



Testimony of

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before the

**SUBCOMMITTEE ON DOMESTIC POLICY
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

Hearing on

**FEDERAL ELECTRIC TRANSMISSION CORRIDORS:
CONSEQUENCES FOR PUBLIC AND PRIVATE PROPERTY**

April 25, 2007

Chairman Kucinich and Members of the Committee,

My name is Christopher G. Miller, and I am President of the Piedmont Environmental Council, which is headquartered in Warrenton, Virginia. Thank you for the opportunity to testify on behalf of the Piedmont Environmental Council with respect to the Department of Energy's implementation of Section 1221 of the Energy Policy Act of 2005.

The Piedmont Environmental Council is a non-profit organization incorporated in Virginia in 1972 with a mission of promoting and protecting the natural resources, rural economy, history and beauty of the northern Virginia Piedmont. We have members through-out a nine county region that runs from Loudoun County and the Potomac River south to Albemarle County and the City of Charlottesville. We have a professional staff that supports programs to educate communities and policymakers about the importance of good regional planning including land conservation, transportation planning and energy policy. We also play a dynamic role in land use planning and land conservation policy and practice which protect natural resources, historic sites, scenic areas and riparian lands within the Chesapeake Bay watershed to meet local, state, and national goals.

The reason we are here today is that national and state designated resources may not be adequately protected by the Department of Energy's implementation of §1221 of

EPAct. We are particularly concerned that the Department has proceeded towards NIET corridor designation without meeting the statutory requirements of this section. The Department of Energy has not prepared a programmatic environmental impact statement (PEIS), as required by the National Environmental Policy Act (NEPA) prior to designating a corridor. This process would identify important national and state resource lands that should continue to be protected. A programmatic EIS is particularly required when an agency initiates a major new federal program which covers a region of the United States where there will be interrelated environmental and economic effects. Second, the Department of Energy should incorporate demand response, energy efficiency and distributed generation plans which have been implemented by states to reduce demand on the grid. The Department has not made a full analysis of alternatives to transmission in advance of NIET corridor designation. Finally, there is accumulating evidence that the Department of Energy has not consulted with stakeholders, particularly state governments and state utility regulators as to the merits of NIET corridor designation.

Section 1221 Inadequately Protects Federal and State Designated Resources

The Piedmont region of Virginia is an unusual place in the degree to which communities have actively participated in federal, state and local policies to provide protection for historic, cultural, and natural resources, helping to meet many of our nation's environmental and historic preservation goals. These goals are set forth in federal policy such as the American Battlefield Protection Program of 1996, the Historic Preservation Resources Act of 1966, the Appalachian National Scenic Trail, the Chesapeake Bay 2000 Agreement, and in state policies and goals such as agricultural land preservation, the Virginia State Park System, Virginia Historic Landmarks and the State Scenic Byway Program. Although certain categories of land under Federal ownership are exempt from a Presidential decision to allow location of transmission lines, such as components of the National Park System and National Wildlife Refuges, other lands that are important to Federal and State conservation priorities may be put at risk by NIET corridor designation. While in the west, large areas of federally owned land can be set aside as National Parks and Wildlife Refuge areas, in states east of the Mississippi River, national resource values have been protected through cooperative efforts with states and private landowners.

One tool that has been particularly effective is conservation easements which often protect multiple values including agricultural land preservation, watershed protection, wildlife habitat and historic resources. However, the primary motivation for many landowners to put their land in conservation easement is the protection of scenic values. The designation of a NIET corridor that includes lands under conservation easement would undermine successful efforts encouraged by federal and state tax policies that reward conserving lands to protect historic resources, watershed, forests, agricultural lands and open space. The conservation values of hundreds of thousands of acres of conservation easements that help achieve both federal and state land conservation policies will be adversely impacted. Easements on those several hundred thousand acres of land within the Piedmont represent more than \$500 million in federal and state tax incentives. Just as important, landowners will be less willing to donate conservation

easements in the future if there is a prospect that land, adjacent land or areas within nearby viewsheds will be taken by federal eminent domain for 120-170 foot high transmission towers.

Important environmental, scenic and viewshed resources such as lands visible from the Appalachian National Scenic Trail, lands within Civil War Battlefield areas designated for protection by the American Battlefield Protection Program, and lands in Historic Districts and Rural Historic Districts listed or eligible for listing on the National Register of Historic Places are not expressly exempt from NIET corridor designation and use of federal eminent domain to locate transmission lines. Also at risk are the scenic values of state parks, wildlife management areas, natural heritage areas, scenic rivers, and scenic byways from transmission lines located on or adjacent to those resources. (See Attachment H, Piedmont Environmental Comments And Request for Preparation of An Environmental Impact Statement, Exhibit B., Affidavit of Christopher G. Miller, October 10, 2006). State owned land, federally designated resources, and lands under permanent conservation easement which implement federal and state policy should be exempt from NIET corridor designation and federal eminent domain.

The Department of Energy apparently plans to designate National Interest Electric Transmission Corridors without performing a Programmatic Environmental Impact Statement putting local, state and federal priorities at risk.

Because of Piedmont Environmental Council's explicit involvement in resource management and regional planning, we are aware of the many federal and state programs and resources put at risk by the threat of NIET corridor designation. Our concern is that the Department of Energy has indicated it may designate NIET corridors in the near future, giving utilities access to a new and unprecedented federal eminent domain power, without first having completed a programmatic EIS as required by the National Environmental Policy Act, and without consultation with affected stakeholders. While the overall goal of NIET corridor designation is to reduce economic congestion and constraints on our nation's power grid, these designations cannot be made in a vacuum. NIET corridor designations would enormously affect communities within the path of a transmission project by threatening protected natural, historic and scenic resources and opening the door for federal override of the state regulatory decisions on proposed projects. A programmatic EIS would enable not only a timely consideration of alternatives to transmission lines and consultation with stakeholders required by Section 1221, but also a full comparison of the impacts on potentially affected communities.

NEPA requires an EIS prior to any 'major federal action significantly affecting the human environment.' A programmatic EIS is required when an agency initiates a major new federal program that covers a region of the United States where there will be interrelated environmental and economic effects. DOE announced (together with Interior, Agriculture and Defense) that it would conduct a programmatic EIS in the process of designating transmission lines and oil and gas pipelines under §368 of EAct 2005 which provides for utilities to operate on federal lands. But there has not been a commitment by Department of Energy to conduct a programmatic EIS prior to NIET corridor designation pursuant to EAct §1221.

The requirements of NEPA ensure that federal decision makers understand the environmental and cultural consequences of their actions. Without an EIS, a precipitous NIET corridor designation could undermine previously enacted federal, state and local policy decisions designed to maintain and protect public values. These include historically, culturally and environmentally sensitive areas such as historic districts, battlefields and lands under permanent conservation easement.

A programmatic EIS would also ensure that the Department of Energy conducts a full analysis of alternatives to transmission in advance of NIET corridor designation. Pennsylvania, New Jersey, Maryland and other states in the Mid-Atlantic region have recently acted to implement better demand management programs, strengthen energy conservation and energy efficiency, and encourage clean energy generation closer to demand. In Pennsylvania, Governor Edward Rendell announced a comprehensive plan, including state assistance to purchase “smart meters” and efficient appliances, to achieve conservation savings and offset need for 4 or 5 large coal or nuclear plants in 15 years. In New Jersey the goal is to reduce demand by 1.5% per year (15% in 10 years) and Governor Corzine recently issued an Executive Order calling for 20% reduction from projected demand by 2020. Maryland has established state wide energy efficiency standards; requires utilities to install smart meters for time of use rates; and programmable thermostats to cycle air conditioners during periods of peak demand. Governor Tim Kaine of Virginia recently directed significant conservation measures in government facilities and the State Corporation Commission was directed to consider these measures more broadly. The widespread implementation of these strategies could substantially affect the need for additional interstate transmission capacity.

Communities and affected landowners deserve a full review of the alternatives such as these progressive programs, before being subjected to the potential of federal eminent domain. EPAct §1221(a)(2) requires the Department of Energy to undertake a serious and detailed study that considers all alternatives to reduce energy demand-alternatives that could reduce congestions and could eliminate any need to carve new transmission corridors through the countryside and our communities. In the Department of Energy’s August 2006 National Electric Congestion Study, the Department anticipated “congestion solutions will be based on a thorough review of generation, transmission, distribution and demand-side options, and that such options will be evaluated against a range of scenarios concerning load growth, energy prices, and resource development patterns to ensure the robustness of the proposed solutions.” We have yet to witness this analysis of alternatives to new transmission although the Department of Energy has indicated it may make NIET corridor designations within the next month.

The Department of Energy has failed to require utilities to come forward with a set of facts, including the utility’s own consideration of alternatives, which prove the need for a transmission project before designating a NIET corridor. Such inaction is exemplified in Allegheny and Dominion Powers’ joint application to construct a 240 mile interstate transmission line which passes through parts of Pennsylvania, West Virginia and Virginia and is proposed within PJM Interconnection’s southernmost NIET corridor request, the Allegheny Mountain Path. Dominion says it doesn’t intend to use federal siting authority but it has not asked PJM to withdraw its application for NIET corridor designation. Neither utility has released transparent data to support a conclusion that the proposed NIET corridor designation is in the best interest of the regional planning

system. This lack of analysis gives an unfair advantage to utilities that have proposed transmission projects over alternative measures to resolve system constraints. Such data should be made available for public analysis and comment before any NIET corridor designation is made by the Department of Energy.

The Secretary of Energy has not consulted with affected States on electric transmission congestion or NIET Corridor Designation

EPAct §1221(a) directs “the Secretary of Energy, in consultation with affected States, [to] conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States), the Secretary shall issue a report” that may designate as a NIET corridor any area experiencing electric transmission constraints. Despite this clear mandate, the Department of Energy has not consulted with state governments and state utility regulators as to the merits of NIET corridor designation. It is our understanding that state officials in Virginia, Pennsylvania or Maine, three states included in requests for early NIET corridor designation, have not been consulted. The need to consult is increasingly important as affected states implement load management, energy efficiency, and energy conservation plans to reduce overall demand on the transmission grid.

Our experience with the process thus far suggests that the Department of Energy is proceeding in an ad hoc manner in response to specific utility proposals rather than undertaking a systematic analysis of optimal energy solutions in the national interest that take into account other national interests and stakeholder concerns. There is a record of dozens of meetings by Department of Energy officials with utility representatives but a pattern of refusing meetings with other stakeholders after its self-determined October 10, 2006 deadline.

In March 6, 2006, PJM Interconnection, LLC submitted a request to the Department of Energy to expedite the designation of a corridor as proposed by Allegheny Power, “no later than August 31, 2006.” That route was modified in July-August to include a different route that would terminate some 75 miles to the south at Loudoun substation in Arcola, Virginia, rather than Kemptown, Maryland. From the perspective of hundreds of communities in Virginia, there is an immediate prospect of a federally designated corridor that would, for the first time, allow the Federal Energy Regulatory Commission to grant utilities federal condemnation powers. When PEC contacted local, state, and federal officials from Virginia in June 2006, none of them were aware of the NIET corridor designation process or the potential federal condemnation authority. PEC staff provided the first notice that there was a National Congestion Study underway and the potential for NIET corridor designation; none of the elected officials of the potentially affected jurisdictions recalled being contacted as part of the study process or requested to comment in an organized stakeholder process. Virginia Attorney General Robert F. McDonnell, wrote to the Secretary of Energy on November 15, 2006 that, “the Department’s August 2006 transmission congestion study in which it identified portions of the Commonwealth as Critical Congestion Areas, apparently was conducted without this required consultation with Virginia.”

When we requested clarification from the Department of Energy about NIET corridor designation, agency officials implied that corridor designation would occur soon after close of the comment period of the National Congestion Study on October 10, 2006. PJM Interconnection, LLC's comments included proposals for three broad NIET corridors, which together cover most of the Mid-Atlantic from central Virginia north to New York, west to eastern Ohio and the most of the Atlantic coast, including the Delmarva peninsula. Is this what Congress had in mind as a "corridor"? There was also a specific request for designation of the Allegheny Mountain Corridor as PJM's first priority, with one of the main reasons being that the utilities (Allegheny and Dominion) are prepared to invest capital to initiate construction immediately. (Comments of PJM Interconnection, LLC on Designation of National Electric Transmission Corridors, October 10, 2006). In addition, PJM requested DOE to provide an accelerated designation "no later than December 31st of 2006."

Since the end of the National Congestion Study comment period October 10, 2006, there has been no official clarification about the process that the Department of Energy will follow for NIET corridor designation. Officials at the Department of Energy have suggested that they may make "preliminary" designations with a period for comment, followed by final corridor designation. But no further information about the proposed process has been provided and there is no indication that the Department will consider alternatives or conduct an impact study. While officials from Virginia, West Virginia, Maryland, Pennsylvania, New Jersey, Delaware, New York and Ohio are now generally aware that PJM Interconnection has requested NIET corridor designation through their lands, the Department of Energy has not provided them any procedures, criteria or other guidance as to how to analyze or respond to that request. In fact, the Department of Energy has not even provided a public map of proposed NIET corridor areas for the United States despite repeated requests by PEC.

Conclusion

First, historically, culturally and environmentally sensitive areas such as historic districts, battlefields and lands under permanent conservation easement already recognized under state and federal law must remain protected. Second, the Department of Energy must undertake an EIS and full evaluation of alternative measures before any NIETC is designated and, third, the state role in the siting of transmission lines must be protected.

The adoption of these three principles will ensure Americans will always have the electricity they need while, at the same time, protecting our most precious resources. We at the PEC look forward to working with Congress and the Administration on this very important issue to find sensible solutions.

Thank you again for inviting me to testify today before the subcommittee and I look forward to answering any questions you might have regarding this important issue.

Attachments

- A. Map depicting PJM Interconnection, LLC's National Interest Electric Transmission Corridor requests in the Mid-Atlantic.
- B. PJM's proposed backbone transmission projects beyond 5 years.
- C. Map showing publicly owned lands, battlefields, historic districts and conservation easements which could be impacted within the Virginia section of PJM's proposed Allegheny Mountain Corridor.
- D. Map of lands visible from the Appalachian Trail and protected resources within the Virginia section of PJM's proposed Allegheny Mountain Corridor.
- E. Map of lands held in conservation easement within the Chesapeake Bay watershed
- F. Letter from Rodger Sant *et al.* to Secretary of Energy Samuel Bodman, October 25, 2006.
- G. Letter from David McCullough and James McPherson to Congressman Frank Wolf, March 2, 2007.
- H. Letter from Virginia Attorney General Robert F. McDonnell to Secretary of Energy Samuel Bodman, November 15, 2006.
- I. Comments of the Piedmont Environmental Council to the Department of Energy on the August 8, 2006 Congestion Study (one copy provided to the subcommittee staff).