it clear that our opening offer is a starting point for discussion. We encourage landowners to bring us comps from the latest land auction or sale; we know agricultural land values are on the rise and we want to fairly compensate for that." – Private Transmission Developer

"Land values in the area went up over time so we redid our earlier appraisals and increased compensation to landowners we had already paid. That created a lot of goodwill." – Private Transmission Developer

"We do not negotiate in-kind payments. We want to treat each landowner the same and it is difficult to do that with in-kind payments. Land agents who have worked for other developers, however, have reported that sometimes in-kind payments are the only way to get a landowner on board." – Private Transmission Developer

the tower, and for the increased visual impact. Lattice structures typically command a higher payment than monopoles. It is important to note that structure payments can raise equity issues, especially on structures sited near property lines as the landowners where the structure is hosted may receive compensation but adjoining landowners who may still have construction, maintenance, and visual impacts do not receive a structure payment.

6. Proximity Payments

Landowners who own property adjacent to, but not on, the proposed right-of-way may believe that their property value will be diminished by a proposed project. Payments to landowners based solely on their proximity to a project, also referred to as "good neighbor payments," have been received positively in the United States for renewable energy projects (e.g. payments for properties located in proximity to wind projects).[31] They have also been used in other countries for transmission lines such as Ireland's EirGrid which makes a proximity payment for those within 200 meters of the centerline of the high voltage line. The amount of the payment decreases in set increments the further one is from the project.

7. Community Assistance

While not strictly a form of landowner compensation, direct or indirect assistance to communities can promote good will and build support for a project. Developers should consult with communities to find out what assistance would be helpful: for example, funding, grants, or donations of employee time. The action may be as simple as participating in county fairs. The most effective programs have visible, long-lasting impacts.

Consultation with local public affairs specialists and others familiar with a given area can help identify important community needs and the most appropriate way to meet those needs.

Many rural areas lack quality internet access and that is a significant limitation in those areas. Developers may wish to evaluate whether their facilities can be used to provide broadband internet service to communities along the route.

Ongoing Presence

Developers should consider whether to commit to an ongoing presence in communities along the route. There is a common perception that developers enter an area, construct their project, and leave. Residents, on the other hand, must live permanently with a project they did not necessarily want. Transmission lines do not require a large local work force once constructed so their contribution to a community, other than tax dollars (which can seem to some like an abstraction) is transitory. Committing to a long-term involvement with the community can constructively influence local views. The options for a presence that outlives the construction of the project are many. They range from providing job training to funding athletic programs, volunteer fire and ambulance squads, local parks, and libraries, to name a few. Local expertise can help navigate what contribution to a local community is most valuable.

Evaluate the Potential Value of Alliances

Landowner alliances occasionally form in the context of infrastructure development. They can be a part of existing organizations, such as a local, state, or regional cattleman's association; other times they arise organically when local people join together to negotiate an agreement. In the electricity industry, such alliances appear to be used primarily when landowners decide to aggregate their holdings to attract wind and solar projects.

Transmission developers should evaluate whether to encourage such activities, as landowner alliances can help landowners feel they are part of the project development, build support for a project, and facilitate the process of negotiating a deal that brings a group of landowners on board.

"My family has run cattle here for generations. I make a living from the farm, but economics aren't everything. The best times are when I watch my cattle grazing across a timeless landscape. That makes the land worth preserving. Everything has value, but not everything has a price." – Private Landowner

"We've used a structure payment for towers in the past- but we've been moving away from that approach because of difficulties when a tower is located on one landowner and an adjoining landowner does not get paid even though the tower is located close to the property line." – Private Transmission Developer

11. Conclusion

The regulatory landscape for obtaining approvals of electric transmission lines is challenging. In areas where there is landowner and community opposition to electric transmission projects, the opposition can be significant. Against this backdrop, the United States needs to build vast amounts of new transmission. It is a formidable task.

To be successful in bringing new projects online, developers must continue to be innovative in approach and thoughtful in engaging with landowners, tribal governments and communities, and environmental justice communities. While successful community engagement does not automatically translate to project success, it should facilitate the process and increase the chances of completing these much-needed projects for our reliable, clean energy future.

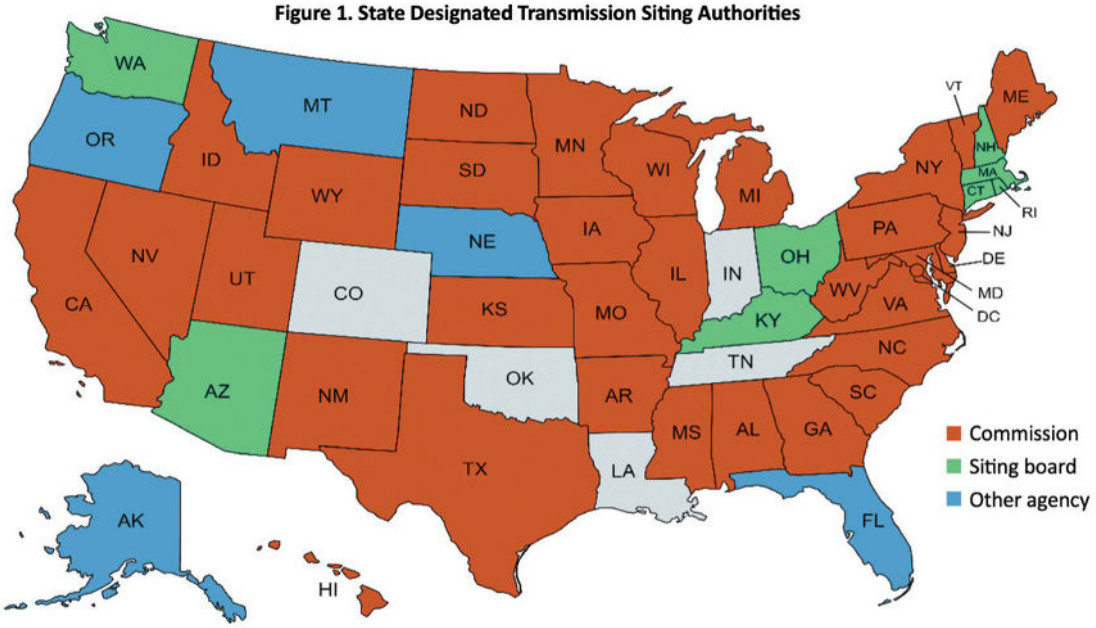
> *"When it comes to building transmission, there is no substitute for meaningful engagement with landowners." – Public Utility*

APPENDIX

State and Local Jurisdiction Over Siting

While responsibility for approving the siting of new transmission lines rests primarily with individual states and sometimes with local jurisdictions, the structure and makeup of the primary siting authority body can vary greatly from jurisdiction to jurisdiction—ranging from a state public utility commission or siting board to local zoning boards.

Figure 1. State Designated Transmission Siting Authorities



Source: NCEP Mini Guide

Similarly, the siting application and public consultation requirements of state and local regulatory programs can differ widely from jurisdiction to jurisdiction. For more information on this topic we suggest the National Council on Electricity Policy's Mini Guide on Transmission Siting: State Agency Decision Making which provides a helpful overview of different types of state and local regulation around the country.

Federal Jurisdiction

The federal government also has certain jurisdiction over transmission line siting that was granted by Congress in an attempt to address some of the challenges of siting large transmission lines. Some of the major pieces of legislation and federal regulatory action on this issue, include the following.

Energy Policy Act of 2005

The Energy Policy Act of 2005[32] established a dual federal role in transmission line approval by amending the Federal Power Act (FPA). Section 216(a) of the FPA directed the Department of Energy (DOE) to conduct a triennial study and issue a report on electric transmission congestion and permitted DOE to designate transmission-constrained or congested geographic areas as National Interest Electric Transmission Corridors (National Corridors). Section 216(b)(1) authorized the Federal Energy Regulatory Commission (FERC) to issue permits to construct or modify electric transmission facilities in a National Corridor if FERC found, among other things, that the state withheld approval of the facilities for more than one year (commonly described as backstop siting authority). Section 216(e) authorized a developer which had been granted a FERC permit to use eminent domain authority to acquire easements.

The Court of Appeals for the Fourth Circuit in 2009 found that FERC's interpretation that "withheld approval" meant backstop siting authority was triggered even where a state had denied a permit application (as opposed to not acting on the application) was contrary to the statute.[33] The Court of Appeals for the Ninth Circuit in 2011 vacated DOE's National Corridor designations, finding that DOE did not properly consult with affected states in preparing the congestion study and also failed to analyze the National Corridor designations as required by the National Environmental Policy Act .[34] Since those decisions were issued DOE has not designated National Corridors and FERC has not received applications for electric transmission facilities.

The Infrastructure Investment and Jobs Act of 2021

The 2021 Infrastructure Investment and Jobs Act (IIJA) attempted to address the issues stemming from the court decisions by further amending FPA section 216.[35] Those amendments expand the scope of the National Corridor study to include addressing potential renewable energy bottlenecks, and expressly provides that FERC's backstop authority is triggered when a state denies an application for transmission facilities located within a National Corridor. The IIJA also amended FPA section 216(e) by requiring FERC to determine, as a precondition to the exercise of eminent domain authority, that the developer has made good faith efforts to engage with landowners and other stakeholders early in the permitting process.

FERC Notice of Proposed Rulemaking

To implement the changes enacted by the IIJA, FERC issued a Notice of Proposed Rulemaking (NOPR) on December 15, 2022, proposing to revise regulations it had issued in 2006 establishing standards for evaluating applications for transmission facilities under FPA section 216.[36]

As relevant here, the 2006 regulations required an applicant to develop a Project Participation Plan and implement that plan in a pre-filing process that the applicant was required to engage in before formally filing with FERC. The Project Participation Plan required the applicant to identify specific tools and actions it would take to facilitate communications with, and provide information to, stakeholders.

The NOPR proposes to supplement the 2006 pre-filing requirements by allowing an applicant to demonstrate that it has made good faith efforts to engage with stakeholders by complying with an Applicant Code of Conduct. The Applicant Code of Conduct includes record keeping and information sharing requirements, as well as prohibitions against misconduct, such as ensuring that communications with affected landowners are factually correct and devoid of misrepresentation.[37] The NOPR also proposes to require applicants to file an Environmental Justice Public Engagement Plan, which would describe the applicant's outreach activities with environmental justice communities.[38]

The 2006 regulations describe eleven resource reports that must be included in an application for a transmission line, with the resource reports primarily requiring information FERC needs to evaluate the project's potential environmental impacts.[39] The NOPR proposes to add a Tribal Resource Report requiring identification of tribes potentially affected by the proposed project.[40] The Tribal Resource Report would also require the applicant to provide information FERC needs to evaluate the impacts of the project on tribes and tribal interests, and cultural, religious, and historical information of significance to tribes, tribal lands, and tribal resources. The NOPR also proposes to add an Environmental Justice Resource Report that would require an applicant to provide information identifying environmental justice communities within the project area, describing the impact of the project on those communities, and any mitigation measures necessary to avoid or minimize those impacts.[41]

Impact of Statutory and Regulatory Efforts

It is too early to determine what impact the recent statutory changes will have on the development of future transmission lines. DOE continues to develop a new transmission siting study that will lead to the designations of National Corridors in 2023, and FERC's backstop siting authority cannot be triggered unless a proposed transmission line is located in a National Corridor. Legal challenges to these actions are certain. As for the NOPR, FERC will receive extensive comments on the proposal and it is uncertain when a final rule will be issued amending the regulations, or what requirements FERC might eventually establish pertaining to public participation, tribes, and environmental justice communities. Ultimately, even if an effective process to authorize transmission facilities emerges at the federal level, successful interactions between developers and landowners, tribes, and environmental justice communities undoubtedly will continue to be essential.

SOURCES

1 See, Americans for a Clean Energy Grid, Why Transmission Matters, see also Michael Goggin, Transmission Makes The Power System Resilient To Extreme Weather (July 2021); Christopher T.M. Clack, Michael Goggin, Aditya Choukulkar, Brianna Cote, & Sarah McKee, Consumer, Employment, And Environmental Benefits Of Transmission Expansion In The Eastern U.S. (Oct. 2020).

2 E.g., S. 2651, Streamlining Interstate Transmission of Electricity Act (Introduced Aug. 5, 2021).

3 Federal Energy Regulatory Commission, Applications for Permits to Site Interstate Electric Transmission Facilities Notice of Proposed Rulemaking, 181 FERC ¶ 61,205, Docket No. RM22-7-000 (2022), 88 Fed. Reg. 2770 (Jan. 17, 2023) (FERC Backstop Siting NOPR).

4 Energy Systems Integration Group (ESIG), Transmission Planning for 100% Clean Electricity, at 4 (2021).

5 See, e.g. Smith, William H, Mini Guide on Transmission Siting: State Agency Decision Making, National Council on Electricity Policy (Dec. 2021) (NCEP Mini Guide).

6 U.S. Constitution, Amendment V ("nor shall private property be taken for public use, without just compensation").

7 Not all circumstances of eminent domain are contentious. In at least one transmission project, the developer has used eminent domain at the request of certain landowners to quiet title to land where the historical ownership of the land was murky.

8 Laura Keir, Richard Watts & Shoshana Inwood (2014) Environmental justice and citizen perceptions of a proposed electric transmission line, Community Development, 45:2, 107-120, DOI: 10.1080/15575330.2014.887130.

9 2003 Wisconsin Act 89 (December 3, 2003).

10 Pub. L. 117-58 § 40105 (a)(3) (enacted at 16 U.S.C. 824p(a)(4)(G)).

11 U.S. Department of Transportation Federal Highway Administration, State DOTs Leveraging Alternative Uses of the Highway Right-of-Way Guidance (April 27, 2021)

12 U.S. Department of Energy, Memorandum of Understanding between the Department of Energy and the Department of Transportation, (December 14, 2021)

13 NGI Consulting and The Ray, NextGen Highways Feasibility Study for the Minnesota Department of Transportation Buried High-Voltage Direct Current Transmission (2022).

14 MISO, MTEP21 Report Addendum: Long Range Transmission Planning Tranche 1 at 22 (2021).

15 Id. at 1.

16 World Health Organization, Fact Sheet No. 322, Electromagnetic Fields and Public Health, Exposure to Extremely Low Frequency Fields (June 2007).

17 American Association of Professional Landmen, What is a Landman?

18 Backstop Siting NOPR, PP 26-27, 88 Fed. Reg. at 2773-74 and 2786 (proposing new 18 CFR section 50.12).

19 Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 86 Fed. Reg. 7554 (Jan. 29, 2021).

20 National Council on State Legislatures, State Recognition of American Indian Tribes, last updated Oct. 10, 2016. Siting and permitting agencies may require consultation with state recognized tribes.

21 25 C.F.R. Part 169 (2015).

22 Department of the Interior, Bureau of Indian Land Management, Rights-of-Way on Indian Lands Handbook, 52 IAM 9-H (January 2022).

23 See Department of Interior, Interior Department Strengthens Tribal Consultation Policies and Procedures, Dec. 1, 2022.

24 U.S. Environmental Protection Agency, Learn About Environmental Justice.

25 Id.

26 Backstop Siting NOPR at P 30, 88 Fed. Reg. at 2774.

27 US Environmental Protection Agency, EJScreen: Environmental Justice Screening and Mapping Too.

28 US Census Bureau, American Community Survey Data.

29 E.g., California Communities Environmental Health Screening Tool: CaliEnviroScreen 4.0; New Jersey Environmental Justice Mapping, Assessment, and Protection (EJMAP).

30 Berry, Allison, Getting Right-of-Way Right: Landowner Compensation for Electric Power Transmission Rights-of-Way, Lincoln Institute (2013).

31 See, e.g. Weise, Elizabeth, Wind energy gives American farmers a new crop to sell in tough times, USA Today, Feb. 20, 2020.

32 Pub. L. 109-§ 1221, 119 Stat. 594 (2005) (amended 2021).

33 Piedmont Environmental Council v. FERC, 558 F.3d 304 (4th Cir. 2009), cert denied, 558 U.S. 1147 (2010).

34 California Wilderness Coalition v. Dept. of Energy, 631 F.3d 1072 (9th Cir. 2011).

35 Pub. L. 117-58.

36 Backstop Siting NOPR.

37 Id., PP 26-27, 88 Fed. Reg. at 2773-74 and 2786 (proposing new 18 CFR section 50.12).

38 Id., PP 30-31, 88 Fed. Reg. at 2774-75.

39 Id., PP 50-62, 88 Fed. Reg. at 2777-78.

40 Id., PP 63-64, 88 Fed. Reg. at 2778.

41 Id., PP 65-67, 88 Fed. Reg. at 2778. The NOPR also proposes to add a third new report for Air quality and environmental noise. Id., PP 68-71, 88 Fed. Reg. at 2778-79.

About ACEG

Americans for a Clean Energy Grid (ACEG) is a non-profit broad-based public interest advocacy coalition focused on the need to expand, integrate, and modernize the North American high-capacity grid.

Expanded high-capacity transmission will make America's electric grid more affordable, reliable, and sustainable and allow America to tap all economic energy resources, overcome system management challenges, and create thousands of well-compensated jobs. But an insular, outdated and often short-sighted regional transmission planning and permitting system stands in the way of achieving those goals.

ACEG brings together diverse support for an expanded and modernized grid from business, labor, consumer and environmental groups, and other transmission supporters to educate policymakers and key opinion leaders to support policy which recognizes the benefits of a robust transmission grid.

Christina Hayes
Executive Director

cleanenergygrid.org

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