

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Patricia Hughs

Filing Date: August 5, 2026

Case No.: FIA-26-0053

Issued: August 14, 2026

Decision and Order

On August 5, 2026, Patricia Hughs (Appellant) appealed a denial of expedited processing by the Department of Energy’s (DOE) Office of the General Counsel (GC) regarding Request No. HQ-2026-02141-F, a request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. In a letter notifying Appellant of its decision (the Determination Letter), GC explained that Appellant had not satisfied the statutory or regulatory criteria to demonstrate a compelling need for expedited processing. The Appellant challenged the decision to deny expedited processing. In this Decision, we deny the appeal.

I. BACKGROUND

On July 22, 2026, Appellant submitted a FOIA request seeking “any submittals/information/comments to the [July 2026 National Transmission Needs] Study [(Study)] from Public Service of New Mexico and El Paso Electric . . . [and] submittals/information/comments from entities in the West Connect South and Southwest Power Pool that address New Mexico . . . [and] any input used in the Study from Lawrence Berkely [sic] National Laboratory.” FOIA Request at 1. Appellant stated that the comment period for the Study would close on September 7, 2026, and requested a timely response so that she could review the record and submit comments to DOE before that deadline. *Id.* Appellant justified her request for expedited processing by stating that comments on the Study were due September 7, 2026, “less than 2 months from now,” that she and other landowners were affected by the Study, that her ranch was included in a National Interest Electric Transmission Corridor (NIETC) designation process, and that commenting on the Study was vital to the future of her land and “multigenerational livelihood.” *Id.* at 2.

The NIETC program is intended to address harm caused by lack of energy transmission infrastructure in areas designated by the Secretary of Energy. *National Interest Electric Transmission Corridor Designation Process*, U.S. Department of Energy, <https://www.energy.gov/oe/national-interest-electric-transmission-corridor-designation-process>. Transmission Corridors are designated through notice and comment procedures via notice of the

proposed designation in the Federal Register and the opportunity for public comment on the proposed designation. *Id.* DOE provides the following justification for the program:

Consumers are frequently harmed from a lack of transmission infrastructure, which can directly contribute to higher electricity prices, more frequent power outages from extreme weather, and longer outages as the grid struggles to come back online. While these needs are urgent, building and expanding electric transmission often requires several years of permitting, siting, and regulatory processes, especially if the transmission line extends through multiple states and regions.

To expedite and streamline this process, the Federal Power Act [(FPA)] authorizes the Secretary of Energy to designate any geographic area as a National Interest Electric Transmission Corridor (NIETC) if the Secretary finds that consumers are harmed by a lack of transmission in the area and that the development of new transmission would advance important national interests in that area, such as increased reliability and reduced consumer costs.

Id. The draft of the July 2026 Study that is the subject of Appellant's request states that "[p]ursuant to FPA section 216(a)(2), DOE will consider the results of its 2026 Needs Study and other information relating to electric transmission capacity constraints and congestion when issuing any final NIETC designation reports within the statutorily mandated three-year window." Draft National Transmission Needs Study, U.S. Department of Energy at 17 (July 2026), <https://www.energy.gov/documents/national-transmission-needs-study-draft-july-2026>. Appellant is seeking information about what information was considered in compiling the Study. Whether such information may be withheld under an exemption to the FOIA is not at issue in this Decision.

On July 27, 2026, GC issued the Determination Letter. Determination Letter at 1. GC restated the scope of Appellant's request and informed her that DOE would provide a response after completing its search for and review of any responsive records, but her request for expedited processing was denied because she had not demonstrated a compelling need for it. *Id.* GC explained that a requester demonstrates a "compelling need" for expedited processing by showing either that failure to obtain the records quickly could reasonably be expected to pose an imminent threat to an individual's life or physical safety or that a requester primarily engaged in disseminating information has an urgency to inform the public concerning actual or alleged Federal Government activity. *Id.* GC further explained that courts consider three factors to determine whether a requester has demonstrated "urgency to inform": "(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity." *Id.* at 2. GC stated that Appellant had not provided information establishing an imminent threat to an individual's life or safety and concluded that the request did not sufficiently address the first two factors of the urgency to inform test. Accordingly, GC denied expedited processing and stated that the request would be processed under the ordinary provisions of FOIA. *Id.*

On August 5, 2026, Appellant appealed the denial of expedited processing. Appeal at 1. Appellant asserted that the Southwestern NIETC designation could permit the Federal Energy Regulatory Commission to authorize private, for-profit developers to use eminent-domain authority for

projects within the corridor. *Id.* She stated that the proposed corridor was five to fifteen miles wide, spread over 2,350,000 acres, and encompassed entire agricultural operations. *Id.* She stated that the proposed corridor affected her family's 120-year-old, five-generation ranch and more than 8,000 private-property owners, most of whom she described as agricultural producers in New Mexico, Colorado, and Oklahoma. *Id.* She alleged that the incomplete designation process had already caused severe losses in property value and reduced landowners' ability to obtain operating loans and that future harms could include loss of control over property and loss of the ability to earn a living from generationally owned land. *Id.* Appellant contended that the 2023 National Transmission Needs Study had provided part of the justification for the existing NIETC process, that the 2026 Study could also be used to justify an NIETC, and that her FOIA request sought information used in preparing the 2026 Study. *Id.* Appellant argued that failure to obtain the requested records quickly could pose an imminent danger "to the lives, livelihood and physical safety of our selves, many, many others, and farming and ranching in a New Mexico, Colorado and Oklahoma." *Id.* Appellant stated:

We are part of a Coalition of ranchers, farmers, county officials and private property owners that has been disseminating information contained in the DOE's NIETC Designation Process Guidance Documents, federal law, the previous Transmission Needs Study and industry analyst documents concerning the NIETC. We have informed 11 county governments, state senators and representatives, cattle grower organizations, landowners within the proposed corridor and our federal representatives. We have spoken at New Mexico and Colorado cattle grower community informational meetings and landowner coalition community informational meetings, given testimony to our state Senate and Representative subcommittees, been interviewed on podcasts, have been the source of information for several news articles and have disseminated information on our coalition Facebook page that has 1400 members. There is no formal disseminating of information from any source, including the DOE, except through activities like the ones just cited.

...

In the past, the DOE has been *non-responsive* when asked to talk to and hear out the public about the Southwestern NIETC. Many, many calls for information or meetings with them have not resulted in communication. Because of this, it has been the work of those affected to keep the public informed. The urgency behind this FOIA request is that we will again be doing the outreach concerning the new Needs Study. Over 600 people commented on the NIETC designation process. Many people will want to comment on the Needs Study that will inform the NIETC process going forward. We need to have specific information included in the request in order to make Informed comments. Withholding that information will continue to leave those who stand to lose their property, livelihoods and future in the dark. The people who will be most affected by the Southwestern NIETC need to know what input was used in the development of the 2026 Needs Study.

Id. at 2. Appellant argued that the loss of farms and ranches would threaten food security and, therefore, implicated national security and a matter of current exigency to the American public. *Id.* She further argued that a delay in production of responsive records beyond the September 7, 2026,

comment deadline would compromise the significant interests of affected landowners by preventing them from submitting informed comments on a Study that she maintained could support the taking of productive agricultural land and private homes. *Id.* Appellant stated that the request concerned DOE’s past and present conduct in connection with the NIETC designation process. *Id.* Finally, Appellant stated that she was attaching a “25-page referenced submittal” discussing the alleged harms of an NIETC, and a video of her husband disseminating information at a community meeting in Clayton, New Mexico. *Id.* at 2–3.

Appellant further stated that, during the preceding two and one-half years, DOE had received information concerning the alleged harms posed by the Southwestern NIETC from landowners, county commissions and staff, agricultural organizations, state lawmakers, hospital administrators, business owners, and bank executives. Appeal at 1. She asserted that every affected county in New Mexico and Colorado had adopted resolutions opposing the Southwestern NIETC. *Id.*

II. ANALYSIS

It is well-established that “public awareness of the government’s actions is ‘a structural necessity in a real democracy,’” and that “[t]imely awareness is equally necessary because ‘stale information is of little value.’” *Am. Oversight v. United States Dep’t of State*, 414 F. Supp. 3d 182, 186 (D.D.C. 2019) (citing *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) and *Payne Enters. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988)). Therefore, delays in processing a FOIA request may “‘cause irreparable harm,’ but typically only in ‘rare FOIA cases . . . involving ongoing proceedings of national importance.’” *Brennan Ctr. for Justice at NYU Sch. Of Law v. Dep’t of Commerce*, 498 F. Supp. 3d 87, 101 (D.D.C. Oct. 20, 2020) (quoting *Ctr. for Pub. Integrity v. Dep’t of Def.*, 411 F. Supp. 3d 5, 11–13 (D.D.C. 2019)).

The FOIA requires expedited processing “in cases in which the person requesting the records demonstrates a compelling need and in other cases determined by the agency.” 5 U.S.C. § 552(a)(6)(E)(i). DOE regulations mirror the FOIA’s language, which states that the term “compelling need” means:

- (i) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (ii) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

Id. § 552(a)(6)(E)(v); *see also* 10 C.F.R. § 1004.5(d)(6). The requester has the burden of demonstrating compelling need. *Wadelton v. Dep’t of State*, 941 F. Supp. 2d 120, 122 (D.D.C. 2013). The categories for compelling need are intended to be narrowly applied. *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001). Appellant has alleged that expedited processing is required to prevent an imminent threat to the life or physical safety of a person. However, even supposing there is such a threat to life or physical safety, the harm alleged is not imminent; Appellant does not assert that the September 7, 2026, deadline is when the harm will occur. Considering that the harm in question will occur, if ever, an indeterminate number of months in the future, it is not imminent.

Therefore, we discuss only whether Appellant has satisfied the second definition of “compelling need.”

Courts consider three factors when determining whether a requestor has demonstrated an “urgency to inform”: “(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.” *Al-Fayed*, 254 F.3d at 310. GC determined that Appellant failed to sufficiently address only the first two factors.

A matter is of current exigency to the American public when, in close temporal proximity to the request, there is “substantial interest, either on the part of the American public or the media, in” the matter. *Al-Fayed*, 254 F.3d at 311. Courts have found current exigency where “‘the subject matter of the request was central to a pressing issue of the day,’ . . . or was of ‘immediate public interest in view of [an] ongoing debate.’” *Rolling Stone LLC v. DOJ*, 739 F. Supp. 3d 237, 243 (S.D.N.Y. 2024). The pendency of legislation has been found to create current exigency when the legislation is the topic of ongoing debate. *ACLU v. United States DOJ*, 321 F. Supp. 2d 24, 30 (D.D.C. 2004). Courts use objective markers to discern whether current exigency exists. *Democracy Forward Found. v. Office of Management & Budget*, 780 F. Supp. 3d 61, 73 (D.D.C. 2025) (finding news articles and reports can be used to show widespread interest); *Elec. Privacy Info. Ctr. v. Nat’l Sec. Comm’n on Artificial Intelligence*, 419 F. Supp. 3d 82, 95 (D.D.C. 2019) (“[N]ews articles and other contemporary documents may illuminate whether EPIC’s FOIA requests meet the ‘urgency to inform’ standard.”). News articles are not the only marker courts use, but they are often a way of providing evidence of widespread concern. *ACLU v. United States DOJ*, 321 F. Supp. 2d at 29 (2004) (“Newspaper articles plaintiffs cited in their request for expedited processing discuss, for example, how widespread public concern is reflected by the many resolutions passed by local and state governments urging Congress to narrow provisions of the Patriot Act.”).

In order to show that a significant recognized interest would be compromised by a delay in processing, a requester must “identify a specific end point at which the information’s value drops off altogether—*i.e.*, the conclusion of a process such as a legislative vote, impeachment proceeding, national census, court case, or the like.” *Rolling Stone*, 739 F. Supp. 3d at 244 (internal citations omitted); *Long v. Dep’t of Homeland Sec.*, 436 F. Supp. 2d 38, 43 (D.D.C. 2006) (stating that the plaintiff [requestor] must “identify an imminent action indicating that the requested information will ‘not retain its value if procured through the normal FOIA channels’”); *Democracy Forward Found.*, 780 F. Supp. 3d at 74 (string cite describing cases where interests would be compromised by delay due to impending congressional hearings, an upcoming census, and sunset provisions in laws).

GC does not deny that Appellant is primarily engaged in disseminating information. *See* Determination Letter at 1–2. Appellant has asserted that she seeks the requested information in conjunction with the activities of an organization that disseminates information about the proposed NIETC designation and provided evidence of such dissemination occurring. As GC has not contested this issue, and indeed treated the condition as satisfied by using the urgency to inform test without caveat, I find that GC has conceded the issue and there is sufficient evidence to support a finding that Appellant, as part of her coalition, is primarily engaged in the dissemination of information.

As an initial matter, there is no dispute that the requested information concerns government activity. I turn now to whether the request concerns a matter of current exigency to the American public.

It is clear that the looming comment period deadline is the primary driver of Appellant's expedited processing request. The fact that a government decision is pending does not on its own immediately mean that a matter is of *current* exigency. However, courts have found that where a proposal affects the rights of the public and there is a time limit on debate regarding the proposal, particularly when the government has acknowledged the proposal's importance to the public, the confluence of factors may be sufficient to find compelling need. *ACLU v. United States DOJ*, 321 F. Supp. 2d at 29–31. The NIETC program is intended to address urgent public needs through a streamlined process that affects the property interests of landowners across several states. Those who may be affected have limited opportunities to engage with the government during the NIETC designation process, and the deadline for comments on the 2026 Study provides an additional, time-limited opportunity to comment on information that DOE has stated it will consider when issuing final NIETC designation reports. There is a high likelihood that comments on this topic submitted after the deadline or submitted during comment periods for other topics will not be considered by DOE. *See Reytblatt v. NRC*, 105 F.3d 715, 723 (D.C. Cir. 1997) (“Agencies are free to ignore . . . late filings.”); *Healthy Gulf v. U.S. Army Corps of Eng'rs*, 81 F.4th 510, 526 (5th Cir. 2023) (“In light of the existence of public comment periods, we have no interest in adjudicating how ‘close’ is too ‘close’ in the context of untimely comments. We therefore see no reason here for deviating from our general requirement that a party ‘rais[e] the alternative in the comments addressed to the agency’ during the relevant public comment period.”).

While this matter is of the utmost exigency to Appellant—and, potentially, her community—she has not demonstrated that the 2026 Study is of current exigency to the broader American public. Moreover, while Appellant has identified county resolutions and previous public comments, she failed to provide evidentiary proof of either, thus preventing an evaluation of their content and relevance to this matter. Her appeal describes these actions in broad terms without identifying the counties involved, the resolutions passed, or the subjects of previous comments. She has submitted no evidence of media coverage concerning the 2026 Study or the wider NIETC program. In essence, it is Appellant's burden to establish facts that could demonstrate current exigency, and she has not provided sufficient evidence to meet that burden. OHA has long recognized that mere assertions of fact are insufficient to provide an evidentiary basis for a FOIA appellant's position. *See Neal Dikeman*, OHA Case No. FIA-25-0016 (2025) (A bare statement that the public had an interest in knowing about a government activity and a reference to a negotiation between a private entity and a state government was not sufficient to demonstrate current exigency.). Accordingly, I find that Appellant has not demonstrated that her request relates to a matter of current exigency to the American public.

Appellant identifies property interests as the significant recognized interest that could be compromised by a delay in processing. However, the requested information has not been closely tied to preventing a drop in property values or seizure of land through eminent domain. There are so many steps between this FOIA request and the potential harm that I cannot find enough of a nexus to say processing delays for this request could harm Appellant's property interests.

Accordingly, I find that Appellant has not demonstrated that a delay in processing her FOIA request could compromise a significant recognized interest.

For the foregoing reasons, I find that Appellant has not demonstrated a compelling need for expedited processing.

III. ORDER

It is hereby ordered that the Appeal filed on August 5, 2026, by Patricia Hughs, No. FIA-26-0053, is denied.

This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect one's right to pursue litigation. OGIS may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS, College Park, MD 20740
Web: <https://www.archives.gov/ogis> Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

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