



2451 Crystal Drive
Suite 1000
Arlington, VA 22202-4804
202 467-2900
www.PublicPower.org

May 15, 2026

Major General Jason E. Kelly
U.S. Army, Deputy Commanding General for Civil and Emergency Operations
U.S. Army Corps of Engineers
Attn: CECW-CO-R
441 G Street N.W.
Washington, D.C. 20314-1000

Submitted electronically via <http://regulations.gov>

RE: Comment of the American Public Power Association in Response to the Notice of Solicitation of Input on Potential Future Changes to Nationwide Permits; Docket No. COE-2026-0001; 91 Fed. Reg. at 12591 (March 16, 2026).

Dear Major General Kelly:

The American Public Power Association (APPA) appreciates the opportunity to provide our members' perspective on the U.S. Army Corps of Engineers' (the Corps) "Notice Soliciting Input on Potential Future Changes to Nationwide Permits (NWP); Establishment of a Public Docket; Request for Input."¹

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 55 million people that public power utilities serve, and the 100,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

The Corps' notice explains that submitted comments will help shape updates to the NWPs, either before the 2026 NWPs expire or in subsequent NWP reissuances. APPA strongly supports the

¹ 91 Fed. Reg. at 12,591 (March 16, 2026) (Notice).

NWP program and the Corps' continued reissuance of the NWPs, which are essential to electric energy projects nationwide and to the Corps' effective administration of its workload and the Clean Water Act (CWA) section 404 permitting program.

APPA's comments reflect the on-the-ground experience of regulated electric utilities that regularly rely on the NWP program to support electric grid work. In APPA's view, the program generally works well by providing an efficient permitting pathway that advances the national interest in a reliable, resilient, and affordable grid while protecting aquatic resources. APPA encourages the Corps to keep the 2026 NWPs in place and, in the next reissuance, make limited refinements that simplify and clarify implementation without reducing environmental protections.

Public power utilities rely heavily on several Nationwide Permits, particularly NWP 12 (Utility Line Activities), NWP 3 (Maintenance), NWP 33 (Temporary Construction, Access, and Dewatering), and NWP 57 (Electric Utility Line and Telecommunications Activities) to carry out routine, repetitive, and geographically dispersed infrastructure activities. Nationwide Permits are therefore a critical regulatory tool that enables public power utilities to efficiently maintain and modernize energy infrastructure while avoiding or minimizing impacts on jurisdictional waters of the United States (WOTUS).

APPA has maintained continuous engagement with the NWP program and has actively participated in the Corps' prior proposed NWP rulemakings in 2017, 2020, and most recently in 2025.² In our prior 2025 comments, APPA supported the proposal to reissue and modify Nationwide Permits and offered several recommendations to strengthen the program and further reduce regulatory burden associated with NWP submittals. Streamlined CWA permitting processes are crucial for obtaining timely approval of the substantial energy infrastructure required to maintain a reliable and resilient electric grid that can accommodate rising electricity demand. APPA appreciates the opportunity to provide additional comments focused on practical, implementation-level improvements to specific NWPs most used by public power utilities. These improvements would enhance permitting efficiency while continuing to meet the statutory requirement that NWP-authorized activities result in no more than minimal individual and cumulative adverse environmental effects.

² See: APPA's Comment on the 2017 NWP Proposal, <https://www.regulations.gov/comment/COE-2015-0017-0510>; Joint Trade Association Comments on 2020 NWP Proposal, <https://www.regulations.gov/comment/COE-2020-0002-0310>; and APPA's 2025 Comments on NWP Reissuance Proposal, <https://www.regulations.gov/document/COE-2025-0002-0315>.

I. APPA's Comments in Response to Corps Request for Information

A. What measures should the Corps consider that would eliminate unnecessary review over jurisdictional activities that do not require heightened scrutiny? (e.g., PCN requirements, impact limits, general conditions).

1. Refine Pre-Construction Notification Requirements for Routine Utility Activities

The Corps should refine pre-construction notification (PCN) requirements to focus review on activities that present substantial environmental risk, while allowing routine, low-impact electric utility activities to proceed efficiently under applicable Nationwide Permits.

Public power utilities routinely conduct activities authorized under NWPs 12, 3, and 57, often supported by NWP 33, including:

- Replacement of existing poles and associated infrastructure;
- Rebuilding or reconductoring electric lines within existing alignments;
- Minor temporary fills associated with utility line crossings and access; and
- Maintenance, reliability, and safety upgrades within established rights-of-way.

These activities are well understood, frequently repeated, and typically conducted using established best management practices.

For example, association members report that PCNs for routine pole replacements or in-kind line rebuilds within existing rights-of-way frequently result in verification without changes to project design or construction methods.

In many cases, PCN review for these routine activities does not result in project modifications or additional environmental protection, but it does cause unnecessary delays and uncertainty, which complicate outage planning, emergency repairs, and seasonal construction schedules.

Members have noted that even short delays associated with PCN review can disrupt coordinated work windows where system outages, contractor availability, and seasonal access constraints must align.

APPA encourages the Corps to:

- Raise the PCN trigger for NWP 33, as these activities are only temporary, and follow authorized construction activities, the permittee is required to remove all temporary fill to an area that has no WOTUS, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations;
- Clarify that water-filled barriers are not counted towards fill allowances under NWP 33 or fill allowances/thresholds under other NWPs;
- Reevaluate PCN thresholds for activities that consistently meet the minimal effects standard and/or support fish habitat enhancement projects;

- Clarify PCN applicability to reduce inconsistent interpretation across Corps districts.

Targeted refinement of PCN requirements would allow the Corps to prioritize staff resources for higher-risk activities while maintaining environmental safeguards and the integrity of the NWP program.

2. Clarify Applicability of Existing Statutory Exemptions for Maintenance Activities

Congress exempted CWA section 404 permitting the discharge of dredged or fill material for maintenance of currently serviceable dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures, as well as for emergency reconstruction of recently damaged parts of dams if completed within a reasonable time.³ The Corps' regulations further provide that maintenance is not subject to a permit so long as the "[m]aintenance does not include any modification that changes the character, scope, or size of the original fill design."⁴ Despite this clear statutory and regulatory framework, public power utilities are frequently required in practice to obtain permits for routine maintenance and repair activities—particularly those associated with work otherwise covered by NWP 3 (Maintenance), 12 (Utility Line Activities), and 57 (Electric Utility Line and Telecommunications Activities). Applying NWP authorization in these cases imposes unnecessary administrative burden without improving environmental outcomes.

APPA encourages the Corps to clarify, through guidance or future NWP updates, that maintenance and repair activities meeting the statutory exemption—especially those associated with NWPs 12, 3, and 57—do not require section 404 authorization, and that no Rivers and Harbors Act (RHA) section 10 permit is required for repair work at non-federal hydropower projects authorized through the FERC licensing process. Clear direction would:

- Reduce unnecessary permitting and duplicative review;
- Improve consistency across Corps districts; and
- Support timely maintenance, emergency repairs, and reliability-driven upgrades within existing footprints.

This clarification is particularly important for public power utilities operating under constrained outage windows and facing increasing demands for system reliability and would better align implementation with congressional intent and national energy priorities.

³ 33 U.S.C. § 1344(f)(1)(B).

⁴ 33 C.F.R. §323.4(a)(2).

B. Ways to improve/maintain efficiency in PCN review and issuance of NWP verifications (e.g., coordination requirements, what constitutes a complete PCN, verification compliance with procedural law, and implementing regulations to be changed or remain the same).

1. Ensure Priority and Accelerated Processing for NWP Verification for Energy Projects

The Administration has emphasized a strong national interest in maintaining a reliable, secure, and resilient electric grid. Several Executive Orders—including *Unleashing American Energy* and *Declaring a National Energy Emergency*—highlight the need to expedite and streamline federal permitting for energy infrastructure.⁵ In support of these priorities, the President issued a determination under the Defense Production Act, finding that aging and constrained grid infrastructure poses a growing risk to national defense and that domestic capacity to design, produce, and deploy large-scale grid systems is limited.

Meeting rising energy demand will require a comprehensive buildout of infrastructure, including:

- New generation resources;
- Relicensing and modernization of existing hydropower facilities;
- Investment in advanced technologies such as nuclear;
- Expanded pipeline systems; and
- New and more resilient transmission and distribution networks.

These investments are necessary to ensure electricity is delivered reliably, affordably, and where and when it is needed, which remains critical to both utility customers and national security.

Executive Order 14156 also underscores the importance of the Nationwide Permit (NWP) program in enabling timely energy development. In particular, NWPs 3, 12, 57, and 58 play a key role by authorizing limited discharges associated with the construction and maintenance of energy, water, and communications infrastructure (e.g., electric lines, pipelines, and fiber networks).

To align with these national priorities and ensure that critical projects move forward efficiently, the Corps should prioritize and expedite processing of PCNs for energy-related projects.

⁵ Executive Order 14156, *Declaring a National Energy Emergency*, 90 Fed. Reg. at 8433 (January 29, 2025); and Executive Order 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (January 29, 2025).

2. Improve Alignment with Programmatic ESA, NHPA, or CWA Processes

The Corps should improve alignment between Nationwide Permits and existing Endangered Species Act (ESA), National Historic Preservation Act (NHPA), and CWA section 401 water quality certification (WQC) reviews, to avoid duplicative processes.

Some public power utilities operate under:

- Programmatic biological opinions;
- Existing FERC licenses with an approved CWA §401 WQC;
- Statewide or regional programmatic agreements; and
- Established coordination frameworks with federal and state resource agencies.

Where these frameworks already exist, requiring additional case-by-case written verification for routine NWP activities can delay projects without providing commensurate environmental benefit.

APPA members have observed that routine activities covered by existing programmatic reviews often undergo additional project-level verification that does not alter avoidance measures or consultation outcomes.

APPA encourages the Corps to:

- Clarify when reliance on existing programmatic ESA and NHPA reviews is appropriate;
- Provide clearer triggers for when written verification is required; and
- Ensure that NWPs complement rather than duplicate established interagency consultation processes. For example, clarify that no duplicative 401 WQC process is necessary or appropriate when an activity is being undertaken pursuant to an existing FERC license with an associated water quality certification. This could be added as part d) to general condition (GC) 25.

This approach would maintain full compliance with the CWA, ESA, and NHPA while improving efficiency and predictability for both the Corps and permittees.

3. Maintain the “No Effects” Determination and Ensure Timely ESA Consultations

APPA supports the Corps’ determination that reissuance of the NWPs has “no effect” on listed species or designated critical habitat and therefore does not require ESA section 7 consultation. As explained in the preamble to the 2026 NWPs, the issuance or reissuance of the NWPs itself does not authorize any activity that may affect listed species or critical habitat.⁶ Instead, the

⁶ 91 Fed. Reg. at 845 (January 8, 2026).

NWP program appropriately focuses ESA compliance at the activity-specific and regional levels through GC 18 and 33 C.F.R. § 330.4(f).

Under this framework, no activity that may affect listed species or critical habitat may proceed under an NWP unless and until any required ESA section 7 consultation—whether activity-specific or pursuant to an applicable regional programmatic consultation—is completed. Indeed, GC 18 establishes a more conservative trigger for Corps review and consultation than the ESA’s section 7 regulations by requiring a PCN whenever listed species or critical habitat are in the vicinity of, or might be affected by, a proposed activity. Activities requiring a PCN are not authorized under an NWP unless the Corps determines that consultation is unnecessary or completes any required informal or formal consultation, and the district engineer affirmatively verifies authorization. Work may not begin until the permittee is notified that ESA requirements have been satisfied, and the Corps may impose species-specific permit conditions as needed.

Because any use of an NWP that could affect listed species or critical habitat must first undergo ESA review and consultation, APPA agrees that the Corps’ “no effect” determination for issuance and reissuance of the NWPs is fully consistent with and satisfies ESA requirements. APPA encourages the Corps to retain this approach in future NWP reissuances.

To improve transparency and predictability, we also recommend:

- Enhancements to consultation timelines. GC 18 and the Services’ regulations establish clear timelines for Corps determinations and ESA consultations. Relevant timelines in GC 18 include a 45-day period for the Corps to notify permittees whether a project may affect listed species or critical habitat, followed by 60 days for informal consultation and 135 days for formal consultation. When those timelines are exceeded, applicants should be able to request that the consultation be elevated to higher levels within the Corps and the Services and expedited to ensure accountability and timely resolution; and
- That the Corps and Services establish and communicate consultation schedules with regular status updates to applicants. These steps would help ensure consultations are completed within a reasonable timeframe and allow our members to better plan and implement projects essential to the nation’s energy security.

C. What measures should the Corps consider to improve existing regulations regarding general permits or the implementation of the NWP program? For instance, what changes should the Corps consider that would increase the efficiency of the Chief Engineer’s decision-making process to reissue NWPs?

1. Preserve the Definition of a Single and Complete Linear Project

The Corps should maintain the definition of a “single and complete linear project.” Public power utilities are increasingly engaged in infrastructure projects driven by:

- Electric system reliability and resilience needs;
- Replacement of aging infrastructure;
- Safety and wildfire mitigation; and
- Climate adaptation and extreme weather response.

These projects frequently reduce long-term environmental impacts by maintaining infrastructure within existing footprints rather than expanding into new areas.

For instance, many grid modernization projects involve replacing existing facilities with equivalently sized or smaller-footprint infrastructure within established corridors, reducing the need for new access or disturbance.

APPA strongly supports the definition of “single and complete linear project.”⁷ As clarified in the 2026 NWP preamble, a single, complete project includes all crossings of a single WOTUS at a specific location. Where a linear project crosses the same or different waterbodies at separate and distant locations, each crossing is appropriately treated as its own single and complete project for purposes of NWP authorization.

APPA also supports Note 2 under NWP 57, which clarifies that “[f]or electric utility line or telecommunications activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization.”⁸

The definition and Note 2 align with the Corps' established regulations and long-standing practices for "single and complete linear project[s]," which are important for public power utilities. The Corps initially established the "single and complete" definition in 1988 regulatory guidance, noting that “[l]inear projects by their nature will likely have minimal impacts on several different water-bodies...”⁹

⁷ 91 Fed. Reg. at 886

⁸ *Id.* at 874.

⁹ Regulatory Guidance Letter 88-06, at 1, 3 (June 27, 1988) available at <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll9/id/1360>.

The Corps clarified that for "linear projects, the single and complete project requirement for individual NWP[s] will be applied to a water-body crossing at a single location" and that "multiple application[s] of the NWP on a lengthy project" is allowed.¹⁰ In 1991, the Corps incorporated this principle into the Part 330 regulations, which aligns with the definition found in current NWP[s]:

For linear projects, the "single and complete project" (*i.e.*, single and complete crossing) will apply to each crossing of a separate water of the United States (*i.e.*, single waterbody) at that location; except that for linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a *single and complete project*.¹¹

This definition embodies the reasonable understanding that discharges of dredged or fill material along utility lines, involving narrow crossings of separate and distant waters, generally produce minimal impacts both on individual waters crossed and cumulatively on watersheds. This occurs because small impacts on separate waters tend to dissipate over short distances and are often unlikely to accumulate within a watershed in measurable or ecologically significant ways. Furthermore, the Corps has implemented safeguards to ensure that individual and cumulative effects of NWP[s] authorizing utility line-related activities remain minimal. The NWP[s] mandate consideration of and protection against cumulative effects at both nationwide and project-specific levels.

Note 2 also references 33 C.F.R. § 330.6(d), which governs the combination of NWP[s] with individual permits.¹² Note 2 specifies that "[e]lectric utility line and telecommunication activities must comply with 33 C.F.R. §330.6(d)."¹³ In accordance with these regulations:

portions of a larger project may proceed under the authority of the NWP[s] while the [district engineer] evaluates an individual permit application for other portions of the same project, but only if the portions of the project qualifying for NWP authorization would have independent utility and are able to function or meet their purpose independent of the total project... When a portion of a larger project is authorized to proceed under an NWP, ... construction will in no way prejudice the decision on the individual permit for the rest of the project.¹⁴

The term "independent utility" has been present in 33 C.F.R. § 330.6(d) since 1991.¹⁵ In the preamble to the 2017 NWP reissuance, the Corps verified that Note 2's purpose is to ensure that utility lines containing one or more crossings ineligible for NWP authorization undergo

¹⁰ *Id.* at 3.

¹¹ 33 C.F.R. § 330.2(i) (emphasis added).

¹² 90 Fed. Reg. at 26,155.

¹³ *Id.*

¹⁴ 33 C.F.R. § 330.6(d).

¹⁵ 56 Fed. Reg. at 59,110, 59,117, 59,140 (Nov. 22, 1991).

evaluation through the individual permit process.¹⁶ This aligns with APPA's member experience, where a utility line segment with an independent utility would qualify for an NWP.

APPA supports keeping the definition of “single and complete linear project” and Note 2 to NWP 57 in any future updates to the NWP or Corps regulations.

2. Ensure Regional Conditions Are Targeted and Transparent

While regional conditions play an important role in addressing local resource concerns, overly broad or duplicative regional conditions can undermine the nationwide consistency and predictability that are central to the NWP program.

Public power utilities may operate across multiple Corps districts, and inconsistent regional conditions applied to NWPs 12, 3, and 57 can:

- Increase compliance complexity;
- Drive unnecessary project redesign; and
- Increase costs for community-owned utilities and their customers.

APPA Members operating in multiple districts have reported that substantively similar utility activities may be subject to different PCN requirements or conditions depending on location, despite comparable environmental settings.

APPA encourages the Corps to:

- Ensure regional conditions are narrowly tailored to specific regional resource concerns;
- Avoid duplicating requirements already addressed by national NWP terms or other regulatory programs; and
- Provide clear justification and transparency for regional deviations.

3. Issue Additional Section 106 Guidance and Timelines to Corps Districts Consistent with Appendix C

In 2024, the Corps proposed removing Appendix C from its permitting regulations and relying instead on the Advisory Council on Historic Preservation’s (ACHP) NHPA section 106 regulations. Although that proposal was not finalized, APPA supports Appendix C because it is tailored to the Corps’ limited jurisdiction under section 404 and provides important clarity on the scope of historic property review. In particular, Appendix C appropriately focuses review on the Corps’ “permit area”—that is, jurisdictional waters and certain directly affected uplands—rather than the broader project as a whole. By contrast, the ACHP’s “area of potential effects” standard is broader and less useful in the context of utility line permits. Appendix C also includes practical, project-specific guidance on issues such as the permit area, modified lands, de minimis projects, and indirect effects, and allows the Corps to address adverse effects through permit conditions rather than broader agreements.

¹⁶ 82 Fed. Reg. at 1,889.

APPA is aware of inconsistent section 106 implementation across Corps districts, including confusion over when consultation is required for resources outside the permit area. Additional guidance would help confirm that the Corps' review should remain tied to the effects of jurisdictional discharges of dredged or fill material into WOTUS, not impacts from the larger project. APPA also recommends that the Corps adopt clear timelines for completing section 106 review. In practice, this process is often the longest part of NWP review, and the 45-day timeline in GC 20 is frequently missed. If those timelines are exceeded, the Corps should establish an escalation mechanism to help ensure timely and efficient permit decisions.

4. Improve Administrative Efficiency and Predictability

APPA supports continued improvements to the administrative implementation of the NWP program, including:

- Clear and consistent standards for PCN completeness. Establishing uniform criteria for PCN completeness would provide greater predictability for utilities and improve the quality of application submittals; and
- Expanded use of electronic submission and communication systems, such as the regulatory request system (RSS). The RSS can streamline submission and tracking of permit applications, PCNs, and other regulatory requests for activities in navigable waters and WOTUS. As use expands, the system should reduce delays and administrative burdens. We encourage the Corps to seek broader user feedback to improve the system's effectiveness. With the required information already in the RRS, the Corps should be able to respond to permit applications more quickly.

Predictability is particularly important for public power utilities that must coordinate construction schedules with system outages, emergency response needs, and public safety obligations.

Clear expectations regarding PCN content and review/consultation timelines help both utilities and Corps districts allocate staff resources more efficiently.

II. Conclusion

Nationwide Permits, particularly NWPs 12, 3, 57, and 33, are essential to supporting reliable energy services while protecting aquatic resources. The refinements suggested above are consistent with the Corps' statutory authority, aligning with changes adopted in prior NWP renewal cycles, and would improve the efficiency and effectiveness of the NWP program without diminishing environmental safeguards.

APPA appreciates the Corps' consideration of these comments and looks forward to continued engagement as the Nationwide Permit program evolves. Please contact Ms. Julia Karo at 202-

467-2900 or email JKaro@publicpublic.org should you have any questions regarding the above comments.

Sincerely,

A handwritten signature in black ink that reads "Carolyn Slaughter". The script is cursive and fluid, with the first letter of each word being capitalized and larger than the others.

Carolyn Slaughter

Sr. Dir. Environmental Policy

Cc: Lee Forsgren, Acting Assistant Secretary of the Army (Civil Works)