

Environmental Review Process for PTC Wayside Poles

Determining Whether an EA Is Required

Section 1.1307(a) of the Commission's rules requires an applicant to file an Environmental Assessment (EA) if construction of a facility may significantly affect the environment. If an EA is required, construction may not begin until the Commission issues a Finding Of No Significant Impact (FONSI).¹ The conditions under which an EA is routinely required are set out in Section 1.1307(a) and (b) and the Note to Section 1.1307(d).² In order to determine whether any of these conditions are met, the railroads must take the following steps:

- Determine whether the construction may affect historic properties or Indian religious sites (Section 1.1307(a)(4) and (5)). This determination is made by following the procedures set forth in the Program Comment adopted by ACHP on May 16, 2014, or any agreed-upon alternative procedure contemplated under the Program Comment. If these processes result in a determination of adverse effect and the adverse effect cannot be avoided, mitigation measures will be memorialized in a PTC adverse effect agreement, and an EA is then required.
- Determine whether the construction may affect listed threatened or endangered species or designated critical habitat, or is likely to jeopardize the continued existence of proposed threatened or endangered species or destruction or adverse modification of proposed critical habitat (Section 1.1307(a)(3)). This is determined in consultation with the U.S. Fish and Wildlife Service (FWS), or based on information from FWS, as follows:
 - If threatened or endangered species are not located in the action area, or if they are present in the action area but would not be affected, no EA is required. A determination that no threatened or endangered species are present in the action area may be made by querying the FWS' Information, Planning, and Conservation (IPaC) database. Alternatively, the railroad may rely on publicly available FWS species lists for the area containing each site, or it may obtain a site-specific determination of no effect from the local FWS field office, or its own qualified biologist may determine no effect. FCC staff will work with FWS staff to help obtain expeditious determinations of no effect in appropriate cases.
 - If threatened or endangered species may be affected, informal consultation with FWS is required. If FWS issues a finding of Not Likely to Adversely Affect, no EA is required.
 - If FWS finds there may be an adverse effect, the railroad must formally consult with FWS and complete a Biological Assessment. An EA is then required.

¹ In the unusual circumstance where the Commission is unable to issue a FONSI, additional environmental processing is required.

² The Commission will also require an EA if it finds that an otherwise excluded action may have a significant environmental impact under Section 1.1307(c) or (d). If the FCC determines that a railroad must file an EA pursuant to Section 1.1307(c) or (d), FCC staff will inform the railroad in writing.

- Determine if the site is located in a 100-year floodplain (Section 1.1307(a)(6)). Floodplain boundaries are identified on maps available from FEMA. If the site is in a floodplain, an EA is required, and the EA must show that the equipment cabinet and any other auxiliary structures will be at least one foot above the floodplain.

The remaining criteria requiring an EA are unlikely to be met for PTC wayside poles. However, the railroad must satisfy itself that none of these criteria are triggered:

- Location in a designated wilderness area (Section 1.1307(a)(1)).
- Location in a designated wildlife preserve (Section 1.1307(a)(2)).
- Significant change in surface features (Section 1.1307(a)(7)). The most common type of significant change in surface features for communications projects is wetland fill. If a wayside pole will require wetland fill, the railroad must obtain a regional wetlands permit or an individual site permit from the Army Corps of Engineers and attach the permit to the EA, or attach a preexisting agreement or other document from the Army Corps of Engineers that permits construction.
- Use of high intensity white lights in a residential neighborhood (Section 1.1307(a)(8)).
- Human exposure to radio frequency emissions in excess of the Commission's guidelines (Section 1.1307(b)).
- Structure height more than 450 feet above ground level (Section 1.1307(d) Note).

Preparing and Filing an EA

If an EA is required, it must be filed as an attachment to Form 608 or 601 in the Universal Licensing System (ULS). An EA that is associated with leased spectrum is filed with Form 608 by the spectrum lessor, and should be uploaded to the Form 608 submission by using the "Environmental Assessment" attachment type. Railroads that are leasing spectrum from PTC-220, LLC, should make arrangements with PTC- 220's affiliate, TTCL, to file their EAs.

EAs that are associated with spectrum licensed directly to the operating railroad are filed by the licensee with Form 601. To file Form 601, the railroad will need its FCC Registration Number, password, and the call sign associated with the underlying license.

If a Form 601 submission includes multiple sites, Schedule D must be completed for each site. If a Form 608 submission includes multiple sites, Schedule C must be completed for each site. This is accomplished on either form by initially entering the coordinates for one site and answering questions about that site as prompted by ULS. Once these questions are answered for that site, the system will allow the applicant to enter coordinates for an additional site. This process should be repeated until all sites are included.

A single Form 608 or 601 and a single EA may be used for multiple sites that are subject to similar environmental analysis. ULS will accept up to 999 sites in a single submission, provided they are all associated with the same license. The only guideline is that the fact patterns should be sufficiently similar so that the EA may be easily understood.

If an EA is required, the railroad must address all the factors in Section 1.1307(a) and (b), even if the EA requirement is not triggered under a particular factor. The required contents of an EA are outlined in the attached NEPA checklist (Attachment A). As discussed below, an EA for PTC facilities may under some circumstances be initially submitted with the information for effects on historic properties and Indian religious sites incomplete, but it must be supplemented before a FONSI can be granted. If the same analysis and supporting documentation applies to multiple sites within an EA, it may be stated only once and need not be repeated for each site. If the common analysis or documentation applies to fewer than all of the sites included within an EA, the submission should make clear which sites are included.

ULS allows an applicant to submit multiple attachments to Form 608 or 601 in .pdf format. For ease of review, we recommend that the railroad submit the EA and each supporting document or group of related supporting documents as separate attachments. Each attachment should be given a name that clearly identifies what it is and the scope of the sites that it covers, if fewer than all of the sites included in the EA. If a document refers to sites that are not included within the relevant Form 608 or 601, we recommend that the railroad highlight the information that pertains to the relevant sites so as to assist the FCC reviewer.

To further facilitate review, we additionally recommend that the railroad provide, as separate attachments to each Form 601 submission, one or more NEPA cover sheets and TCNS summary charts. Sample formats for the NEPA cover sheet and TCNS summary chart are Attachments B and C, respectively. The cover sheet should summarize, in succinct fashion, whether each of the EA criteria in Section 1.1307 is triggered for the wayside poles included in the submission, as well as the pages in the EA where each criterion is covered and the attachment(s) containing the documentation relevant to each criterion. The TCNS summary should indicate, for each Tribal Nation contacted, whether 1) the Tribal Nation has indicated in TCNS that its lack of a reply indicates no interest; 2) the Tribal Nation has agreed that further pre-construction process for the poles included in the submission is unnecessary (and the date and nature of documentation, such as a TCNS response, letter, or adverse effect agreement, memorializing that concurrence); 3) the Tribal Nation did not respond to the railroad's attempts at contact and the FCC has not directed that the Tribal Nation be given a further opportunity to participate (and the date the lack of response was referred to the FCC); or 4) the FCC has resolved disputed issues between the railroad and the Tribal Nation (and the date of the FCC's determination). The TCNS summary should also provide the relevant TCNS number(s) and identify where any relevant documentation not contained within TCNS may be found.

To ensure that they can be easily associated with the correct EA, both the NEPA cover sheet and the TCNS summary chart should include the coordinates of the pole sites covered, matching the coordinates

in Form 608 Schedule C or Form 601 Schedule D. If the information in either document is not the same for all sites contained within a submission, we recommend preparing multiple versions of the cover sheet and/or TCNS summary, clearly indicating by coordinates which poles are covered by each version. Multiple iterations of the cover sheet or TCNS summary may be submitted in a single .pdf document as a single attachment to Form 608 or 601.

Upon submission of Form 608 or 601 with an attached EA and associated documentation, ULS will automatically assign an application file number. Within one week after filing, the Form 608 or 601 will be placed on public notice for a 30-day comment period. A FONSI is ordinarily issued within 15 days after the end of the comment period unless: 1) the EA did not include all of the information required in the checklist; 2) a petition to deny is filed; or 3) staff identifies unusual circumstances under which the construction may have a significant environmental impact under Section 1.1307(d). Staff will endeavor to identify any missing information early in the comment period, and if the missing information is promptly provided and does not materially change the submission, it ordinarily will not require additional notice or otherwise delay the review. It is our experience that petitions to deny are rare and can almost always be anticipated based on known controversy. If a petition to deny is filed that affects fewer than all of the sites in a submission, the railroad can file a severance as a minor amendment so that a FONSI can be granted for all sites that are not subject to the petition to deny.

Filing an EA Before Completing the Section 106 Process

Where construction of a PTC facility requires an EA for a reason other than potential significant impacts on historic properties or Indian religious sites, Commission staff will permit the railroad to file the EA prior to completing the review process under Section 106 of the National Historic Preservation Act. This special procedure recognizes the urgent need for efficiency in connection with the deployment of statutorily required PTC systems.³

If a railroad files an EA prior to completing the Section 106 process, it should indicate on the NEPA cover sheet (Attachment B) that review has not yet been completed for effects on historic properties and/or Indian religious sites, and it should indicate on the TCNS summary (Attachment C) those Tribal Nations whose participation under the Program Comment is not yet completed. The Form 608 or 601 will then be placed on public notice in the same manner as any similar form filed with an EA. During the public comment period, Commission staff will continue working with the railroad, SHPO, and Tribal Nations to resolve Section 106 issues consistent with the Program Comment.

Once the Section 106 process has been completed with respect to the SHPO and all Tribal Nations, the railroad or TTCI must amend the EA by filing a minor amendment to the application in ULS. Specifically, the railroad should file an updated NEPA cover sheet and TCNS summary, amend the discussion in the body of the EA as necessary, and add any documentation necessary to demonstrate that the process has

³ See Wireless Telecommunications Bureau Modifies *Ex Parte* Rules for Environmental Assessments Submitted for Positive Train Control Facilities, *Public Notice*, DA 14-1243 (WTB August 27, 2014).

been completed. Staff will review the amended submission and, if no adverse effect to historic properties or Indian religious sites has been determined, will ordinarily issue a FONSI within 10 business days (or within 15 days after the end of the comment period, whichever is later), unless there is a reason a FONSI cannot be provided. If the Section 106 review results in a finding of adverse effect that cannot be avoided, or otherwise materially changes the substance of the findings in the EA, the Bureau will place the application on public notice for an additional 30 days.