

Federal Energy Regulatory Commission Imposes New Requirements on Transmission Line Siting Applicants Seeking Rights of Way on Tribal Lands



Client Alert

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On October 17, 2024, the Federal Energy Regulatory Commission (FERC) took final action on Order No. 1977, which requires applicants seeking rights of way for electric transmission lines on Tribal lands to include Tribal Engagement Plans in their siting permit applications.

Section 216 of the Federal Power Act requires FERC approval for the siting of certain interstate electric transmission facilities, including on Tribal lands. The 2021 Infrastructure Investment and Jobs Act amended Section 216 to require FERC to now determine that a permit applicant has made a good faith effort to engage with landowners and other stakeholders, including Tribes.

Previously, applicants were only required to submit a Project Participation Plan during the application review process to provide stakeholders – including potentially affected Tribes – with information about a proposed transmission line project. Under Order No. 1977, applicants seeking transmission line rights of way on Tribal lands

must now include a full Tribal Engagement Plan (the “Plan”) within the Project Participation Plan. In this context, Tribal lands include (i) lands held *in trust* – *i.e.*, the United States holds land in trust for the benefit of a Tribe and/or individual Indian, and (ii) lands with *restricted* status – *i.e.*, a Tribe and/or individual Indian holds title to the land but can alienate or encumber it only with the approval of the United States.

Under Order No. 1977, the Plan must:

- Detail all targeted Tribal outreach;
- Provide a summary of comments received from Tribes during outreach;
- Describe planned outreach activities that are to occur during the pre-filing and after the filing of the application with potentially affected Tribes; and,
- Describe how the applicant will obtain the necessary Tribal permissions, including consent to access Tribal lands if needed (*e.g.*, to survey).

Finally, Order 1977 requires that communications with Indian Tribes be honest, factually accurate, and respectful of Tribal sovereignty, and confirms that Tribe’s right to exclude, or condition the presence of, nonmembers on Tribal lands is well-established, and nothing in Order No. 1977 can infringe upon Tribal sovereignty.

For more information regarding Order No. 1977, or for questions regarding its environmental or energy law impacts, contact Madelyn VanDorpe at mvandorpe@lippes.com or another member of our [Environment & Energy Practice Team](#).

For more information regarding securing rights of way or developing on Tribal lands, contact Kathryn Myrtle at kmyrtle@lippes.com or another member of our [Indian Law Practice Team](#).

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