



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

Preliminary Permits for Hydroelectric Power Projects Docket No. RM26-5-000

COMMENTS OF THE GRAND CANYON TRUST

I. Introduction

The main effect of the rulemaking the Secretary of Energy has proposed, contrary to his claims, would not be for “America to continue dominating global energy markets” or to boost development of “non-intermittent dispatchable” energy sources.¹ Rather, the rulemaking’s primary result would be to diminish the power of tribal nations to govern their own affairs and to manage their own lands, as sovereigns and proprietors. The Commission should not join hands with the Secretary in pursuing that backwards-thinking policy.

The Secretary’s proposal takes aim at Commission precedent that withholds preliminary permits for hydropower proposals on the lands of tribal nations who have objected to the permits’ issuance,² as well as a counterpart precedent applying to proposals on land or facilities managed by federal agencies who refuse to grant independent authorization for the project.³

Although we believe there is a sound rationale for this precedent across the board, our comments are focused solely on the tribal-deference precedent. Tribal nations, unlike federal agencies, are sovereigns, with extensive powers of self-governance. Those powers, as well as the unique obligations the federal government owes to tribes as a trustee, distinguish tribal reservations from other federal land

¹ Letter from the Secretary of Energy to the Federal Energy Regulatory Commission, “Secretary of Energy’s Direction that the Federal Energy Regulatory Commission Initiate Rulemaking Procedures and Proposal Regarding Hydroelectric Power Preliminary Permits Pursuant to the Secretary’s Authority Under Section 403 of the Department of Energy Organization Act,” 1, 4 (Oct. 23, 2025) (“Section 403 Letter”).

² See, e.g., *Nature & People First New Mexico PHS, LLC*, 186 FERC ¶ 61,118 (2024).

³ See, e.g., *FreedomWorks, LLC*, 167 FERC ¶ 62,026 (2019).

reservations, such as national forests or military sites, when interpreting the Commission’s authority over hydropower development on “the public lands and reservations of the United States.”⁴

Thus, even if it were a defensible policy for the Commission, when issuing preliminary permits, to speak for the United States government without regard to dissenting views of other federal agencies, it does not follow that the Commission can or should speak over the objection of tribal nations. It is a gross simplification, and a disrespectful one, for the Secretary’s proposal to lump together tribes and federal agencies as “third parties” who are “responsible for the lands on which the projects [would] be located.”⁵ The Commission should cast off that framing and recognize the unique legal and moral considerations governing its permitting decisions connected to tribal lands.

To that end, these comments urge two major points: (1) the Commission should extend the comment period; and (2) the Commission should decline to reverse its tribal-deference precedent.

II. Background

In 2019, the Commission began to receive a steady flow of applications for preliminary permits to build pumped-storage hydropower projects—many large, some colossal—on the Navajo Nation. The first was a pair of proposals by a company newly formed by two Phoenix businessmen to build the nation’s largest pumped-storage project on the doorstep of the Grand Canyon, entirely on Navajo Nation lands.⁶ The applicant’s aspiration was to dam the Little Colorado River gorge, just upstream of where the river flows into the Grand Canyon.⁷ That spot is called the

⁴ 16 U.S.C. § 797(e).

⁵ Section 403 Letter at 2–3.

⁶ Pumped Hydro Storage LLC, Application for Preliminary Permit: Salt Trail Canyon Pumped Storage Project, Project No. 14992-000, 6 & Ex. 3-2 (May 8, 2019); Pumped Hydro Storage LLC, Application for Preliminary Permit: Little Colorado River Pumped Storage Project, Project No. 14994-000, 6 & Ex. 3-2 (May 10, 2019).

⁷ *Id.*

confluence, where there is a numinous merging of the muddy Colorado River and the often-turquoise waters of the Little Colorado River. It is a place sacred to the Hopi, Navajo, Zuni, and other tribal nations.

The Navajo Nation intervened and objected to the permit's issuance, explaining that the applicant had not consulted with the Navajo Nation or sought approvals required under Navajo law.⁸ The Hopi Tribe also submitted comments opposing the permit application, explaining that it would "significantly and forever adversely impact Hopi sacred places...."⁹

Thus began a pattern, repeated ten more times in the next few years, in which outside developers applied for preliminary permits to build pumped-storage projects entirely on the Navajo Nation without first obtaining the Navajo Nation's official approval, and without first consulting formally with any other tribe whose cultural and spiritual interests the projects could affect.¹⁰ By February 2024, seven permit applications of this variety were pending before the Commission, making clear that a

⁸ Mot. to Intervene of the Navajo Nation, P-14992-000, 3 (Nov. 22, 2019); Mot. to Intervene of the Navajo Nation, P-14994-000, 3 (Nov. 22, 2019).

⁹ Letter from C. Tenakhongva, Vice Chairman, Hopi Tribe & T. Nuvangyaoma, Chairman, Hopi Tribe, to K. Bose, Secretary, Fed. Energy Regulatory Comm'n, P-14992-000, 2 (Oct. 23, 2019); Letter from C. Tenakhongva, Vice Chairman, Hopi Tribe & T. Nuvangyaoma, Chairman, Hopi Tribe, to K. Bose, Secretary, Fed. Energy Regulatory Comm'n, P-14994-000, 2 (Oct. 23, 2019).

¹⁰ See Navajo Energy Storage Station LLC, Application for Preliminary Permit: Navajo Energy Storage Station Project, P-15001 (July 1, 2019); Pumped Hydro Storage LLC, Application for Preliminary Permit: Big Canyon Pumped Storage Project, P-15024 (Mar. 11, 2020); Kinetic Power, LLC, Application for Preliminary Permit: Beclabito Hydroelectric Energy Storage Center, P-15034 (June 26, 2020); Nature & People First Ariz. PHS, LLC, Application for Preliminary Permit: Black Mesa Pumped Storage Project – North, P-15233 (Sep. 1, 2022); Nature & People First Ariz. PHS, LLC, Application for Preliminary Permit: Black Mesa Pumped Storage Project – East, P-15234 (Sep. 1, 2022); Nature & People First Ariz. PHS, LLC, Application for Preliminary Permit: Black Mesa Pumped Storage Project – South, P-15235 (Sep. 1, 2022); Nature & People First Ariz. PHS, LLC, Application for Preliminary Permit: Chuska Mountain North Pumped Storage Project, P-15309 (May 2, 2023); Rye Development, Application for Preliminary Permit: W. Navajo Pumped Storage Project No. 1, P-15314 (June 9, 2023); Rye Development, Application for Preliminary Permit: W. Navajo Pumped Storage Project No. 2, P-15315 (June 9, 2023); Nature & People First New Mexico PHS, LLC, Revised Application for Preliminary Permit: Chuska Mountain Pumped Storage Project, P-15293 (July 12, 2023).

recurring confrontation with tribal sovereignty had arisen from the upswell of developers seeking to gain licensing priority over pumped-storage development sites.

The Commission responded with a ruling tailored to this emerging problem—a ruling that recognized the distinctive jurisdiction belonging to tribes, as sovereigns, over their lands and the distinctive responsibilities owed to tribes by the federal government, as a trustee. In four orders issued in February 2024, the Commission held that it “will not issue preliminary permits for projects proposing to use Tribal lands if the Tribe on whose lands the project is to be located opposes the permit.”¹¹

The effect of this tribal-deference rule, of course, is not to preclude hydropower development on tribal lands, but rather, to establish an orderly permitting sequence that gives due regard to the sovereign rights of tribal nations to control entry onto and regulate the use of their own lands. And indeed, applying this precedent, the Commission recently issued a preliminary permit for a project on the Navajo Nation that the Navajo Nation did not oppose, after the developer began consultation with the Navajo Nation and acquired surveying and access permits from the Navajo Nation.¹²

III. Comments

A. The Commission should allow more time for public comment.

So far as we can discern, on October 27, 2025, the Commission quietly posted to its eLibrary system the notice inviting comments on the Secretary’s proposal, allowing only 16 days for responses.¹³ It appears the Commission has pursued little outreach to alert tribal nations and the public to the comment opportunity. Nothing

¹¹ *Nature & People First Ariz. PHS, LLC*, 186 FERC ¶ 61,117 (2024); *Nature & People First NM PHS, LLC*, 186 FERC ¶ 61,118 (2024); *Nature & People First Ariz. PHS, LLC*, 186 FERC ¶ 61,119 (2024); *W. Navajo Pumped Storage 1, LLC*, 186 FERC ¶ 61,120 (2024).

¹² See Letter from V. Blackhat, Ass’t Attorney General, Navajo Nation Dep’t of Justice, to E. Steimle, Rye Development, 1 (Feb. 14, 2025), enclosed with Rye Development, Application for Preliminary Permit: W. Navajo Pumped Storage Project, P-15314, (Mar. 14, 2025); *W. Navajo Pumped Storage 1, LLC*, 192 FERC ¶ 62,075 (Aug. 7, 2025).

¹³ Comment Notice at 1.

was published in the Federal Register. The Commission did not issue a press release. No alert appeared on the Commission's website.

We presume the Commission's rush arises from the Secretary's demand that the Commission take "immediate and final action" on his rulemaking proposal by December 18, 2025.¹⁴ The Secretary gave no reason for insisting on that hurried timeline,¹⁵ and its justification is not self-evident.

The Commission is obligated only to act expeditiously on the Secretary's proposal and to comply with "reasonable time limits as may be set by the Secretary...."¹⁶ Yet here, the Secretary's 8-week deadline is unreasonable, and indeed it appears to have been chosen arbitrarily.

The policy matters in question are not simple, and garnering well-developed comments from tribal governments, cultural-preservation officers, tribal communities, and a broad swath of the public would take more than 16 days. This is especially true here, where the rulemaking would affect Native people who often face technological and logistical constraints in responding rapidly to comment opportunities like this one.

To make a bona fide effort to solicit the views of tribal nations and the public, the Commission should extend the comment period to at least 30 days.

B. The Commission should decline to initiate the proposed rulemaking.

The arguments the Secretary has made for his proposal falter on numerous grounds. The Secretary has overstated his authority by purporting to give the Commission "direction" to initiate his proposed rulemaking. He has erred in arguing that the Commission's precedent contravenes the Federal Power Act and the Commission's regulations. His assertion about improper delegation of authority to "third parties" overlooks specialized principles that apply when sovereigns, like

¹⁴ Section 403 Letter at 4.

¹⁵ *Id.*

¹⁶ 42 U.S.C. § 7173(b).

tribes, are implicated. And his insinuation that the tribal-deference precedent is an “unnecessary burden[]” for developing “non-intermittent dispatchable generation sources” does not comport with the facts,¹⁷ especially considering the Secretary’s and the Trump administration’s anti-renewable-energy policies.

1. *The Secretary lacks authority to “direct” the Commission to initiate a rulemaking.*

The Secretary’s October 23, 2025, letter purports to give the Commission “[d]irection” to initiate rulemaking procedures, yet the Secretary has no such power.¹⁸ Congress has authorized the Secretary to “propose” rules and regulations, but it has granted the Commission “exclusive jurisdiction” to take “final action” on any proposal the Secretary makes.¹⁹ The Commission is, of course, an independent agency over which the Secretary of Energy lacks supervisory power. It is up to the Commission, and only the Commission, to determine whether to initiate the rulemaking the Secretary has proposed.

2. *The tribal-deference precedent does not defy the Federal Power Act.*

The Secretary is mistaken to argue that the Commission’s tribal-deference precedent “cannot be squared with the [Federal Power Act].”²⁰ In the Act, Congress “authorized and empowered” the Commission “[t]o issue preliminary permits for the purpose of enabling applicants for a [hydropower] license ... to secure the data and to perform the acts required by” the license-application section of the Act.²¹ That text conditions the Commission’s power only by requiring that preliminary permits be issued for the purpose of preparing applications for hydropower licenses. The only other salient statutory commands require the Commission to give notice of

¹⁷ Section 403 Letter at 1, 4.

¹⁸ *Id.* at 1.

¹⁹ 42 U.S.C. § 7173(a)–(b).

²⁰ Proposed Notice of Proposed Rulemaking, “Preliminary Permits for Hydroelectric Power Projects,” 6 (Oct. 23, 2025), enclosed with Section 403 Letter (“Proposed NOPR”).

²¹ 16 U.S.C. § 797(f).

preliminary-permit applications,²² to give preference to certain applicants (including tribes),²³ and to confine permit terms to no more than 4 years, with limited power to grant extensions.²⁴

Nothing in the statute prevents the Commission from exercising its discretion to establish other preconditions for issuing permits. Or, as the D.C. Circuit has put it: “[The Commission], under the Federal Power Act, is not obliged to issue permits to anyone who seeks them.”²⁵ On the contrary, the Commission may deny a permit for any reason that is consistent with the Administrative Procedure Act—any reason that is not arbitrary, capricious, or otherwise not in accordance with law.²⁶

In keeping with that broad delegation of power from Congress, the Commission “has historically exercised significant discretion in processing preliminary permit applications.”²⁷ The earliest Federal Power Act regulations categorically denied permits to all proposed projects whose capacity was under 100 horsepower.²⁸ The Commission in recent years has ruled that it will not issue preliminary permits for projects in Hawaii that fall under the Commission’s permissive-licensing power.²⁹ The Commission has also denied permits when

²² *Id.*

²³ 16 U.S.C. § 800(a).

²⁴ 16 U.S.C. § 798.

²⁵ *Karmargo Corp. v. Fed. Energy Reg. Comm’n*, 852 F.2d 1392, 1398 (Aug. 9, 1988); *see also Symbiotics, LLC*, 100 FERC ¶ 61,010, 61,018 (2002) (observing that Commission has “broad discretion to decide whether or not to issue a preliminary permit”); *Preliminary Permits for Wave, Current, and Instream New Technology Hydropower Projects*, 72 Fed. Reg. 9,281, 9,282 n.9 (Feb. 15, 2007) (“Nothing in the [Federal Power Act] requires the Commission to issue a preliminary permit; whether to do so is a matter solely within the Commission’s discretion.”).

²⁶ *Karmargo Corp.*, 852 F.2d at 1398; *see also Wyco Power & Water, Inc.*, 139 FERC ¶ 61,124, 61,852 (2012) (recognizing that the Commission may deny a preliminary permit “so long as it articulates a rational basis for not issuing the permit”).

²⁷ *Kahawai Power 4, LLC*, 137 FERC 61,057, *5 (Oct. 20, 2011).

²⁸ *Id.* (citing Regulation 9, FPC Order No. 9 (Feb. 28, 1921)).

²⁹ *Id.*

applicants are unfit.³⁰ And it has denied permits when there is a permanent legal barrier standing in the way of a project's development.³¹

The Commission's tribal-deference ruling is of a piece with this precedent and thus squarely within the Commission's statutory authority. And the rationale for the ruling is not arbitrary or capricious.

In adopting it, the Commission first pointed to its precedent for responding to federal-agency opposition to preliminary permits for projects on public lands and at federal facilities.³² In those cases, the Commission reasoned that "there would be no purpose in issuing a preliminary permit" when a federal agency with independent permitting authority "has indicated that it is unlikely to issue the necessary authorizations for the project."³³ The Commission then "recognize[d] the unique relationship between the United States and Indian Tribes..." and concluded that its "trust responsibility to Tribes counsel[ed]" adoption of "a similar policy in cases involving Tribal lands."³⁴

The support for this reasoning is ample. Tribes are vested, as sovereigns and by recognition in federal law, with far-reaching powers of self-governance. Exercising these powers, tribes may preclude a preliminary-permit holder from accessing tribal lands to conduct investigative activities. Indeed, one of the Navajo Nation's repeated objections to the issuance of preliminary permits for projects on its lands has been

³⁰ See, e.g., *Energie Grp. v. Fed. Energy Regulatory Comm'n*, 511 F.3d 161, 164 (D.C. Cir. 2007) ("In deciding whether to grant a permit, [the Commission] . . . has discretion to consider the fitness of the applicant.").

³¹ See, e.g., *Symbiotics, LLC*, 99 FERC ¶ 61,100, 61,416–17 (2002), *aff'd by Symbiotics, L.L.C. v. Fed. Energy Regulatory Comm'n*, 110 F. App'x 76, 81 (10th Cir. 2004).

³² See *Nature & People First Ariz. PHS, LLC*, 186 FERC ¶ 61,117 at ¶ 12.

³³ *FreedomWorks, LLC*, 167 FERC ¶ 62,026 at ¶ 11; see also *Advanced Hydropower, Inc.*, 155 FERC ¶ 61,007, at ¶¶ 9–10 (2016) (describing Commission precedent denying permits when "no purpose would be served in issuing a permit because the federal entity would not approve modifications to its federal facilities.").

³⁴ *Nature & People First Ariz. PHS, LLC*, 186 FERC ¶ 61,117 at ¶¶ 13–14.

that applicants have not procured clearances and permits, such as those needed for preliminary biological investigations.³⁵

Thus, considering the independent authority that tribal nations have over hydropower development on tribal lands, the Commission's trust responsibilities, and the moral and legal rights of self-determination that tribes possess, there is a sound basis for the Commission's tribal-deference precedent.

3. The Commission's regulations and tribal-deference holding are in accord.

The Secretary's assertion that the tribal-deference precedent "cannot be squared with the Commission's regulations" is as baseless as his twin claim about the Federal Power Act.³⁶ The Commission's regulations, like the Act, are silent about whether the Commission will grant preliminary permits on the lands of tribal nations who have objected to the permit's issuance.³⁷ And the tribal-deference precedent cannot be inconsistent with silence.

On the contrary, the Commission is empowered to implement the Federal Power Act through case-by-case adjudication and not solely by adopting regulations.³⁸ And the Commission's adjudicative precedent has equal legal force as the Commission's regulations.³⁹ The tribal-deference requirement is the result of adjudication, and it is for all legal purposes equivalent to, and complementary of, the Commission's regulations.

³⁵ See, e.g., Navajo Nation, Motion to Intervene, P-15233-000, at 3 (Dec. 30, 2022).

³⁶ Proposed NOPR at 6.

³⁷ See 18 C.F.R. §§ 4.30–4.39, 4.80–4.84.

³⁸ 16 U.S.C. § 825h; see also *S. Carolina Pub. Serv. Auth. v. Fed. Energy Reg. Comm'n*, 762 F.3d 41, 71 (D.C. Cir. 2014) ("The decision whether to proceed by rulemaking or adjudication lies within the broad discretion of the agency....") (internal quotation omitted).

³⁹ See *Pacific Ga. & Elec. v. Fed. Power Comm'n*, 506 F.2d 33, 38 (D.C. Cir. 1974) ("An administrative agency has available two methods for formulating policy that will have the force of law. An agency may establish binding policy through rulemaking procedures by which it promulgates substantive rules, or through adjudications which constitute binding precedents."); see also *Symbiotics, L.L.C.*, 110 F. App'x at *85–86 ("'[A]gencies are not precluded from announcing new principles in an adjudicative proceeding, ... and the choice between rulemaking and adjudication lies in the first instance within the agency's discretion.'") (quoting *Rupp v. U.S. Dep't of Treasury*, 52 F.3d 1510, 1521 (10th Cir.1995)).

4. *The Commission has not improperly delegated its authority.*

The tribal-deference precedent does not present a sub-delegation problem, contrary to the Secretary's assertions. The Secretary argues that the Commission "has created an untenable regime," in which it has "delegated its exclusive statutory authority to issue preliminary permits to third parties."⁴⁰ But that is too facile a framing of the relevant law.

Subdelegation principles do not impede federal agencies from requiring tribal consent as a precondition to issuing a permit affecting a tribe's lands.⁴¹ That sort of precondition has been upheld on the grounds that tribal nations have independent, sovereign authority over their lands.⁴² Stated more broadly, there is no legal impropriety for a federal agency to "incorporate into the decision-making process the wishes of a body with independent authority over the affected lands."⁴³ Requiring tribal consent, moreover, does not improperly relinquish final decision-making power to a tribe when the agency, as here, retains the final choice over whether to approve the permit.⁴⁴

The Ninth Circuit's decision in *Southern Pacific Transportation Company v. Watt* is directly on point. In that case, the Southern Pacific railroad challenged an Interior Department regulation requiring tribal consent as a condition precedent to granting rights-of-way across tribal lands under an 1899 statute.⁴⁵ The statute, as here, was silent on the question of tribal consent but granted the Secretary of the Interior

⁴⁰ 403 Letter at 3.

⁴¹ See *S. Pac. Transp. Co. v. Watt*, 700 F.2d 550, 556 (9th Cir. 1986); *U.S. Telecom Ass'n v. Fed. Comm. Comm'n*, 359 F.3d 554, 567 (D.C. Cir. 2004) ("[A] federal agency entrusted with broad discretion to permit or forbid certain activities may condition its grant of permission on the decision of another entity, such as a state, local, or tribal government, so long as there is a reasonable connection between the outside entity's decision and the federal agency's determination."); *United States v. Matherson*, 367 F. Supp. 779, 782–83 (E.D.N.Y. 1973) *aff'd* by 493 F.2d 1399 (2d Cir. 1974).

⁴² *S. Pac. Transp. Co.*, 700 F.2d at 556.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

general authority to prescribe rules and regulations governing right-of-way grants.⁴⁶ Using that authority, the Secretary of the Interior adopted a regulation providing that “[n]o right-of-way shall be granted over and across any tribal land ... without the prior consent of the tribe.”⁴⁷

Faced with the railroad’s argument that this regulation was an unlawful redelegation of the Interior Secretary’s authority, the Ninth Circuit ruled for the Secretary, holding that the “Secretary acted within his power in requiring by regulation that tribal consent be obtained for the acquisition of rights-of-way pursuant to the 1899 Act....”⁴⁸

The D.C. Circuit has concurred. Though that court has disagreed with the Ninth Circuit’s application of related Supreme Court precedent, and though it has articulated somewhat differing standards for evaluating sub-delegation issues, it has agreed that “a federal agency entrusted with broad discretion to permit or forbid certain activities may condition its grant of permission on the decision of another entity, such as a state, local, or tribal government, so long as there is a reasonable connection between the outside entity’s decision and the federal agency’s determination.”⁴⁹

The Commission’s tribal-deference precedent fits that description precisely. And it accordingly does not violate sub-delegation principles.

5. *The evidence does not support the Secretary’s assertion that his proposed rule will boost non-intermittent, dispatchable power.*

The main energy-policy argument the Secretary has advanced for his rulemaking proposal is that it will remove an “unnecessary burden[]” on the

⁴⁶ Compare *id.* at 553 with 16 U.S.C. § 825h (granting the Commission the power to “prescribe, issue, make, amend and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of the [Federal Power Act].”).

⁴⁷ *Id.* at 552 (quoting 25 C.F.R. § 161.3(a) (1981)).

⁴⁸ *Id.* at 556.

⁴⁹ *U.S. Telecom Ass’n*, 359 F.3d at 567.

development of hydropower projects.⁵⁰ Those projects, he has asserted, are an important way to help ensure a “reliable supply of energy from non-intermittent dispatchable generation sources.”⁵¹ But the facts paint a differing, more complicated, picture.

To fairly predict the likely effects of the Secretary’s rulemaking proposal, it is crucial to recognize that all the permit applications that have so far been denied due to a tribe’s opposition were closed-loop pumped-storage projects.⁵² That project design cannot generate power in isolation, but instead simply stores energy generated by other, variable sources, like wind and solar installations. When energy is abundant and prices are low, a closed-loop pumped-storage facility would pump water from one reservoir to another at a higher elevation. And when energy is in demand and prices rise, water would be released back to the lower reservoir to generate energy. Systems of that design have no use—and will not be built—except to shift the timing for when wind- and solar-generated energy can be used.

In other words, only if wind and solar projects are built at scale is it sensible also to build closed-looped pumped-storage projects. And yet, under Secretary Wright’s leadership, the Department of Energy has joined in pervasive efforts by the current administration to obstruct development of wind and solar projects. In July of

⁵⁰ Section 403 Letter at 1.

⁵¹ *Id.* at 4.

⁵² See Pumped Hydro Storage LLC, Application for Preliminary Permit: Big Canyon Pumped Storage Project, P-15024, at 1, Ex. 3-1 (Mar. 11, 2020); Nature & People First Ariz. PHS, LLC, Application for Preliminary Permit: Black Mesa Pumped Storage Project – North, P-15233, Ex. 1 at 1 (Sep. 1, 2022); Nature & People First Ariz. PHS, LLC, Application for Preliminary Permit: Black Mesa Pumped Storage Project – East, P-15234, Ex. 1 at 1 (Sep. 1, 2022); Nature & People First Ariz. PHS, LLC, Application for Preliminary Permit: Black Mesa Pumped Storage Project – South, P-15235, Ex. 1 at 1 (Sep. 1, 2022); Nature & People First Ariz. PHS, LLC, Application for Preliminary Permit: Chuska Mountain North Pumped Storage Project, P-15309, Ex. 1 at 1 (May 2, 2023); Rye Development, Application for Preliminary Permit: W. Navajo Pumped Storage Project No. 1, P-15314, Ex. 1 at 7 (June 9, 2023); Rye Development, Application for Preliminary Permit: W. Navajo Pumped Storage Project No. 2, P-15315, Ex. 1 at 7 (June 9, 2023); Nature & People First New Mexico PHS, LLC, Revised Application for Preliminary Permit: Chuska Mountain Pumped Storage Project, P-15293, Ex. 1 at 1 (July 12, 2023).

this year, for example, the Department canceled a \$4.9 billion loan for an 800-mile transmission line “intended to connect wind and solar capacity across Kansas and Missouri.”⁵³ Weeks later, the Department announced plans to withhold \$13 billion in funding for the “wasteful Green New Scam agenda.”⁵⁴

Examples like this are plentiful elsewhere in the current administration. One that stands out in this setting is the Environmental Protection Agency’s decision to end the Solar for All program, which had allocated \$7 billion in Inflation Reduction Act funding to build solar infrastructure in low-income communities.⁵⁵ Of that sum, \$25 million had been obligated to install solar panels at 600 homes on the Hopi Reservation, where many homes lack electricity.⁵⁶

These anti-wind-and-solar initiatives are in direct conflict with Secretary Wright’s rulemaking proposal, for it is possible for his proposal to help boost “non-intermittent, dispatchable generation sources” only to the extent that wind and solar sources are simultaneously being constructed at a significant scale. And yet, by attacking wind and solar generation, the Secretary is also hampering the economic justification for closed-loop pumped-storage projects.

Added to that, the Secretary has given no reason to think that tribes will arbitrarily thwart pumped-storage projects whose developers began consultation early and respectfully, comply with tribal law, and pursue only those projects that are responsive to the concerns and interests of tribal communities and governments. It is

⁵³ U.S. Dep’t of Energy, “Dep’t of Energy Terminates Taxpayer-Funded Financial Assistance for Grain Belt Express” (July 23, 2025) *available at* <https://www.energy.gov/articles/departments-energy-terminates-taxpayer-funded-financial-assistance-grain-belt-express>.

⁵⁴ U.S. Dep’t of Energy, “Energy Department Returns \$13 Billion in Unobligated Wasteful Spending to American Taxpayers” (September 24, 2025) *available at* <https://www.energy.gov/articles/energy-department-returns-13-billion-unobligated-wasteful-spending-american-taxpayers>.

⁵⁵ Environmental Protection Agency, “Greenhouse Gas Reduction Fund” (Nov. 12, 2025) *available at* <https://www.epa.gov/aboutepa/greenhouse-gas-reduction-fund>.

⁵⁶ See National Public Radio, “A tribe in Arizona planned to connect 600 homes to electricity. Then the funding was cut,” (Oct. 7, 2025) *available at* <https://www.npr.org/2025/10/07/nx-s1-5453913/trump-hopi-tribes-native-americans-clean-energy>.

equally doubtful, contrary to the Secretary's claims, that improper "gamesmanship" will result from the tribal-deference precedent.⁵⁷ Tribes already have a statutory right to assert precedence over competing preliminary-permit applicants, which Congress enacted in the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.⁵⁸ It is a jaundiced view, furthermore, for the Secretary to speculate that tribes will have some special propensity to abuse a power to screen competing hydropower applications. Surely the Secretary would not characterize as "gamesmanship" other landowners' choices about how to use their lands.

In short, the better view of the facts is that the Secretary's rulemaking proposal will not accelerate the development of closed-loop pumped-storage projects. And that raises a crucial question: Is the Secretary's rulemaking proposal likely to have any consequential outcome other than to take away power from tribal nations to govern their own affairs and their own lands?

We think not. That sort of anti-sovereignty policy is wrong-headed, and the Commission should decline to pursue it.

Respectfully submitted this 12th day of November, 2025.

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⁵⁷ Section 403 Letter at 3–4 n.13; Proposed NOPR at 7.

⁵⁸ Pub. L. 115-325 § 201(a) (Dec. 18, 2018, codified at 16 U.S.C. § 800(a)).