

**COMMENTS OF THE CLASS OF '85 REGULATORY RESPONSE GROUP AND  
THE CROSS-CUTTING ISSUES GROUP ON  
THE COUNCIL ON ENVIRONMENTAL QUALITY'S  
NATIONAL ENVIRONMENTAL POLICY ACT INTERIM GUIDANCE ON  
CONSIDERATION OF GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE**

**Docket No. CEQ-2022-0005**

**I. INTRODUCTION**

On January 9, 2023, the White House Council on Environmental Quality (“CEQ”) published in the *Federal Register*, at 88 Fed. Reg. 1196, notice of the interim guidance, “National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change” (“Interim Guidance”). The purpose of the Interim Guidance is to assist agencies with analyzing greenhouse gas (“GHG”) emissions and the climate change effects of their proposed actions under the National Environmental Policy Act (“NEPA”).<sup>1</sup>

The Class of '85 Regulatory Response Group and the Cross-Cutting Issues Group (collectively, “Groups”) respectfully submit these comments to the rulemaking docket.<sup>2</sup> The Groups are comprised of electric generating companies with a diverse portfolio of traditional/fossil-fuel and renewable generating assets located throughout the country. Members of the Groups often are part of the NEPA process as they construct, operate, and maintain facilities, powerlines, and equipment associated with electric generation. Moreover, members are actively involved in the transition to clean electric generation and are expanding their portfolios with renewable energy facilities and associated transmission lines, many of which are subject to NEPA review in connection with permitting, funding, or land use approvals by federal agencies.

The Groups thus have a particular interest in assisting CEQ with developing guidance concerning the consideration of GHG and climate change effects in NEPA analyses for their proposed projects. While the Groups commend CEQ’s efforts to enhance clarity and consistency on how agencies address climate change in NEPA reviews, the Groups recommend that CEQ further evaluate certain aspects of the Interim Guidance as they may compromise efficient federal permitting, funding, and land use approvals. They also may impede renewable energy and other projects needed to ensure reliable delivery of affordable energy to households and businesses, as well as continued functioning of infrastructure and vital services. These aspects include: (i) methodologies for calculating GHG emissions; (ii) interpretation of “reasonably foreseeable” effects; (iii) application of social cost of GHG emissions (“SC-GHG”) estimates; (iv) evaluation of reasonable alternatives; (v) interpretation of climate change effects on a project; and (vi) applicability of the Interim Guidance. For the reasons discussed below, the Groups encourage CEQ to reevaluate these aspects prior to finalizing the Interim Guidance to further streamline and clarify permitting, land use approvals and funding to support clean energy development.

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<sup>1</sup> 88 Fed. Reg. 1196 (Jan. 9, 2023) (“Interim Guidance”).

<sup>2</sup> Attachment A contains a list of the Class of '85 members and Attachment B contains a list of the Cross-Cutting Issues Group members supporting these comments.

## II. COMMENTS

The Groups appreciate the opportunity to provide CEQ feedback on the Interim Guidance. The Interim Guidance identifies and explains the steps agencies should take when quantifying, disclosing, and contextualizing climate change impacts and when addressing the potential climate change effects of proposed actions.<sup>3</sup> These steps include: (i) quantifying the reasonably foreseeable GHG emissions (including direct and indirect — upstream and downstream — emissions) of a proposed action over the expected lifetime of the action, as well as the reasonably foreseeable GHG emissions of the no action alternative, and any reasonable alternatives; (ii) disclosing and providing context for the GHG emissions and climate impacts associated with a proposed action and alternatives, including by monetizing climate damages using SC-GHG estimates, placing emissions in the context of relevant climate action goals and commitments, and providing common equivalents; and (iii) analyzing reasonable alternatives, including those that would reduce GHG emissions relative to baseline conditions (such as clean energy alternatives to fossil fuel-related projects), and identifying available mitigation measures to avoid, minimize, or compensate for climate effects.<sup>4</sup>

The Interim Guidance also explains how federal agencies should consider the effects of climate change on proposed actions, which entails: (i) identifying the current and future state of the environment as affected by the proposed action or its reasonable alternatives; (ii) using available climate assessments and scenarios to assess present and future impacts; and (iii) assessing a proposed action’s vulnerabilities and resilience to climate change effects, including sea level rise and severe weather events.<sup>5</sup> Additionally, the Interim Guidance provides information on how agencies can utilize traditional NEPA tools and practices in considering climate change effects, such as using the scoping process to frame climate change issues in NEPA reviews and undertaking an analysis of GHG emissions or climate change effects in a programmatic analysis and then incorporating it by reference into future NEPA reviews.<sup>6</sup>

The Groups commend CEQ for updating its 2016 “Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Review.”<sup>7</sup> The Groups fully support the goal of ensuring that federal agencies properly consider the environmental effects of their proposed actions and inform the public of those effects. Clear guidance on the scope and process of NEPA reviews is essential to the Groups’ transition to clean electric generation.

Members of the Groups, however, are concerned that certain aspects of the Interim Guidance may compromise efficient federal permitting, land use approvals, and funding decisions.

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<sup>3</sup> Interim Guidance at 1200-01.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1207-10.

<sup>6</sup> *Id.* at 1210-12.

<sup>7</sup> 81 Fed. Reg. 30,866 (Aug. 7, 2016). The 2016 final guidance was withdrawn by the prior administration pursuant to E.O. 13783. *See* E.O. 13783 on “Promoting Energy Independence and Economic Growth” (Mar. 31, 2017). CEQ then issued a draft guidance in June 2019, which was rescinded by the current administration in February 2021. *See* 84 Fed. Reg. 30,097 (June 26, 2019) (draft guidance); 86 Fed. Reg. 10,252 (Feb. 19, 2021) (rescission). Since then, agencies have looked to the 2016 final guidance for insight. *See* 86 Fed. Reg. at 10,252 (“In the interim, agencies should consider all available tools and resources in assessing GHG emissions and climate change effects of their proposed actions, including, as appropriate and relevant, the 2016 GHG Guidance.”).

The Groups thus strongly encourage CEQ to consider ways to streamline and clarify NEPA compliance to support clean energy development, including the recommendations outlined below.

**A. The Groups Support CEQ’s Efforts to Provide Greater Clarity and Consistency Regarding How Agencies Address Climate Change in NEPA Reviews.**

The Groups commend CEQ for undertaking efforts to enhance clarity and consistency in how agencies address GHG emissions and climate change in NEPA reviews, and the Groups support the following aspects of the Interim Guidance.<sup>8</sup>

1. GHG Reductions

The Groups support CEQ’s clarification that agencies should consider both gross GHG emissions increases *and reductions* associated with projects subject to NEPA review.<sup>9</sup> This ensures that GHG emissions from a proposed project are appropriately quantified and evaluated. Furthermore, this ensures that projects with low net GHG emissions increases or net GHG emissions decreases — such as renewable energy generation projects or projects with carbon sinks — are not subject to burdensome NEPA reviews solely due to their gross GHG emissions increases.

2. Rule of Reason and Concept of Proportionality

The Groups appreciate CEQ reaffirming the “rule of reason” and the concept of proportionality throughout the Interim Guidance, as NEPA reviews should be based on the nature of the proposed activity and the impacts of an activity should be assessed in proportion to the activity’s significance.<sup>10</sup> The courts have consistently affirmed that these principles are a key foundation of any NEPA analysis.<sup>11</sup> The Groups support CEQ’s reaffirmation that the concept of proportionality applies in the context of proposed actions with net beneficial climate effects.<sup>12</sup> There will be an increasing number of projects with net beneficial climate effects as electric generating companies transition their fleets to cleaner energy — net benefits which CEQ should recognize and acknowledge. For instance, the construction of a new natural gas plant to replace a retiring coal plant may present net benefit climate effects as the new plant would ultimately result in net GHG emissions reductions. The fact of net benefits should be reflected in the extent of GHG emissions analysis for a project. In assessing net benefits of climate effects, CEQ should recognize that some of these effects may manifest themselves in other sectors. For example, enhancements to electric generating capacity likely would support the electrification of the transportation sector.

The Groups also support CEQ’s clarification that the “rule of reason and the concept of proportionality caution against providing an in-depth analysis of emissions regardless of the

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<sup>8</sup> See Interim Guidance at 1198.

<sup>9</sup> See *id.* at 1201.

<sup>10</sup> See *e.g., id.* at 1199.

<sup>11</sup> See *e.g., Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 754 (2004); *Marsh v. Oregon Nat. Resources Council*, 490 U.S. 360, 374 (1989).

<sup>12</sup> See Interim Guidance at 1201

insignificance of the quantity of GHG emissions that the proposed action would cause,” including for proposed actions that “may involve net GHG emissions reductions or no net GHG increase, such as certain infrastructure or renewable energy projects.”<sup>13</sup> Not requiring a detailed analysis of GHG emissions ensures that such projects will not be unnecessarily held up by burdensome NEPA analysis and review.

### 3. Categorical Exclusions

The Interim Guidance states that agencies “should apply this guidance to consider climate impacts and GHG emissions in establishing new categorical exclusions [“CatExs”].”<sup>14</sup> CatExs are critical tools for facilitating timely and efficient review of projects that will not have significant impacts on the quality of the human environment. Analysis of GHG emissions certainly should not be a factor in determining whether renewable energy projects qualify for a CatEx, and the Groups recommend that CEQ encourage agencies to consider circumstances under which CatExs for funding or permitting of such projects would be appropriate.

If CatExs are not applicable, CEQ should encourage agency use of streamlined or programmatic NEPA reviews for evaluating climate impacts and GHG emissions for projects such as wind, solar, and geothermal energy and siting and constructing associated transmission lines.<sup>15</sup> These projects are intended to minimize GHG emissions, consistent with Administration goals. Use of streamlined review mechanisms for evaluating climate impacts and GHG emissions associated with renewable energy projects ensures that agencies are appropriately devoting resources to evaluating other impacts of these projects that may potentially be significant, thus helping ensure that development of these types of projects is not hindered by unnecessary and lengthy analysis and review, as these projects are essential to achieving the Administration’s GHG emissions reduction goals.<sup>16</sup>

### 4. Mitigated Environmental Assessments / Findings of No Significant Impact

Mitigation can play a key role in NEPA analyses, such as providing the basis for a mitigated environmental assessment (“EA”) / finding of no significant impact (“FONSI”), which can be far more efficient than the preparation of an Environmental Impact Statement in moving a proposed project forward while ensuring all impacts are appropriately considered.<sup>17</sup> While the Groups appreciate CEQ recognizing the importance of mitigation in NEPA analyses, the Groups ask that CEQ clarify that NEPA does not require the adoption of mitigation measures. The Interim

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<sup>13</sup> *Id.* at 1202 (“For such actions, agencies should generally quantify projected GHG emission reductions, but may apply the rule of reason when determining the appropriate depth of analysis such that precision regarding emission reduction benefits does not come at the expense of efficient and accessible analysis. *Absent exceptional circumstances, the relative minor and short-term GHG emissions associated with construction of certain renewable energy projects, such as utility-scale solar and offshore wind, should not warrant a detailed analysis of lifetime GHG emissions.*” (emphasis added)).

<sup>14</sup> *See id.* at 1198, fn. 20.

<sup>15</sup> *See id.* at 1210.

<sup>16</sup> *See id.* at 1211.

<sup>17</sup> *See id.* at 1206, fn. 107 (citing to CEQ, Memorandum for Heads of Federal Departments and Agencies, “Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact,” Jan. 14, 2011, [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation\\_and\\_Monitoring\\_Guidance\\_14Jan2011.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf)).

Guidance repeatedly stresses that agencies must consider mitigation and “strongly encourages” agencies to mitigate GHG emissions to the extent possible.<sup>18</sup> The Interim Guidance should explicitly acknowledge that while NEPA requires consideration of mitigation, it does not mandate the adoption of mitigation measures and that any agency decisions regarding mitigation must be consistent with the agency’s underlying statutory authority.

**B. The Interim Guidance May Compromise Efficient Federal Approvals and CEQ Should Consider Ways to Streamline and Clarify Permitting Processes to Support Clean Energy Development.**

While the Groups commend CEQ’s efforts to improve the efficiency and consistency of NEPA reviews, the Groups are concerned that the Interim Guidance may actually hinder efficient federal permitting, land use approvals, and funding decisions. The Groups propose that CEQ consider adopting the following recommendations to streamline and clarify federal permitting and approval processes to support clean energy development.

1. GHG Emissions Calculation

CEQ should provide guidance to agencies on the appropriate methodologies for calculating GHG emissions. The Interim Guidance does not provide guidance on how agencies should calculate gross GHG emissions. The Interim Guidance provides only one footnote on calculating *net* GHG emissions.<sup>19</sup> CEQ should thus identify acceptable calculation methodologies while noting any associated limitations of the methodologies and, at the same time, providing agencies with flexibility to determine which methodology is most appropriate for the specific project being evaluated.

2. Reasonably Foreseeable Effects

The Groups are concerned that the universe of “indirect effects,” as interpreted by the Interim Guidance, is very broad. The Group strongly recommends that CEQ clarify that the scope of “indirect effects” to be evaluated is constrained by the concepts of causation and foreseeability, the “rule of reason,” and the concept of proportionality.

NEPA requires agencies to consider the reasonably foreseeable direct and indirect effects of their proposed actions and reasonable alternatives, including the no-action alternative.<sup>20</sup> “Direct effects” are “reasonably foreseeable effects that are caused by the action and occur at the same time and place.”<sup>21</sup> “Indirect effects” are “effects that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable . . . [and] generally include reasonably foreseeable emissions related to a proposed action that are upstream or downstream of

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<sup>18</sup> *Id.* at 1206.

<sup>19</sup> *Id.* at 1201, fn. 53 (“Net emissions can be calculated by totaling gross emissions (all reasonably foreseeable direct and indirect GHG emissions from the proposed action) and subtracting any gross emissions reductions from the proposed action . . . . The resulting net value may be either a net increase in total GHG emissions or a net decrease in emissions. In rare circumstances, agencies should consider whether a significant delay between increased emissions and decreased emissions could undermine the value of a net emissions calculation as a metric of climate impact.”).

<sup>20</sup> *Id.* at 1204 (citing to 42 U.S.C. § 4332(2)(C)(i); 40 C.F.R. § 1508.1(g)).

<sup>21</sup> *Id.* (citing to 40 C.F.R. § 1508.1(g)(1)).

the activity resulting from the proposed action.”<sup>22</sup> The Interim Guidance states that “indirect effects” include “indirect” emissions,” as such emissions are “reasonably foreseeable since quantifiable connections frequently exist between a proposed activity that involves use or conveyance of a commodity or resource, and changes relating to the production or consumption of that resource.”<sup>23</sup>

Of particular concern to the Groups are the examples and explanations provided by the Interim Guidance regarding what effects from projects should be considered “reasonably foreseeable.” One such example is a natural gas infrastructure project that, as explained by the Interim Guidance, “creates the economic conditions for additional natural gas production and consumption, including both domestically and *internationally*, which produce indirect (both upstream and downstream) GHG emissions that contribute to climate change.”<sup>24</sup> This example suggests that even emissions by end-users in far-flung countries could be considered a reasonably foreseeable indirect effect and thus subject to NEPA review. It is hard to see how such speculative effects could be considered “reasonably foreseeable,” and CEQ should reconsider its use of such examples.

CEQ also should provide further guidance on reasonable foreseeability or examples of effects that would *not* be considered reasonably foreseeable; otherwise, agencies will be encouraged to extend the analysis of indirect effects too far up and down the causal chain. For instance, applying the Interim Guidance’s interpretation of “indirect effects” to a transmission project — a type of project members of the Groups frequently undertake — would mean that the reviewing agency needs to calculate emissions from power plants connected to the transmission line. However, an agency also could interpret the Interim Guidance’s discussion of “indirect effects” to require the inclusion of emissions associated with the activities of every downstream customer — industrial, commercial, residential or governmental — receiving power from the transmission line. But requiring a NEPA analysis to encompass emissions associated with every end-use of electricity carried by the transmission line, particularly when electricity is constantly shifted around a grid, would surely exceed the limits of what is “reasonably foreseeable” and would make GHG analysis nearly impossible, thereby impeding federal approvals.

Simply put, the Interim Guidance’s position on “indirect effects” jeopardizes CEQ’s efforts to provide greater clarity. That position also potentially runs contrary to the “rule of reason” and the concept of proportionality. Guardrails are needed to ensure that NEPA analyses focus on impacts that are potentially significant and reasonably quantifiable to avoid devoting inordinate time and resources to analyzing effects that ultimately are not useful to an agency’s decision-making. Accordingly, the Groups strongly recommend that CEQ further clarify that the universe of “indirect effects” is *not* infinite — specifically, that only analysis of indirect effects that are reasonably foreseeable (*i.e.*, have a reasonably close causal relationship to the proposed action and that can reasonably be expected to occur) based on the best available science is required. Furthermore, CEQ should provide (i) examples of effects that would *not* fall within the purview of “indirect effects”; and (ii) additional project examples and their reasonably foreseeable

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<sup>22</sup> *Id.* (citing to 40 C.F.R. § 1508.1(g)(2)).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at fn. 86 (emphasis added).

upstream and downstream effects, particularly for renewable energy projects (e.g., solar) and other clean energy projects (e.g., carbon capture and storage).

### 3. SC-GHG Estimates

The Groups offer three recommendations regarding the use of SC-GHG estimates. First, the Groups recommend that CEQ state that whenever the potential costs associated with a project's GHG emissions are estimated through the use of SC-GHG, the project's potential benefits likewise should be estimated. While the Interim Guidance does not explicitly state that SC-GHG estimates are required, it does state that such estimates should typically be used.<sup>25</sup> Requiring a monetary quantification of a project's GHG impacts *without* the corresponding benefits, however, may provide an incomplete and distorted representation of a project's overall net benefits, which may lead to an incorrect understanding of the tradeoffs associated with an action and its alternatives. Thus, CEQ also should instruct agencies to quantify the project's benefits if they are to quantify SC-GHG estimates as a matter of "best practice[.]"<sup>26</sup>

Second, CEQ should not recommend that agencies use interim estimates by the Interagency Working Group on Social Cost of Greenhouse Gases ("IWG") for the currently available SC-GHG estimates.<sup>27</sup> They are not the "best available estimates" of SC-GHG because the estimates are based on methodologies that do not satisfy the National Academies of Sciences, Engineering, and Medicine's recommendations, and therefore are not yet scientifically reliable or adequately robust for use in the regulatory guidance, rulemaking, or policy analysis context.<sup>28</sup> Moreover, IWG's estimates are intended for use in the rulemaking context only (*i.e.*, national or regional policy evaluations) and may yield inconsistent, or even inaccurate, results if used for project-specific evaluations.<sup>29</sup> Any specific SC-GHG estimates that CEQ recommends agencies use should be

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<sup>25</sup> See *id.* at 1202, fn. 63 ("In *uncommon* circumstances, an agency may choose not to do so if doing so would be confusing, there are no available estimates for the GHG at issue, or, consistent with the concept of proportionality, an agency does not produce a quantitative estimate of GHG emissions because the emissions at issue are *de minimis*." (emphasis added)). See also *id.* at 1198 ("[A]gencies should apply NEPA principles and existing best practices to their climate change analyses by: . . . provid[ing] additional context for GHG emissions, including through the use of the best available social cost of GHG (SC-GHG) estimates, to translate climate impacts into the more accessible metric of dollars, allow decision makers and the public to make comparisons, help evaluate the significance of an action's climate change effects, and better understand the tradeoffs associated with an action and its alternatives.")

<sup>26</sup> *Id.* at 1198.

<sup>27</sup> *Id.* at 1202, fn. 61-63 (citing IWG, "Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990" (Feb. 2021); [https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument\\_SocialCostofCarbonMethaneNitrousOxide.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf)).

<sup>28</sup> See IWG's "Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990," at 12-15 (explaining that the document "provides preliminary discussion of how at least one component of SC-GHG estimation, discounting, warrants reconsideration in the more comprehensive update by January 2022 [not yet issued] to reflect the advice of the National Academies (2017) and other recent scientific literature"). We note the concerns regarding the IWG methodology raised by the Electric Power Research Institute ("EPRI") in its recent comments. EPRI, "Public comments on U.S. EPA proposed oil and gas methane rule and draft new SC-GHG estimation methodology (Docket ID No. EPA-HA-OAR-2021-0317)," Comment ID No. EPA-HQ-OAR-2021-0317-2361, submitted Feb. 15, 2023, <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-2361>.

<sup>29</sup> See *e.g.*, *id.* at 1-2. See also Executive Order 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993) (requiring agencies, to the extent permitted by law and where applicable, "to assess both the costs and benefits of the intended *regulation*" (emphasis added)).

based on rigorous, robust, and peer-reviewed scientific literature that has been conducted with full transparency and reviewed by the public.

Third, the Groups recommend that CEQ instruct agencies to also quantify *domestic* impact estimates, if it is requiring global SC-GHG estimates. While global SC-GHG estimates may be suitable for macro-scale evaluations, quantification of domestic impacts is likely more appropriate for evaluating the effects associated with one specific project by more accurately capturing the cost to U.S. society, which bears the most, if not all, direct impacts.

#### 4. Reasonable Alternatives

The Interim Guidance states that “agencies should identify the alternative with the lowest net GHG emissions or the greatest net climate benefits among the alternatives they assess.”<sup>30</sup> But although CEQ acknowledges that “[n]either NEPA, the CEQ Regulations, or this guidance *require* the decision maker to select the alternative with the lowest net GHG emissions or climate costs or the greatest net climate benefits,” the Groups are very concerned that GHG emissions may become, in practice, the determining factor in the selection of alternatives for review.<sup>31</sup> Many projects may not have such an alternative that is consistent with the project’s purposes — for example, a new natural gas-fired generating facility to maintain grid reliability and affordability. These facilities are essential as utilities transition to clean energy. Moreover, public utilities are regulated by state utility commissions and are subject to independent system operator and/or regional transmission organization rules, which may limit the range of reasonable alternatives. The Groups thus recommend that CEQ reframe its position on reasonable alternatives, acknowledging the need for facilities that can generate reliable and affordable electricity as electric generating companies continue to explore clean energy technologies that can be deployed at comparable scale.

#### 5. Effects of Climate Change on a Project

The Interim Guidance directs agencies to “consider how climate change can make a resource, ecosystem, human community, or structure more vulnerable to many types of effects and lessen its resilience to other environmental effects.”<sup>32</sup> The Interim Guidance further explains that “[s]uch considerations are squarely within the scope of NEPA and can inform decisions on siting, whether to proceed with and how to design potential actions and reasonable alternatives, and to eliminate or mitigate effects exacerbated by climate change.”<sup>33</sup> In many cases, however, the effects of environmental resources have either not been studied at a macro/regional scale or understood in a manner that would be considered “reasonably foreseeable” for NEPA analysis. The Group recommends that unless such effects are “reasonably foreseeable,” they should not be included in the NEPA analysis.

Furthermore, to the extent agencies take resiliency into account in making decisions, those decisions must be consistent with the agencies’ statutory authority and their own implementing

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<sup>30</sup> Interim Guidance at 1204.

<sup>31</sup> *Id.* (emphasis added).

<sup>32</sup> *Id.* at 1208 (providing as an example that “a proposed action or its alternative may require water from a stream that has diminishing quantities of available water because of decreased snow pack in the mountains, or add heat to a water body that is already warming due to increasing atmospheric temperatures”).

<sup>33</sup> *Id.*



regulations. NEPA is ultimately a procedural statute. Agencies cannot require private applicants to take steps to address resiliency issues unless the agency has authority over the siting and design of the proposed project.<sup>34</sup>

## 6. Applicability of Interim Guidance

CEQ should have issued the Interim Guidance in draft form so that it was not immediately effective in light of the unsettled issues raised by the Interim Guidance and the potential for changes in the final guidance.<sup>35</sup> Issuing the Interim Guidance in draft form also would have provided impacted stakeholders an opportunity to provide comment and assess appropriate steps to take, if needed, for proposed projects where NEPA review is underway.<sup>36</sup>

Until the Interim Guidance is finalized, the Groups strongly urge CEQ to refrain from directing agencies to apply the Interim Guidance to new NEPA analyses — or at least from encouraging agencies to apply the guidance to projects with an *ongoing* NEPA process.<sup>37</sup> This would eliminate confusion and possibly duplicative analysis and review if the final version ultimately differs from the Interim Guidance.

## III. CONCLUSION

The Class of '85 Regulatory Response Group and the Cross-Cutting Issues Group appreciate the opportunity to submit comments on the Interim Guidance. The Groups respectfully ask CEQ to consider the recommendations discussed above to ensure that the transition to clean energy is not impeded by burdensome NEPA reviews.

Dated: April 10, 2023

Respectfully submitted,

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<sup>34</sup> Even absent requirements to address resilience issues, the electric generating industry is already undertaking efforts to do so. The electric generating industry is currently developing a consistent framework based on scientifically informed insights to guide companies on climate resilience planning and adaptation investments. *See e.g.*, EPRI, Climate READi, <https://www.epri.com/research/sectors/readi>; EPRI, A Starting Point for Physical Climate Risk Assessment and Mitigation: Future Resilience and Adaption Planning, Apr. 27, 2022, <https://www.epri.com/research/products/00000003002024895>.

<sup>35</sup> *See* Interim Guidance at 1212.

<sup>36</sup> *See id.*

<sup>37</sup> *See id.*

## ATTACHMENT A

AES Corporation  
Alliant Energy Corporation  
Ameren  
Arizona Public Service  
Arizona Electric Power Cooperative, Inc.  
Arkansas Electric Cooperative Corporation  
City of Tallahassee  
Cleco Corporate Holdings LLC  
Cogentrix Energy Power Management, LLC  
Dairyland Power Cooperative  
Dayton Power & Light Company  
Dominion Energy  
Duke Energy  
Entergy Services, LLC  
Eversource Energy, Inc.  
Florida Municipal Electric Association  
Gainesville Regional Utilities  
Great River Energy  
Hawaiian Electric Company, Inc.  
Indianapolis Power & Light Company  
JEA  
Lakeland Electric  
Louisville Gas & Electric/Kentucky Utilities  
Minnesota Power  
National Grid  
NRG Energy  
OGE Energy Corp.  
Orlando Utilities Commission  
Portland General Electric  
PowerSouth Energy Cooperative  
Public Service Company of New Mexico  
Rainbow Energy Center, LLC  
Salt River Project  
Talen Energy  
Tampa Electric Company  
Tucson Electric Power Company  
Western Farmers Electric Cooperative  
Xcel Energy Inc.

## **ATTACHMENT B**

AES Corporation  
Arizona Public Service  
Alliant Energy Corporation  
Cleco Corporate Holdings LLC  
Dominion Energy  
Duke Energy  
Entergy Services, LLC  
Louisville Gas & Electric / Kentucky Utilities  
Minnesota Power  
OGE Energy Corp.  
Public Service Company of New Mexico  
PowerSouth Energy Cooperative  
Talen Energy  
Tucson Electric Power Company  
Salt River Project  
SIGECO