

Comments of Environmental Defense Fund (EDF) on the Colorado Electric Transmission Authority (CETA) Draft Principles of Community Engagement

Submitted via email to mgalbraith_CETA@outlook.com

INTRODUCTION

EDF appreciates the efforts of CETA in developing a set of principles and binding engagement requirements that transmission developers must meet when developing transmission projects in Colorado (“Draft Principles”).¹

Building transmission is crucial to achieving the Polis Administration’s goal of 100% renewable energy by 2040.² New transmission lines, and capacity upgrades to existing lines, not only enable new renewable resources to reach the grid and serve end use customers,³ but also help harden the electric system against severe weather events,⁴ increase overall reliability,⁵ and provide energy security to areas with tenuous grid connections.⁶

Despite the many benefits that transmission can yield, the physical construction and operation of transmission infrastructure can disrupt communities. Some have borne the brunt of adverse impacts from our fossil-driven past,⁷ often with limited or no compensation. Just as land taken for public benefit projects must be justly compensated, communities hosting transmission

¹ Colorado Electric Transmission Authority, Principles of Community Engagement (2024), <https://static1.squarespace.com/static/6390da3a799a023d4be2c27e/t/66671ded9bfe07e60757583/1718033901536/CETA+Principles+of+Engagement+DRAFT.pdf>.

² Polis Administration’s Roadmap to 100% Renewable Energy by 2040 and Bold Climate Action, <https://energyoffice.colorado.gov/sites/energyoffice/files/documents/ROADMAPTO100%25RENEWABLE.pdf>.

³ DOE Office of Policy, *Queued Up . . . But in Need of Transmission* (2022), <https://www.energy.gov/sites/default/files/2022-04/Queued%20Up%E2%80%A6But%20in%20Need%20of%20Transmission.pdf>.

⁴ Michael Goggins, *Transmission Makes the Power System Resilient to Extreme Weather*, Grid Strategies (2021), https://www.cleanenergygrid.org/wp-content/uploads/2021/09/GS_Resilient-Transmission_proof.pdf.

⁵ See also Christina E. Simeone and Amy Rose, *Barriers and Opportunities to Realize the System Value of Interregional Transmission*, National Renewable Energy Laboratory, <https://www.nrel.gov/docs/fy24osti/89363.pdf>.

⁶ BIA, Statement of Bryan Newland Assistant Secretary for Indian Affairs (Mar. 29, 2023), <https://www.doi.gov/ocl/tribal-energy-development#:~:text=Specifically%2C%2021%25%20of%20Navajo%20Nation,overall%20lives%20of%20Native%20Americans.>

⁷ EPA, Power Plants and Neighboring Communities, <https://www.epa.gov/power-sector/power-plants-and-neighboring-communities>.

facilities should also be justly benefited. CETA's Draft Principles provide a solid foundation to drive a more equitable process capable of limiting adverse impacts to communities and offering meaningful benefits.

One major shortcoming of the principles as proposed is insufficient focus on providing Colorado communities with the context and resources needed to understand information provided to them in the course of their engagement regarding transmission development. To address these shortcomings, EDF urges CETA to focus on developing and sharing with the public additional information on CETA's role, the engagement principles as finalized, and context on transmission development within Colorado generally, including historical and potential future impacts.

A second shortcoming of the proposed principles is lack of clarity regarding how CETA intends for developers to operationalize these principles where transmission lines cross state boundaries. CETA has the power to "coordinate, investigate, plan, prioritize, and negotiate with entities within and outside Colorado for the establishment of interstate transmission corridors."⁸ Additional clarity should focus on how to avoid or mediate between conflicting, duplicative, overlapping or unnecessary community engagement requirements in other states, and how to establish procedures to streamline community engagement practices in these scenarios to avoid developers spending time engaging in repetitive and wasteful activities. CETA should outline how it will work with other states to ensure that these Draft Principles and associated requirements with those of neighboring state.

Third, CETA should clarify how it will ensure that developers comply with these principles, including specific information or materials CETA will require developers to submit to demonstrate compliance with the principles, how CETA will evaluate those materials, and what if any penalties developers could be subject to if they violate the principles.

Fourth, while we appreciate the opportunity to provide feedback on these Draft Principles, we are concerned that the engagement process for stakeholder feedback on the Draft Principles was not sufficiently robust. Where these principles serve as the backbone of the requirements that will inform how transmission developers, communities, local individuals and community-based organizations will engage to benefit Colorado communities, those

⁸ Colorado Electric Transmission Authority, About CETA, <https://www.cotransmissionauthority.com/about>.

communities deserve the greatest opportunity to weigh in on the principles prior to finalization. We are concerned with the narrowness of the outreach seeking public input; for example, the Draft Principles document does not provide an email address or contact information, does not explicitly request public comments to inform the final principles, and CETA appears not to have advertised the opportunity to provide public comment via its website or on any social media.

This narrow distribution of information on this comment opportunity risks missing out on feedback that could be highly valuable for informing final principles that could significantly benefit how developers and CETA engage communities. We encourage CETA to offer a new round of public comment with increased outreach and visibility to members of the public, including clear instructions regarding how community members can engage with CETA staff to provide responses.

Lastly, EDF suggests that CETA to add a principle establishing clear guidance to developers regarding how they must define a particular “community,” and thus which groups stand to represent the members of that community, and what process they must undergo to make that determination. This is an issue that has come up recently in the FERC led *Roundtable on Environmental Justice and Equity in Infrastructure Permitting*,⁹ where community groups highlighted that a project developer that negotiated to build a Boys and Girls Organization center only had discussions with a community group that represented the more affluent white neighborhood and did not have any substantive engagement with any members of the black community.¹⁰

While most of the impacts are felt by the community members that live near to a project, other communities can be affected by projects from afar. A recent and related example comes from litigation filed by Tohono O’odham Nation and the San Carlos Apache Tribe to halt construction of a portion of the SunZia transmission line that would cross Arizona’s San Pedro

⁹ FERC, *Roundtable on Environmental Justice and Equity in Infrastructure Permitting*, Docket No. AD23-5-000 (Mar. 29, 2023) <https://www.ferc.gov/news-events/events/roundtable-environmental-justice-and-equity-infrastructure-permitting>.

¹⁰ *Id.* See Transcript at 109, available at <https://www.ferc.gov/sites/default/files/2023-04/20230405-4001.PDF>.

Valley, an area that is sacred to both tribes, despite their reservations, and most of their membership being located hundreds of miles away.¹¹

Guidance should consider how developers can identify and engage different communities, including communities that may not be clearly geographically defined. This process should include meetings with local and tribal governments, community leaders, and community based organizations. If a community is entirely geographically defined, CETA guidance should clarify whether a community should be delineated by distance from a project, or by jurisdictional limits, such as county, or neighborhood. If a community is culturally defined, CETA should also specify a set of best practices.

Defining the contours of a community and who has the right to speak for it, is one of the most important steps in the entire community engagement process and CETA should provide guidance to transmission developers for how they can ensure that they are properly defining the bounds of what a community is, and equally important, what a community is not.

In the sections below, we respond directly to the individual Draft Principles:

I. Information Sharing

EDF agrees with CETA that information sharing and data transparency throughout the engagement process is key to ensure that that communities are aware of the impacts of a potential project, and that they are provided adequate notice and sufficiently informed to be able to engage in fair negotiations with developers. We therefore strongly support the broad policies articulated in CETA's minimum requirements but encourage CETA to provide additional detail to better ensure that the requirements result in greater accessibility and developer accountability.

Process Documentation: Information that may be important to communities may be difficult to access – not necessarily because it is unavailable, but because it can be dense, complex and technical or because where and how to locate available information is unknown to some important stakeholders. Developers should therefore endeavor to make process and related documents as inclusive as possible by ensuring that the information is accessible to community

¹¹ Formal Compl. Re Violations of Cert. of Env't Compatibility No. 171 By SunZia, *In the Matter of the Application of SunZia Transmission LLC*, AZ. Corp. Comm'n., Docket No. L00000YY-15-0318-00171, Received Feb. 5, 2024, https://biologicaldiversity.org/programs/public_lands/rivers/san_pedro_river/pdfs/lawsuit-ACC-20240205-COMPLAINT-FILED.pdf.

members that are not in the common practice of evaluating transmission development documents.

To accomplish these goals, in addition to requiring that transmission developers “maintain thorough documentation of all steps leading to project decisions, including meeting notices, agendas, summaries, public input opportunities, and supporting technical information,”¹² developers should also create and maintain brief summaries of all large documents exceeding 20 pages, explainers for technical documents, and glossaries of technical terms and acronyms that are often used in project documents.¹³

Public Information Repository: A public database of project information is crucial to ensure that the public can determine the scope of the project and identify any potential impacts. Access to this information will help ensure that communities can engage in good faith with developers. Therefore, EDF strongly supports CETA’s requirement that developers “create and maintain a publicly accessible repository of project information, including a project timeline with highlighted public engagement opportunities.”¹⁴

CETA, however, should clearly specify where this repository should be hosted. EDF recommends that this database exist on a public website that is hosted by CETA. There are several important reasons why CETA should host the website. First, CETA could provide web location, nomenclature and user interface consistency in its database. This would provide the public with a one-stop-shop for all information, rather than having to visit and search through each individual transmission developer page to locate the data, which could have varying naming conventions and more complex, less user-friendly search functions. A central, CETA-run database would lower the risk of search errors, and better ensure that the public has access to the information. Second, CETA is less likely to develop financial shortfalls that could risk project bankruptcies and cause disruptions to company operations, including its web hosting. Third, CETA could better ensure that the data that is available in the database is search-engine-optimized (“SEO”) so that members of the public can locate the files directly through a public

¹² *Draft Principles* at 1.

¹³ See C40 Cities, *Inclusive Community Engagement Playbook*, 30 (2019), https://c40.my.salesforce.com/sfc/p/#36000001Enhz/a/1Q000000Mea7/3zH_zQzfhUmD_KNamcD1aPz5zvabD4XtoDO9yfEMgFM.

¹⁴ *Draft Principles* at 1.

search query using common search engines such as Google. To best enable that files are SEO-optimized, CETA should require that transmission developer files, particularly PDFs and image files, use Optical Character Recognition (“OCR”) to ensure that they can be searchable. Many and more of these recommendations are also mandatory for state and local government websites under Department of Justice ADA compliance rules.¹⁵

Not all members of a community have access to reliable high-speed internet.¹⁶ This is why in addition to having an online repository, physical hard copies of project documents should also be made available. The location of these hard copies, or a computer-supported staff member who can provide local community members with access to the database, should be determined through engagement with the community.

Finally, there should be no expiration date on how long files are publicly available. Transmission projects can take up to a decade to build. It is therefore important that these public databases are maintained with longevity in mind. If CETA hosts the repository online, it should endeavor to host them in perpetuity, but at least for six years following the completion of a project. CETA should clarify that this repository would also include the process documents that are described in the separate “process documentation” section above.¹⁷

Project Points of Contact: It is important that transmission project developers designate a point of contact available to receive input from community members and respond to any questions. These contacts should be clearly displayed on transmission developer websites and kept in an online database that is hosted by CETA to provide an additional layer of transparency. Developers should also include all points of contact on any public-facing documents.

To better ensure accessibility for community members who are unable to use the internet, developers should include both an email address and a phone number. When out of the office, points of contact email addresses and phone numbers should automatically forward to others within a company who are capable of hearing community input. Developers should also review and update points of contact monthly to better ensure that information is up to date. CETA should

¹⁵ See 28 C.F.R. Part 35, *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities*, <https://www.ada.gov/assets/pdfs/web-rule.pdf>.

¹⁶ As of June 30, 2023, 160,426 Colorado homes did not have access to 100 Mbps internet download speeds. See Colorado’s Governor’s Office of Information Technology, Colorado Broadband Office Mapping Hub, <https://broadbandhub.colorado.gov/>.

¹⁷ See *Process Documentation*, *supra* P. 4-5.

also designate its own point of contact that community members can reach if they are unable to reach a developer.

Points of contact should be capable of soliciting and responding to feedback in as many languages as is relevant and that reflects the makeup of a particular community. At no point should the sole point of contact be a chat bot, nor should there be any requirements to submit a form, engage with a chat bot, or go through lengthy automated phone systems before reaching a point of contact. If a point of contact is not immediately available via phone, where a community member does leave a message, a response should be required within a reasonable time not to exceed 48 hours (excepting weekends and holidays).

Timely Updates: Timely and regular project updates are vital to ensure that communities and potentially affected stakeholders are informed of progress on a project and any issues that a project may face. Timeliness is a subjective standard, however, and CETA should provide a minimum required frequency for periodic updates, such as quarterly updates. In addition, updates should be required when there are any major actions, changes to plans, public events, or when public documents are released. Notice should be made both online and through physical notices in public locations. These public notice locations should be determined through engagement between the community and developer.

Developers should be required to allow the public to sign up for updates via both email and text messages. They should also send updates via physical mail to all community members within a zip code that is potentially impacted, and provided the opportunity to opt out. Similarly, developers should have a shared public engagement project calendar that community members can subscribe to in order to be alerted to public events, project timelines, and other relevant dates.

Transparency about Other Infrastructure Projects: Transparency requires more than merely providing information about the single transmission project, but should include relevant information on other projects that are currently under development by the developer, as well as past projects they currently own or operate, or ones that have since been retired or sold. Such transparency better ensures that communities are aware of how a potential transmission project may interact with other developments, and to help understand any past impacts that the developer has caused to communities. This transparency better ensures that communities are able to have honest conversations with developers that reflect the entirety of past interactions.

Documents provided to communities should include sufficient details of projects such that communities can understand what they were, where they were, and who was involved..

II. Communication

While EDF agrees that “Communication” is important, this principle appears to be better articulated as “engagement” and recommends that this principle be renamed to avoid any confusion. Communication is a key component of the information sharing principle described above and it is unclear what the substantive differences exist between the terms “information sharing”¹⁸ and “communication.” Engagement instead is a concept that suggests direct meetings between community and developer, which appear to better align with the minimum requirements of this principle.

Comprehensive Engagement Plans: Community engagement plans are helpful documents that can provide accountability between the developer and the community and provide CETA with a way of determining whether a developer has met the minimum requirements established under these principles. These plans therefore should be created by the developer with feedback from CETA and communities. To help ensure that these plans reflect the most up-to-date information that developers receive from communities, developers should be required to make them public facing so that community members can access them, actively solicit feedback, and periodically update the plans.

EDF is concerned that engagement only starts once a company starts to develop a project. While some regional and interregional merchant projects may start in company boardrooms, most of the transmission that is built will come out of local or regional planning processes that identify specific geographic areas of the state, and possibly individual communities, as places where transmission lines will be built or modified. In these instances, CETA should begin to engage directly with communities as soon as those geographies are identified, letting them know that transmission projects may be developed and begin to provide them resources so that they are informed and prepared once developers reach out to engage on a specific project.

The value of public participation and early engagement with communities in the transmission planning process was recognized by the Pacific Northwest National Laboratory

¹⁸ See *Information Sharing*, *supra* P. 4-8.

(PNNL) in its 2023 paper, *Principles for Equitable Transmission Planning*,¹⁹ which highlighted that “the lack of community engagement in energy infrastructure planning is a significant factor in high levels of resistance to energy projects in the U.S. relative to countries that have employed more community-based planning.”²⁰

PNNL identified several “actionable mechanisms for equity integration into transmission planning,”²¹ which CETA should consider in developing a final set of Principles. Broken up by the type of equity, these include:

Recognition Justice

- Identification of affected populations, especially those experiencing increased energy costs, decreased reliability, or adverse health outcomes due to the transmission system
- Identification of existing system impacts, including (but not limited to) technical impacts (e.g., load shedding/service disruption, congestion, singleline failures), economic impacts (e.g., consumer costs, property value), and physical impacts (e.g., human and ecosystem health)
- Enhanced baselining of existing transmission system and operations to review direct benefits (environmental, social, economic) offered by line operations

Procedural Justice

- Community recruitment and engagement to understand needs, concerns, and preferences, including those of marginalized and underrepresented groups
- Information sharing and educational outreach through accessible training materials and transparent information (including plans, studies, and data) that is accessible to stakeholders (e.g., multiple languages, formats)
- Participant funding to support consumer advocates in planning procedures

Distributive

¹⁹ PNNL, *Principles for Equitable Transmission Planning* (Dec. 2023), https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-35256.pdf.

²⁰ *Id.* at 3 (citing Mendonça, Miguel, Stephen Lacey, and Frede Hvelplund, *Stability, participation and transparency in renewable energy policy: Lessons from Denmark and the United States*, *Policy and Society*, 27 (4), 379-398 (2009) <https://doi.org/10.1016/j.polsoc.2009.01.007>).

²¹ *Id.* at 6.

- Evaluation of contingency service prioritization and review of load shedding procedures (especially with respect to DACs)
- Evaluation of electric service restoration prioritization procedures after a grid disruption with respect to DACs, from typical prioritization strategies (number of customers and economic impact) towards a prioritization that recognizes vulnerability to outages
- Evaluation of technical, physical, and economic impacts of transmission system by customer group or sociodemographic indicator and strategies to remediate disproportionate impacts

Restorative

- Consideration of additional benefits to non-wires solutions, including avoided environmental and cultural impacts as well as capitalization for economically disadvantaged communities
- Accounting for multi-functional transmission development that can offer additional environmental, social, and service benefits to affected communities
- Consideration of infrastructure siting options subject to least-impact analysis according to community inputs and needs
- Investigation of local economic development pathways for communities as new projects are planned, including co-ownership and job training programs
- Integrated planning efforts that explore pollution abatement in affected communities

Pre-Application Information Sessions: Information sessions can be incredibly useful tools to educate communities on project plans if they are accessible to the community. To better ensure that an information session is accessible they should be made available both in person and virtually. All virtual sessions should be recorded and posted on the developer's website for the public to access if they are unable to attend a live session. In-person sessions should be held at locations that are found to be convenient for most of the community, and at minimum are in areas that are near to public transportation and centrally located. They should also be held on days and times that most of the community can attend. Meeting spaces should also be large enough to accommodate a significant number of community members, with ample seating available. Where possible, the developer should provide beverages, like water and coffee, and snacks or other food.

Meetings should be held in as many languages as is reasonable for a particular community. In some cases, it may also be necessary to host multiple meetings where a community is particularly large, where there are many different languages that are spoken, and where a single meeting would not be able to accommodate a majority of community members interested in attending.

Public information sessions should not be limited to pre-filing but should be made available whenever there are major project updates or any material changes to a project. Consistent with the principles above, an information session should be appropriately noticed.²² Links to recordings of the meetings should also be circulated via newsletters or listservs.

Private Tribal Meetings: EDF appreciates the respect that these Draft Principles show for tribal sovereigns and the recognition demonstrated of the unique circumstances of individual tribal communities. Because of their status as sovereign nations and, developers should engage in private meetings with tribal governments and should ensure that sensitive information is respected. The principles should make clear, however, that it is a tribal government that retains the right to a private meeting, not the developer, and that it is also their right to make meetings public if they so choose. Developers must also ensure that information sessions and other public meetings are accessible for members of impacted tribal communities, including through coordination with tribal leaders and governments.

Inclusivity and Diversity: Inclusivity and diversity should be pursued by a developer in their community engagement activities, however, CETA should provide more details as to how developers can “ensure that engagement efforts identify all affected interests and actively seek out marginalized or underrepresented groups within the community to provide a truly inclusive process” and how CETA will provide accountability to these efforts.

CETA should develop a set of minimum required activities that developers must undergo to ensure that they are actively participating in efforts identify interest and marginalized or underrepresented groups including through engagement with community-based organizations, hosting public meetings, and consulting with local governments.

Adaptable and Responsive: EDF strongly supports the requirement that developers “design engagement methods . . . tailored to address regional and local issues, cultures, and relationships” and that they “continuously monitor the effectiveness of these methods, actively

²² See *Timely Updates*, *supra* P. 7.

seek feedback from stakeholders and the public, and modify engagement processes as necessary to ensure they remain relevant and effective.”²³

Many of our suggestions above and below reflect the need for iterative engagement method design and monitoring to ensure that new information or changes to the community are reflected in the developer’s engagement processes. Transmission projects are measured in years if not decades, and the makeup of communities and their needs may change. A developer must be required to update and adapt their process to changing circumstances.²⁴

Flexibility in Project Design: EDF supports CETA’s draft principle on flexibility in project design, and the requirement that developers “show willingness to adapt project design and location based on community feedback.”²⁵ However, EDF worries that demonstrating a willingness on its own is not an accountable standard. Instead, EDF suggests that this principle requires developers to respond to community concerns and feedback on a project, providing the community with a record where they can be held accountable for their decisions.

CETA should also specify that this requirement is inclusive of recommendations to reroute a transmission project onto an existing right-of-way or to underground a line. A commonsense requirement to ensure that transmission developers are prepared and capable of engaging in good faith discussions around project design and route, is to require transmission developers to undergo a preliminary audit of all potentially viable brownfields that could serve as alternate project routes, including existing rights-of-way.

Land Agent Code of Conduct: EDF supports the requirement that land agents operating on behalf of transmission developers maintain a code of conduct. However, it is unclear whether CETA’s requirement that developers “instruct project sponsors’ land agents to be respectful, forthright, and truthful, clearly identifying themselves as project representatives” requires that developers maintain a written code of conduct to achieve this.²⁶ If so, it is unclear what language must be included in a written code. Given the lack of clarity, EDF urges CETA to develop more

²³ *Draft Principles* at 2.

²⁴ See discussion of defining community, *supra* P. 3-4. See also Clean Air Task Force, Community Benefits Agreements Case Studies, Federal Guidelines, and Best Practices, P. 7 (Nov. 2023), <https://cdn.catf.us/wp-content/uploads/2023/11/30172616/community-benefits-agreements-case-studies-federal-guidelines-best-practices.pdf>.

²⁵ *Draft Principles* at 2.

²⁶ *Id.*

precise information that will form the basis of an agreement between the transmission developer and land agents operating on their behalf. The Federal Energy Regulatory Commission recently issued Order 1977, *Applications for Permits to Site Interstate Electric Transmission Facilities*, which included an “Applicant Code of Conduct” that transmission developer applicants seeking a permit from FERC must comply with to ensure that applicants engage in good faith and honest negotiations with landowners.²⁷ Order 1977’s Applicant Code of Conduct provides detailed, specific and common-sense provisions that developers and agents must follow including how to ensure that these requirements are followed and complied with.

A highlight of some of Order 1977’s requirements that could be applied to CETA’s Code of Conduct requirements include that developers “maintain a log of discussions with affected landowners”, “provide to each affected landowner . . . within 3 business days of the first contact, a document that, at a minimum, includes: a description of the project, a description of the Commission and its role, a map of the project route, an explanation that affected landowners may request from applicants copies of discussion log entries that pertain to their property and how to make such requests”, “[e]nsure that any representative acting on the applicant’s behalf states their full name, title, and employer, as well as the name of the applicant that they represent, and presents a photo identification badge at the beginning of any discussion with an affected landowner, and provides the representative’s and applicant’s contact information, including mailing address, telephone number, and electronic mail address, prior to the end of the discussion”, “[e]nsure that all communications with affected landowners are factually correct” and that must correct any statements when made aware, “[e]nsure that communications with affected landowners do not misrepresent the status of the discussions or negotiations between the parties” and [p]rovide an affected landowner upon request a copy of any discussion log entries that pertain to that affected landowner’s property, [p]rovide affected landowners with updated contact information whenever an applicant’s contact information changes, “avoid harassing, coercive, manipulative, or intimidating communications or high-pressure tactics”, “abide by an affected landowner’s request to end the communication or for the applicant or its representative to leave the affected landowner’s property”, “obtain an affected landowner’s permission prior to entering the property, including for survey or environmental assessment, and leave the property without

²⁷ Order No. 1977, *Applications for Permits to Site Interstate Electric Transmission Facilities*, Docket No. RM22–7–000, 89 Fed. Reg. 46,682 (2024) [hereinafter Order 1977].

argument or delay if the affected landowner revokes permission,” “refrain from discussing an affected landowner’s communications or negotiations status with any other affected landowner, “provide the affected landowner with a copy of any appraisal that has been prepared . . . for that affected landowner’s property . . . before discussing the value of the property in question”, sign an “affirmative statement that the applicant intends to comply with the Applicant Code of Conduct”, and provide monthly status reports that include an attestation of compliance with the code of conduct during that month and detailed explanations of any non-compliance and actions taken to remediate.²⁸ Given the amount of time, public feedback, and depth of thought that FERC has put into developing Order 1977, CETA should look to it and the Applicant Code of Conduct to further develop this principle to provide practical and responsible requirements for developers to follow so that CETA can ensure that developers comply with this principle.

Language Services: EDF appreciates CETA’s specific and direct requirement that transmission developers “provide language translation services when significant non-English-speaking populations are present.” This is particularly important given the correlation between communities with a higher percentage of non-English speakers and higher rates of air and water pollution.²⁹

CETA’s requirement, however, is somewhat vague and risks letting transmission developers escape from substantively complying with the requirement. The principle only requires that developers provide translation services when “significant non-English-speaking populations are present.”³⁰ It is unclear what presence would mean in this context and whether this is to suggest that a translation service is required when such populations are present in the community, or present at a specific event or meeting. If it is the latter, it is also unclear when a developer would have adequate notice of the language needs in order to bring in a translator. EDF has concerns that under this scenario developers would not have an adequate opportunity to respond and provide the necessary translation services. To ensure that transmission developers have adequate time to provide essential translation services, this principle should provide clear

²⁸ See Appendix A for full text of Order 1977’s Applicant Code of Conduct.

²⁹ Anthony Lumm, *Language Barriers to Environmental Public Involvement* (April 13, 2021), <https://storymaps.arcgis.com/stories/3afacfc4343443ac8633f08e2cfa193b>.

³⁰ *Draft Principles* at 2.

steps that developers can take to determine the needs of a community meeting well before it takes place.

Documentation of Public Input: It is important to capture comments and feedback from the community so that there is an open and transparent record between the community and the project developer. As has been discussed above regarding the Public Information Repository,³¹ public input should be maintained in an accessible database online, as well as available at in person locations for community members who are unable to access the internet.

Online databases must be easily searchable and sortable and have a user-friendly interface. This database should be maintained through a CETA controlled webpage, instead of through the developer, to ensure continuity in the case that there is a disruption to the business operations of the transmission developer.³²

Developers, however, should also be mindful and respectful that not all input is public and that certain submissions from community members must be maintained in confidence, redacted or anonymized. For example, in consultation with tribal governments, or tribal community members, some of the locations that the community may wish to highlight as areas of concern have cultural, historical, religious and spiritual, significance (sometimes known as sacred sites) such that they must remain confidential, despite being of consequence to the decisions of the transmission developer.³³

Other input from community members may be otherwise sensitive, or may implicate other members of a community, including where the disclosure of the information may risk retaliation. In these, and in other relevant instances, efforts must be made to redact, anonymize or exclude details to respect these individual circumstances and maintain confidence.

Transmission developers should clearly and affirmatively state that such confidence may be kept, if necessary, to help ensure that members of the public are able to safely, and comfortably, share important information with developers. CETA may also consider working

³¹ See *Public Information Repository*, *supra* P. 4.

³² *Id.*

³³ Advisory Council on Historic Preservation, Policy Statement on the Confidentiality of Information about Indian Sacred Sites, <https://www.achp.gov/sites/default/files/2021-01/PolicyStatementontheConfidentialityofInformationaboutIndianSacredSites.pdf>. See also UCLA School of Law, *The Need For Confidentiality Within Tribal Cultural Resource Protection* (2020) https://law.ucla.edu/sites/default/files/PDFs/Native_Nations/239747_UCLA_Law_publications_Confidentiality_R_2_042021.pdf.

with community members, particularly tribal communities, to design a process that would allow for confidential information to be considered by developers, but not otherwise exploited.

III. Community Benefits

As we site the transmission needed to ensure the future electric grid can deliver resilient, reliable, and affordable carbon-free electricity, it is important that we do not replicate the damaging and inequitable practices of the past. Many of the communities likely to be candidates for major new transmission expansion already serve as hosts for significant energy infrastructure including oil and gas production, leaky gas pipelines, and polluting fossil-fuel electric generators. Given this history, it is important to ensure that communities that will be asked to host transmission projects are not disproportionately burdened by those projects and are provided a fair share of the societal benefits that new transmission lines offer.

Providing communities benefits that have been fairly negotiated is one potential way that developers can offset the impacts of a project. EDF therefore appreciates the principle requiring CETA to advocate for resources to be used for providing community benefits.

Fair Landowner Compensation: EDF supports the establishment of a fair and consistent methodology for determining landowner compensation. This uniformity should be capable of reflecting the physical value of the land, as well as the value that the land may hold for current and future use, such as agriculture. Any land assessments by agents of a transmission developer should be open and transparent. Assessors should make their valuations open to responses by the individual landowners. These recommendations echo similar recommendations in the developer's Code of Conduct. Where relevant, CETA should look to the recommendations made above reflective of FERC's Applicant Code of Conduct in Order 1977.³⁴

EDF also appreciates that there is flexibility in this principle, to divert from a consistent methodology as circumstances prescribe. To best ensure that this flexibility doesn't overcome the purpose of the principle and result in scattershot compensation method, CETA should provide a non-exclusive list of circumstances and factors to consider for a developer to find a situation to be adequately unique to develop an alternative methodology for landowner compensation.

Tangible Community Benefits: EDF strongly supports impacted communities receiving benefits from developers, however, the CETA provided list of potential benefits that a

³⁴ *Supra* P. 11. *See also* Appendix A.

transmission developer can provide, including “local community improvements, such as better roads, enhanced local workforce, improved emergency services, or upgraded public spaces, is unnecessarily limited. As a result, we recommend CETA provide a more illustrative list of potential community benefits in addition to those provided, including but not limited to project profit sharing, alternative route selection, undergrounding, or health or liability insurance coverage for community members and remove any type of prescriptive language limiting what benefits a community can receive.

Communities are the ultimate arbiter of their needs. Engagement between the developer and the community should help a community to understand what type of benefits they can ask for in negotiations, and at minimum should include educational meetings organized by the developer or hosted by CETA to discuss the scope and scale of benefits commonly provided by transmission developers, and a discussion of the pressing needs of the community.³⁵ Developers should also include relevant information on past community benefits and related negotiations in written form, available at public information sessions and online.

As relates to workforce agreements, CETA should clarify how a developer can effectively structure workforce agreements across separately impacted communities. Given the linear nature of transmission development, many communities may exist along a particular route. It is possible that members of each of these communities will vie for a limited set of project jobs. The more geographically diffuse nature of transmission line construction as compared, for example, to constructing new generation resources, creates the potential for shorter employment, longer commutes, and/or fewer jobs in a larger number of impacted communities. As a result, developers should think proactively about how it can structure hiring from communities across the entire linear length of the project, and what restrictions if any they would have on formulating workforce agreements with individual communities, including the definition of “local hires.”

Self-Determination of Benefits: EDF strongly supports community self-determination of benefits. Developers have greater experience in project negotiations generally, if not negotiating

³⁵ See e.g., EPA, Office of Transportation and Air Quality, Community Benefits Agreement Training (July 2020) <https://www.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&cd=&ved=2ahUKFwj9ouSwoMyAAxU2O0QIHanQAksQFnoECCAQAQ&url=https%3A%2F%2Fwww.epa.gov%2Fsites%2Fdefault%2Ffiles%2F2020-07%2Fcomm-bene-agreemnt-train-pres-2020-07.pptx&usg=AOvVaw3WaxcUKftnzvfytrFptnj&opi=89978449> (last accessed Aug. 8, 2024).

community benefit packages specifically. One of CETA's fundamental responsibilities as regards community benefits is to help ensure that this experience imbalance is not exploited by developers to the detriment of the community. Requiring the self-determination of community benefits helps to ensure that communities retain their authority.

Self-determination requires that a community is adequately informed of both the potential project impacts and the range of potential benefits that could be available. Consistent with the *Information Sharing* principle, and as discussed above regarding *Tangible Community Benefits*, developers should make sure that communities have access to information and have sufficient resources to understand that information, on the siting and operational impacts of a potential transmission project and type of benefits that have been provided to other communities or might be available to them.

However, the principle is unclear with respect to what is required of developers. It states that CETA "will advocate for . . . self-determination of benefits", which means "provide mechanisms for local communities to determine the allocation of community benefits."³⁶ This suggests CETA will advocate for, but not require, transmission developers to provide these mechanisms. CETA should clarify the intention of this principle.

In doing so, EDF recommends CETA require transmission developers to provide mechanisms for communities to determine the allocation of community benefits. CETA should include a definition of what a "mechanism" would mean in this context, and some examples of proper mechanisms. At minimum, a mechanism should include (1) an information sharing or resource sharing process that includes access to past community benefit agreements that the company has engaged in or past agreements that it is aware of (consistent with what was discussed regarding *Tangible Community Benefits*) and (2) an honest and open question and answer session between community members and developers to determine what are potential community needs, including whether additional resources are needed by the community in order to determine potential benefits, including but not limited to proper assessment of community infrastructure, environmental assessments of air, water, and soil, and analysis of the electric rate impacts of community clean energy projects, such as installing rooftop or community solar and storage. As part of this process CETA should also provide communities with a list, or otherwise

³⁶ *Draft Principles* at 2.

facilitate introductions to organizations known to be interested in helping communities in developing a community benefit framework.

As transmission projects can take years if not decades to build, a mechanism should be able to balance the lengthy development time for transmission projects, and the possibility of changing community needs. For example, coastal communities may determine the scale and scope of sea level rise impacts only after a benefit agreement has already been reached with a developer, or may realize that an agreed to benefit would be far less beneficial under such a scenario. CETA should therefore ensure that any mechanism can provide communities with some flexibility, at least until the transmission project is completed, and as long as it can be done so without compromising the binding nature of the developer's existing obligations.³⁷

Third-Party Advisory Resources: EDF strongly supports the use of third-party advisors in the development of community benefits. This is particularly important because communities are not regularly engaging in transmission project design, the permitting process, or negotiations with private corporate entities. Hiring consultants and advisors will help ensure that communities are on a more equal footing with transmission developers when formal negotiations on project impact and community benefits begin.

It is unclear if CETA intends for third party advisor funding to operate separate from a mechanism provided for under the principle of *Self-Determination of Benefits*. EDF supports requiring funding of a third-party advisor as part of the *Self-Determination of Benefits* mechanism mentioned above, and this principle should be rewritten to reflect that.

CETA should also more clearly state transmission developers' obligations under this principle given that CETA acts as an advocate for third party advisor resources but does not require transmission developers to provide such resources. CETA could also work with national and community based organizations to publish a list of sample third-party services and identify any preferred providers.³⁸

Mediation Services: Negotiations between entities with differing and potentially competing interests can become contested and limit the ability of parties to agree. Having a third

³⁷ See *Draft Principle, Self-Determination of Benefits*, supra P. 9.

³⁸ See Clean Air Task Force, *Community Benefits Agreements Case Studies, Federal Guidelines, and Best Practices*, P. 8 (Nov. 2023), <https://cdn.catf.us/wp-content/uploads/2023/11/30172616/community-benefits-agreements-case-studies-federal-guidelines-best-practices.pdf>. See also The Alliance for Tribal Clean Energy's Preferred Provider program available at <https://tribalcleanenergy.org>.

party, such as a mediator, that can bridge any divisive, complex, or sensitive issue can be incredibly useful to steer negotiations towards an agreement. EDF, therefore, supports CETA's inclusion of mediation services within these Draft Principles.

As written, this principle appears to impose an obligation on CETA to offer mediation services where communities and project developers are unable to facilitate discussions or resolve project-related issues. EDF strongly supports this construction. CETA should make this resource clearly known to community members to ensure that they are able to take advantage of the opportunity. This can include but not be limited to a notice of mediation services on public documents and including it in a conspicuous location on the CETA website.

As part of its oversight responsibility, CETA should also periodically check in with both the transmission developer and communities on the progress of any developer-led engagement, and affirmatively offer up mediation services where it appears that negotiations or engagement have become protracted.

IV. Accountability

Accountability is critical to ensuring that developers are held responsible for any commitments made directly to communities, as well as to CETA. EDF agrees with CETA that when a transmission developer builds a project in a community it enters a long-term relationship with the community and that there must be a measure of accountability for any missteps, or diversions from prior and ongoing commitments, and to any future controllable, or avoidable impacts that arise.

As discussed in some detail above, how a community is defined will have an outsized impact on the substance of the engagement efforts.³⁹ A community must be sufficiently inclusive of its constituent members so that any outreach and engagement from a development has the potential to reach the full community. Without a properly defined community that is inclusive of its constituency, a developer cannot be properly held to account for a project's operations over its lifetime.

Additionally, a community may change in size and demographics over the length of a project's operational life. As a result, transmission developers should have a process for ensuring

³⁹ See discussion of definition of community, *supra* P. 3-4.

that as the makeup of a community changes, that they remain responsible to the community over time.⁴⁰

Transmission developers must also be accountable to CETA. CETA has an oversight role in the planning and building of transmission lines in Colorado, which should include transmission developer adherence to final community engagement principles. CETA should therefore provide additional detail in this section as to how it will monitor transmission developers for compliance with the full set of community engagement principles.⁴¹

EDF is concerned that these principles do not appear to include any accountability over the developer's delivery of benefits to the community. As with a transmission project, a project that is devised to benefit a community should also have its own set of accountability requirements. While some of the specific accountability requirements may be decided as between the developer and the community consistent with fair negotiations, CETA should nevertheless provide a set of binding requirements for transmission developers to adhere to in order to ensure that benefits are realized and delivered in good faith.

Construction Stage Engagement: EDF strongly supports the designation of a point of contact or community liaison to hear and address community concerns during the construction phase. For relationship continuity, where possible, this point of contact should be the same as during earlier engagement (as well as during the subsequent operation stage). If that is not possible, this construction point of contact should be in direct contact and capable of consulting with earlier and subsequent transmission developer points of contact. This continuity will help ensure that sensitive relationship details do not need to be re-explained and can help reduce the amount of time that communities will need to dedicate towards communication with the transmission developer.

As with the discussion above, at no point should the sole point of contact be a chat bot, nor should there be any requirements that community members must submit a form, or engage with a chat bot, or go through lengthy automated phone systems in order to reach and connect to a point of contact. If a point of contact is not immediately available via phone, where a

⁴⁰ See e.g., City of Somerville, Community Action Plan, P. 77 (April 2024), https://s3.amazonaws.com/somervillema-live/s3fs-public/Final_Somerville_CAP_REV061824_Online.pdf.

⁴¹ See Partnership for Working Families, Common Challenges in Negotiating Community Benefits Agreements, P. 8 (Jan. 2016) <https://www.datocms-assets.com/64990/1657040054-effective-cbas.pdf>.

community member does leave a message, a response should be made within a reasonable time not to exceed 48 hours (excepting weekends and holidays). There should also be an emergency line that is available 24 hours a day and 7 days a week that community members can access when there are serious safety or public health concerns.

Construction points of contact should also have periodic check-ins with the community point of contact and review reports of any issues, disruptions or items that otherwise would require notice to the community. Where notice is required, it should be made to the community point of contact as well as via any listservs or newsletters and printed and available in any physical locations as discussed under prior principles above. Points of contact during the construction phase should also provide regular meetings for community members to lodge complaints.

This principle should also recognize that transmission project construction could be tethered to a community benefit project. Where this occurs, engagement by the point of contact should be mindful and sensitive to the reasons for the community benefit project. Examples of construction-related community benefits could include enhanced security for the community, temporary sound barriers, enhancing construction or environmental monitoring, or use of pollution-free electric vehicles and heavy duty equipment.

Operation Stage Engagement: EDF strongly supports community engagement through the operation stage, consistent with the examples CETA has provided and with EDF comments on construction stage engagement.

Restoration Commitments: EDF agrees with CETA that transmission developers should make commitments with the community to ensure that “roads and public facilities” are not disturbed by project construction. The phrasing of this principle, however, suggests that even where a developer has made material improvements to a road or facility that they would be required to restore it to its “pre-construction status.” Project developers may have need to modify roads or facilities to better accommodate equipment or other installations, including the building of new service roads. CETA should, therefore, clarify that restoration only applies where a facility is negatively impacted. Such a determination should be made in consultation with community representatives and should include an identification of the full catalogue of roads and other public facilities that were used by the project developer and detail proposals for any restoration projects that are needed. The community should be given an opportunity to provide

feedback on the restoration proposals, including an opportunity to provide alternative actions that can be taken to mitigate any potential negative community impacts from restoration projects.

Clear Monitoring Metrics: EDF strongly supports clear monitoring metrics. Monitoring is key to ensuring that a project is accountable for its commitments to the community and to CETA.⁴² All monitoring data should be available and accessible to the community and in a data set that can be easily understood and doesn't require any additional software to parse. If requested by the community, developers should provide public information sessions or community meetings to discuss the data that it has collected and explain the results to the community. Where the community determines that it needs a third-party advisor to assess the information, the transmission developer should make funds available to the community. Where monitoring directly relates to public health or safety concerns of the community, including but not limited to project pollution and community disturbances, data collection monitoring responsibility should be offered to be paid for by the developer and overseen by the community.

Also, CETA should make clear that monitoring data will also be used by CETA to ensure compliance with these principles and any other project requirements. CETA should specify how it will monitor these results against any required filings by the transmission developer.⁴³

Dispute Resolution Processes: EDF supports the establishment and implementation of dispute resolution processes, however, this requirement should not be limited to transmission project commitments and should equally apply to projects that are developed under a community benefit framework. Processes structured to resolve disputes can come in many varieties – some maintain ultimate discretion within a company, others entrust that to a third party. CETA should put its thumb on the scale and provide more detail as to what type of dispute resolution process is preferable and would meet this requirement. EDF suggests that a process that enlists a third party that is not structurally associated with the developer would be the most effective method to fairly resolve disputes.

⁴² See Partnership for Working Families, *Common Challenges in Negotiating Community Benefits Agreements*, 8 (Jan. 2016), <https://www.datocms-assets.com/64990/1657040054-effective-cbas.pdf>.

⁴³ See FERC Order 1977 (requiring that transmission developer applicants file a monthly status report that describes efforts to comply with the Applicant Code of Conduct).

EDF also recommends that CETA maintain a backstop authority to resolve any disputes between a developer and community, and to step in and provide resources to assist communities in resolving any ongoing disputes with developers.

CONCLUSION

Transmission development is crucial not only towards meeting the electricity and decarbonization needs of Colorado but in serving the needs of neighboring states and regions. Many communities have faced disruptions and impacts in developing earlier parts of the electric grid, or in hosting other infrastructure or municipal projects, with little to no meaningful engagement and generating minimal, if any, benefits. To ensure that the grid of the future is just and equitable, thorough and considerate engagement with communities is vital.

CETA's draft community engagement principles represent a significant step forward in developing ways to reduce the risk that individual communities will face, and we look forward to continuing to work with CETA to help strengthen these principles.

Respectfully Submitted,
/s/ Adam Kurland
Adam Kurland
Attorney, Federal Energy
Environmental Defense Fund
555 12th Street NW Suite 400
Washington, D.C. 20004

Appendix A

FERC Order 1977's Applicant Code of Conduct

- (a) Applicant code of conduct.
 - (1) Develop and maintain a log of discussions with affected landowners, organized by name and property address, that includes:
 - (i) The name of the affected landowner;
 - (ii) The substance of the items discussed;
 - (iii) The nature of the contact (such as in-person, virtual meeting, telephone, electronic mail);
 - (iv) The date of the contact; and
 - (v) The status of discussions with the affected landowner following the contact, including any permissions granted, negotiations, or future meetings scheduled.
 - (2) In addition to the Pre-filing Notification required by § 50.4(c)(1)(i) and (ii), provide to each affected landowner, prior to, during, or within 3 business days of the first contact, a document that, at a minimum, includes: a description of the project, a description of the Commission and its role, a map of the project route, an explanation that affected landowners may request from applicants copies of discussion log entries that pertain to their property and how to make such requests, and the Landowner Bill of Rights in the form described in § 50.4(c)(2)(ii)(B). If the first contact with the affected landowner is in-person, the applicant must offer to provide the affected landowner at least one paper copy of the document. If the first contact with the affected landowner is by telephone, text, or electronic mail, the applicant may provide the affected landowner with a copy of the document by electronic means or by first class mail, at the affected landowner's preference. The applicant must review the provisions of the document with the affected landowner upon request.
 - (3) Ensure that any representative acting on the applicant's behalf states their full name, title, and employer, as well as the name of the applicant that they represent, and presents a photo identification badge at the beginning of any discussion with an affected landowner, and provides the representative's and applicant's contact information, including mailing address, telephone number, and electronic mail address, prior to the end of the discussion.
 - (4) Ensure that all communications with affected landowners are factually correct. The applicant must correct any statements made by it or any representative acting on its behalf that it becomes aware were:
 - (i) Inaccurate when made; or
 - (ii) Have been rendered inaccurate based on subsequent events, within three business days of discovery of any such inaccuracy.
 - (5) Ensure that communications with affected landowners do not misrepresent the status of the discussions or negotiations between the parties. Provide an affected landowner upon request a copy of any discussion log entries that pertain to that affected landowner's property.
 - (6) Provide affected landowners with updated contact information whenever an applicant's contact information changes.

- (7) Communicate respectfully with affected landowners and avoid harassing, coercive, manipulative, or intimidating communications or high-pressure tactics.
 - (8) Except as otherwise provided by State, Tribal, or local law, abide by an affected landowner's request to end the communication or for the applicant or its representative to leave the affected landowner's property.
 - (9) Except as otherwise provided by State, Tribal, or local law, obtain an affected landowner's permission prior to entering the property, including for survey or environmental assessment, and leave the property without argument or delay if the affected landowner revokes permission.
 - (10) Refrain from discussing an affected landowner's communications or negotiations status with any other affected landowner.
 - (11) Provide the affected landowner with a copy of any appraisal that has been prepared by, or on behalf of, the applicant for that affected landowner's property, if any, before discussing the value of the property in question.
 - (12) Ensure that any representative acting on the applicant's behalf complies with all provisions of the Applicant Code of Conduct described in this paragraph (a).
- (b) Compliance with Applicant Code of Conduct. (1) File, as part of the pre-filing request required by § 50.5(c), an affirmative statement that the applicant intends to comply with the Applicant Code of Conduct.
- (1) Include, as part of the monthly status reports required by § 50.5(e)(11):
 - (i) An affirmation that the applicant and its representatives have, to the best of their knowledge, complied with the Applicant Code of Conduct during the month in question; or
 - (ii) A detailed explanation of any instances of non-compliance with the Applicant Code of Conduct during the month in question and any remedial actions taken or planned.
 - (2) Identify, in a filing with the Commission or as part of the monthly status reports required by § 50.5(e)(11), any known instances of non-compliance that were not disclosed in prior monthly status reports and explain any remedial actions taken in the current month to address instances of non-compliance occurring in prior months.
 - (3) File monthly status reports providing the information required in paragraphs (b)(2) and (b)(3) of this section, for the duration of the application review process.
- (c) Compliance with an alternative method. Applicants not committing to comply with the Applicant Code of Conduct must:
- (1) File, as part of the pre-filing request required by § 50.5(c):
 - (i) An affirmative statement that the applicant intends to rely on an alternative method of demonstrating that it meets the good faith efforts standard;
 - (ii) A detailed explanation of the alternative method of demonstrating that it meets the good faith efforts standard, including any commitments to recordkeeping, information-sharing, or other conduct;
 - (iii) An explanation of how the alternative method is equal to or better than compliance with the Applicant Code of Conduct as a means to ensure the good faith efforts standard is met;
 - (iv) An explanation, for each component of the Applicant Code of Conduct with which it does not comply, why it did not follow that component; and

- (v) An explanation, for each component of the Applicant Code of Conduct with which it does not comply, why the alternative method is an equal or better means to ensure the good faith standard is met notwithstanding that deviation from the Applicant Code of Conduct.