



**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Applications for Permits to Site)	
Interstate Electric Transmission)	Docket No. RM22-7-000
Facilities)	

**COMMENTS OF
THE RAIL ELECTRIFICATION COUNCIL
ON THE
NOTICE OF PROPOSED RULEMAKING**

The Rail Electrification Council (“REC” or “Council”)¹ respectfully submits the following comments in response to the Notice of Proposed Rulemaking (“NOPR” or “Proposal”)² issued in this docket on December 15, 2022 by the Federal Energy Regulatory Commission (“FERC” or “Commission”). The Council strongly supports the Commission’s recent efforts to plan and support the “grid of the future.” However, grid modernization has a critical “on the ground” component. The success of the Commission’s modernization programs ultimately depend on the timely development, locations, and construction of major transmission lines. Attention to the physical deployment of infrastructure and technologies

¹ Founded in 2020, the Council is a diverse coalition of electrical manufacturers, technology companies, transportation companies, renewable energy providers, and other stakeholders that seek to enhance the strength and efficiency of two of our most critical infrastructure networks – the North American high voltage electric transmission grid and the international, national, and regional networks of North American railroads. The Council was co-founded by the National Electrical Manufacturers Association, but its membership is open to all interested companies and institutions seeking to advance modern energy and transportation policies. The Council’s agenda addresses North American freight and passenger transportation, mitigation of the climate impacts from the transportation and electric power industries, new electric generation technologies, and siting and permitting challenges facing infrastructure development in the U.S. and Canada. In particular the REC addresses development and integration of the high voltage transmission grid. For more information, please visit [Rail Electrification Council](#)

² *Applications for Permits To Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (2022), *errata*, 182 FERC ¶ 61,020 (2023).

that increase transfer capabilities between states, markets, and regions to ensure grid reliability and resilience has often been the missing link between major grid additions and delay, litigation, and economic waste. The Council sees all that changing and this rulemaking is among the catalysts. As the Congress and the Commission recognize, transmission expansion plans have frequently been frustrated by inaction, delay, or rejection by agencies historically charged with authorizing and siting such projects; Congress has twice concluded that additional Federal siting procedures, such as those enacted in the 2005 Energy Policy Act³ (“EPAct2005”) and revised in the Infrastructure Investment and Jobs Act of 2021⁴ (“IIJA”), can be successfully and sensibly employed to achieve workable and expeditious transmission solutions.

Revised Section 216 of the Federal Power Act (“Section 216”)⁵ can be a bridge to the grid of the future, especially if the Commission responds proactively in this rulemaking to the growing demand to integrate modern distributed electricity systems. As the Council explains below, the principal proactive measures that the Commission must employ in this docket, under both revised Section 216 and its existing authorities to improve transmission planning, should include:

- Active exploration with industry of the important siting opportunities afforded by existing rights-of-way (“ROWs”) can play in timely development of high voltage transmission;
- Require consideration of existing ROWs as conditions of approval or remedies for harmful project impacts on the environment, communities, or resources;
- Preparation and planning for development of high voltage direct current (“HVDC”) transmission lines to link new resources, regions, and markets for power, where the efficient use of the ROWs of the railroad network can maximize grid integration, minimize adverse environmental and socio-

³ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 1221 (codified as amended in 16 U.S.C. 824p).

⁴Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58, § 40123, 135 Stat. 429, 951 (to be codified at 16 U.S.C. 824s-1).

⁵ 16 U.S.C.A. § 824p (West)(2021).

economic impacts and, as a result, reduce the time and resources spent in regulatory approval processes for major projects; and

- Creation of productive partnerships with new industry players like railroads and their state and federal regulators, so as to enhance communications, establish first principles, and leverage expertise across the transportation and electric power ecosystems.

Finally, the Council raises certain technical questions about implementation of the proposed rule.

I. INTRODUCTION: RAIL RIGHTS OF WAY AS TRANSMISSION CORRIDORS

The Council views this Proposal as an opportunity for the Commission and the industry to take a “fresh look” at the location and impacts of transmission projects proposed for development within National Interest Electric Transmission Corridors (“NIETC”) designated by the Department of Energy (“DOE”)⁶. The Commission surely recognizes that the Final Rule in this docket must provide procedural clarity and administrative efficiency. Beyond that, this rulemaking can also ensure that siting and permitting review under Section 216 contributes to the broader societal and economic benefits of clean energy and grid integration.

The Council supports the Commission’s proposals to implement Section 216’s ‘backstop siting’ provisions as important steps toward grid modernization. Public and industry support is growing regulation that expedites instead of hinders interstate and interregional transmission system development.⁷ Finding ways to help avoid the exercise

⁶ 16 U.S.C.A. § 824p (a) (West) (2021).

⁷ Popular recognition of the need for more transmission as well as the Congress’ unprecedented focus on grid infrastructure argue for a Final Rule that expedites siting and permitting. “America finally has a serious climate strategy. However, it depends not just on a rapid expansion of solar and wind power, but also on linking these to new energy sources to the electrical grid. But the U.S. power grid doesn’t have enough capacity, and it is in general a mess. Part of the reason is that there isn’t really a U.S. grid: Investment in electricity transmission is . . . ‘controlled by a Byzantine web of local, state and regional regulators who have strong political incentives to hold down spending.’ And this regulatory system wasn’t designed to handle the sudden influx of new energy sources; as a result, simply getting permission to connect to the grid can take years.” Paul Krugman, “The Promise and Peril of Biden’s Climate Policy,” N.Y. Times (Mar. 3, 2023), <https://www.nytimes.com/2023/03/02/opinion/biden-climate-policy.html>; Brad Plumer, “The U.S. Has Billions for Wind and Solar Projects. Good Luck Plugging Them In,” N.Y. Times (Feb. 23, 2023),

of eminent domain, gather landowner and industry support, and work to overcome landowner or other popular resistance to infrastructure construction will complement and enhance traditional siting and permitting authority. Additionally, utilizing existing ROWs will reduce the cost of purchasing or leasing real estate, modifying environment features, or putting natural assets at risk.⁸ Specifically, the utilization of historical railroad ROWs for transmission co-location can prove instrumental in expediting regulatory approval processes designed to protect natural assets or property rights. This principle applies doubly to larger, multi-jurisdictional projects and the advanced elements of the grid of the future, such as HVDC macro-grid development. A linear network of ROWs will have regulatory and planning advantages and contribute to the environmental, community, aesthetic, and social justice goals that the NOPR articulates so extensively.

To incorporate the benefits of existing ROWs into transmission planning and development, the Council believes that the Commission must first reflect in its rules that transmission co-location on railroad and other existing ROWs can generate near- and long-term benefits consistent with the NOPR's expressed goals.⁹ Therefore, it is important that

<https://www.nytimes.com/2023/02/23/climate/renewable-energy-us-electrical-grid.html>; Jeff Lagerquist, "Biden's climate chief: 'Delays and bottlenecks' slowing IRA spending" [yahoo!finance \(Mar. 7, 2023\)](https://www.yahoo.com/lifestyle/bidens-climate-chief-delays-and-bottlenecks-slowing-ira-spending-131050663.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAACNmnLXz0OzVPPutYcwWjW95H-vXmLP04FV4iILIBddkAh_cPRxK9WYaI36jKifhsNnJnj_lwHx20GuA71Ei35N3eVL2DLuPWCZCv8uqLV8do1WWeiUI2N3WMFxN8dUxcHP2RnRKVUi1mvm-sOEu9InblDpmFFY8kDExj2yTc8Qm), https://www.yahoo.com/lifestyle/bidens-climate-chief-delays-and-bottlenecks-slowing-ira-spending-131050663.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAACNmnLXz0OzVPPutYcwWjW95H-vXmLP04FV4iILIBddkAh_cPRxK9WYaI36jKifhsNnJnj_lwHx20GuA71Ei35N3eVL2DLuPWCZCv8uqLV8do1WWeiUI2N3WMFxN8dUxcHP2RnRKVUi1mvm-sOEu9InblDpmFFY8kDExj2yTc8Qm

⁸ The Council's use of the term rights-of-way or "ROWs" in this Comment relates to lands and related property rights generally adjacent to railbeds that railroad companies historically own or lease, and not to the shared use of actual trackage to which multiple transportation companies may seek access for competing mobility operations. While ROWs are generally thought of a longitudinal, track-side property rights, they may also be rail yards and other real estate assets proximate or integral to railroad operations. See Federal Railroad Administration, "Report to Congress: Shared-Use of Railroad Rights-of-Way" (Jul. 2019), <https://railroads.dot.gov/elibrary/shared-use-railroad-rights-way>. Nothing in this Comment should suggest that the REC would require projects to use a railroad ROW where financial principles or good planning dictate otherwise.

⁹ The Council notes that interstate highway, pipeline, and pre-existing transmission ROWs are also potential sites for co-locating transmission. See "Joint Comments of The Railroad Electrification Council and NextGen Highways, in response to a Request for Information from the Department of Energy, Grid Deployment Office" (Feb. 28, 2023), https://www.nema.org/docs/default-source/council-documents-library/rec-and-nextgen-highways-rfi-response-transmission-siting-economic-development-grants-february-28-2023.pdf?sfvrsn=39442a87_3

this rulemaking consider the value utilizing transportation infrastructure networks can provide. The Commission will also find that this objective can be advanced through coordination with State and Federal agencies that share oversight responsibility of railroad and highway infrastructure networks. Incorporating ROWs into the Commission’s planning and backstop siting regimes is the best way to address one of the most persistent barriers to transmission project development: siting and permitting. As the Council has made clear in previous Comments,¹⁰ the Commission should consider the full range of benefits from such projects, including the values and advantages that existing ROWs offer multiple stakeholder groups and communities.

II. CORRESPONDENCE AND COMMUNICATIONS

In accordance with Rule 203 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.203, all communications should be addressed to the following individuals:

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III. COMMENT

A. A Fresh Look

The Commission is poised to take a fresh look at project applications under the revised Federal Power Act backstop siting provisions that will be filed when State authorities have reviewed, or have had a chance to review, an eligible transmission project. Section 216 authorizes FERC to act if a proposed project is within a NIETC. However, the Commission has never exercised this authority because appellate court decisions have rejected DOE’s congestion studies, initial broad-brush corridor designations, and have

¹⁰ Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, “Comments of the Rail Electrification Council,” Docket No. RM21-17-000 (Oct. 12, 2021).

interpreted the Commission's authority in a limiting way. These developments effectively nullified the Commission's ability to backstop State siting authorities as Congress intended in EAct2005. Through the enactment of the IIJA and the Inflation Reduction Act, Congress has sought to remedy that defect in the law's implementation and reaffirm FERC's authority.

For the first time since EAct2005, the Commission can now consider whether to approve an application to site an interstate transmission project, to condition its approval, or to reject it. The Council recommends that the Commission consider this key siting and permitting issue, despite the NOPR's silence about the role of best practices in making optimal decisions under Section 216. The Council is confident that, to the extent the Commission seizes upon the opportunity to encourage physical development of transmission projects within the underutilized real estate assets owned and operated by railroads existing ROWs -- where environmental impacts will be fewer or less severe, the prospect of litigation or adverse effects on communities will likely be smaller, and regulatory complications and legal hurdles less problematic -- its rules will accomplish the expedition anticipated by the Congress.¹¹ While State siting authorities will remain important to future grid development, the Council looks to the Commission to signal its interest in having developers and railroads (as well as other ROW owners) explore the benefits of project development in existing ROWs.

While not unprecedented, collaboration between railroads and the power industry on the possible future development of railroad ROWs along main lines, short lines, and in wayside real estate has been rare. The Council wishes it were less so, because the mutual benefits could be substantial. We contend that many such ROWs can accommodate additional energy infrastructure safely and efficiently and that Section 216 empowers the

¹¹ The Council notes that interstate highway, pipeline, and pre-existing transmission ROWs are also potential sites for co-locating transmission. See Joint Comments of The Railroad Electrification Council and NextGen Highways, in response to a Request for Information from the Department of Energy, Grid Deployment Office (Feb. 28, 2023), https://www.nema.org/docs/default-source/council-documents-library/rec-and-nextgen-highways-rfi-response-transmission-siting-economic-development-grants-february-28-2023.pdf?sfvrsn=39442a87_3.

Commission to take a fresh look at the merits of such co-location in the context of regional and interregional transmission planning and development.

The Council believes that the NOPR is correct in its implicit assumption that Section 216 enables the Commission to examine the developmental goals and decisions that contribute to a project's location and design. Nothing in Section 216 prevents the Commission from examining how, and to what extent, existing ROWs have been, or could be, used to mitigate adverse impacts on the environment, on Tribal resources and underserved communities, on air quality or noise severity, on visual appeal, and on other ground-disturbing variables related to transmission development. The data provided in the resource reports the Commission proposes, or in compliance with the National Environmental Policy Act, will form the basis of any review and authorization processes under Section 216(b) and (c). However, for those reports to be complete and processes to work efficiently and equitably FERC's Final Rule must encourage railroads, landowners, and regulators to examine the feasibility of siting above- and below-ground transmission facilities within ROWs. . The Council further contends that siting determinations must also contribute to system impact studies and the planning of grid facilities on a local, regional, or interregional basis. For that reason, the Commission should expand on its original proposal.

B. Collaboration and Partnerships

The historical role of States in siting transmission projects is unquestionably entitled to respect and substantial deference. Even if the Commission were to exercise jurisdiction over a project application under Section 216, State regulation will remain important, if not central, to a project's permitting and approval. State agencies will remain in charge of Clean Air Act and Clean Water Act authorizations, for example. As such, backstop siting will succeed to the extent that collaboration and information sharing continues while the State evaluates a project proposal or even after FERC's pre-filing process has begun. The Final Rule can establish benchmarks for such coordination. However, when project applicants have been unable to find a forum for review and authorization, or have been subject to conflicting or impractical state rulings, or have had an application denied by one or more

state siting authorities on the basis of its view of the public interest, the Commission’s review and consideration under Section 216 will become even more consequential.

In practice, the Section 216 review process is not purely appellate by nature; it does not appear to be constrained by the record developed by State proceedings. The REC believes the Commission should be able to determine whether a project’s proposed location is reasonable and whether environmental or socio-economic impacts can be avoided or mitigated, and environmental reviews consequently reduced, by ensuring that existing ROWs are utilized wherever feasible, consistent with good engineering. Additionally, the Commission’s Final Rule should provide for consideration of existing ROWs as a means of mitigating or avoiding altogether a project’s potentially adverse environmental, socio-economic, reliability, or other impacts. We believe that it is for such a purpose that the NOPR contains the Effects Analyses reporting requirement. It also follows that a proposed project can be rejected or even amended on these grounds, including the failure to use existing ROWs when readily available or when such options have not been pursued in good faith or collaboratively. Under the proposed rule, neither developers, ROW owners, or states have an incentive to consider such siting solutions. Section 216 and the NOPR make clear that the Commission’s role in conducting a review and analysis under Section 216 is more than a rubber stamp, even where a State has duly considered a project.

The Council, along with other organizations¹² and businesses, contend that Section 216 allows the Commission to consider whether a proposed transmission line is, or could potentially be, co-located alongside other established infrastructure networks or ROWs, wholly or in part, as a way to promote an efficient use of resources, advance regional plans, and avert or minimize undue harm to communities, environmental features, Tribal interests, or aesthetics. Where financially and operationally feasible, railroad ROWs should be made available to host transmission projects if such co-location is determined to be both safe and

¹² See <https://nextgenhighways.org/>; see also Americans for A Clean Energy Grid, Report: Recommended Siting Practices for Electric Transmission Developers, Sec. 4 “Co-Location in Existing Rights-of-Way” (Feb. 2023), <https://cleanenergygrid.org/portfolio/recommended-siting-practices-electric-transmission-developers/>.

cost-effective as well as beneficial to developers, property owners, and local economies in specific cases¹³ based on facts developed pursuant to the requirements in the Final Rule. The Commission comes to backstop siting with significant expertise in coordinating environmental reviews and making proactive siting decisions under its organic statutory authority, namely Section 7 of the Natural Gas Act,¹⁴ and the laws that will apply to federal certification of infrastructure projects such as the National Environmental Policy Act or the Clean Water Act. Section 216 approvals should play a role in enforcing best practices in siting transmission facilities. Utilization of existing ROWs is one such best practice where feasible.

C. Related Informational Reporting

To effectuate its recommendations above, the Council proposes that the Commission include in its rules under Section 216, either as part of its proposed resource reports or as an additional report, a request for information about any relevant existing ROW and how such ROW will benefit, or could affect, the environment or other socio-economic factors. This information should include an explanation of whether any geographic, economic, commercial, ownership or other factors were considered in determining the potential availability of ROWs for project siting. This data would give the Commission a factual basis upon which to guide pre-filing processes and, if necessary, to develop a plan for utilizing existing ROWs once property rights have been identified and procured. Since the Council recommends having ROWs included in the Commission's siting processes, applicants should be responsible for describing the interests and positions of all stakeholders, such as State transportation agencies (primarily for highway ROWs) and railroads (for rail ROWs). Third parties may have legitimate safety, communications, commercial, land usage, and

¹³ The presence of transmission infrastructure along the 38,800 miles of the Strategic Rail Corridor Network ("STRACNET"), which is deemed important to national defense by serving 193 defense installations whose mission requires rail service, may provide national security benefits as well. Military Surface Deployment and Distribution Command Transportation Engineering Agency, "Strategic Rail Corridor Network (STRACNET) and Defense Connector Lines" (Oct. 2018), https://www.sddc.army.mil/sites/TEA/Functions/SpecialAssistant/RND%20Publications/STRACNET%202018_Reduced.pdf

¹⁴ NGA Section 7: 15 U.S.C.A. § 717f (West) (2021).

public interest concerns that must be considered and addressed by the Commission when ROWs are at issue.

Together with, or as part of, the proposed Resource Reports 1 through 11,¹⁵ an applicant should routinely be required to identify any existing railroad ROWs that:

- (1) are proximate to the project's source, route, or sink;
- (2) either were or could have been considered in previous State siting proceedings as economically feasible locations for project facilities; and
- (3) could offer benefits to project development in terms of land acquisition cost savings, shorter permitting times, simpler siting procedures, and/or fewer concerns about aesthetics, effects on property values, or reliability impacts.

The Council recognizes that mere proximity is not likely to be a sufficient predicate for genuine ROW negotiations.¹⁶ Active communication with railroad landowners about the identifiable benefits from an economic, engineering, or regulatory perspective is a necessity in order for such a development option to be considered viable. The Council contends that the information provided through this reporting will stimulate creative and constructive thinking among applicants, siting authorities, and other third parties and provide further

¹⁵ See NOPR at PP 51-61.

¹⁶ The Council points out that, while long stretches of railroad ROWs have been electrified in the past, only one major project is currently being developed in this way. See <https://soogreen.com/>. Although railroad landowners have seldom been asked for such access, except perhaps for fiber-optic installations, their underutilized ROW assets will become increasingly valuable as demand for other linear energy and communication systems grows. We recognize that use of privately held ROWs, as opposed to facilities siting on regulated public property like highway ROWs, will tend to be subject to private contract agreements and that the network of railroad ROWs have typically not been considered by electric transmission planners as available pathways for development of interregional or inter-market transmission. To date, the Commission has neither encouraged nor discouraged the use of rail ROWs because of historical concerns about infringement on the physical property of railroads, safety and communications concerns, and the availability of other private or public lands for transmission development, often through exercise of the right of eminent domain. Staff, Federal Energy Regulatory Commission, *Report on Barriers and Opportunities for High Voltage Transmission* (June 2020), <https://www.congress.gov/116/meeting/house/111020/documents/HHRG-116-II06-20200922-SD003.pdf>.

incentives for ROW owners to become collaborative partners in high voltage project development.

The Commission should stress that good faith and dynamic engagement with railroad companies are core requirements under the Section 216 processes. Even if the Commission would not fundamentally redesign project proposals, it should not underestimate its influence in drawing attention to ROW siting opportunities. FERC should utilize this authority to ensure that project developers do not inadvertently forfeit significant environmental and economic benefits to both the public interest and commercial enterprise.

Therefore, in addition to the three identification requests noted above, the Council proposes that the Commission request the following general information from applicants for transmission siting under this Final Rule:

- (1)** The extent to which any existing railroad ROWs are proximate to a project's source, route, or sink and the extent to which the ROWs were or could have been considered as a site, wholly or in part, for the project during previous State siting proceedings or opinions about the proposed project; ,
- (2)** Any previous, current, or contemplated plan or effort to deploy the applicant's transmission lines and related facilities (e.g., converter stations, energy storage, or charging facilities) wholly or in part, within an existing ROW, wayside, rail yard, or similar property owned by a railroad company and any information about whether such ROW is in operation, retired or abandoned, or otherwise underutilized;
- (3)** Any information developed in planning or regulatory proceedings pertaining to a request to install transmission within a railroad ROW, including any publicly available (not commercially sensitive) negotiations, litigation, memorandums, or contracts or other efforts to secure easements, licensing agreements, or other property rights for electric transmission co-location;

(4) Where appropriate, any agreement with landowners adjacent to a railroad ROW; and

(5) An evaluation of the outcome of any past or ongoing efforts to deploy transmission facilities within an existing railroad ROW, including:

- Any safety, communications, or property rights objections raised below with or by State or Federal regulators, and
- Any identified benefits to the transmission developer, the railroad or other ROW owner, or to such local or regional communities as may be affected by such project co-location.

D. Partnering Opportunities Under the Rule

Railroads are regulated common carriers with service and safety obligations to the public, their customers, and regulatory agencies; therefore, the Council strongly urges the Commission to promote partnerships among the railroads and existing or potential electric transmission providers. The Commission's good offices and those of the U.S. Department of Transportation, especially the Federal Railroad Administration, should formulate Memorandums of Understanding and strategies for developing shared usage of ROWs that benefit both industries and comport with the respective regulatory policies and practices of the affected agencies. In addition, the Commission can play an important role in encouraging partnerships with rail labor, whose work could be impacted by the development of electric power infrastructure in railroad ROWs. Existing labor agreements that govern the work and technical practices of railway workers may or may not apply equally to electrical operations (including catenary) and the development, construction, and operation of high voltage electric facilities on or near a ROW. Rebuilding electrical and transportation infrastructure should be looked upon as another opportunity for collaboration between industries and between capital and labor. The Council contends that the Commission should take the critical initial steps toward coordination as it implements its Final Rule, so as to avert undue delays in transmission development or interruption in rail services.

E. Issues Requiring Resolution

The Council asks the Commission to provide guidance on the following important questions:

1. Does Section 216 permit or require the Commission to take jurisdiction to consider permitting a project (within an NIETC) where a State transportation authority with ownership or control of a railroad ROW that is integral to a proposed transmission project does not act on the transmission project co-location within Section 216's one-year timeline or conditions its approval in a manner inconsistent with the transmission development purpose of statute (Section 216 (b))? Is such agency a "State commission or other entity" under the statute? Are local siting authorities included in that term?

2. As announced in the recent DOE "Notice of Intent and Request for Information" on NIETC designations, the Secretary of Energy "intends to designate NIETCs that are 'route-specific,' meaning they encompass narrow areas that are under consideration for the location of specific potential project(s), and which are sufficient for the construction, maintenance, and safe operation thereof . . ." ¹⁷ If specific railroad ROWs are designated as NIETCs in accordance with the criteria of Section 216 (a)(4) or are part of a wider geographic designation, is it FERC's opinion:

(1) that such designations could facilitate transmission development by diminishing the impacts of projects within the NIETC requiring review and analysis, and

(2) that the Commission could then consider whether it could authorize, or a transmission project developer could employ, eminent domain in the Section 216 context,

¹⁷ Department of Energy, Notice of Intent and Request for Information: Designation of National Interest Electric Transmission Corridors [6450-01-P], ___ Fed. Reg. ___ (2023), Executive Summary, https://www.energy.gov/sites/default/files/2023-05/Designation-of-National-Interest-Electric-Transmission-Corridors_Note-of-Intent-and-Request-for-Information.pdf.

including where a State action or law thwarts access to a privately-held ROW and thus impedes the project development goals of the Federal Power Act?¹⁸

CONCLUSION

In sum, the Council recommends that the Final Rule: should advance the following objectives:

First, The Commission should promote innovative partnerships between the Commission, State and Federal transportation regulators, and the owners of transportation ROWs pursuant to the goal of siting transmission in existing ROWs. The Commission should be proactive in facilitating grid development within transportation ROWs as another way to alleviate the delays and burdens of transmission siting and permitting and as a contribution to transportation electrification generally.

Second, this rulemaking proceeding should be used by the Commission as an opportunity to utilize Section 216 authority to request, as part of an applicant's pre-filing submittals, any information that relates to the consideration, availability, or use of railroad ROWs as a site for all or a portion of a proposed project. Additionally, to enable the Commission to fully assess the merits of using existing ROWs in specific cases, the Final Rule should seek information regarding engineering, safety, communications, financial, or design considerations involved in selecting or rejecting ROW co-location, as a hedge against further investigation and potential delay. Use of existing ROWs will be principally aimed at simplifying or eliminating lengthy reviews and complex decision making that would otherwise be necessary under the law where sensitive natural features, ground-disturbing activities, and potential socio-economic impacts and legal proceedings would otherwise be more severe and costly for all parties.

¹⁸ The Council recognizes that eminent domain is generally disfavored as a way to advance commercially viable projects despite Commission's new ability to authorize its use under Section 216. For that reason, the Commission should be proactive in coordinating between industries that have affected sites and their regulators, so that potential pathways to successful project development is not delayed or foreclosed by a lack of communication.

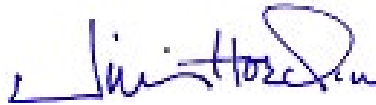
Finally, the Final Rule should address critical issues of interpretation and implementation, as noted above.

As the Council argued in its comments on the Commission's landmark planning proposed rule in Docket No. RM21-7-000, the Commission can play a key role in inducing participation by incumbent and non-incumbent transmission providers in creating partnerships with regional and national railroad companies. It is these partnerships that will help take the grid of the future, clean energy advancements, and the growth expectations of railroads to new heights. They will help accelerate development of all modes of electrified transportation. Siting and permitting is an important way for the Commission to facilitate creation of a resilient grid by 2035 and beyond in anticipation of changing electricity demand, emerging technologies, climate change and other factors, and the advent of a transportation-electric power ecosystem of which electric highway vehicles are already an identifiable part. Setting forth the utilization of existing railroad ROWs as a best-practice for siting high voltage transmission is among the best ways to overcome current structural and institutional barriers to transmission development. The backstop siting regime is a manageable place to start.

Respectfully submitted on behalf of the REC,

A handwritten signature in blue ink, appearing to read "Steve Griffith", is enclosed in a thin black rectangular border.

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