



Virginia Stephens
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To: Andrea Sarzynski/WHO/EOP@EOP
cc:
Subject: Comments per FR Notice (66 FR 43586; August 20, 2001)

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"Ristau, Toni" <TRistau@pnm.com>
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Record Type: Record

To: Edward A. Boling Energy Task Force/CEQ/EOP@EOP
cc:
Subject: Comments per FR Notice (66 FR 43586; August 20, 2001)

September 28, 2001

TO: Chair, Council on Environmental Quality
Executive Office of the President
Washington, DC

FROM: Public Service Company of New Mexico (PNM)

BY: Toni Ristau
Director, Environmental Services
PNM Bulk Power Services
Albuquerque, NM

RE: CEQ Notice and Request for Comments and Suggestions for
Improving Processes and Expediting permits for Energy Related Projects

Per Notice Published in the Federal Register August 20, 2001
(66 FR 43586)

Public Service Company of New Mexico (PNM), headquartered in Albuquerque, NM, is pleased to provide the attached summary of potentially applicable permitting and approval requirements for the siting, construction, operation, and maintenance of electrical transmission and generation and

associated ancillary facilities, together with specific examples of electricity generation and transmission projects being undertaken by PNM. In addition, PNM, as a regulated utility, sites, constructs, and operates natural gas pipelines within the state of New Mexico.

In addition, PNM is providing comments and suggestions related to current environmental planning and permitting processes in a more general sense, to provide information to the Task Force for its use in improving and streamlining the environmental approval processes overall (see attached document for detail).

In New Mexico, as in many of the western states, more than 80 percent of the lands and resources within the boundaries of the state are owned or controlled by federal, state, or tribal entities. Thus, the siting and construction of electrical generation and transmission facilities always invoke a myriad of approval processes and the involvement of dozens of federal, state, tribal, local, and other jurisdictions who oftentimes impose conflicting or contradictory requirements.

Currently, PNM is pursuing many activities and projects which require federal, state, local, tribal, and other types of environmental, as well as general, approvals. The cumulative impact to energy development in New Mexico from inconsistent, non-productive, or duplicative state, local, tribal and federal processes is substantial, both in terms of project/activity cost and timeframes, many times with no discernible value added for resource conservation or environmental protection/improvement.

PNM does not suggest that the Task Force attempt to abrogate fundamental environmental protections that truly serve to protect and enhance the environment, but that the Task Force identify which of the myriad of environmental planning and permitting requirements truly do benefit or protect public health and the environment (and work to eliminate or modify those that do not); eliminate duplicative processes; streamline environmental review processes; impose reasonable, but specific and enforceable, timeframes upon various agency review and approval processes; and institute procedures to require, whenever possible, concurrent/coordinated rather than sequential, review and approval processes.

SUMMARY OF MAJOR ISSUES AND SUGGESTIONS FOR IMPROVEMENT

The following are major issues for electricity generation and transmission projects, pipeline projects, and related ancillary activities within the State of New Mexico and immediately adjacent states.

National Environmental Policy Act (NEPA) Compliance and Coordination

The biggest single issue is the "open-ended" nature of many federal (as well as other agency or entity) review processes. The most notable is the environmental planning process required under the National Environmental Policy Act and CEQ Guidelines. The applicable statutes and regulations establish minimum timeframes in which to accomplish the requisite reviews, but there is no maximum time limit in which the federal lead agency and cooperating/consulting agencies must conduct and conclude their reviews and provide a decision. Since in many cases, the preferred siting, routing, or

technology cannot be selected or committed to by the project proponent until the conclusion of the NEPA process (including in many cases appeals to federal courts), acquisition of other resources (e.g., water, minerals), permits, rights of way, etc. cannot commence for many months, sometimes years, after the initiation of the project.

Suggestions for improvement that may be implemented by the Task force in this arena include:

F The imposition of statutory timeframes for the federal lead and cooperating/consulting agencies to conduct their reviews, with a proviso that failure of the federal lead and cooperating/consulting agencies within the requisite timeframe constitutes approval of the project proponent's identified preferred alternative

F Wider use of "categorical exclusions" for routine or repetitive types of projects or activities who are willing to either follow standard procedures or to commit to standard mitigation measures for those activities/projects

F Greater coordination between the various federal agencies who participate in the NEPA compliance process and greater consistency in the selection of lead/cooperating and consulting agencies

F Requiring that other entities (state, local, and tribal) abide by the findings of the lead federal agency regarding the selection of the preferred alternative, required mitigation, etc. Many times, at the conclusion of the NEPA review process, other state, local and tribal entities will impose their own mitigation requirements, over and above those already imposed by the federal agencies, and/or will refuse to issue other project permits, approvals, etc. on the grounds that the environmental review through NEPA was not adequate or sufficient to protect the environment.

Other Agency Compliance and Coordination Issues

The "open-ended" nature of many environmental review and permitting processes in addition to NEPA or in cases where NEPA compliance (EA or EIS) is not required is also problematic. Examples of such processes include the wetlands review/certification process; Section 404 permitting by the U.S. Army Corps of Engineers (COE); and various reviews conducted by the U.S. Fish and Wildlife Service (USFWS) pursuant to the Endangered Species Act.

In addition, though coordination between the various federal agencies often could use improvement, coordination between the federal agencies and state and local entities is often non-existent, as is coordination amongst those state and local entities themselves. Short of commissioning a "mega-planning and coordination" agency at the federal level, with the authority to pre-empt conflicting, contradictory, duplicative and unnecessary environmental review and permitting processes by state and local authorities and boards, there appears to be no ready solution to this particular problem.

The suggestions for improvement in this area are similar to those discussed above for improving the NEPA compliance process, including:

F The imposition of statutory timeframes for the various agencies to conduct their reviews, with a proviso that failure of the agencies to conduct their reviews within the requisite timeframe constitutes approval of

the project proponent's proposed activity or permit request.

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Extensions (or Expansions) of Jurisdiction Over Environmental Matters by Agencies that do not have Primary Statutory Jurisdiction

The recent tendency of every agency to extend jurisdiction over environmental matters when its primary mandate is not environmental protection, resource conservation, or protection of public health, particularly when there already exist other agencies who do have such a mandate, has created additional barriers and duplication in the siting and permitting processes for energy related projects. For example, the state utility commission who is responsible for the issuance of a location permit and/or a certificate of convenience and necessity (CCN) for electrical transmission and generation facilities may expand its review to include various environmental factors (including emissions/discharges from generation facilities that are already assessed and regulated by other authorities, or impacts to land, water, and biota that are already mitigated through the NEPA process), and will include these factors in their decision process (and in some cases, coming to a different conclusion as to whether or not the project can be permitted). Another example includes recent claims of expansions in environmental jurisdiction by the Corps of Engineers for projects that are located within or may affect wetlands, which again creates a duplicative and sometimes contradictory decision process for project proponents.

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F Requiring that other entities (state, local, and tribal) abide by and defer to the findings of the agency having primary statutory jurisdiction or subject-matter expertise in the issuance of approvals, permits, and the like.

F Coordinating all reviews so that they run concurrently rather than sequentially, and vesting the Task Force or a designated "lead agency" with the authority to override inconsistent or contrary findings or requirements imposed by other agencies or entities.

Native American Jurisdiction/Coordination

In the western US, including New Mexico, assertions of jurisdiction in the environmental arena by various tribal or other Native American sovereign entities has become increasingly problematic for entities such as PNM that

are seeking to site, construct, operate, or maintain electrical generating and transmission facilities. For example, the State of New Mexico has 23 separate sovereign pueblo and tribal entities (19 Pueblos, the Navajos, the Utes, and the Mescalero and Jicarilla Apache) within its boundaries, each of which has the authority to preclude or regulate activities within its boundaries in a manner not necessarily consistent with neighboring land owners or managers. Tribal and Pueblo entities do not recognize jurisdictional authority over their lands or resources by state or other local governmental entities. In some areas, non-tribal lands are interspersed with Indian lands, creating a "checkerboard" land use/management pattern and providing for interesting jurisdictional conflicts and formidable permitting barriers for entities wishing to field electrical generation and transmission projects in these areas.

Also, as an example of the exacerbation of these types of conflicts, the U.S. Environmental Protection Agency is obligated by Section 301(d)(2) of the Clean Air Act to adopt regulations identifying those provisions of the Clean Air Act "for which it is appropriate to treat Indian tribes as states." The resulting regulations are known as the "Tribal Authority Rule" (TAR). In promulgating these regulations, the EPA took an extremely broad view in its interpretation of the reach of the tribes. First, the EPA construed the Clean Air Act Amendments of 1990 as delegating to the tribes the authority to "address conduct relating to air quality on all lands within a reservation without regard to any prior limitations that existed as to the tribes' authority to regulate air quality. For example, the EPA concluded that tribes could regulate all non-Indian fee lands within reservations. Also, the EPA indicated its intention to include within its jurisdictional definition of tribal regulatory authority not only all areas included within the exterior boundaries of a recognized Indian reservation, but also "trust lands that have been validly set apart for the use of the tribe even though the land has not been formally designated as a reservation," and to potentially develop and implement tribal air quality programs, including permitting, in non-reservation areas that the EPA determines to be within the tribe's purview.

These issues are potentially very intractable particularly due to the sovereignty considerations involved. Suggestions for improvement could include:

F Requiring the coordination of tribal permitting and environmental review processes through the CEQ and President's taskforce to ensure that conflicts between varying Indian jurisdictions as well as between Indian and non-Indian entities can be timely and effectively resolved, and that enforceable and binding agreements can be made between Indian and non-Indian parties as to issuance of permits, rights-of-way, etc.

F Imposition of statutory timeframes in which Indian and non-Indian entities must complete their reviews, develop appropriate restrictions/requirements for the proposed project or activity, and issue the requisite permits, licenses, rights-of-way, etc. This should also include a proviso that failure of the Indian and non-Indian agencies and entities to complete their reviews and reach a decision within the requisite timeframe constitutes approval of the project proponent's proposal and/or issuance of the project proponent's proposed permit, license, or grant.

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Provided electronically via the CEQ Website at www.whitehouse.gov
AND
Via Telefax at (202) 456-6546

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- ♦ Imposition of statutory timeframes in which Indian and non-Indian entities must complete their reviews, develop appropriate restrictions/requirements for the proposed project or activity, and issue the requisite permits, licenses, rights-of-way, etc. This should also include

a proviso that failure of the Indian and non-Indian agencies and entities to complete their reviews and reach a decision within the requisite timeframe constitutes approval of the project proponent's proposal and/or issuance of the project proponent's proposed permit, license, or grant.

- ♦ Conducting a thorough statutory and regulatory review, with the aim of minimizing or eliminating overlapping/conflicting jurisdictional problems such as those typified by the TAR, rather than expanding them.

SUMMARY OF MAJOR FEDERAL, STATE, LOCAL, TRIBAL, AND OTHER REQUIREMENTS APPLICABLE TO THE SITTING, CONSTRUCTION, OPERATION, AND MAINTENANCE OF ENERGY PROJECTS AND ACTIVITIES IN AND ADJACENT TO THE STATE OF NEW MEXICO

There are two major areas where environmental (and other) approvals are typically required for electricity generation, transmission, and associated ancillary facilities. These are:

- **Siting and Construction of New Facilities**
- **Operation and Maintenance of Permitted Facilities**

For each of those areas compliance is likely required, and the siting and construction of these facilities can be needlessly hindered or slowed (or in some cases, stopped altogether) by requirements arising under some or all of the following:

**POTENTIAL, MAJOR FEDERAL, STATE, LOCAL, AND TRIBAL PERMITS OR LICENSES REQUIRED
AND OTHER ENVIRONMENTAL REVIEW REQUIREMENTS FOR
ELECTRICITY TRANSMISSION AND POWER GENERATION PLANT SITING, CONSTRUCTION AND OPERATION**

Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
FEDERAL					
Pre-siting/construction environmental planning per the National Environmental Policy Act (NEPA) and CEQ Guide-lines	Federal; Grants of rights of way or use of lands or other resources (e.g., water, minerals) under Federal jurisdiction or receiving Federal funding	Lead Agency (federal); Public Service Company of New Mexico (PNM); cooperating agencies	EA and FONSI -or- EIS, Record of Decision and FONSI	NEPA (42 UCS 4321), CEQ (40 CFR 1500-1508). Various federal agency implementing regulations	EA-typically, 3 to 6 mo (open-ended) EIS – minimum of 16 months to several years (open-ended)
Right-of-way, lease or use of land under Federal Management	Preconstruction surveys; construction, operation, maintenance, and abandonment	U.S. Dept. of the Interior, Bureau of Land Management (BLM)	Right-of-way grant and special use permit	Federal Land Policy and Management Act (FLPMA) of 1976 (PL 94-579) 43 USC 1761-1771 43 CFR 2800	Typically 30-60 days, plus time required for NEPA and other compliance prior to grant (open-ended)
		U.S. Dept. of the Interior, Bureau of Indian Affairs (BIA), tribe	Right-of-way grant across American Indian lands	25 CFR 169	Typically 30-60 days, plus time required for NEPA and other compliance prior to grant (open-ended)

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
	U.S. Dept. of Agriculture, U.S. Forest Service (FS)	Special use authorization permit or easement	36 CFR 251	Typically 30-60 days, plus time required for NEPA and other compliance prior to grant (open-ended)	
	U.S. Dept. of the Interior, National Park Service (NPS)	Authorization to cross National Park Service lands	18 USC, 36 CFR 14	Typically 30-60 days, plus time required for NEPA and other compliance prior to grant (open-ended)	
	U.S. Dept. of the Interior, U.S. Fish and Wildlife Service (FWS)	Special use permit for crossing a national wildlife refuge	50 CFR 25	Typically 30-60 days, plus time required for NEPA and other compliance prior to grant (open-ended)	
Water Resources/ Water Supply	Use of or potential impairment of Indian reserved water rights	Water rights adjudicatory authorities; Bureau of Indian Affairs; Bureau of Reclamation (BuRec); COE; State Engineer's Office	Authorization to use water/deplete watercourse	Varies	Typically 1-4 years, plus time required for NEPA and other compliance prior to grant (open-ended)

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Right-of-way across land under Federal management	"Conversion of use" for a use other than recreation on lands reserved with Land and Water Conservation Fund Act (LWCF) monies	NPS	Review of transmission line corridor to identify conflicts with recreational areas	Land and Water Conservation Fund Act PL 88-578, Section 6(f)(3)	Typically 30-60 days, plus time required for NEPA and other compliance prior to grant (open-ended)
Construction, operation, maintenance, and abandonment of transmission or other lines across or within highway rights-of-way		Federal Highway Administration (FHWA)	Permits to cross Federal Aid Highway, 4 (f) compliance	Department of Transportation Act 23 CFR 1.23 and 1.27 23 USC 116, 123, and 315 23 CFR 645 23 CFR 771	Typically 30-60 days, plus time required for NEPA and other compliance prior to grant (open-ended)
Ground disturbance and surface water quality degradation	Construction sites with greater than five acres of land disturbance	Environmental Protection Agency (EPA)	Section 402 National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Construction Activities	Clean Water Act (33 USC 1342)	NOI submitted at least 48 hours prior to commencement of construction; no permit/approval required
	Construction across or impacts to surface water resources	U.S. Army Corps of Engineers (COE)	General easement	10 USC 2668 to 2669	Typically 30-60 days, plus time required for NEPA and other compliance prior to grant (open-ended)

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Crossing 100-year floodplain, streams, and rivers	COE	Floodplain use permits	40 USC 961		
Construction in or modification of floodplain	Federal lead agency	Compliance	Executive Order 11988 Floodplains		
Construction or modification of wetlands	Federal lead agency	Compliance	Executive Order 11990 Wetlands		
Potential discharge into surface waters (including wetlands and washes)	COE (and states); EPA on tribal lands	Section 401 permit	Clean Water Act (33 USC 1344)		
Discharge of dredge or fill material to watercourse	COE; EPA on tribal lands	404 Permit (individual or nationwide)	Clean Water Act (33 USC 1344)		
Placement of structures and construction work in navigable waters of the U.S.	COE	Section 10 permit	Rivers and Harbors Act of 1899 (33 USC 403)		
Protection of all rivers included in the National Wild and Scenic Rivers System	Affected land-managing agencies	Review by permitting agencies	Wild and Scenic Rivers Act (PL 90- 542) (43 CFR 83.50)		

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Biological Resources	Potential pollutant discharge during construction, operation, and maintenance	EPA	Spill Prevention Control and Countermeasure (SPCC) Plan	Oil Pollution Act of 1990 (40 CFR 112)	
	Grant right-of-way by Federal land-managing agency	FWS	Endangered Species Act compliance by Federal land-managing agency and lead agency	Endangered Species Act of 1973 as amended (16 USC 1531 et seq)	
	Protection of Migratory Birds	FWS	Compliance	Migratory Bird Treaty Act of 1918 16 USC 703-712 50 CFR Ch 1	
	Protection of bald and golden eagles	FWS	Compliance	Bald and Golden Eagle Protection Act of 1972 (16 USC 668)	

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Cultural Resources	Disturbance of historic properties	Federal lead agency, State Historical Preservation Officers (SHPO), Advisory Council on Historic Preservation	Section 106 consultation	National Historic Preservation Act of 1966 (16 USC 470) (36 CFR Part 800)	
	Excavation of archaeological resources	Federal land-managing agency	Permits to excavate	Archaeological Resources Protection Act of 1979 (16 USC 470aa to 470ee)	
Potential conflicts with freedom to practice traditional American Indian religions		Federal lead agency, Federal land-managing agency	Consultation with affected American Indians	American Indian Religious Freedom Act (42 USC 1996)	
Disturbance of graves, associated funerary objects, sacred objects, and items of cultural patrimony		Federal land-managing agency	Consultation with affected native American group regarding treatment of remains and objects	Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001)	
Investigation of cultural and paleontological resources		Affected land-managing agencies	Permit for study of historical, archaeological, and paleontological resources	Antiquities Act of 1906 (16 USC 432-433)	

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ELECTRICITY TRANSMISSION AND POWER GENERATION PLANT SITTING, CONSTRUCTION AND OPERATION**

Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
	Investigation of cultural resources	Affected land-managing agencies	Permits to excavate and remove archaeological resources on Federal lands; American Indian tribes with interests in resources must be consulted prior to issuance of permits	Archaeological Resources Protection Act of 1979 (16 USC 470aa to 470ee) (43 CFR 7)	
	Protection of segments, sites, and features related to national trails	Affected land-managing agencies	National Trails Systems Act compliance	National Trails System Act (PL 90-543) (16 USC 1241 to 1249)	
Paleontological Resources	Ground disturbance on Federal land or Federal aid project	BLM	Compliance with BLM mitigation and planning standards for paleontological resources of public lands	FLPMA of 1976 (43 USC 1701-1771) Antiquities Act of 1906 (16 USC 431-433)	
Air Traffic	Location of towers in regards to airport facilities and airspace	Federal Aviation Administration (FAA)	A "No-hazard Declaration" required if structure is more than 200 feet in height	FAA Act of 1958 (49 USC 1501) (14 CFR 77)	

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
			Section 1101 Air Space Permit for air space construction clearance	FAA Act of 1958 (49 USC 1501) (14 CFR 77)	

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
STATE					
Siting and construction of electrical transmission and generation facilities by regulated utilities	Required for siting electrical transmission or generation facilities above certain size limits within the state of New Mexico	New Mexico Public Regulatory Commission (NMPRC)	Location permit	New Mexico Statutes Annotated (NMSA) (1978 Compilation) Article 9-1 Sec 62-9-1 to 62-9-3 NMPRC Orders and Regulations	Includes environmental and land use review in addition to those required by other authorities; typically requires 6 mo. to several years
Construction and operation of electrical transmission and generation facilities	State Public Utility Commission	Certificate of convenience and necessity	NMSA Article 9-1 Sec 62-9-1 to 62-9-3 NMPRC Orders and Regulations	New Mexico Department of Transportation	Includes environmental and land use review in addition to those required by other authorities; typically requires 6 mo. to several years
Right-of-way encroachment	Crossing state highways	New Mexico Department of Transportation	Encroachment permit	New Mexico Department of Highway rules and regulations	Typically 1-6 months
	Crossing state lands	New Mexico State Land Office	Right-of-way permit	State Lands Office Rule #10	Typically 1-6 months

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
Protection of air quality	Construction and operation of electrical generation facilities that emit regulated pollutants	Depending upon the location of the plant site within the State of New Mexico: New Mexico Environment Department (NMED) EPA Region VI EPA Region IX City of Albuquerque Environmental Health Division	Authority-to-construct permit (minor source) PSD permit (major source) Title V – operating permit	20 NMAC 2.72 20 NMAC 2.74 20 NMAC 11.41 20 NMAC 11.61 20 NMAC 2.70 20 NMAC 11.42 40 CFR Part 70 40 CFR Part 71	Minor source – typically 4-6 months PSD – typically 12 months Operating permit – 12 months to several years
	Siting, construction or operation of natural gas compressor stations	Depending upon the location of the plant site within the State of New Mexico: New Mexico Environment Department (NMED) EPA Region VI EPA Region IX City of Albuquerque Environmental Health Division	Authority-to-construct permit (minor source) PSD permit (major source) Title V – operating permit	20 NMAC 2.72 20 NMAC 2.74 20 NMAC 11.41 20 NMAC 11.61 20 NMAC 2.70 20 NMAC 11.42 40 CFR Part 70 40 CFR Part 71	Minor source – typically 4-6 months PSD – typically 12 months Operating permit – 12 months to several years

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
Groundwater and vadose zone protection	Potential discharge during construction, operation, and maintenance that could adversely impact groundwater	NM State Water Quality Control Commission (WQCC)	Discharge permit issued by the NMED (for electricity generation and transmission related facilities) or the NM Oil Conservation Division (OCD) (for natural gas pipelines and related facilities)	Ground Water Protection Act NMSA Chap. 74 Art. 6B NMAC Title 20 Chap. 6	60 days – 6 months
Ground disturbance and water quality degradation	100-year floodplain, streams and rivers, water of the state	New Mexico Environment Department (NMED)	Floodplain use permits Clean Water Act 401, 402, and 404 permits	New Mexico Statutes – State Water Quality Certification rules	?
Cultural Resources	Construction and operation	Office of Historic Preservation	Section 106 consultation	National Historic Preservation Act of 1966 (16 USC 470) Advisory Council on Historic Preservation Regulations (36 CFR 800)	Often coordinated/included in NEPA documentation; similar time frames as for NEPA compliance
	Investigation of cultural resources on state lands	New Mexico Cultural Properties Review Committee	Permits to conduct archaeological survey or excavation	New Mexico Cultural Properties Act (NMSA 18-6-1 to 18-6-17) (1978 Compilation)	Typically 30-60 days

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
Biological Resources	Disturbance of human burials on non-Federal or non-Indian lands in New Mexico	New Mexico Cultural Properties Review Committee	Human burial excavation permit	New Mexico Cultural Properties Act (NMSA 18-6-11) (1978 Compilation)	Typically 30-60 days (if burial is discovered during construction or maintenance activities, expedited procedures are available)
	Ground disturbance in areas with sensitive plant species	New Mexico Department of Energy, Minerals, and Natural Resources	Permit	New Mexico Endangered Plant Species Act (NMSA 9-10-10)	Typically 30-60 days if free-standing; if coordinated with Federal ESA requirements and/or NEPA compliance, can be much longer
	Habitat modifications in areas of sensitive animal species	New Mexico Department of Game and Fish	Permit	New Mexico Wildlife Conservation Act (NMSA 17-2-37 to 17-2-46)	Varies, depending upon the location and species involved
Public Health	Treatment, testing, and monitoring of potable water	New Mexico Environment Department (NMED)	Compliance required for drinking water systems providing water to workers or the public	State of New Mexico Drinking Water Provisions NMAC 20-7-1 et seq.	Continuing
Aquifer protection requirements	New Mexico Environment Department (NMED)	Applicable to sole-source aquifers	State of New Mexico Drinking Water provisions NMAC 20-7-1 et seq.	Can preclude siting of certain types of facilities in certain areas	
Solid and Hazardous Waste	Treatment, storage and disposal of solid and hazardous wastes	New Mexico Environment Department (NMED)	Applicable to operational facilities that will generate solid and hazardous wastes	State of New Mexico Solid and Hazardous Waste provisions NMAC 20-9-1 et seq.	Issuance of permits for haz waste TSD or corrective action facilities typically require 6 mo. to 2 years

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
Underground Storage Tanks	The installation, operation, and removal of underground storage tanks for petroleum and hazardous substances	New Mexico Environment Department (NMED)	Applicable to operational facilities that will include underground storage tanks	State of New Mexico UST provisions NMAC 20-5-1 et seq.	Installation must conform to state standards; out-of-service tanks must undergo closure per NMED requirements (typically, 60-90 days)
		COUNTY		County Rules and Regulations	Varies, depending upon particular county processes and administrative procedures (i.e., some counties require board hearings before approvals can be granted, and the specific board may only meet monthly or quarterly)
Right-of-way encroachment	Crossing county roads and land	San Juan, McKinley, Rio Arriba, Sandoval, Cibola, and Bernalillo counties.	Right-of-way easement		

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
LOCAL/MUNICIPALITIES/OTHER					
					Local jurisdictions (e.g., counties, municipalities, towns, conservancy districts, planning districts, zoning districts, and the like) also may have additional permitting or approval processes that may come into play, but these are so varied and so numerous that providing specifics on all of the potential requirements is not possible. Within the State of New Mexico, examples include the Middle Rio Grande Conservancy District (MRGCD), the City of Albuquerque Land Use Planning and Zoning (LUPZ) board, the City of Albuquerque Environmental Planning Commission (EPC), the City of Santa Fe Zoning Commission (including the Extraterritorial Zoning Commission, which imposes requirements outside the exterior boundaries of the city), various Historical Review boards (where projects are planned that are within or could impact historic districts), and similar types of boards, commissions, or authorities.
					TRIBAL
					The State of New Mexico has 23 separate sovereign pueblo and tribal entities (19 Pueblos, the Navajos, the Utes, and the Mescalero and Jicarilla Apache) within its boundaries, each of which has the authority to preclude or regulate activities within its boundaries in a manner not necessarily consistent with neighboring land owners or managers. Tribal and Pueblo entities do not recognize jurisdictional authority over their lands or resources by state or other local governmental entities. In some areas, non-tribal lands are interspersed with Indian lands, creating a "checkerboard" land use/management pattern and providing for interesting jurisdictional conflicts and formidable permitting barriers for entities wishing to field electrical generation and transmission projects in these areas.
Water Resources/ Water Supply	Use of or potential impairment of Indian reserved water rights	Tribal council or government	Authorization to use water/deplete watercourse	Varies	Typically 1-4 years, plus time required for NEPA and other compliance prior to grant (open-ended)
Biological Resources	On-ground investigation for tribal or Federally protected species within Navajo Tribal boundaries	Navajo Department of Fish & Wildlife	Biological Investigation Permit	Government Services Committee Resolution SFCF-3-94	2-6 months

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
	Pre-construction activities, con-struction, operation, and maintenance within Navajo Tribal boundaries	Resources Committee of the Navajo Nation Council	Formal written approval	2 Navajo Tribal Codes (NTC) 164	2-6 months
	Activities in wetlands areas within Navajo Tribal boundaries	US EPA Region VI Navajo Nation EPA	NPDES Permit	Navajo Nation Council (NNC) CJA-16-96	2-6 months

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
Right-of-way encroachment	Permission to survey on NTTI for surveying, map legal description, environmental assessment, ethnographic and archaeological studies	Navajo Nation reviewing departments (*) *Project Review Office	Navajo Nation Council consent letter or permit per Resource Committee	2 NTC 695 25 CFR 169	2-6 months (can be substantially longer)

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
Right-of-way over Navajo Nation lands under Federal Trust Management (BIA)	Construct operate, and maintain right-of-way	Resource Committee Resolution Council; BIA agencies or area office	Resource Committee Resolution and Navajo Nation consent letter	2 NTC 695 (B)(6)	Minimum of 6 months (can be substantially longer)
	Restoration of right-of-way	Navajo Nation EPA	Review and approval	25 CFR 169.5	1-6 months
Cultural Resources	Cultural resource investigations on Navajo Nation lands	Navajo Nation Historic Preservation Department; BIA, Navajo Area Office	Class B inventory permits, Class C excavation permits, Archaeological Resources Protection Act (ARPA) permits for disturbance to archaeological resources	Navajo Nation Cultural Resources Protection Act (CRPA-19-88) ARPA (43 CFR 47)	1-6 months
Forest and woodland resources	Clearing, transporting, selling, trading, or bartering any Navajo Forest product	Navajo Nation Forestry Department	Commercial permit	Resource Resolution RCJN-69-88; 23 NTC 902(c); 17 NTC 525; 18 USC 1853; 18 USC 1850	1-6 months (can be substantially longer)
Water Resources	Potential effects on the water of Navajo Nation lands	Department of Water Resources Management	Water use permit	Chapter 7, NTC 254 22 NTC 1101 et seq.	2-6 months (can be substantially longer)

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Issue	Action Requiring Permit, Approval, or Review	Agency	Permit, License, Compliance or Review	Relevant Laws and Regulations	Permit, License, Compliance or Review Processing Duration
Earth Resources	Survey activities for geologic or paleontological resources	Navajo Nation Minerals Department	Reconnaissance permit	Government Services Committee Resolution GSCAP-20-94	2-6 months (can be substantially longer)
	Removal of fossil resources for study purposes	Navajo Nation Minerals Department	Collection permit	Government Services Committee Resolution GSCAP-20-94	1-6 months (can be substantially longer)

Specific Project/Activity Examples

As requested in the FR notice, the following table presents a summary of specific project examples.

**SPECIFIC ELECTRICITY TRANSMISSION, POWER GENERATION PLANT, AND PIPELINE SITING,
CONSTRUCTION, MAINTENANCE AND OPERATION PROJECT AND ACTIVITIES EXAMPLES**

Project/Activity	Entity	Category	Description	Agency Consultation/Approval
Sonora-Arizona Interconnection Project	PNM	Electricity Transmission	Bulk power transmission line (two 345 kV lines) proposed to link electricity generation facility in Arizona—Palo Verde Nuclear Generating Station—with the State of Sonora, Mexico	<p><u>Federal</u></p> <p>USDI/BLM [Consultation, Approval] US Army/COE [Consultation, Approval] USDA/Soil Conservation Service [Consultation] Federal Emergency Management Agency [Consultation] USDI/Fish & Wildlife Service [Consultation] US EPA [Consultation, Approval] USDI/National Park Service [Consultation, Approval] USDA/Forest Service [Consultation, Approval] US Department of Energy [Consultation, Approval] USDI/Bureau of Indian Affairs [Consultation, Approval] USDI/Bureau of Reclamation [Consultation, Approval] USDOT/Federal Highway Administration [Consultation, Approval] USDOT/Federal Aviation Administration [Consultation, Approval]</p> <p><u>State</u></p> <p>Arizona Department of Transportation [Consultation, Approval] Arizona Department of Environmental Quality [Consultation] Arizona Department of Game & Fish [Consultation] Arizona State Historic Preservation Office [Consultation] Arizona State Land Office [Consultation, Approval] Arizona Corporation Commission [Consultation, Approval]</p> <p><u>Tribal</u></p> <p>Tohono O'odham Tribe [Consultation, Approval] Pasqua Yaqui Tribe [Consultation, Approval]</p> <p><u>Local</u></p> <p>Maricopa County, Arizona [Consultation, Approval] Pinal County, Arizona [Consultation, Approval] Pima County, Arizona</p> <p>County Commission [Consultation, Approval] Planning & Zoning [Consultation, Approval] Parks & Recreation [Consultation, Approval] Santa Cruz County, Arizona [Consultation, Approval] City of Tucson, Arizona [Consultation, Approval] City of Nogales, Arizona [Consultation, Approval]</p>

SPECIFIC ELECTRICITY TRANSMISSION, POWER GENERATION PLANT, AND PIPELINE SITING, CONSTRUCTION, MAINTENANCE AND OPERATION PROJECT AND ACTIVITIES EXAMPLES

Project/Activity	Entity	Category	Description	Agency Consultation/Approval
Afion Power Project	PNM	Electricity Generation	An approximately 225 MW natural gas combined cycle combustion turbine electricity generation facility. This will be located southwest of Las Cruces, NM, with project facilities located on federal land administered by the USDI/Bureau of Land Management. It will include 345 kV transmission lines, a natural gas supply pipeline, and a water pipeline, all also on BLM lands.	<u>Federal</u> USDI/BLM [Consultation, Approval] US Army/COE [Consultation, Approval] USDA/Soil Conservation Service [Consultation] Federal Emergency Management Agency [Consultation] USDI/Fish & Wildlife Service [Consultation] US EPA [Consultation, Approval] USDA/National Park Service [Consultation] USDA/Forest Service [Consultation] USDOT/Federal Aviation Administration [Consultation, Approval]
				<u>State</u> New Mexico State Highway Department [Consultation, Approval] New Mexico Environment Department Air Quality Bureau [Consultation, Approval] Ground Water Quality Bureau [Consultation, Approval] New Mexico Game & Fish Department [Consultation] New Mexico State Historic Preservation Office [Consultation] New Mexico Department of Energy, Minerals, and Natural Resources [Consultation] New Mexico State Land Office [Consultation] New Mexico Office of the State Engineer [Consultation, Approval]
PNM Eddy County Generating Station	PNM	Electricity Generation	Construction of new approximately 80 MW simple cycle gas turbine electric generation facility on federal land near Artesia, NM. Greenfield site adjacent to existing bulk electricity transmission line. Project includes new connecting pipelines to supply natural gas and water to the generation facility, as well as very small	<u>Local</u> Dona Ana County, NM <u>Federal</u> USDI/BLM [Consultation, Approval] US Army/COE [Consultation, Approval] USDA/Soil Conservation Service [Consultation] Federal Emergency Management Agency [Consultation] USDI/Fish & Wildlife Service [Consultation] US EPA [Consultation] USDA/National Park Service [Consultation]

SPECIFIC ELECTRICITY TRANSMISSION, POWER GENERATION PLANT, AND PIPELINE SITING, CONSTRUCTION, MAINTENANCE AND OPERATION PROJECT AND ACTIVITIES EXAMPLES

Project/Activity	Entity	Category	Description	Agency Consultation/Approval
PNM Lordsburg Generating Station	PNM	Electricity Generation	Construction of new, approximately 80 MW simple cycle gas turbine electric generation facility on private land in Lordsburg, NM. Project includes new connecting pipelines to supply natural gas and water to the generation facility, as well as an electrical interconnection to a bulk electricity transmission line; all facilities to be located on private lands.	<p><u>State</u> New Mexico State Highway Department [Consultation, Approval] New Mexico Environment Department [Consultation, Approval] Air Quality Bureau [Consultation, Approval] Ground Water Quality Bureau [Consultation, Approval] New Mexico Game & Fish Department [Consultation] New Mexico State Historic Preservation Office [Consultation] New Mexico State Land Office [Consultation]</p> <p><u>Local</u> Eddy County, New Mexico [Consultation]</p> <p><u>Federal</u> US Army/COE [Consultation, Approval] Federal Emergency Management Agency [Consultation] USDI/Fish & Wildlife Service [Consultation] US EPA [Consultation, Approval] US DOT/Federal Highway Administration [Consultation, Approval]</p>
Expansion of Existing Coal-Fired Generating Station	PNM	Electricity Generation	Increased generating capacity of existing electricity generating units by the installation of high efficiency turbine modifications. Upgrade existing air	<p><u>Local</u> Hidalgo County, New Mexico [Consultation] City of Lordsburg, NM</p> <p><u>Federal</u> USDI/BLM [Consultation, Approval] US Army/COE [Consultation, Approval] USDA/Soil Conservation Service [Consultation]</p>

SPECIFIC ELECTRICITY TRANSMISSION, POWER GENERATION PLANT, AND PIPELINE SITING, CONSTRUCTION, MAINTENANCE AND OPERATION PROJECT AND ACTIVITIES EXAMPLES

Project/Activity	Entity	Category	Description	Agency Consultation/Approval
			pollution control systems. Construct another coal-fired electricity generating unit.	<p>Federal Emergency Management Agency [Consultation]</p> <p>USDI/Fish & Wildlife Service [Consultation]</p> <p>US EPA [Consultation, Approval]</p> <p>USDI/National Park Service [Consultation, Approval]</p> <p>USDA/Forest Service [Consultation, Approval]</p> <p>USDI/Bureau of Indian Affairs [Consultation, Approval]</p> <p>USDI/Bureau of Reclamation [Consultation, Approval]</p> <p>USDOT/Federal Highway Administration [Consultation, Approval]</p> <p>USDOT/Federal Aviation Administration [Consultation, Approval]</p> <p>State</p> <p>New Mexico State Highway Department [Consultation, Approval]</p> <p>New Mexico Environment Department</p> <p>Air Quality Bureau [Consultation, Approval]</p> <p>Ground Water Quality Bureau [Consultation, Approval]</p> <p>New Mexico Game & Fish Department [Consultation]</p> <p>New Mexico State Historic Preservation Office [Consultation]</p> <p>New Mexico Office of the State Engineer [Consultation, Approval]</p> <p>New Mexico State Land Office [Consultation]</p> <p>New Mexico Department of Energy, Minerals, and Natural Resources [Consultation]</p> <p>New Mexico Public Regulation Commission [Consultation, Approval]</p> <p>Tribal</p> <p>Navajo Nation [Consultation]</p> <p>Southern Ute Tribe [Consultation]</p> <p>Ute Mountain Tribe [Consultation]</p> <p>Jicarilla Apache Tribe [Consultation, Approval]</p> <p>Local</p> <p>San Juan County, NM [Consultation, Approval]</p>

**SPECIFIC ELECTRICITY TRANSMISSION, POWER GENERATION PLANT, AND PIPELINE SITING,
CONSTRUCTION, MAINTENANCE AND OPERATION PROJECT AND ACTIVITIES EXAMPLES**

Project/Activity	Entity	Category	Description	Agency Consultation/Approval
Alamogordo Mainline Cabezon North Mainline Bloomfield Hub Dark Canyon DOE 3-Mile Line Nambe Gas Line Star Lake Mainline Truth or Consequences Gas Line Tucumcari Gas Line Mainline Loop Caballo Line	PNM	Natural gas pipeline	Intrastate natural gas transmission pipeline within the state of New Mexico (new line/replacement line construction)	<p><u>Federal</u></p> <p>USDI/BLM [Consultation, Approval] US Army/COE [Consultation, Approval] USDA/Soil Conservation Service [Consultation] Federal Emergency Management Agency [Consultation] USDI/Fish & Wildlife Service [Consultation] US EPA [Consultation, Approval] USDI/National Park Service [Consultation] USDA/Forest Service [Consultation] USDOT/Federal Aviation Administration [Consultation, Approval]</p> <p><u>State</u></p> <p>New Mexico State Highway Department [Consultation, Approval] New Mexico Environment Department Air Quality Bureau [Consultation, Approval] Ground Water Quality Bureau [Consultation, Approval] New Mexico Game & Fish Department [Consultation] New Mexico State Historic Preservation Office [Consultation] New Mexico Department of Energy, Minerals, and Natural Resources [Consultation] New Mexico State Land Office [Consultation] New Mexico Office of the State Engineer [Consultation, Approval]</p>