

January 23, 2023

Ms. Tracy Stone-Manning Director, Bureau of Land Management U.S. Department of the Interior Room 5646 1849 C Street NW Washington, DC 20240

Dear Director Stone-Manning:

The American Public Power Association, Edison Electric Institute, Northwest Public Power Association and the National Rural Electric Cooperative Association (collectively, the "electric utility trades") appreciate the opportunity to submit comments to the Bureau of Land Management (BLM) on its proposed rule, *Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way* (Proposed Rule or Proposal).¹ The Proposed Rule would amend BLM's existing regulations in an effort to enhance the communications uses program; update cost recovery fee schedules; and importantly, to add provisions required under Section 512 of the Federal Land Policy and Management Act (FLPMA) which govern the development and approval of operations, maintenance, and fire prevention plans and agreements for rights-of-way (ROWs) for electric transmission and distribution facilities.²

¹ 87 Fed. Reg. 97,306 (Nov. 7, 2022).

² 43 U.S.C. § 1761.

Electric utility trade members operate facilities on BLM managed lands and conduct routine operations and maintenance (O&M) and vegetation management activities, as well as non-routine or emergency O&M and vegetation management activities to enhance the grid and maintain reliable and safe electricity service throughout their territories. A significant increase in catastrophic wildfire events in recent years have brought increased attention to the need for electric utilities to gain timely access to their physical assets and infrastructure in order to proactively resolve operational and vegetation management hazards within and adjacent to their ROWs.

Through the Electricity Subsector Coordinating Council's Wildfire Working Group (ESCC WWG), the electric utility trades are working collaboratively with the Department of the Interior to address the shared responsibility and accountability of the federal government and electric utility trade members to reduce wildfire risk and to respond to and recover from wildfire events. This collaborative effort has focused on improving, and making more efficient and consistent, the process by which electric utilities can effectively perform O&M, vegetation management, and grid hardening activities in their ROWs on BLM managed lands. The ESCC WWG has worked with the U.S. Forest Service (USFS) to develop a Master Special Use Process on Forest Service electric utility rights-of-way that could ease such processes on Forest Service Lands. Similarly, the electric utility trades encourage BLM to utilize a similar process, such as master agreements, to facilitate more certainty and ease by which electric utilities can conduct necessary wildfire mitigation and recovery, grid hardening, and operations and maintenance, and vegetation management processes.³

³ BLM currently is utilizing such permits in Idaho and Arizona, and an ongoing pilot program Bakersfield, California.

The electric utility trades appreciate the opportunity to provide comments on this Proposed Rule. They recognize that the Proposed Rule provides flexibility to BLM offices and electric utilities in the issuance, renewal, and amendments of utility ROW grants. With some changes and clarifications, the Proposal could facilitate more efficient O&M of electric utility trade member infrastructure. Specifically, BLM should provide clarification for some of the requirements for operations, maintenance, and fire prevention plans (hereinafter "operations plans") located in proposed 43 C.F.R. § 2805.21 and identify the applicability of existing and proposed categorical exclusions for the approval of plans as described below.

I. BLM Should Modify Certain Requirements of Operations, Maintenance, and Fire Prevention Plans at proposed 43 C.F.R. 2805.21.

a. Finalize the definition of "hazard tree" to conform with USFS definition and maintain consistency across land management units.

Electric transmission and distribution line corridors often transverse both BLM and USFS lands in an uninterrupted manner. However, differing vegetation management regulations and requirements between the two federal land management agencies can create uncertainty and disruption in utility O&M and vegetation management procedures. For consistency and improved operational certainty for electricity service providers, BLM should amend the proposed definition of "hazard tree" to conform with USFS's definition as finalized in section 512 of FLPMA.⁴ It states:

Hazard tree, when used in §2805.22 of this part, means any tree, brush, shrub, other plant or part thereof, hereinafter "vegetation" (whether located inside or outside a right-of-way) that has been designated, prior to tree failure, by a certified licensed arborist or forester under the supervision of the Secretary or the owner or operator of a transmission or distribution facility to be:

⁴ See 36 C.F.R. § 251.51.

- (1) Dead, likely to die within routine vegetation management cycle, or likely to fail within the routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; or
- (2) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement

Similarly, BLM's proposed definition should also recognize that many types of vegetation, not just trees, risk contact with power lines and create hazardous situations. Vegetation found within and abutting ROWs may include trees as well as brush, shrubs, and other plants. BLM's "hazard tree" definition should explicitly reference these varied types of vegetation, consistent with the USFS's definition. The proposed definition also should include a reference to the minimum vegetation clearance distance (MVCD) in addition to the stated "10 feet" to capture all the potential vegetation hazards in and abutting a ROW.⁵

Electric utility trade members are subject to mandatory reliability standards established by the North American Electric Reliability Corporation (NERC). The current NERC reliability standard, FAC-003-4: Transmission Vegetation Management, requires electric utilities to conduct

⁵ MCVD is the calculated minimum distance to prevent flash-over between conductors and vegetation, for various altitudes and operating voltages. NERC, Glossary of Terms Used in NERC Reliability Standards (Dec. 2, 2022), <u>https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf</u>.

vegetation management to avoid encroachment of vegetation into the MVCD.⁶ The MVCD is a uniform, objective standard by which utilities determine whether vegetation poses an imminent threat to their powerlines and therefore constitutes a hazard that is likely to cause substantial damage to the powerlines or disrupt powerline service. The MVCD helps utilities determine the location of hazard trees for purposes of Section 512 of FLPMA and their O&M and fire prevention plans for powerline ROWs. Incorporating MVCD, an industry-wide standard, into BLM operating plans and agreements and powerline authorizations will provide consistency in administration of authorizations for powerline facilities on USFS and BLM managed lands.

Creating a consistent definition of the term "hazard tree" across both USFS and BLM regulations and guidance will provide much-needed consistency and efficiency to electric utility trade members that maintain critical infrastructure on land managed by both agencies.

b. BLM should standardize the notice and approval process for all operation, maintenance, and fire prevention plans.

Many electric utility trade members operate critical infrastructure across multiple BLM offices within states, across multiple states, and in lands contiguous to USFS lands. This has resulted in a patchwork of requirements for the process of managing their ROWs on BLM managed land and for utility lines that pass through both USFS and BLM managed lands. In the final rule, BLM should create a standardized notice and approval process for similar activities, as the USFS did in its final rule.⁷ This will provide the predictability that electric utility trade members need to ensure they can conduct O&M as necessary to mitigate wildfire risk and enhance grid reliability.

⁶ NERC, Form FAC-003-4: Transmission Vegetation Management (last accessed Dec. 14, 2022), <u>https://www.nerc.com/pa/Stand/Reliability%20Standards/FAC-003-4.pdf#search=FAC%2D003%2D4</u>.

⁷ 36 C.F.R. § 251.51.; 87 Fed. Reg. 7,947 (Feb. 11, 2022).

For example, the Proposed Rule requires ROW holders to notify and request approval from BLM to conduct routine maintenance activities, according to schedules in their operations plans.⁸ Routine maintenance in such cases involves the repair and/or replacement of any component of the covered facility to operate in accordance with applicable reliability and safety standards. These maintenance activities often have no, or minimal environmental impacts and do not require environmental review. While it is appropriate for the grant holder to notify the BLM of the location and timing of such maintenance activities, there should not be a requirement for the grant holder to obtain approval from BLM to carry out routine maintenance activities if they are part of an approved plan. Standardization of this process would provide predictability to operators, and enhanced wildfire mitigation efforts throughout the electric utility sector. This notice requirement should be consistent across all approved operations plans.

c. BLM should provide clarity on the review and approval process and timeframes.

Timely agency approval of O&M, vegetation management, grid hardening, and wildfire mitigation activities in electricity ROWs is critical to ensuring the continued provision of safe and reliable electricity service throughout the nation. BLM appropriately proposes a 120-day period for BLM to review and approve operations, maintenance, and fire prevention plans.⁹ However, clarity is needed about how BLM intends to handle certain elements of this process and if those elements affect the overall approval timeframe.

⁸ 87 Fed. Reg. at 67,337

⁹ 87 Fed. Reg. at 67,337

For example, BLM should clarify whether requests for additional information from the ROW grant holder during the review process—including response time from the applicant, and the incorporation of additional applicant responses beyond the original application—would toll, or pause, the 120-day review timeframe. BLM also should clarify that the 120-day review period begins when the applicant submits a completed application as defined in the Proposed Rule. This will provide a more efficient and predictable process as required in the Consolidated Appropriations Act, 2018.¹⁰

Further, BLM should provide clarity on how compliance and consultation requirements under applicable environmental laws, including the National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act, are to be handled within the 120-day review and approval period. Specifically, BLM should clarify if these requirements will be satisfied on a case-by-case basis, after approval of a plan but before those activities are conducted, or if the BLM expects to perform the requisite analyses and consultations under these provisions within the proposed 120-day review and approval timeframe.

VI. The BLM Should Clarify the Applicability of Existing and Propose a New Categorical Exclusion(s).

43 U.S.C. § 1772(c)(5) directs the Secretary of the Interior to identify categories of actions, with respect to the development, approval, and implementation of plans, that do not require environmental analysis. BLM should specifically identify existing categorical exclusions (CEs)

¹⁰ The Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, 132 Stat. 348 (2018).

that could be applied under this direction. to make the review and approval of operating plans, and activities in an approved operating plan, more efficient.¹¹

In addition to the utilization of existing CEs, BLM also should adopt a new CE to expedite plan approvals, and to expedite the implementation of vegetation management and other activities under an approved operations plan. Such activities conducted by electric utility trades members within and along ROWs include vegetation management, routine inspections, facility repairs, access road improvements, erosion controls, and wildfire mitigation. Maintaining transmission and distribution lines and managing the vegetation around them is critical to mitigating wildfire risk and providing safe and reliable electricity to millions of Americans. A new CE that specifically excludes such routine activities in an approved plan from additional environmental review would streamline critical operations and maintenance activities, provide consistency to operators, and create significant efficiencies for both the BLM and electric utility trade members while continuing to minimize environmental impacts.

Accordingly, the electric utility trades propose the following categorical exclusion:

Approval of operations, maintenance, and fire prevention plans, and activities conducted in accordance with an approved operating plan under a right-of-way grant for an electric transmission and distribution facility.

Activities performed under operating plans or agreements in authorized and established ROWs do not have a significant individual or cumulative environmental impact and should be categorically excluded under NEPA. Such an exclusion will fulfill the requirements of 43 U.S.C. § 1761 *et seq.*

¹¹ U.S. Dept. of the Interior, *Department Manual, Part 516 Chapter 11: Managing the NEPA Process 11.9 Actions Eligible for a Categorical Exclusion* (May 8, 2008), https://www.doi.gov/sites/doi.gov/files/elips/documents/516-dm-11-signed-508.pdf.

to minimize the need for case-by case approvals for vegetation management, facility inspection, and operation and maintenance of powerlines and facilitate the work necessary to ensure reliability and mitigate wildfire risk in and around our nation's electricity infrastructure.

Our organizations thank you for your attention to this important issue for our industry. Please do not hesitate to reach out to <u>Scott Aaronson</u>, <u>Megan Olmstead</u>, <u>Corry Marshal</u> or <u>Scott Corwin</u> with any questions.

Sincerely,

American Public Power Association Edison Electric Institute Northwest Public Power Association National Rural Electric Cooperative Association

cc:

Stephen Fusilier, Branch Chief, Rights-of-Way, BLM Nevada State Office Erica Pionke, Program Lead for Powerline Rights-of-Way and Energy Corridors

APPA is the national service organization representing the interests of more than 2,000 not-for profit community- and state-owned electric utilities that together provide electricity to approximately 49 million Americans and employ approximately 96,000 people. The Association advocates and advises on electricity policy, technology, trends, training, and operations. Association members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

EEI is the association that represents all U.S. investor-owned electric utilities. Our members provide electricity for more than 220 million Americans, and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 65

international electric utilities, with operations in more than 90 countries, as International Members, and hundreds of industry suppliers and related organizations as Associate Members.

The National Rural Electric Cooperative Association (NRECA) is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America's electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From growing regions to rural farming communities, to remote areas in and around our nation's public lands, electric cooperatives provide safe, affordable, and reliable electricity to 1 in 8 Americans, and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape.

Northwest Public Power Association (NWPPA) is a not-for-profit association of over 150 public/people's utility districts, electric cooperatives, municipalities, and Crown corporations in the Western U.S. and Canada. NWPPA was founded in 1940 to serve the collective interests of cooperatives, public and people's utility districts, municipalities, and mutual public power utilities throughout the Northwest, including Alaska, California, and British Columbia.