

Comments to the U.S. Department of Energy on the Plan Presented at the March 29, 2006, Public Technical Conference on the Transmission Congestion Study Plan and Designation of National Interest Electric Transmission Corridors (NIETCs)



The following material comprises comments received by the U.S. Department of Energy in response to a request at the March 29, 2006, Public Technical Conference on the Transmission Congestion Study Plan and Designation of National Interest Electric Transmission Corridors (NIETCs) held at the Hilton Garden Inn O’Hare Airport. These comments were received via e-mail to EPACT1221@hq.doe.gov. It was requested that all comments be submitted by close-of-business Friday, April 14, 2006.

The U.S. Department of Energy presents the comments as received and without any endorsement of their validity. The comments are listed in alphabetical order by commenter, including the date and time that the comments were received.

List of Commenters (including date and time the comments were received):

Note: Comments can be accessed by clicking on the page numbers listed to the right below

1.	Allegheny Power, Received Thurs 4/13/06 7:51 PM	2
2.	American Electric Power, Received Thurs 4/13/06 3:45 PM.....	6
3.	American Transmission Company, Received Thurs 4/13/06 5:32 PM	10
4.	California Public Utilities Commission, Received Fri 4/14/06 2:51 PM	16
5.	Committee on Regional Electric Power Cooperation (CREPC), Received Fri 4/14/06 6:52 PM.....	24
6.	Edison Electric Institute, Received Fri 4/14/06 3:29 PM	28
7.	ISO/RTO Council, Received Fri 4/14/06 11:46 PM.....	34
8.	National Association of Regulatory Utility Commissioners, Received Fri 4/14/06 3:52 PM.....	40
9.	Northeast Power Coordinating Council, Received Thurs 4/13/06 2:59 PM.....	51
10.	Northern California Power Agency, Received Fri 4/14/06 5:39 PM.....	52
11.	Old Dominion Electric Cooperative, Received Fri 4/14/06 3:17 PM.....	52
12.	PSEG Services Corporation, Received Thurs 4/13/06 2:45 PM.....	59
13.	Xcel Energy, Received Tue 4/04/06 5:08 PM	62

1. Allegheny Power, Received Thurs 4/13/06 7:51 PM

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY**

**Re: Considerations for Transmission Congestion Study
and Designation of National Interest Electric
Transmission Corridors; Notice of Inquiry
Requesting Comment and Providing Notice
of a Technical Conference**

**COMMENTS OF ALLEGHENY POWER REGARDING
THE PROPOSED TWO-STEP PROCESS FOR DESIGNATION OF
NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDORS**

During the March 29, 2006 Technical Conference in this matter, the Department of Energy (DOE) presented a two-step process for designation of National Interest Electric Transmission Corridors (NIETCs). In response to the DOE's proposal, Allegheny Power¹ submits the following comments.

I. Comments

To implement its new authority to designate NIETCs pursuant to section 216 of the Energy Policy Act of 2005 (EPAct), DOE has proposed a two-step process. In the first step, DOE would detail, after study, an "Electric Transmission Constraint Area." In the second step, DOE would invite proposals for specific projects designed to alleviate the constraint. DOE

¹ Allegheny Power is the trade name for Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company. The Allegheny Power companies are public utilities that supply electric energy at retail in parts of Pennsylvania, Virginia, West Virginia and Maryland. All of the Allegheny Power companies own electric transmission facilities subject to the functional control of PJM. Monongahela Power Company owns generation facilities. The Allegheny Power companies are owned and controlled by, and are direct subsidiaries of, Allegheny Energy, Inc., a public utility holding company.

would evaluate the proposals and, if a specific proposal is approved by DOE, an NIETC designation would be issued for the project.

The proposed two-step process raises the following concerns:

1. By soliciting proposals for specific proposals that DOE would evaluate and select, the two-step process engrafts a step into the NIETC designation process that was not contemplated by Congress. The phrase “alternatives and recommendations from interested parties” as used in section 216 does not authorize DOE to consider and authorize specific projects as a pre-requisite to the designation of an NIETC. Instead, this phrase was intended to require DOE to solicit input regarding specific areas that should be designated as NIETCs, not specific projects needed to alleviate transmission constraints within those areas. Moreover, the criteria identified in section 216 for determining whether to issue an NIETC designation do not include evaluation of specific projects. DOE’s proposed criteria for NIETC designations are not consistent with the process of review and approval of specific projects. The proposed criteria would have to be completely revamped to focus on project review. This in turn would depart from the broad criteria that Congress provided in EPAAct and raise legal issues as to the criteria’s consistency with the statute as well as DOE’s authority to authorize specific projects. In short, the two-step process goes beyond DOE’s authorization under EPAAct.
2. By reviewing specific projects, DOE will duplicate and possibly usurp the role of state siting processes and potentially limit FERC’s options if backstop siting authority is needed. In addition, by rejecting specific proposals, DOE will limit siting options. If a proposed project does not pass DOE muster, the likelihood that the project will

obtain either state siting authorization or FERC backstop authorization will be significantly reduced because regulators will perceive it as not being necessary. Congress intended DOE to undertake a broad designation of NIETCs but did not intend to reassign to DOE the siting processes and authorities that now reside with the states and, under EPAct, with FERC as a backstop.

3. The two-step process places DOE in the role of becoming the nation's "master planner" of the transmission grid and will usurp or, at least, duplicate the independent transmission planning function carried out by RTOs and ISOs under carefully designed and stakeholder vetted tariffs on file with FERC. These planning processes are highly complex analytical exercises designed to identify reliability, operational performance and economic needs on the transmission system and provide for the installation of specific upgrades to remedy the specific need. These processes are dependent upon long-range projections and the queuing of generation and transmission additions to the system. The two-step process will interfere with these processes and further complicate the already complicated processes of determining which transmission upgrades should be constructed. DOE should serve as the facilitator of NIETC designations, not the planner and designer of the nation's transmission system. Moreover, where an RTO or ISO has in place an effective regional planning process, DOE should defer to that planning process when determining the need for NIETC designations.
4. DOE review of specific projects in the two-step process will add delays to the designation of NIETCs and invite appeals of its decisions. This will significantly jeopardize DOE's ability to complete its NIETC study within the 12-month

timeframe authorized under EPAct and will further cloud the exercise of FERC's backstop siting authority.

5. DOE approval of specific projects could trigger NEPA review and the requirement for DOE to prepare an Environmental Impact Statement. NEPA review at the corridor designation stage can only engender further delays at the very time Congress has sought to expedite the siting process.

II. Correspondence and Communications

Correspondence or communications with respect to these comments should be addressed to the following:

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Respectfully submitted,

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Dated at Greensburg, PA this 13th day of April 2006.

2. American Electric Power, Received Thurs 4/13/06 3:45 PM

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April 13, 2006

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Submitted by e-mail to: EPACT1221@hq.doe.gov

Re: Considerations for Transmission Congestion Study and Designation of
National Interest Electric Transmission Corridors, Additional Comments Following
March 29, 2006 Technical Conference

Dear Ms. Agrawal:

The designation of National Interest Electric Transmission Corridors (“NIETCs” or “Corridors”) is one of the most important aspects of the Energy Policy Act of 2005 (“EPAct”). The intent of the EPAct is to site transmission more expeditiously if it is indeed determined that transmission is the right solution. As the lead government agency for the NIETC process the DOE will play a critical role in identifying corridors in a timely fashion. In these comments, the companies of the American Electric Power System (collectively “AEP”)¹ offer suggestions on how the DOE’s proposals can be strengthened and focused to achieve the necessary goal of building new transmission to reduce congestion and increase reliability.

DESIGNATION AND CRITERIA

The DOE urgently needs to enact clear simple rules for the designation of NIETCs. This will allow industry participants to quickly begin the process of building new transmission in order to alleviate congestion and increase reliability. However, when enacting these rules the DOE should not plan or determine solutions for the industry. Instead, the DOE should rely on recommendations from independent planning organizations such as RTOs, ISOs, and other regional planning authorities. These independent organizations, because of their established processes and expertise within their individual regions, are the ideal organizations to evaluate the myriad of projects that will be proposed. First, these independent organizations will be able to determine if transmission is the best solution to alleviating congestion in a particular area. Second, if additional transmission is the best solution these independent entities will be able to select the best transmission alternative for their particular region. Additionally, if a request for corridor designation comes from a regional planning organization the DOE should give that corridor a high priority because the request has already passed through an open stakeholder process and has been determined to be necessary. This system will leave the door open for DOE to do a more robust "second step" in areas where independent planning is not in place.

When designating corridors we urge the DOE to follow a clear, simplified and directed multi-step process. The criteria developed should be both forward-looking and a mix of qualitative and quantitative information. The criteria should not be so narrowly defined as to identify specific tests or procedures that are to be used for any given situation. Instead, the criteria should create general guidelines that are to be used to determine whether a corridor is needed.

Once the DOE designates a corridor that designation should not expire. Likewise, corridor designations should not be re-studied in every triennial study, as siting processes would be prolonged as a state waits out the study process. Further, the DOE’s corridor designations should be broad enough not to require an environmental impact statement at the designation stage.

¹AEP Texas North Company, AEP Texas Central Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Wheeling Power Company, and AEP Transmission Company, LLC.

Finally, the DOE should be clear that it is the lead agency for corridor designation on federal land and any land not covered by state or local siting procedures. The DOE should also rely upon the Federal Energy Regulatory Commission (“FERC”) to perform specific siting activities as provided for in the EPAct, due to its expertise and existing processes in this area.

AEP believes the following five-step process will help to designate and site NIETCs in the fastest most efficient way possible.

- Problem Identification and DOE Designation Stage – the DOE should identify constrained areas, cut planes, or interfaces that exhibit significant congestion or reliability issues. (This step is generally consistent with the two steps discussed by EEI in their supplemental comments: first step, congestion/constraint identification; second step, national interest designation.)
- Solution Identification Stage – established regional planning bodies such as RTOs/ISOs or regional reliability councils, such as SERC, should determine the optimal solution to alleviate reliability constrained congestion in the area identified by the DOE.
- Additional Corridor Designation Stage – if new transmission is the solution and the transmission route does not already lie within a previously designated NIETC, then the DOE should designate a broad corridor encompassing the transmission solution as an NIETC.
- Siting Process – State and local agencies should be fully engaged with the transmission developer at this step to comply with siting requirements as specified in the applicable laws and regulations, including any necessary EIS.
- FERC Backstop Authority – as a last resort for state and local processes, FERC should use its backstop siting authority as defined in the Energy Policy Act of 2005, after “full and complete” applications are made to state and local siting authorities.

DOE PRELIMINARY PROPOSAL

During the NIETC Technical Conference the DOE proposed a two-step process. As AEP understands this proposed process, during the first step the DOE would detail, after a study, an “Electric Transmission Constraint Area.” Next, specific projects would be presented to the DOE. The DOE would then evaluate and approve these projects. If approved a project would then be designated as an NIETC.

AEP believes this approach will raise a number of problems. The primary responsibility of DOE under Section 1221 is to identify congestion problems and designate those afflicted areas that are in the national interest as NIETCs. DOE is not charged with identifying solutions, nor waiting until solutions have been identified to decide where to designate NIETCs. The determination of the best solutions to address congestion in areas identified by DOE is the province of independent planning organizations, the states, and FERC in their planning and permitting processes.

The DOE’s preliminary proposal does not simply identify and designate corridors. Instead it adds another step to the process, one not contemplated by Congress - the evaluation

and approval of specific transmission projects. This additional step would invite further delay without any additional legal significance or assurance to transmission developers. By reviewing specific projects, DOE activity would overlap and potentially conflict with state siting processes and could complicate FERC's backstop authority. Congress intended DOE to undertake a broad designation of national interest corridors but did not intend to reassign to DOE aspects of the siting process, which remain with the states and with FERC as a backstop. Although DOE may not intend to review and approve the routing of a transmission project, any review and approval of specific transmission projects would unnecessarily complicate and potentially delay the routing approval process.

Furthermore, DOE individual project review and consideration of alternative solutions would duplicate existing regional planning processes. A better approach is for DOE to complete the high-level congestion identification and corridor designation and leave to established planning organizations and their processes the task of determining the best solution to address congestion within those corridors.

DOE review of specific transmission projects also opens the door for appeals of its decisions. This litigation would introduce uncertainty as to when the 12 month state review process begins and therefore, when FERC backstop siting authority is initiated.

Finally, DOE review of specific transmission projects could trigger NEPA review and the requirement for DOE to prepare an Environmental Impact Statement. NEPA review prior to DOE action would be premature, duplicative and potentially wasteful as states and ultimately FERC will be reviewing environmental impacts in their siting processes. NEPA review at the corridor designation stage can only engender further delays at the very time Congress sought to expedite the siting process.

EARLY CORRIDOR DESIGNATION

Urgent action is needed in identifying and designating NIETCs. The DOE should act as soon as possible to finalize the rulemaking in Section 216 of the EPAct in order to allow construction on new transmission to begin as soon as possible. However, in advance of this rulemaking the DOE has the power to immediately designate certain corridors that it believes are of urgent need for the country. AEP urges the DOE to select the Allegheny Mountain and Delaware River constraints identified by PJM for early designation as NIETCs, due to the acute need for congestion relief in this region of the country. The AEP I-765 project addresses both the Allegheny Mountain and Delaware River constraints. Finally, the AEP I-765 transmission corridor is complementary with the transmission line proposed by Allegheny Power, which also addresses the Allegheny Mountain constraint.

CONCLUSION

The DOE should focus on problem identification not problem solution. Once the DOE has identified a congested area and designated it as the NIETC the DOE should rely on independent planning organizations to choose the best solution to alleviate congestion in the afflicted area, and on state and FERC procedures for siting of specific transmission lines, with backstop authority remaining at FERC. This method will ensure that congestion is identified and

infrastructure is built in the fastest way possible to alleviate that congestion, by maximizing the expertise of the various entities involved.

Respectfully Submitted,

Submitted Electronically

J. Craig Baker

3. American Transmission Company, Received Thurs 4/13/06 5:32 PM

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

**Considerations for Transmission)
Congestion Study and Designation of)
National Interest Electric Transmission)
Corridors)**

COMMENTS OF AMERICAN TRANSMISSION COMPANY LLC

American Transmission Company LLC, by its corporate manager, ATC Management Inc. (collectively, ATCLLC) files comments in response to the Department of Energy's Technical Conference on the DOE Congestion Study and Criteria for Designation of National Interest Electric Transmission Corridors (NIETCs) held in Chicago on March 29, 2006. ATCLLC urges DOE to consider these comments and those ATCLLC filed March 6, 2006 in response to DOE's Notice of Inquiry regarding the same matter.¹

Executive Summary

¹ *Considerations for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors*, Notice of Inquiry, Office of Electricity Delivery and Energy Reliability, Department of Energy, 71 Fed. Reg. 5660 (Feb. 2, 2006).

ATCLLC's experience with the issues that arise in all stages of completing transmission improvements repeatedly demonstrates that transmission is local. Viable projects are those that provide a benefit to impacted communities by meeting multiple needs and that gain state regulatory support. It is with this experience that ATCLLC files the following comments in response to issues raised during DOE's March 29 technical conference on the transmission congestion study and criteria for designating NIETCs.

ATCLLC suggests the following guidelines for identification of congestion and designation of "Constraint Areas"² and NIETCs:

- Not all congestion is of national importance. ATCLLC encourages DOE to remember this both in developing criteria and processes used for identification of Constraint Areas and NIETCs, and, especially, in designating these areas. Ultimately, ATCLLC suggests that remedying all congestion is neither economical nor feasible.
- DOE should collaborate with states prior to designating a Constraint Area or NIETC. This will ensure that DOE's activities do not conflict with states' efforts already underway to remedy congestion or with existing state laws and goals regarding the environment, transmission siting, resource adequacy, and generation mix. ATCLLC is concerned that conflicts between federal and state efforts could pose problems in getting transmission facilities built.
- Rather than specific transmission routes or broad geographic areas, NIETC designations should be based upon localized electrical paths. Route selection is best done at the state and local levels, where officials are familiar with the impacted communities, and with public input. Similarly, designating overly broad corridors offers no prioritization for parties seeking to develop needed infrastructure within those areas. Furthermore, designating NIETCs will be best accomplished when coordinated with local and regional planning to optimize the new transmission facilities and to ensure they don't adversely affect the existing surrounding electrical system and the planned and proposed elements that may already be under consideration.
- ATCLLC is concerned that DOE intends to get involved in integrated resource planning. States' siting processes already consider the need for a transmission facility in the context of other resource alternatives. Moreover, much of the functions of integrated resource planning, and the authority for these functions, reside at the state level. Federal processes that do not recognize the functions and authority of the states could create confusion and complications that would not be helpful to building transmission facilities.

² DOE staff during the March 29 technical conference described "Constraint Area" as a label for an important problem in the transmission infrastructure.

ATCLLC appreciates the opportunity to submit these comments and would be pleased to provide additional information or answer any questions that may assist DOE in its consideration of these issues.

Description of ATCLLC

ATCLLC is a stand-alone transmission company that is a member of the Midwest Independent Transmission System Operator, Inc. (MISO).³ ATCLLC provides day-to-day operation and system control of its transmission system, including the necessary maintenance, repair, and replacement of elements of its transmission system, as well as the planning, design, engineering, siting, certification, and construction of new facilities.

Since ATCLLC began operating in 2001, it has invested approximately \$1 billion in the necessary strengthening of its system, essentially tripling the company's investment in transmission infrastructure over a five-year period. Over the next ten years, ATCLLC plans to invest approximately \$3.4 billion in new transmission improvements to address load growth, accommodate new generation, improve transmission access by better connecting ATCLLC's system to adjacent regions, and repair or replace aging facilities.⁴

Comments

1. DOE Should Not Attempt to Remedy All Congestion.

Congestion, in and of itself, is not an indicator of a situation of national importance. Remedying all congestion is neither economical nor feasible. This reality should be factored into

³ Effective on February 1, 2002, ATCLLC transferred operational control of its transmission system to MISO. Transmission service is provided to various entities over ATCLLC's transmission system under the terms of the MISO's Transmission and Energy and Markets Tariff.

⁴ More information about ATCLLC's construction plans is available at <http://www.atc10yearplan.com/>.

developing criteria and processes for identification of Constraint Areas and NIETCs and, especially, in designating them.

To the extent that DOE seeks to identify congestion problems worthy of national attention, it should focus on corridors that address reliability needs with the understanding that this also will provide economic benefits. It is ATCLLC's experience that projects designed to meet multiple needs are the most efficient and are the ones likely to be approved.

2. DOE Should Collaborate With States Prior to Designating Constraint Areas and NIETCs.

ATCLLC suggests that collaborating with states prior to designating Constraint Areas and NIETCs would assist in preventing DOE's actions from conflicting with states' efforts to achieve ultimately what is the same goal – to provide consumers with cost-effective, reliable electricity. ATCLLC is concerned that conflicts between federal and state efforts could pose problems in getting transmission facilities built.

A process that involved the states prior to DOE designating a Constraint Area or NIETC would likely raise to DOE's attention possible conflicts with state environmental laws, transmission siting laws (such as Wisconsin's that require high-voltage transmission project applications to propose at least two routes, from which the Public Service Commission of Wisconsin selects one)⁵, and resource adequacy and generation resource portfolio laws and goals. States also are familiar with their geography and the location of established rights of way.

⁵ See Wis. Stats. § 196.491(3). Wisconsin Law further describes the evaluation process utilities must use when compiling the routes for submission. Preference is given to existing utility rights of way, railroads, road rights of way, recreational trails, and, finally, new right of way.

3. NIETCs Should be Based Upon Localized Electrical Paths Designated in Coordination with Local and Regional Planning.

NIETCs should be designated based upon localized electrical paths rather than specific transmission routes or broad geographic areas. Route selection is best addressed at the state and local level, where officials are familiar with the impacted communities, and with local input. Likewise, overly broad geographical designations appear to run counter to the objective of identifying specific corridors and are likely to provide minimal guidance to those seeking to prioritize transmission facility development opportunities.

Furthermore, the decision to designate a corridor in which transmission facilities are likely to be built should not occur in a vacuum. DOE should keep in mind that state regulators, RTOs/ISOs, and transmission owners are all considering options for eliminating congestion. Thus, the problems that necessitated a NIETC will likely already have been identified. When considering NIETCs, DOE also should make use of the experience at the state and local levels in siting transmission projects. Ultimately, designation of NIETCs should be coordinated with local and regional planning to best optimize new transmission facilities and to ensure they don't have adverse effects on the existing surrounding electrical system and the planned and proposed elements that may already be under consideration.

ATCLLC suggests that DOE, in its processes of designating NIETCs, recognize the important role of local planning. The local level is where the immediate impacts of transmission projects are most felt and where much of the knowledge exists on the factors that affect the success of a project (*e.g.*, land use restrictions, environmental concerns, available right of way, and potential new development). Moreover, even a proposed regional transmission line is actually a series of projects that need to be addressed at the local level.

ATCLLC also urges DOE to recognize the key role of the transmission owner in local planning. Transmission owners are the entities with the local expertise and knowledge relating to the configuration and operation of their systems; they have long-standing relationships with state regulators and local community leaders; and have the obligation to plan their systems to meet customer needs in a responsible, prudent, and cost-effective manner.

4. ATCLLC is Concerned About DOE Involvement in Integrated Resource Planning.

DOE staff at the March 29 technical conference said that by designating Constraint Areas, which would not have “a precise locus or boundaries,” the department “could flag an important problem (and) remain agnostic about how to solve it.” DOE staff also indicated that the department would determine if a Constraint Area would need to be designated as a NIETC depending on whether proposed generation or other non-transmission solutions alleviated the congestion. Given the discussion at the technical conference regarding Constraint Areas, ATCLLC is concerned that DOE intends to get involved in integrated resource planning.

ATCLLC suggests that DOE should leave the role of determining appropriate solutions to the state siting processes, as these already consider the need for a given transmission facility in the context of alternatives, including non-transmission options. Furthermore, much of the functions of integrated resource planning, and the authority for these functions, reside at the state level. Federal processes that do not recognize the functions and authority of the states could create confusion and complications that would not be helpful to building transmission facilities.

Conclusion

ATCLLC encourages DOE to recognize in fulfilling its responsibilities under EPAAct that not all congestion is of national importance, that it should avoid taking action that conflicts with

state laws and goals, and that designating NIETCs would best be done by coordinating this function with local and regional planning. Furthermore, ATCLLC suggests that DOE cede integrated resources planning to states that have such authority.

Respectfully submitted,

/s/ Nina Plaushin

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March 13, 2006

4. California Public Utilities Commission, Received Fri 4/14/06 2:51 PM

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY**

Considerations for Transmission Congestion Study and)
Designation of National Interest Electric Transmission Corridors)

**FURTHER COMMENTS OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

The Department of Energy (DOE) hosted a public Technical Conference concerning the criteria for evaluation of candidate areas as National Interest Electric Transmission Corridors (NIETCs) on March 29, 2006 in Chicago, Illinois. The chief purpose of the Technical Conference was to discuss key issues raised by commentors' responses concerning the criteria

proposed for the evaluation of geographic areas for designation as NIETCs. The California Public Utilities Commission (CPUC) appreciates this opportunity to provide further comments to DOE following up on certain key topics that were discussed at the Technical Conference.

1. The CPUC Supports the Two-Step Process Proposed by DOE Staff at the May 29 Technical Conference

At the beginning of the March 29 Technical Conference, DOE Staff proposed a possible new two-step approach to the corridor designation process. Under this suggested approach, DOE would initially identify “Constraint Areas,” i.e., areas where a “problem in the transmission infrastructure” has been identified. In designating such Constraint Areas, DOE would remain “agnostic” regarding the appropriateness of a wires or a non-wires solution to the constraint, but the identification of a Constraint Area would lead to further assessments and proposals on the part of the stakeholders in the state or region in question regarding the best and most cost-effective means of resolving the constraint. If this assessment showed that a National Interest Electric Transmission Corridor (NIETC) was still needed, DOE would then proceed to make such a designation. It is worth noting that this proposed two-step process is entirely consistent with the initial comments submitted by the CPUC and other Western stakeholders in early March, calling for identification and subsequent evaluation of “potential” corridors before any formal designation takes place.

2. DOE Needs to Integrate Its Corridor Designation Process Under EAct Section 1221 With the Designation of Energy Corridors on Federal Lands Under EAct Section 368

DOE needs to closely coordinate its process for designating any NIETCs in the Western states with its evaluation and designation of multi-use energy corridors on western federal lands that is already underway pursuant to Section 368 of EAct. If a potential NIETC entails corridors through federal lands and the Section 368 process has not designated those corridors,

then that particular NIETC should not be designated. In the West, where there are extensive federal lands and a preponderance of long transmission distances, potential NIETCs are very likely to pass through federal lands. Accordingly, in the West, it makes sense for DOE to adequately resolve the Section 368 process before designating any NIETCs.

The Section 368 process is especially important, because it will include an environmental review -- essentially a pre-approval -- of routes for transmission and other energy projects through federal lands, which will greatly facilitate transmission siting in the West in general, regardless of NIETC designations.

Coordination of the Section 368 and Section 1221 NIETC processes also supports the two-step NIETC designation process presented by DOE staff at the March 29 meeting. As recommended by Mr. Rob Kondziolka from the Salt River Project at the March 29 conference, congestion and other assessments underlying Constraint Area identification in the Section 1221 process should actively inform the development of Section 368 corridors. In this way, the designation of federal land energy corridors via the Section 368 process would be a necessary (but not sufficient) pre-condition for ultimate designation of an NIETC that required those corridors.

The results of the Western Area Congestion Study are now being completed by the Western Congestion Assessment Task Force (WCATF) for submission to DOE for use in identifying areas of congestion in the Western Interconnection. This Congestion Study, which will identify congested transmission paths in the West, can and should also serve as a key resource for informing the joint agency process that is working on identifying appropriate multi-use energy corridors through federal land. This Section 368 process is scheduled to complete its work by August of 2007.

Between now and then, the results of the WCATF Congestion Study can and should serve as the basis for concentrated state and regional exploration of whether the best and most cost-effective solutions to the constraints identified by the WCATF study are new transmission lines or reasonably available non-wires alternatives. On a West-wide basis, this state and regional effort can be guided by the new Transmission Expansion Planning Policy Committee (TEPPC) of WECC, whose charter emphasizes “guiding the analyses and modeling for Western Interconnection economic transmission expansion planning.” This new function will help WECC members develop and assess impartial, reliable and timely information on the value of expanding the transmission grid in the West. .

While the Section 368 and Section 1221 processes as well as WCATF congestion studies proceed, and the TEPPC assumes its role in West-wide economic transmission planning, on-going transmission planning and evaluation activity in the West has already resulted in specific proposals for major new transmission projects under review at the state level. For example, the WCATF study identified congestion both east and west of the Colorado River. Two proposed transmission projects that would alleviate this congestion, Devers-Palo Verde 2 and the Sunrise Powerlink, are currently under active review by the CPUC. The CPUC is committed to reviewing these projects in an expeditious manner, consistent with its state statutory requirements for review of project alternatives and addressing project need in terms of ratepayer benefits. The CPUC’s review of the Devers-Palo Verde project should be completed by the end of this year, and its review of the Sunrise Powerlink project should be completed sometime in 2007.

By the summer of next year, the Section 368 process, state siting processes for proposed new transmission lines already under review, and the added economic transmission planning

focus brought by the WECC's TEPPC will give us in the West, as well as DOE, a very solid idea of whether there is any need to designate any NIETCs in the Western Interconnection. At the March 29 Technical Conference, DOE Staff clearly stated that DOE wanted to move forward on NIETC designation in a careful and thoughtful manner and that DOE did want to coordinate its efforts with regional planning efforts. As the foregoing discussion demonstrates, there already are several on-going transmission-related planning efforts in the Western Interconnection with which DOE can and should coordinate its NIETC designation process. For all of these reasons, in the West, it makes sense for DOE to complete the Section 368 process before designating any NIETCs.

3. DOE Needs to Make Sure that Cost Recovery and Siting Constraints are Adequately Addressed at the *Federal* End, Before Designating Any Corridors that Would Preempt State and Regional Roles

DOE's identification of a Constraint Area should not only trigger deeper state/regional assessment and searches for solutions; it should also trigger efforts by DOE, FERC and other federal agencies to ensure that incomplete federal cooperation in transmission siting and cost recovery is not hindering a solution. Several speakers at the March 29 Technical Conference, while recognizing that cost recovery does not fall within DOE's domain, noted that the cost recovery/allocation implications of designating NIETCs and processing applications within them are problematic and must be anticipated. A "solution" that cannot be financed is not a solution and raises questions of credibility. For example, in some instances, FERC may be able to help resolve cost recovery issues and thus contribute to a more efficient and timely solution than would be obtainable via NIETC designation plus potentially lengthy and litigious FERC siting preemption.

Similarly, coordinated and expedited project permitting is not only central to DOE's

Section 368 initiative regarding "energy corridors on federal lands" but is also equally important to meet permitting timelines for most transmission projects to be sited in the West, whether or not they will be located in a designated NIETC. In this regard, it is our experience in the West that the federal land use agencies can be the most critical players in the siting of new transmission infrastructure. We can have the best planning process in the world, but unless federal land use agencies are actively involved in the planning – as well as the permitting – we cannot keep decisions on schedule. It would be a sad irony if a state is not able to complete its permitting of a transmission line proposed in a designated NIETC within the one-year time frame specified in EPAct because of delays in the environmental permitting process occasioned by a federal agency!

All proposed transmission projects in the West that would cross federal lands – and therefore be subject to review under NEPA – would benefit more from enhanced coordination and responsiveness of federal agency review than they would benefit from the formal designation of NIETCs. This is yet another reason why in the West, at least, DOE needs to focus its attention on the Section 368 process, and on facilitating transmission development in general. It is the outcome of this Section 368 process, with DOE in the driver's seat, more than the designation of NIETCs that will dramatically facilitate the siting of needed new facilities in the West.

4. At Least in the West, DOE Should be Very Wary of Requests for Early NIETC Designations

At the Technical Conference in Chicago, several stakeholders from the East, in particular, speakers from AEP, TVA and PJM, advocated early designations of NIETCs in areas where existing studies demonstrate the need for new transmission, such as from coal generation areas to major load centers on the eastern seaboard. It may be that such early designations are desired,

for legitimate and compelling reasons, by a wide range of stakeholders in the East. However, DOE should most assuredly not take this type of step in the Western Interconnection.

In the Western Interconnection, various collaborative regional and sub-regional transmission planning efforts have already resulted in the identification and designation of major transmission upgrades, and a number of specific projects resulting from these planning efforts are in the active permitting process at the state level, as discussed under item 2 above. State action on these proposed projects, which can be anticipated to occur sometime next year, may well obviate the need for any designation of an NIETC between generation and major population centers in the Southwest. This is precisely the sort of information that DOE needs to take into account as it moves forward on NIETCs.

Thus, although we are “agnostic” as to whether DOE should defer to the wishes of stakeholders in the east for early designations of certain NIETCs, we are sufficiently informed regarding transmission needs and developments in the West to state that DOE should similarly defer to on-going planning and project evaluation processes in the Western Interconnection and should not designate any NIETCs in the West as long as these processes are moving forward productively.

In this regard, the CPUC notes that in the first round of comments on DOE’s NOI, two commentors, specifically San Diego Gas & Electric Company (SDG&E) and the Bay Area Municipal Transmission Group (BAMTG), requested early designation of NIETCs in California. However, neither of these “priority” or early NIETC designation requests is either necessary or reasonable at this time. Both of these projects are already undergoing active permitting processes, and there is no urgent or compelling need for DOE to take action at this time to complicate – and potentially preempt – these on-going permitting processes. At the March 29

conference, DOE staff explicitly stated that they did not want to be “picking winners.” However, that is exactly what the early designation requests of SDG&E and BAMTG are asking DOE to do.

Conclusion

In conclusion, DOE should actively pursue the two-step process that it presented at the March 29 Technical Conference. In pursuing this strategy, DOE should be cognizant of, and should incorporate into its processes, the following important policy considerations:

- No NIETC designations, early or otherwise, should occur until DOE, relying on state and/or regional transmission planning processes, has identified a Constraint Area, and has determined that appropriate non-wires solutions are not reasonably available.
- DOE should only make a NIETC designation if there is an identified wires solution to address an identified Constraint Area and there is a lengthy delay in moving that project forward.
- When a NIETC designation is made, it should be done only if the designation is consistent with analyses performed by regional planning entities, as well as with results of the EPart Section 368 process, and any such designation must explicitly address state regulatory concerns, including but not limited to state policies favoring energy efficiency, demand-side management and the development of renewable resources.
- No NIETC designation should be made in the West unless and until the existing state and regional planning and siting processes have first had a chance to fully benefit from federal cooperation and coordination in such areas as cost recovery and permitting on federal lands

The CPUC respectfully requests that the DOE consider the above comments in this proceeding.

April 14, 2006

Respectfully submitted,

/s/ Laurence G. Chaset

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5. **Committee on Regional Electric Power Cooperation (CREPC), Received Fri 4/14/06 6:52 PM**

**Supplemental Comments of the
Committee on Regional Electric Power Cooperation (CREPC)
April 14, 2006**

DOE's Notice of Inquiry on "Consideration for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors"

1. **CREPC Supports the Two-Step Process Proposed by DOE Staff at the March 29, 2006 Technical Conference**

At the beginning of the March 29 Technical Conference, DOE Staff proposed a possible new two-step approach to the national corridor designation process. Under this suggested approach, DOE would initially identify "Constraint Areas," i.e., areas where a "problem in the transmission infrastructure" has been identified. In designating such Constraint Areas, DOE would remain "agnostic" regarding the appropriateness of a wires or a non-wires solution to the constraint, but the identification of a Constraint Area would lead to further assessments and proposals on the part of the stakeholders in the state or region in question regarding the best and most cost-effective means of resolving the constraint. If this assessment showed that a

transmission wires solution was the most appropriate solution to addressing the constraint, DOE would give further consideration to a NIETC designation.

It is worth noting that this proposed two-step process is entirely consistent with the initial comments of WIEB/CREPC submitted to DOE in early March, and with those, as well as of other Western stakeholders, calling for identification of “potential” corridors before any formal designation takes place. CREPC acknowledges DOE’s responsiveness and voices strong support for the “Constraint Area” approach.

2. **CREPC Urges DOE to Integrate Its National Interest Electric Transmission Corridor (NIETC) Designation Process Under EPC Act Section 1221 With the Process for Designation of Energy Corridors on Federal Lands Under EPC Act Section 368**

It is essential that DOE closely coordinate its process for designating any NIETCs in the Western states with its multi-use corridor designation process already underway pursuant to Section 368 of EPC Act. If DOE and other federal land management agencies do not approve a potential transmission route crossing federal lands in the West under the Section 368 process, DOE should certainly not include the route in a NIETC. DOE should also recognize that in the West, most transmission corridors are generally much longer than in the East, which increases the likelihood that many potential NIETCs will run through public lands. Therefore, it is important that the Section 368 corridors match up with the congestion areas identified in the Section 1221 congestion report, due August 2006.

Developers who propose transmission projects in NIETCs should certainly try and line up their projects with Section 368 corridors in federal lands. These corridors will have been through a Programmatic EIS process, which could make the states’ job of reviewing applications for siting new transmission in the West more efficient and could accelerate the development of needed projects.

In this regard, at the March 29, 2006 conference, one speaker from the West, Mr. Rob Kondziolka from the Salt River Project, suggested that the congestion and other assessments underlying Constraint Area identification should actively inform the development of Section 368 corridors. This is consistent with the language of Section 368, which states that DOE shall consider the need for new transmission in designating energy corridors on federal land. The congestion study performed under Section 1221 will be one input to the need analysis for both Sections 1221 and 368. This suggestion complements DOE’s proposed two-step process. The western congestion review now being completed by the Western Congestion Assessment Task Force (WCATF) for submission to DOE can be a key resource for informing the joint agency process that is working to identify appropriate multi-use energy corridors through federal land. This Section 368 process is scheduled to complete its work by August, 2007.

In the interim, the results of the WCATF Congestion Study should serve as the basis for concentrated state and sub-regional exploration of whether the best and most cost-effective solutions to the congestion identified by the WCATF study are new transmission lines or reasonably available non-wires alternatives. To accomplish this, however, will require DOE to

focus on what it expects of itself and sub-regional institutions in the interval between constraint designation and NIETC consideration. It is unclear that existing sub-regional institutions are tasked with this challenge or are staffed appropriately to undertake it successfully.

On a West-wide basis, this state and sub-regional effort could be supported and informed by analyses of the new Transmission Expansion Planning Policy Committee (TEPPC) of WECC, which will have three main functions: (1) overseeing database management, (2) providing policy and management of the planning process, and (3) guiding the analyses and modeling for Western Interconnection economic transmission expansion planning. Gaining an understanding of the DOE initiatives under EAct (both sections 1221 and 368) will be one important early TEPPC task.

At the same time that the Section 368 process and the initial regional planning work of the TEPPC are being conducted, it should be noted that the ongoing sub-regional and SSG-WI transmission expansion studies in various areas of the Western Interconnection have resulted in numerous specific proposals for new transmission that are already under development and/or review, such as Palo Verde-Devers 2, Navajo Transmission Project, Sunrise Powerlink, AMPs line phase shifters, TOT 3, Green Path, TransWest Express/Frontier/Northern Lights, Puget Sound upgrades, seven 500 Kv projects in the Phoenix/Tucson area, and the Montana-Alberta Intertie. Some of these projects are in state review processes with additional system enhancements in place in 2007.

In 2006-2007, we in the West, as well as DOE, will have a clearer understanding of whether there is any need to designate NIETC's in the Western Interconnection, assuming (1) continued progress in implementing Section 368, (2) continuing work by the sub-regional planning groups and WECC's new TEPPC in identifying regional needs for new transmission, and (3) the execution of state siting processes for proposed new transmission lines. At the March 29, 2006 Technical Conference, DOE clearly stated that the Department wants to move forward on NIETC designation in a careful and thoughtful manner and that DOE wants to coordinate its efforts with regional planning efforts. As the foregoing discussion demonstrates, there already are several transmission-related planning efforts on-going in the Western Interconnection with which DOE can and should coordinate its NIETC designation process.

As noted above, DOE's Section 1221 team will identify Constraint Areas before making formal NIETC designations. We fully support this approach. The Section 368 team should take note of these Constraint Areas as it identifies energy corridors on federal lands. And, the Section 1221 staff should take note of Section 368 corridors as it proceeds with formal NIETC designations. This type of real-time coordination is needed in order for state and federal agencies to meet the ambitious siting requirements of the EAct.

3. CREPC Urges DOE to Work with the States to Identify Mechanisms to Ensure that Other Federal Agencies Are Meeting Their Siting Deadlines

DOE's identification of a Constraint Area – which precedes any NIETC designations -- should trigger not only sub-regional efforts and assessments (either to site needed transmission or to identify specific, reasonably available alternatives to that transmission), but also federal

efforts to ensure that the region and the Constraint Area in question were receiving necessary federal attention with regard to key issues, such as cost recovery and siting on federal lands.

Coordinated and expedited project review is not only central to DOE's Section 368 initiative regarding "energy corridors on federal lands" but is also equally important to meet permitting timelines for all transmission projects to be sited in the West, whether or not they will be located in a designated NIETC. In this regard, it is our experience in the West that the federal land use agencies are perhaps the most critical players in the permitting of new transmission infrastructure. Sub-regions and states can have effective planning processes, but unless federal land use agencies are actively involved in the planning – as well as the permitting – states cannot keep decisions on schedule. Timely approval is contingent on federal and state agencies acting expeditiously, and will require DOE and FERC to clarify the appropriate mechanisms that can ensure reasonable implementation of a 12-month review clock.

All proposed transmission projects in the West that would cross federal lands – and therefore be subject to review under NEPA – would benefit greatly from enhanced coordination and responsiveness of federal agency review, arguably, more so than they would benefit from the formal designation of NIETCs. This is yet another reason why in the West, at least, DOE should integrate its Section 368 process with the final NIETC designations. The outcome of this Section 368 process, with DOE in the driver's seat, more than the designation of NIETCs, could effectively facilitate the siting of new facilities in the West.

4. DOE's Approach to This Corridor Designation Process in the Western Interconnection Should Be Different Than Its Approach in the East

At the Technical Conference in Chicago, several stakeholders from the East, in particular, speakers from AEP, TVA and PJM, advocated early designations of NIETCs in areas where existing studies demonstrate the need for new transmission, such as from West Virginia to the major load pockets further east. It may be that such early designations are desired, for legitimate and compelling reasons, by project developers in the East. This does not, however, appear to be the case in the West. DOE should defer to the existing western planning and project evaluation processes prior to any early designation of NIETCs in the West.

As stated previously, in the Western Interconnection, various collaborative regional and sub-regional transmission planning efforts have already resulted in the identification and designation of major transmission upgrades, and a number of specific projects resulting from these planning efforts are in the active permitting process at the state level. State action on several of these proposed projects, which can be anticipated to occur sometime next year, may well obviate the need for designation of a NIETC between major population centers in the Southwest. This is critical information that DOE would take into account as it moves forward in the NIETC evaluation.

6. Edison Electric Institute, Received Fri 4/14/06 3:29 PM

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DAVID K. OWENS
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April 14, 2006

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Submitted by e-mail to: EPACT1221@hq.doe.gov

Re: Supplemental Comments on Considerations for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors, Notice of Inquiry Requesting Comments, 71 Fed. Reg. 5660 (February 2, 2006)

Dear Ms. Agrawal:

The Edison Electric Institute (EEI) appreciates the opportunity to provide supplemental comments to those we filed on March 6 this year with respect to the Department of Energy's (DOE) February 2 Notice of Inquiry (referenced above). We are filing these comments in response to DOE's solicitation for additional comments during the March 29 technical conference in Chicago.

We appreciate the efforts that DOE has made to date to be open with our industry and the public about the Department's process for implementing its new authorities under the Energy Policy Act of 2005 (EPart 2005), and we appreciate DOE's outreach to affected stakeholders. In keeping with these efforts, as discussed later in these comments, we recommend that DOE provide an opportunity for comments on the report the Department will produce by August 8. We also are pleased that DOE is relying to a large extent on the existing catalogue of numerous utility, state, and regional analyses, reports, and studies in preparing the first congestion study

required under section 216(a) of the Federal Power Act (FPA), added by section 1221(a) of EAct 2005.¹

These supplemental comments specifically address DOE's responsibilities in designating "National Interest Electric Transmission Corridors" (NIETCs) under FPA section 216(a). We offer them in full support of DOE's decision-making authority under EAct 2005 and believe they will assist DOE in working through the Department's challenges in developing the methods and processes for making NIETC designations. Furthermore, in the wake of the technical conference, EEI would like to clarify its previous comments, thereby alerting DOE to concerns that EEI and our member companies have with the approach to designating NIETCs that DOE outlined during the technical conference.

EEI is the association of United States shareholder-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. members serve 97 percent of the ultimate customers in the shareholder-owned segment of the industry, and 71 percent of all electric utility ultimate customers in the nation. They generate almost 60 percent of the electricity produced by U.S. electric generators. EEI members construct, own, and operate large portions of the nation's electric transmission grid. In addition, our members rely on the grid to supply power to their customers, either directly as retail suppliers or through wholesale sales to support other such suppliers. As a result, EEI has a keen and direct interest in the DOE congestion study and steps to implement the Department's NIETC authority.

As stated in our initial comments on March 6, EEI believes that Congress provided DOE with clear direction and a focused responsibility: Identify congestion problems throughout the country by conducting a congestion study and designate NIETCs for those problems that are in the national interest to address. NIETC designation does not mean that an economic solution will necessarily be available, or that transmission will necessarily be part of the solution. Furthermore, DOE is not charged with identifying, evaluating, or embracing solutions. Nor is DOE encouraged or required to wait to make NIETC designations until other entities have settled upon a solution or range of solutions for a particular congestion problem. Instead, NIETC designation simply identifies areas with transmission congestion or constraint problems of national concern, and provides the Federal Energy Regulatory Commission (FERC) with backstop siting authority if needed to help address those problems, steps that can be especially important for problems that involve multiple states or regions that do not coordinate their planning processes.

Development and evaluation of solutions is the proper responsibility of state and regional planning processes and of utilities as transmission owners and operators. Final siting and permitting authorities belong to the states, with a FERC backstop for designated NIETCs in cases where established state siting processes either do not apply or have failed to meet certain requirements as to timing and action set out in FPA section 216(b). To the extent that DOE proposes an approach in which NIETC designations hinge on a solutions analysis or the need for

¹ DOE commonly refers to the requirements of FPA section 216(a) as its EAct section 1221 responsibilities. However, DOE has additional responsibilities under section 1221, including its lead agency responsibilities under new FPA section 216(h). Therefore, to be precise, EEI will refer to FPA section 216(a) rather than EAct section 1221 in these comments when that is what we mean.

a decision by others as to when a transmission solution is warranted, we believe that DOE unnecessarily complicates its responsibilities, opens itself to distraction, and may make ultimate designation decisions more politically difficult. We also believe that such an approach would abdicate DOE's responsibility to identify congestion of national concern and to encourage regional cooperation in seeking to identify and implement cost-effective solutions where possible.

We are concerned that the proposed approach to NIETC designation outlined by DOE during the March 29 technical conference heads in the direction of making NIETC designations dependent on decisions elsewhere about solutions and puts DOE in the position of having to endorse particular proposed solutions to congestion issues. DOE staff introduced the concept of "electric transmission constraint areas," which we understand would be based on the congestion study and serve the purpose of spurring regions and states to address and resolve congestion problems. It appeared to us that DOE was proposing identification of "constraint areas" as an interim step and that designation of NIETCs would occur at some undefined point in the future. DOE staff also indicated that NIETC authority would be exercised "sparingly," "judiciously," and "skillfully," and at a time when it would be clear that transmission is the solution to a congestion problem, and after other solutions such as demand response, generation, or renewable energy facilities would have had an opportunity to surface. The challenges of defining the geographic boundaries of an NIETC appeared to be an underlying rationale for this "wait and see" approach to designation."

EEl proposes an alternative approach that we believe would allow DOE more fully to implement Congressional intent, while respecting the important role that various stakeholders – including the states – have in planning, siting, and building facilities to resolve congestion problems. We propose a two-step process as set out in EPAct 2005, not a three-step process that the "constraint area" concept mentioned at the March 29 conference might imply. In the first step DOE would identify geographic areas that are experiencing transmission capacity constraints or congestion that adversely affect consumers, through the congestion study. In the second step, DOE would identify which of those congestion problems are in the national interest to address, by designating NIETCs. Both steps should be reflected in the first report that DOE will produce by August 8, 2006 and in succeeding triennial reports.

Once DOE has designated an NIETC, the matter would be handed off to utility planners, regional planning entities, and the states to identify the appropriate solution – if one is economically available – and to take steps to implement it. If these utility, state, and regional processes determine that a solution is economically available and new transmission is part of the solution, and if an applicant is willing to build the transmission, the applicant would typically engage in state siting processes, but could turn to FERC backstop authority in instances where the state processes do not apply or fail to meet requirements set out in FPA section 216(b). Under section 216(b), FERC would evaluate whether the applicant's proposal meets various criteria, including for example whether the proposed project is in the public interest. Thus, FERC would not be required to exercise its backstop siting authority just because DOE has designated an NIETC corridor. Instead, we anticipate that FERC would take into account the results of appropriate utility, state, and regional planning processes in deciding whether and how to exercise its authority.

After designating an NIETC, DOE's role would be fairly circumscribed. DOE may wish to monitor progress by utility, state, and regional planners to identify and implement solutions in NIETCs, as part of its ongoing responsibility to prepare triennial congestion reports. DOE also may be able to provide useful information from the record underlying its designations to these planners and others responsible for evaluating the congestion at issue and looking for solutions. Also, if transmission is part of the solution for a given NIETC, DOE would have lead agency responsibility under FPA section 216(h) as to federal authorizations and related environmental reviews that are required. But others will be responsible for actually identifying and implementing the solutions.

EI continues to encourage DOE to designate NIETCs broadly. This will preserve the ability of states, regional planning entities, and utilities to examine a range of solutions, and it will avoid the need for DOE to perform a detailed environmental review for the designation. Tailoring an NIETC to accommodate a specific, conceptual transmission project would prematurely anticipate a solution and might preclude others. Doing so also would increase the likelihood that DOE might have to complete an environmental impact statement prior to making a designation, a level of review that should be unnecessary until entities make permit applications for specific projects. Even where DOE is responding to a petition for an NIETC designation that may have a relationship to a proposed project, DOE's analysis should focus on whether the congestion underlying the project exists and is in the national interest to address. If DOE responds by making a designation, the designation should likewise be drawn broadly so as not to pre-judge solutions or require an environmental impact statement or comparable detailed review.

In designating and defining NIETCs, DOE should begin by specifically and technically describing the capacity constraint or congestion problem leading DOE to designate each NIETC. If DOE believes that it must draw lines on a map to define the geographic area encompassed by the NIETC, this technical description of the problem will serve as a natural limit on what would be considered within the scope of the NIETC designation. Alternatively, however, DOE could simply indicate that the geographic boundary of the NIETC is "such geographic area as necessary to address the capacity constraint or congestion problem, if a solution ultimately is economically available and involves transmission." The most important factor in ultimately deciding whether a proposed transmission solution is within an NIETC should be whether and how well it addresses the problem upon which the NIETC designation was predicated. This evaluation will generally be made by utility, state, and regional planning processes, though FERC may end up being involved if asked to exercise its backstop siting authority. The record of any state and multi-state proceedings should be incorporated into FERC's analysis in this regard.

DOE should provide two procedural avenues for NIETC designations: (1) a "regularized" avenue where designations are made coincident with each congestion study and report; and (2) a petition-based or an "upon request" avenue. EI strongly supports designation of NIETCs in the reports required under FPA section 216(a) at the completion of each triennial congestion study, including the report that is required this year based on the first congestion study.² NIETC

² Later in these comments, we will discuss the issue of DOE providing an opportunity for comments on the report and designations.

designations were designed by Congress to avoid endless study of known congestion problems and to encourage states, regional planners, utility planners, and other parties to identify and evaluate cost-effective solutions and to implement them.

DOE's recently proposed formulation of the NIETC designation process – where designation would follow decisions by others that transmission is the desired solution – could perpetuate the status quo because the leverage provided by FERC backstop siting authority to encourage action would never be engaged. Furthermore, under this formulation, DOE would face the difficult task of deciding when a solution is apparent enough to wield its authority, and DOE could be perceived as wading into the debate about appropriate solutions and picking winners and losers. Also, DOE would risk converting the NIETC designation process into one that simply ratifies the decisions of others. Under FPA section 216(a), DOE has an independent responsibility to decide where the national interest lies in terms of assuring that congestion rising to “national interest” status is identified, while recognizing that it may not end up being economic to resolve all such congestion or that transmission may not be the most cost-effective solution. DOE should not defer to others in implementing this responsibility, once the Department has consulted with the States and considered recommendations from interested parties as provided by section 216(a).

In making the decision about the timing of designations, DOE also should consider that making designations within the context of each triennial report could present fewer political challenges. Delayed designations may be more easily perceived as a direct effort to preempt state siting authority with respect to the solutions that the delayed NIETC designation supports.

As to the petition-based procedural avenue to an NIETC designation, EEI continues to support DOE's original proposal to consider individual petitions requesting an NIETC designation. In addition to allowing for designations to be made in advance of the first report required under EPAct 2005, this avenue allows for supplemental designations between triennial reports where there is some urgency.

Whether designations are made in each triennial report or in response to a petition, DOE needs to establish a clear step-by-step process that is transparent and available to all parties. The process for each avenue should be the same, with DOE proposing an action, taking public comment on that proposed action, consulting with states and regional planning entities, and then making a final decision within a specified time period. Using the same approach for the triennial designations and the designations by petition will avoid disparate results. The analysis should be the same for each avenue as well: Is there congestion or a capacity constraint, and is it in the national interest to address.

EEI strongly encourages DOE to comply with the deadlines that Congress has set in FPA section 216(a) for the first congestion report due August 8, 2006 and for the succeeding reports due every three years thereafter. We also strongly encourage DOE to include NIETC designations in each of the reports. Meeting the deadlines and designating NIETCs are important to ensure that the nation makes forward progress on addressing significant transmission capacity constraint and congestion issues in a timely fashion. These steps also are important to provide the certainty needed for utilities to assist in identifying and implementing solutions.

In addition, EEI encourages DOE to provide an opportunity for comments on the reports and NIETC designations, to ensure that the reports and designations fully reflect input by utilities and other stakeholders. This is in keeping with the FPA section 216(a) provision that DOE consider recommendations from interested parties, including affected states, in issuing the reports and designating NIETCs. This opportunity for comments should occur before the deadline for each report, in particular as to the future triennial reports, but even as to the first report due this coming August 8 if possible. However, given the short time frame that Congress has provided for DOE to complete the first report, if DOE simply cannot invite and respond to comments on the first report and designations before August 8, DOE should issue the report with NIETC designations no later than August 8, invite comments during a brief period after that (we suggest 30 to 60 days), and respond to those comments promptly (again we suggest within 30 to 60 days), thus completing the process of taking and responding to input no later than this coming December. If such a post-August 8 process is needed this year, DOE should commit firmly to a schedule as just described and meet the schedule, enabling utilities, states, and other to rely on the August 8 report, again to provide certainty and to honor Congressional intent to move ahead in addressing congestion issues of national concern.

FPA section 216(a) requires DOE to designate NIETCs after considering “alternatives and recommendations.” EEI believes that this means DOE is to consider alternatives and recommendations related to NIETC designations. We do not believe that Congress intended this to be a solutions analysis, but an evaluation and dialogue about which of the various geographic areas experiencing capacity constraints and congestion are important from a national perspective. Similarly, the alternatives analysis contemplated by DOE in its proposed criterion 8 should not be an integrated resource planning-type exercise where the merit of transmission versus other kinds of solutions to congestion and transmission constraints are evaluated for purposes of deciding when an NIETC designation is appropriate. Instead, DOE should apply its NIETC criteria so as to identify capacity constraint or congestion issues of national concern.

EEI recognizes the challenges that DOE faces in implementing its new authorities as well as the sensitivities associated with the potential exercise of FERC backstop siting authority. We believe that many of these sensitivities will be addressed in the implementing rules for FERC backstop siting authority. Furthermore, we believe there will be adequate time for traditional planning processes to settle on solutions and implement them, inasmuch as for the most part the time boundaries set by EAct 2005 are triggered by the filing of an application with a state or affected states. In those circumstances where a non-jurisdictional entity is involved or where a state cannot consider regional benefit, Congress has invited the states to make appropriate modifications to their state laws to preserve their authorities and has provided FERC with the authority to fill the gap when states do not do so.

We look forward to continuing to work with DOE and FERC on the implementation of their respective EAct 2005 authorities. We are confident that the provisions of the Act will help our member companies and other participants in the energy industry plan and build the base load generation, renewable energy facilities, and transmission infrastructure required to meet the nation’s growing need for electricity. Toward that end, the Act’s section 1221 provisions – including the DOE lead agency authority to coordinate all authorizations under federal law required for siting transmission – will help to ensure that solutions to national-interest

transmission congestion or constraints are promptly identified and implemented, where economically feasible.

If you have any questions about these comments or need additional information, please contact me at the above phone number or any of the following EEI staff: Henri Bartholomot at 202/ 508-5622, Meg Hunt at 202/ 508-5634, David Dworzak at 202/ 508-5684, or Ed Comer at 202/ 508-5615. Thank you.

Sincerely,

- signature -

David K. Owens

7. ISO/RTO Council, Received Fri 4/14/06 11:46 PM

UNITED STATES OF AMERICA DEPARTMENT OF ENERGY

Re: Considerations for Transmission
Congestion Study and Designation of
National Interest Electric Transmission
Corridors

SUPPLEMENTAL COMMENTS OF THE ISO/RTO COUNCIL

I. Introduction

The ISO/RTO Council¹ appreciates the opportunity to provide these supplemental comments in response to the Department of Energy's ("Department") invitation for further comment on the various proposals described at the Department's Technical Conference. The IRC submitted initial comments in response to the Department's Notice of Inquiry ("NOI") and uses this opportunity to supplement those comments based on the Department's preliminary description of implementation proposals set forth during the Technical Conference. The IRC will limit this supplemental filing to comment on two specific issues raised at the Technical Conference – the proposed process for handling designations of National Interest Transmission

¹ The members of the IRC are the Alberta Electric System Operator ("AESO"); California Independent System Operator Corporation ("CAISO"); Electric Reliability Council of Texas ("ERCOT"); the Independent Electricity System Operator of Ontario ("IESO"); ISO New England Inc. ("ISO-NE"); Midwest Independent Transmission System Operator, Inc. ("MISO"); New York Independent System Operator, Inc. ("NYISO"); PJM Interconnection, L.L.C. ("PJM"); and the Southwest Power Pool ("SPP"). Due to their own unique jurisdictional circumstances, the Alberta Electric System Operator ("AESO") and the Independent Electricity System Operator of Ontario ("IESO") are not joining these comments. ERCOT, as the ISO for an intrastate interconnection, also is not participating in these comments.

Corridors and the proposed criteria being utilized to determine such corridors – and to highlight questions about the Department’s Draft Congestion Study.

II. Comments

A. The Proposed Two-Step Process Is Unnecessary and Runs Counter to Congressional Intent in Directing the Establishment of National Interest Electric Transmission Corridors.

At the Technical Conference, the Department outlined, as a preliminary proposal, a two-step process for National Interest Electric Transmission Corridor (“Corridor”) designation. As the first step, the Department would, after issuing its Congestion Study, identify “Electric Transmission Constraint Areas”. After such identification, specific transmission solutions to resolve those constraints would be submitted to the Department for approval. The Department would undertake a review of such transmission projects to see if the proposal suitably resolved the constraint and if so, the Department would then designate such transmission project as part of a Department-designated Corridor.² The Department indicated an interest in providing a certain level of deference to projects arising out of regional, independent transmission planning processes but, on the other hand, felt the need for specific Department review and approval of transmission projects prior to Corridor designation.³

The IRC is concerned that the Department’s two step process, although well-intentioned, unnecessarily complicates an already lengthy and litigious process for siting major new transmission lines. The IRC further notes that the proposed process blurs the lines between the Corridor designation and the process of siting transmission and as a result, runs contrary to the intent of Congress. Section 216 of the Energy Policy Act of 2005 represented a careful balancing of state and national interests and a detailed parsing of the respective roles of the Department and the Federal Energy Regulatory Commission (“FERC”). Congress intended for the Department to undertake its designation of “national interest” based on broad criteria set forth in the statute. Those criteria include considerations of national energy policy, homeland security, economic growth and diversification of supply. See e.g. Section 216(a) (4). Congress was careful, however, not to disturb state siting processes except in narrow circumstances – such as, a state’s failure to site or its lacking authority to site a line within a corridor. See Section 216(b). By adding a second step where the Department would be reviewing and presumably approving in some form specific *transmission* projects as part of its Corridor designation, the Department runs the risk of duplicating, if not usurping, the role of state siting processes, and ultimately limiting the FERC’s options in its exercise of backstop siting authority.⁴ Moreover,

² DOE officials did make clear that this second review would not include the specific routing of transmission lines.

³ This description is based on the IRC’s understanding of the Department’s preliminary proposal. To the extent that the Department’s proposal differs from this description, the IRC requests that the Department so clarify in its final rule.

⁴ For example, Congress assigned FERC and not the DOE with determining whether “*the proposed construction or modification*” is consistent with the public interest, will significantly reduce transmission

the proposed two-step process adds significant legal and policy complications with the Corridor process as described below.

The Department's proposal to establish a process by which a Corridor may not be identified until a specific transmission project is identified as resolving a constraint is unnecessary, *because the Department's identification of a Corridor need not be synonymous with a ruling that only a transmission project can resolve an identified constraint*. By Congress' direction, the Department's designation is "based on (its) study of congestion". The designation of Corridors is not intended to supplant the development of solutions, which are considered in regional planning processes and ultimately reviewed in State (or potentially FERC) siting processes. The IRC believes that the Department should define Corridors broadly, and as noted by multiple commenters at the Technical Conference, in regions with ISOs/RTOs, defer to ISO/RTO planning processes to identify the transmission solutions to meet the problems identified by the designation of a Corridor. Such solutions would then, in keeping with Congress' scheme, be considered at the state level where alternatives can be considered leaving FERC as the ultimate "backstop" authority for consideration of the identified solutions. Were the Department to continue with its proposed two-step proposal, then the Department's review of individual projects would simply duplicate existing RTO/ISO planning processes and effectively turn the Department into the ultimate "master planner" of the nation's power grid. It would also render as surplusage Congress' direction to the Commission to determine whether a specific "*proposed construction or modification*" benefits consumers, meets sound national energy policy and reduces transmission congestion in interstate commerce" *See* Section 216(b). Given that RTO/ISO planning processes are *already* subject to review at FERC and the results of RTO/ISO planning processes must be reviewed through state siting proceedings, little is accomplished by adding another layer of federal government review and approval.

In addition to the potential duplication of state and FERC siting processes, there are a number of reasons why the IRC believes that the "hand-off" to the RTOs/ISOs and then to the states should occur earlier in the Department's Corridor designation process and without the Department injecting itself into the determination of specific solutions:

- Congress intended the Corridor designation process to represent a determination that a particular area of congestion or particular reliability problem has national implications. Such a designation was designed as an additional tool to give developers of complex multistate transmission projects some assurance that the federal government has determined that there is a national rather than purely local interest in resolving the problem. The Department's proposed preliminary identification of a corridor as an "Electric Transmission Constraint Area" has no legal significance. It will not provide a developer with any legal assurance that the national interest has been identified. Rather, the specter of a two-step process, on top of state and FERC processes could well work to discourage the very new investment and more expedited processes that Congress was seeking;

congestion in interstate commerce and protects or benefits consumers and is consistent with sound national energy policy and will enhance energy independence." *See* Section 216(b) 2 through Section 216(b) 5.

- The Department’s approval of specific projects could trigger the need for the Department to prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act cite⁵ prior to taking final action. NEPA review is particularly unnecessary at this early stage of the process as it would be wholly duplicative of state and federal environmental reviews to be conducted through the siting process.
- By reviewing specific projects and accepting some and rejecting others, the Department will potentially limit FERC siting options at an early stage of the process and skew state siting decisions by labeling some alternatives as eligible for preemption by FERC while others would not qualify for such preemption. A state concerned about preserving its jurisdiction will be forced to take this into account in its siting determinations;
- A two-step process, with a specific approval of alternatives, could cause greater uncertainty in the development of alternatives. Rather than being able to rely upon the results of the RTO/ISO Regional Transmission Planning Processes, investors determining whether to invest in upgrading generation or demand resources will now need to await the Department’s process to determine if a particular project designated in an RTO/ISO plan will be “approved” by the Department. In a market where there may be a need to move quickly to address impending reliability issues, any such additional steps carry with them a potential “risk premium” and delay in investment;
- The Department review of specific projects in its proposed two-step process will invite appeals of its decisions. This will tend to cloud when the 12 month clock called for in the legislation for state siting review begins and cloud whether and when FERC has authority to proceed with backstop siting.

For all of these reasons, the IRC urges the Department to consider the model outlined by the IRC in its initial comments and reconsider the Department’s preliminary proposal. At least in areas covered by regional independent planning processes administered by ISOs and RTOs, the Department should defer to those processes (and ultimately state and FERC siting processes) for the development of solutions to identified problems of national significance given the multiple regulatory reviews already in place to review the results of such processes⁶. Adding another step in the process would invite “forum shopping” and extended litigation to a process that already includes appropriate checks and reviews by states and ultimately FERC of the results of such planning processes.

B. The Department’s Use of Criteria for Identifying Corridors Should be Undertaken with Consideration of Specific Electric Paths.

⁵ National Environmental Policy Act, 42 U.S.C. §§ 4321-4347 (2000).

⁶ The proposed DOE two-step process may be problematic for non-RTO/ISO areas as well. If DOE identifies significant areas of congestion which have national impacts consistent with Congress’ defined criteria, it need not address how it examines specific solutions from RTO vs. non-RTO regions, instead leaving that issue to the states.

In its initial comments, the IRC supported the Department's originally proposed criteria in the context of the Department's designation being broadly defined as an identification of electrical paths between generation resources and loads rather than the approval of specific transmission projects. Should the Department proceed with approving specific projects, its proposed criteria are far too vague to determine whether one transmission project versus another transmission project is appropriate. Instead, the Department would need to develop criteria that analyze, among other things: violations of NERC criteria, reviews of loop flows and other causes of congestion, the impact of planned generation on resolving the constraint, and the potential impact of "at risk" generation. The Department would need to develop sensitivity analyses around load forecasts. All of these steps are undertaken in the RTO/ISO planning processes making such a review unnecessary unless the Department were to certify transmission alternatives under its proposed two-step process. However, the need to revise the criteria in order to undertake a meaningful review and certification of projects highlights the very problem with reviewing alternatives: such detailed criteria would quickly run afoul of the much higher level criteria that Congress set forth to govern the Department's reviews in Section 216.

In conclusion, a proper framework for identifying Corridors would: (a) respect the limited role Congress intended for the Department; (b) avoid duplication with FERC-approved, independent, and open processes (*i.e.*, ISO/RTO planning processes) for identifying transmission solutions; and (c) recognize that the Department's designation of a Corridor pursuant to Section 216 need not mean that *only* transmission solutions are appropriate resource investments.

C. The Department Should Clarify its Methodology for Completing its Congestion Study.

Finally, the IRC notes that at the Technical Conference, Department consultants explained that its initial congestion study was limited to reviews of "thermal limits" in the Eastern Interconnection. No reason was provided as to why the criteria undertaken in the congestion study should be different in the Eastern versus the Western Interconnection and why the congestion analysis should be different. The IRC is also concerned that limiting the analysis to only thermal limits may miss important constraints in the Eastern Interconnection that are created by voltage issues. Moreover, it remains unclear whether the Department's Study intends to identify constraints that only raise economic congestion issues or whether the Study will also identify threats to grid reliability. The IRC has provided the Department with a great deal of public data and analysis concerning their respective transmission grids. The IRC is concerned about an overly narrow review of constraints in the Eastern Interconnection and the anomalies associated with different analyses and criteria used for the Eastern versus the Western Interconnection.

The Department should take steps to clarify its methodology and offer its Study for stakeholder comment prior to final publication.

III. Conclusion.

For these reasons, the IRC urges the Department to adopt a designation process focused on the identification of electrical interfaces which need to be crossed in order to resolve significant congestion and reliability problems identified pursuant to Congress' established criteria. The IRC also seeks to consult further with the Department to ensure that the criteria being examined in the Eastern Interconnection appropriately identify congestion and reliability challenges. The IRC stands ready to assist the Department in providing additional information to support such a process, with the goal of enhancing the ability to get needed infrastructure built on a timely basis – not to slow it down or add barriers.

Respectfully submitted,

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April 14, 2006

8. National Association of Regulatory Utility Commissioners, Received Fri 4/14/06 3:52 PM

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

Considerations for Transmission)
Congestion Study and)
Designation of National Interest)
Electric Transmission Corridors)
)

COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The Department of Energy (the “Department” or “DOE”) hosted a public Technical Conference concerning the criteria for evaluation of candidate areas as National Interest Electric Transmission Corridors (“NIETCs”) on March 29, 2006 in Chicago, Illinois. The chief purpose of the Technical Conference was to discuss key issues raised by commenters’ responses concerning the criteria proposed for the evaluation of geographic areas for designation as NIETCs. The National Association of Regulatory Utility Commissioners (“NARUC”) appreciates the opportunity to provide comments to the Department in response to its Technical Conference in the *Considerations for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors* proceeding.

COMMUNICATIONS

All pleadings, correspondence, and other communications related to this proceeding should be addressed to the following person:

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INTRODUCTION

NARUC is the national organization of the State commissions responsible for economic and safety regulation of the retail operations of utilities. Specifically, NARUC's members have the obligation under State law to ensure the establishment and maintenance of such energy utility services as may be required by the public convenience and necessity, as well as ensuring that such services are provided at just and reasonable rates. NARUC's members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the rates and terms and conditions of service associated with the intrastate operations of electric, natural gas, water, and telephone utilities. Both Congress¹ and the federal courts² have long recognized NARUC as the proper party to represent the collective interests of State regulatory commissions.

COMMENTS

I. Relationship of "Constraint Areas" to NIETCs

DOE Staff proposed a possible two-step approach to the NIETC designation process. Under this approach, DOE would initially identify "Constraint Areas," *i.e.*, areas where a "problem in the transmission infrastructure" has been identified. In designating such Constraint

¹ See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Boards to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns); *Cf.*, 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). *Cf.* *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "...Carriers, to get the cards, applied to...[NARUC], an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the 'bingo card' system").

² See *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd* 672 F.2d 469 (5th Cir. 1982), *aff'd en banc on reh'g*, 702 F.2d 532 (5th Cir. 1983), *rev'd on other grounds*, 471 U.S. 48 (1985).

Areas,³ DOE would remain “agnostic” regarding the appropriateness of a wires or a non-wires solution to the constraint. Instead, the identification of a Constraint Area would lead to further assessments and proposals on the part of the stakeholders in the State or region in question regarding the best and most cost-effective means of resolving the constraint. If this assessment showed that an NIETC designation was still needed, DOE could then proceed to make such a NIETC designation.

NARUC asks for further clarification on the relationship of Constraint Areas to NIETCs. In this regard, clarification is requested concerning the time between the identification of a Constraint Area and an NIETC designation. NARUC supports DOE Staff’s statements that Constraint Areas and NIETCs would need to be closely coordinated with regional planning processes. NARUC requests clarification as to whether DOE intends to designate as a Constraint Area any areas that have not already been identified as “problem areas” in a regional plan.

II. Weights of the Criteria

With respect to the assignment of weights to the proposed criteria for designating NIETCs, the weights assigned should depend on the facts and circumstances of each situation. However, considerable care should be taken in analyzing the relationship of the facts to the criteria to show that the NIETC designation is absolutely necessary and consistent with the Regional System Plan. Because some of the criteria are so broadly defined, there is a danger that

³ The initial identification of “Constraint Areas” would include the following:

- 1) Refer to a problem in the transmission infrastructure, without stating precise boundaries;
- 2) Purpose is to flag an important problem and remain agnostic about how to solve it;
- 3) Generation solutions would not need NIETCS, but NIETCs could be designated if/when appropriate for transmission solutions;
- 4) “Constraint Areas” and NIETCs would need to be closely coordinated with regional plans;
- 5) An NIETC could be designated even if not in a “Constraint area” or even without a specific project in view.

many situations could fit within the literal language of the specific criterion, even though there is not a pressing need for a solution (much less a transmission solution).

III. Relationship of the Criteria to an NIETC Designation

As to the relationship of the criteria to an NIETC designation, whether the NIETC designation must satisfy some or all of the criteria should be determined on a case-by-case basis. For example, there may be cases where the need under one criterion is so clear and pressing that a strong showing under the other criteria should not be necessary. In other cases, the combination of the criteria may clearly show that the situation is sufficient to warrant an NIETC designation. In any event, even if a case could be made that the situation meets the criteria, if the NIETC designation of an economic project would be inconsistent with the findings of the regional system planner, DOE should rely on the conclusions resulting from the Regional System Plan.

IV. Timing of the NIETC Designations

DOE Staff stated that it wanted to move forward on the NIETC designations in a careful and thoughtful manner. In making a designation, the DOE is actually making two findings – that transmission is needed and that an NIETC designation will be helpful in achieving that result. NARUC concurs that a conservative near-term approach to the NIETC designation is appropriate. Because of the implications that flow from an NIETC designation, *i.e.* federal backstop siting authority and the identification of a non-market solution that flows from a designation, there needs to be a careful examination of whether an NIETC designation is needed. In this regard, DOE should rely on findings in Regional System Plans to determine if the need is pressing enough to warrant an NIETC designation.

V. Process Before an NIETC Designation is Made

Since, by definition, existing adequate regional planning processes are already identifying, prioritizing, and assessing the best solutions for existing regional congestion/constraint issues, the DOE should integrate itself into or participate in existing regional planning processes as opposed to "reinventing the wheel". For example, DOE could provide assistance or consultation in some regions or on some issues, put on workshops on specific topics, and help facilitate coordination with federal land-owning agencies. DOE should confine its analysis to the existing eight criteria, allow the regions and States to determine if there is a cost-effective solution to an identified need, as well as which solution is the most cost-effective. If the regional process has not identified an area of concern or has identified non-transmission alternatives to meet relevant needs, DOE should refrain from designating an NIETC within that region. An NIETC designation should be made only if the designation is consistent with analyses performed by independent regional planning entities. In addition, such a designation should address State regulatory concerns.

VI. Integrating Solutions Prior to When NIETC Designations are Made

An issue raised during the Technical Conference was how DOE's process could be shaped to allow time for alternate wires vs. non-wires solutions to be identified, considered, and adopted prior to the NIETC designations. NARUC believes that, where there is an adequate regional planning process in place, the process will evaluate the available wires and non-wires solutions, and determine which is the most cost-effective. If an entity becomes obligated to pursue a particular transmission solution through that regional planning process, and accepts that responsibility, DOE should let that process unfold and should assume, at least for some period of time, that the solution will be implemented. To the extent that the solution is a non-wires solution, and the State has primary jurisdictional authority, the State's Integrated Resource Plan

("IRP") or other resource evaluation process should be allowed to proceed. The DOE should give such processes time to unfold and produce an appropriate resource decision. Thus, DOE should make an NIETC designation only if an adequate regional planning process has identified a wires solution and there is a lengthy delay in moving the project forward.

DOE can certainly provide assistance to the States/regions, and might even want to consider highlighting an area with needs, consistent with regional planning analyses, in a "pre-NIETC designation" (similar to the Constraint Area concept discussed earlier) before actually making an NIETC designation. Such an approach would provide the States and regions with the impetus as well as the time to consider and address this need in their own manner.

States and regions ultimately need to determine whether the issue has a cost-effective solution, and what the best solution is. The economics and acceptance of a public need or benefit should drive any project that is not based on reliability concerns. If the region has identified a need that can be economically met with a wires solution, but no progress is being made in implementing that solution, a proposed NIETC designation can appropriately be made because States and regions would have had an opportunity to be heard on whether the NIETC designation is appropriate. This multi-step process will ensure that the DOE process works in concert with the regional planning process, while the process for early designation can address those problem areas which have already been identified by State regulators and regional entities as urgently needing a wires solution. Furthermore, to the extent that a DOE-identified concern is NOT one based on reliability, but is in fact based more on a broad "economic" analysis or national policy concern or objective such as fuel diversity, energy independence, renewable energy development, "national security" concerns, *etc.*, the DOE will need to observe considerable caution. The NIETC designation process will, in those circumstances, be more

tenuous and should therefore be most cautious and deferential to State and regional perceptions of need and public benefit.

VII. Impact of Regional System Plans

DOE Staff reported that it planned to coordinate its efforts with regional planning efforts. As highlighted elsewhere in these comments, NARUC supports this approach, since many areas of the country have organized wholesale markets with long-standing operational regional planning procedures.

Fortunately, most of the DOE's work has already been completed for regions with organized electricity markets or another adequate planning process. In those regions, regional stakeholders review the needs of consumers and continually re-assess system requirements to meet those needs in order to develop an annual Regional System Plan. DOE should defer to the regional processes that are currently underway and avoid making an NIETC designation without first incorporating the recommendations of the regional stakeholders. The DOE should not duplicate existing regional planning exercises where those exercises produce valuable information. The findings resulting from these exercises are generally based on the best available data that has been sifted through a rigorous stakeholder review process. DOE should carefully consider State commission comments on regional transmission exercises and studies as well.

VIII. Regional Planning “Modeling”

There were concerns expressed at the Technical Conference about regional planning “modeling”. Any analysis of congestion which identifies a potential need for future transmission enhancements or similar measures depends in large part on the load level and generation assumptions that are made and that go into the computer modeling process. As stated earlier,

this analysis is already being performed in many areas on a regional basis, and DOE should use the results of analyses already performed by an independent entity rather than performing its own studies. State and regional modeling may use a particular set of assumptions, such as the length of time used in the modeling, the preferred mix of generation resources, generation location, the level of energy efficiency/demand response, *etc.* These assumptions and modeling results may, in turn, be driven by State and federal policy initiatives, such as State/federal policies on greenhouse gas emission or carbon constraint issues, renewable energy development, *etc.* Therefore, there is a risk that a parallel analysis by DOE may use different assumptions and arrive at different results. Thus, it is critical that, if DOE performs any independent modeling, which in most cases will be unnecessary, such modeling take into account the effects of State, regional and federal policy initiatives and use assumptions consistent with those employed at the State and regional level. The policy initiatives and decisions of the State and regional authorities should continue to drive, in large measure, much of the transmission needs analysis.

IX. Deference to Regional Planning Processes

As to the question of how and to what extent DOE should defer to existing regional processes in the performance of its congestion analysis and NIETC determinations,⁴ DOE should defer to, and rely on, regional planning processes that are adequately open, transparent, independent, collaborative, inclusive (*i.e.*, include multiple stakeholders in the region), and examine the need for economic as well as reliability upgrades. The more that a regional process includes these elements and characteristics, the more deference it should get. There is no reason for DOE to duplicate an existing regional process that meets these criteria. Furthermore, DOE should not substitute its judgment for the results of a process that already includes all

⁴ For example, is there a "sliding scale" approach (of sorts) that can be used, based on what is currently being done in that region? Are there varying levels of need for DOE involvement/leadership/assertiveness in the NIETC designation processes, and what should those conditions and trigger points be?

stakeholders, reflects the best expertise available in that region, and employs regionally- and State-accepted cost-effectiveness screening criteria to evaluate the different options available for meeting a defined need. DOE should also defer to existing regional and State determinations as to what is considered a "cost-effective" generation, transmission, or demand response solution to an identified constraint or congestion issue.

X. *Improvements to Existing Regional Planning Processes*

There was uniform agreement at the Technical Conference that the regions all do a very good job of reliability planning. Beyond that, however, there are varying degrees of success stories. Improvements to existing regional planning processes should incorporate a number of elements. Within RTO and ISO footprints, regional planning processes can and should be broader; more robust (*i.e.*, more data and better, more refined and rigorous "options analysis"); have longer-term planning horizons; improve coordination with adjoining RTOs/ISOs and neighboring utilities to manage seams issues better; and incorporate long-term regional and State strategies/public policies for generation, transmission, energy efficiency, renewables, self-sufficiency, *etc.* In non-RTO areas, the planning processes can and should be more open, more collaborative, more inclusive, more formalized, broader in scope (more regional), consider more fuel cost/generation cost savings options, and be more independent and transparent. All regions need to better define the appropriate cost allocation methodologies for varying types of investments and circumstances, as well as get regional and State-by-State consensus.

XI. *Interplay of NIETC Designation with Regional/State Policies*

NIETCs should not be inconsistent with or conflict with regional and State policy needs and determinations, and should be supportive of State and regional needs. NIETC designations should be prioritized in terms of where they could do the most good to further an already defined

regional and/or State policy goal, such as that region's desire to increase renewable energy investment, transmission infrastructure, or the like. This prioritization should also be consistent with State and regional initiatives, whether they be generation, conservation or transmission-based, designed to meet those goals. Alternatively, an NIETC designation should not counteract or undermine a regional or State policy goal or legal determination in terms of need, priority, or cost-effectiveness conclusion. An NIETC designation could potentially help or accelerate a region's or State's articulated transmission projects which are designed to meet the region's or State's goals and needs. DOE could also be helpful in coordinating and accelerating approval among federal land-owning agencies.

XII. Participation by Affected States and Regional Entities in the NIETC Designations

DOE Staff stated that it will work closely with the States as the DOE goes forward with the NIETC designations. NARUC welcomes DOE's recognition of the expertise and information that NARUC members can bring to the process. It is clear that Federal Power Act ("FPA") Section 216 requires DOE to consult with at least two parties—(1) Affected States and (2) Regional Entities—as part of the required transmission congestion study.⁵ FPA Section 216 also gives interested parties, including Affected States, the opportunity to provide alternatives and recommendations as DOE develops a congestion study that designates NIETCs.⁶ Therefore,

⁵ Prior to designating a geographic area as a NIETC, the Secretary is required to:

1. Complete a study of electric transmission congestion by August 2007;
2. Consult *Affected States and Regional Entities* while the study is being conducted; and
3. Issue a report based on the study.

⁶ The Secretary may only designate an area as an NIETC if he:

1. Makes specific findings that such a geographic area is experiencing electric energy transmission constraints or congestion that adversely affect consumers;
2. Allows interested parties, *including Affected States*, to provide alternatives and recommendations;
3. Carefully considers the submitted alternatives and recommendations; and
4. Consults with *Regional Entities* on the proposal.

not only should there be opportunities for public participation in the NIETC identification and designation process, there is express statutory language that requires DOE to consult with Affected States and Regional Entities in the NIETC designation process. In this regard, NARUC appreciates the Department's recognition of the special consideration Affected States and Regional Entities are granted in FPA Section 216.

CONCLUSION

NARUC respectfully requests that the DOE consider the above comments in this proceeding.

Respectfully submitted,

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By: _____/s/_____
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April 14, 2006

9. Northeast Power Coordinating Council, Received Thurs 4/13/06 2:59 PM

**Additional Comments of the
Northeast Power Coordinating Council
On the
U.S. Department of Energy's
Office of Electric Delivery and Energy Reliability ("OE")
Notice of Inquiry and Opportunity to Comment
on
Consideration for Transmission Congestion Study and Designation of National Interest
Electric Transmission Corridors
(Federal Register, Volume 71 No. 22, Thursday, February 2, 2006)**

The Northeast Power Coordinating Council ("NPCC") offers the following additional comments in response to questions raised during the U.S. Department of Energy's ("DOE") Office of Electric Delivery and Energy Reliability's March 29, 2006 Technical Conference for Designation of National Interest Electric Transmission Corridors (NIETCs).

ADDITIONAL COMMENTS

1. Principle of High Reliability

Since DOE has already stated that they would be considering the NERC reliability standards in its NIETC process, some questioned the meaning of "high reliability" in DOE's Draft Criterion 1: "Action is needed to maintain high reliability."

NPCC recommends that DOE expressly state that the definition of "high reliability" in its NIETC designation includes not only conformance with NERC/ERO reliability standards, but also conformance with applicable regional reliability criteria. Regional reliability criteria address the specific physical, operational and geographic characteristics of the electrical infrastructure of a particular region. DOE should affirm that the most stringent reliability requirement is controlling in the case of inconsistencies.

2. NIETC Corridor Width

When considering the "width" of a NIETC corridor, NPCC recommends that DOE be aware that submitted NIETC projects may require additional transmission and/or supporting facilities to be built outside the specified NIETC corridor to meet NERC/ERO reliability standards and/or more stringent regional and local reliability criteria. DOE should clarify that the FERC backstop for NIETC projects must apply to all the parts of the proposed NIETC project, including all lines/upgrades/facilities associated with that project required to meet the NERC/ERO reliability standards and/or more stringent regional and local reliability criteria.

10. Northern California Power Agency, Received Fri 4/14/06 5:39 PM

Technical Conference on the Criteria for Designation of National Interest Electric Transmission Corridors (NIETCs)

We wish to confirm the comments made at the DOE meeting on March 29, 2006 at Chicago regarding the following topic and provide additional clarifications.

Input data for transmission economic evaluation studies using LMP type optimal powerflow (OPF) production simulation programs should be made available and not withheld as “confidential”.

Input data for reliability studies is readily available to all entities in the industry, and as a result, reliability studies for both powerflow and stability studies are both accurate and easily benchmarked and consistent for comparison. However, input data for transmission economic evaluation studies using LMP type optimal powerflow (OPF) production simulation programs is not easily available and is often withheld as it is termed ‘confidential’. Such data deemed confidential include cost related data such as heat rates of generators etc. As a result, there is no way to verify the accuracy and results of economic evaluation studies by the parties who perform such studies and withhold data as confidential. It is impossible to perform independent studies for verification or for different scenarios or competing projects if data is not publicly available. Hence we request that DOE and FERC should combine to make such data accessible for transmission planning economic studies to evaluate the benefits and costs of transmission projects.

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11. Old Dominion Electric Cooperative, Received Fri 4/14/06 3:17 PM

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY**

Considerations for Transmission Congestion)
Study and Designation of National Interest)
Electric Transmission Corridors)

**SUPPLEMENTAL COMMENTS OF
OLD DOMINION ELECTRIC COOPERATIVE**

Pursuant to the procedures implemented at the March 29, 2006 Technical Conference in this proceeding, Old Dominion Electric Cooperative (“Old Dominion”) hereby provides its supplemental comments on certain matters addressed at the March 29th Technical Conference.

I. IDENTITY OF OLD DOMINION

Old Dominion is a not-for-profit power supply electric cooperative, organized and operating under the laws of Virginia and subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”). Old Dominion supplies capacity and energy to its twelve electric distribution cooperative members, all of which are located within the control area of PJM Interconnection, L.L.C (“PJM”), a FERC-approved Regional Transmission Organization (“RTO”). Old Dominion is a generation-owning utility, dependent upon use of the transmission facilities operated by PJM to deliver the output of Old Dominion’s generation facilities located within PJM and to deliver periodic power purchases from third party sellers to the load of its member systems.

Edward D. Tatum, Jr. Assistant Vice-President, Rates and Regulation at Old Dominion was a panelist at the March 29th Technical Conference for “Session 3,” which addressed how criteria should be applied in the identification of constraint areas and the designation of national corridors.

II. SUPPLEMENTAL COMMENTS

A. It Is Important That DOE Continue To Give This Project Its Highest Attention And Priority.

As an initial matter, Old Dominion commends DOE for adopting thorough and inclusive public procedures as part of its efforts to implement section 1221 of the Energy Policy Act of

2005. We appreciate the opportunity to be heard on issues that, Old Dominion believes, are of critical importance to the country's energy future. In this regard, designation of national corridors should continue to be a critical and high priority for the DOE. As with the initiatives that gave us the Rural Electrification Administration ("REA") and the Tennessee Valley Authority ("TVA"), our nation now requires the vision and foresight to guide us into a more secure energy future. A robust interstate transmission grid is an essential component of this future as we seek to utilize more domestic fuels. New Deal programs such as the REA (now RUS) and TVA did much to improve the overall economic well-being and viability of our Nation. Electrification of our Nation's farms, for instance, enabled the United States to become the breadbasket of the world. The vision of our interstate highway system, moreover, would not have been realized without federal participation. This initiative is not unlike its predecessors and DOE must stay the course.

B. Old Dominion Supports The Concept Of "Constraint Areas" As A Means To Identify Appropriate NIETCs.

During the March 29th Technical Conference, DOE representatives discussed the concept of "constraint areas" and inquired of the participants how this concept could be used as an initial step prior to identifying National Interest Electric Transmission Corridors ("NIETCs"). This approach is very similar to that proposed by the American Public Power Association ("APPA") for delivery and export regions, which proposal Old Dominion supports.¹ Identifying specific regions as "constraint areas" would provide useful direction to the electric utility industry and

¹ APPA asserted that "...DOE should identify load pockets or import regions that would gain substantial benefits in areas such as reliability, consumer benefits (economics), market power mitigation, and generation fuel supply/technology diversification if they were specified as *delivery regions* for one or more NIETCs. Further, DOE should identify potential generation pockets or *export regions* from which new or surplus baseload coal, nuclear and renewable resources can be exported on a long-term basis to supply the firm-power-supply requirements of load-serving entities ('LSEs') in one or more such delivery regions." DOE Compendium of March 6 Comments at pp. 34-35 (footnote omitted, emphasis in the original).

would be a reasonable first step in developing corridors of appropriate specificity. In regions with a centralized regional planning process, such as PJM, identification of constraint areas independently affirms the opportunity of providing relief to such areas and would support analyses that already may be underway as a result of the planning process. For areas without a regional planning process, identification of constraint areas could provide the focus various stakeholders would need to begin the regional planning and cooperation necessary to develop a viable NIETC. In this way, identification of constraint areas could inspire the development of an open and inclusive planning process.

C. Corridors Need To Have The Right Level Of Specificity

Among the significant topics of discussion at the March 29th Technical Conference were the degree of specificity DOE should use in designating NIETCs and how DOE should reach the appropriate level of specificity. In its March 6 Comments, Old Dominion explained that corridor designations need to be “just right;” not too broad, but not too specific lest state routing considerations are usurped.² Old Dominion reiterates this point here. The appropriate level of specificity will help ensure that facilities actually get built by adequately identifying the costs and benefits of new transmission in the defined corridor. Appropriate and adequate specificity can be achieved while still providing sufficient latitude for the affected states and local authorities to finalize route selection within the corridor.

In its March 6 comments, American Electric Power System (“AEP”) proposed a five-step plan for maximizing the efficiency of the NIETC designation process.³ While Old Dominion does not agree with all the steps outlined by AEP, Old Dominion believes that defining such a process with reference to specific steps is a useful way to identify sufficiently specific corridors.

² See DOE Compendium of March 6 Comments at pp. 345-347.

³ See DOE Compendium of March 6 Comments at pp. 22-23.

From Old Dominion's perspective, the first step in any such process would be to identify, as part of an open and exclusive stakeholder process, existing high voltage facilities between delivery and export regions (constrained areas), as discussed in section B above. If the relevant geographic area is within the footprint of an RTO, this procedure could be accommodated within the RTO's regional planning stakeholder process. For areas without a regional planning process, identification of constraint areas could, as discussed above, provide the focus various stakeholders would need to begin the regional planning and cooperation necessary to develop a viable NIETC.

Second, stakeholders and the regional planning authority could identify conceptual projects to relieve identified constraints, including an assessment of the potential impact of such projects on the existing transmission system and how such projects would be integrated with existing facilities. In this regard, utilization of existing facilities is essential to take advantage of line upgrade or facility enhancements as well as to provide the necessary "off ramps" along designated corridors.

Third, this stakeholder process would define the scope of potential projects that would provide relief to the identified constrained areas. Defining the scope of potential projects would include an evaluation of the extent to which the new projects would require upgrades to the existing transmission system. The results of this analysis would enable the stakeholders to determine if the projected benefits would outweigh the costs.

Fourth, conceptual projects would be vetted with all affected stakeholders (*e.g.*, incumbent utilities, independent generators, load-serving entities, transmission-dependent utilities, consumer advocates, state commissions, etc.) in accordance with generalized criteria

that would project both positive and negative impacts on each market participant should such transmission be built.⁴

Finally, recommendations could be made to DOE regarding specific corridor designations based on the results of such a process.

D. An Open And Inclusive Stakeholder Process Should Be A Prerequisite For Designation Of A Corridor.

As the foregoing makes clear, Old Dominion views the use of an open inclusive stakeholder planning process, particularly in regions with RTOs, as an essential element of identifying and designating NIETCs. If such designations are to have any hope of garnering a critical mass of stakeholder support, they must be the product of a process that ensures that entities that will ultimately pay for any new infrastructure are part of the solution from the outset. Finally, making an open inclusive planning process a prerequisite to a NIETC designation provides a great incentive to utilize such a process, especially in regions without such a process currently in place.

E. DOE Should Not Apply Its Draft Criterion 8 For Identifying NIETCs

In the February 2 Notice of Inquiry, DOE identified eight draft criteria that might be used in evaluating geographic areas identified in the congestion study as candidates for NIETCs. Draft Criterion 8 would consider “whether the alternative means of mitigating the need in question have been addressed sufficiently.” While supportive of the DOE’s other draft criteria, Old Dominion (and others) objected to application of Draft Criterion 8.⁵

⁴ PJM is currently developing, via its Regional Planning Process Working Group, a family of non-additive generalized criteria to evaluate viability of economic projects. Old Dominion is of the opinion that this approach, in combination with an open an inclusive stakeholder process, could be a viable approach for such regional project economic viability.

⁵ See DOE Compendium of March 6 Comments at pp. 348-49.

To be clear, Old Dominion agrees conceptually that a transmission corridor should not be designated as a NIETC unless the transmission infrastructure envisioned for that corridor is the optimal solution to relieve an identified constraint. Contrary to the views expressed by certain other parties at the March 29th Technical Conference and in their filed comments, corridors should *not* be designated unless we know transmission is the best solution. Indeed, one can only imagine the backlash associated with identifying a corridor that will never be used because non-transmission solutions are adopted instead.

What concerns Old Dominion about Draft Criterion 8 is that it implicitly assumes that transmission, generation and demand response all compete on equal footing. There is a developing body of evidence showing that transmission is not a competitive commodity and should not be treated as such. In this regard, Old Dominion believes it is extremely likely that the market will have already evaluated generation and/or demand response solutions in any constrained area likely to be a candidate for NIETC. Adding another layer of comparative review is only likely to slow progress toward getting necessary transmission infrastructure in place.

As correctly explained by the Transmission Access Policy Study Group , Draft Criterion 8 is not included in the issues identified in new Section 216(a)(4) of the Federal Power Act for DOE consideration.⁶ By no means was this an oversight; Congress' intent to get new transmission constructed is clear. As evidenced by the comments DOE has received to date, as well as discussion at the March 29th Technical Conference, reliance on this criteria threatens only to obscure the need for or unduly delay new transmission facilities.

III. CONCLUSION

⁶ See DOE Compendium of March 6 Comments at p. 588.

Old Dominion appreciates the Department consideration of public comment in this process, and urges the Commission to consider the not-for-profit views of public power entities like Old Dominion in adopting criteria for gauging the suitability of geographic areas as NIETCs.

Respectfully submitted,

Old Dominion Electric Cooperative

/s/ Ed Tatum
Edward D. Tatum, Jr.
Assistant Vice President,
Rates and Regulation
Innsbrook Corporate Center
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12. PSEG Services Corporation, Received Thurs 4/13/06 2:45 PM

April 13, 2006

Ms. Poonum Agrawal
Office of Electricity Delivery and Energy Reliability, OE-20
Attention: EPACT 1221 Comments
U.S. Department of Energy
Forestall Building, Room 6H-50
1000 Independence Avenue, S.W.
Washington, DC 20585

Submitted by e-mail to: EPACT1221@hq.doe.gov

Re: Supplemental Comments in Considering Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors, Notice of Inquiry and Request for Comments, 71 Fed. Reg. 5660 (February 2, 2006)

Dear Ms. Agrawal:

Public Service Electric and Gas Company (“PSE&G”), PSEG Energy Resources & Trade LLC (“PSEG ER&T”) and PSEG Power LLC (“PSEG Power”) (collectively referred to herein as the “PSEG Companies”) appreciate the opportunity to submit additional comments in this proceeding to address matters raised at the March 29, 2006 technical conference held in Chicago,

Illinois (“technical conference”). At the outset, the PSEG Companies wish to emphasize their recognition of the need for transmission investment. PSEG’s transmission-owning subsidiary, PSE&G, is one of the leading investors in transmission within PJM through PJM’s FERC-approved Regional Transmission Expansion Planning (“RTEP”) protocols. The PSEG Companies are concerned, however, that such investment be targeted, prudent and cost-effective so that customers are not saddled with unnecessary costs. The PSEG Companies also strongly believe in market solutions as the first and primary mechanism for addressing congestion issues on the transmission grid.

As a proponent of cost-effective, factually justified approaches to addressing congestion, the PSEG Companies wish to commend the DOE for its constructive approach to the designation of National Interest Economic Transmission Corridors (“NIETCs”), as articulated at the technical conference. Specifically, at the technical conference, the DOE introduced the concept of Constraint Areas (“CAs”), which may in certain instances represent a preceding step to NIETC designation. According to the DOE, the purpose of focusing upon CAs is to emphasize the problem and not pre-judge a solution. As the DOE itself stated during the technical conference, the DOE wishes to remain “agnostic” about solutions and avoid “picking winners and losers.”

The PSEG Companies fully agree that corridor designation may often lead to the sanctioning of specific projects running through those corridors, a result that could pre-empt and potentially contravene determinations made by FERC-approved regional planning processes. Indeed, it appears that certain parties seek to positively position particular projects via the mechanism of early NIETC designation. It is critical that the DOE not be rushed to judgment on NIETC designation by entities seeking to leverage that designation for the advancement of a particular project. Any such precipitous rush to judgment would be particularly troublesome given the fact that the DOE has yet to establish a final set of relevant criteria for NIETC designation. The DOE is acting prudently in adopting a cautious approach in this proceeding, one that will only accord NIETC designation, assuming such designation is ultimately appropriate, after full, careful and judicious deliberations.

Such an approach is particularly appropriate in regions such as PJM, where FERC-approved regional planning processes exist to evaluate the merits of, and need for, both reliability and economic transmission projects. As the PSEG Companies explained in their March 23, 2006 comments in this proceeding, it is critical that these processes be followed with respect to transmission infrastructure investments so that all stakeholders, including affected state commissions, will have an opportunity to be heard. In fact, the Edison Electric Institute (“EEI”) noted in its March 6, 2006 comments in this proceeding that the DOE should “not ... pre-judge whether there is an economical solution to the underlying transmission capacity constraint or congestion and, if so, what the best solution might be. (Ultimately, the solution may involve some mix of generation, transmission, demand-side or other options.) ... [I]f a transmission capacity constraint or congestion issue that might otherwise warrant NIETC designation is already actively being addressed by state or regional planning and permitting authorities -- and those authorities can demonstrate that a solution either is not economically available or will occur within a reasonable time – DOE may wish to consider not making an NIETC designation.” Comments of Edison Electric Institute, March 6, 2006. EEI has correctly concluded that market solutions, within a regional planning paradigm, should be given every opportunity to work, and that NIETC designation should be a last resort, not a first one.

It is especially important as the NIETC process unfolds that a meaningful cost-benefit analysis be conducted prior to a specific project being afforded the protections of an NIETC designation, which analysis includes evaluation of alternative solutions, including non-wires solutions, to transmission capacity constraints. Specifically, an analysis must be conducted that compares the “benefits” of particular transmission projects associated with corridor designations with the “costs” of such projects, including all related infrastructure upgrade costs necessary to support the projects. Section 1221(a)(2) of the Energy Policy Act states that “[a]fter considering alternatives and recommendations from interested parties (including an opportunity to comment from affected States), the Secretary [of Energy] ... may designate ... a national interest electric transmission corridor.” Thus, there is no mandate that such corridors be designated, but there is a corresponding directive to the Secretary of Energy to consider “alternatives and recommendations from interested parties” prior to any such designation. It would be impossible to conduct a proper cost-benefit analysis without looking at alternative recommendations, such as generation and demand side solutions as well as targeted, small-scale transmission projects to address congestion.

It is unclear at this time which entity(ies) will conduct such a cost-benefit analysis. The PSEG Companies nonetheless believe that both the DOE and the FERC have a critical role to play in overseeing this analysis and in assuring, for quality control purposes, that consistent and transparent methods, inputs and assumptions are used in conducting the analysis. While variables such as load growth and net capacity growth will be influenced by regional factors and thus may vary by region, other inputs such as fuel and emission prices should be consistent across regions. Future prices for natural gas, coal and fuel oil, as well as emission costs, should be obtained from a nationally-recognized, unbiased source, such as the Energy Information Administration (“EIA”). Moreover, the cost-benefit analysis should be robust, looking at a variety of potential future landscapes and not just fixed within the context of a single “baseline” analysis. In other words, both the DOE and the FERC should be able to assure themselves that a project will be in the public interest notwithstanding uncertainty surrounding future fuel costs and changes in electric supply and demand. As a general matter, modeling assumptions, methodologies and outputs should be as open and transparent as possible, and input assumptions (fuel prices, emission costs, load growth) should be sourced from respected and technically-competent organizations that are looked to by the industry for data. Project-specific assumptions should be avoided, as they may be biased.

Finally, in order to conduct a meaningful cost-benefit analysis, the DOE should (i) **finalize the criteria it intends to apply prior to granting NIETC designations;**¹ and (ii) require proponents of proposed corridor designations to **specifically identify the criteria that the designation, or project(s) associated with such designation, will satisfy.** For example, if action regarding a designation is needed to “maintain high reliability” (Draft Criterion #1), a corridor designation or project associated with the same should clearly be identified as needed to “maintain high reliability.” By doing so, the “benefits” of the project will become more obvious. Similarly, with respect to Draft Criterion #6, pertaining to national security and areas needed to

¹ In its Notice of Inquiry, the DOE solicited and obtained feedback from the industry regarding eight (8) draft criteria to be applied in the NIETC corridor designation process. To PSEG’s knowledge, however, the DOE has not yet finalized this list or put the industry on notice of the final set of criteria it intends to apply.

“reduce vulnerability of ... critical loads or the electricity infrastructure to natural disasters or malicious acts,” NIETC designation requests and final designations s intended to satisfy this criterion should be specifically labeled as such, so that the DOE can then determine whether such a designation request is in fact necessary and whether the designation represents the most cost-effective method of achieving this goal. The PSEG Companies are concerned that Draft Criterion #6 may be used liberally in order to avoid a meaningful cost-benefit analysis and to potentially socialize project costs over a regional, if not national, population to customers not actually receiving benefits from the corridor designation or project. Thus, there should be a clear demonstration by a corridor sponsor that the designation will in fact “reduce vulnerability” of the infrastructure to “natural disasters or malicious acts.”

The PSEG Companies appreciate the opportunity to participate in these proceedings.
Respectfully submitted

Public Service Electric and Gas Company
PSEG Power LLC
PSEG Energy Resources & Trade LLC

By: *Jodi L. Moskowitz*
Jodi L. Moskowitz

Newark, New Jersey
April 13, 2006

13. Xcel Energy, Received Tue 4/04/06 5:08 PM

Xcel Energy
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Minneapolis, MN 55401

April 5, 2006

Ms. Poonum Agrawal
Manager, Markets and Technical Integration
Office of Electricity Delivery and Energy Reliability
US Department of Energy
1000 Independence Ave. SW
Washington, DC 20585

Re: Additional Comments Regarding DOE’s Congestion Study and Criteria for Designation of National Interest Electric Transmission Corridors

Dear Ms. Agrawal,

Xcel Energy Services, Inc. (XES) offers the following comments in response to the dialogue at the March 29th technical conference in Chicago. Xcel Energy Services offers these comments on behalf of its public utility subsidiaries, namely, Northern States Power, Northern States Power-Wisconsin, Public Service Company of Colorado and Southwestern Public Service Company referred to jointly as the “Xcel Energy Operating Companies.”¹

XES thanks the DOE for hosting the conference and for the Department’s willingness to accept additional public comments about their plans for implementing the Energy Policy Act’s provisions for designating National Interest Corridors.

We agree that DOE should continue to rely upon existing models and growth forecasts that have been compiled by Regional Transmission Organizations (RTOs) and Regional Reliability Councils (RRCs) across the country. We encourage the DOE to be generous in designating as many transmission corridors as reasonable, given the data eventually compiled, in order to highlight the need to address specific transmission capacity needs. A designation that a transmission path is constrained will help amplify the need for state policy-makers, transmission owners, RTOs and other market participants to find solutions to address the problems.

Xcel Energy operates three transmission systems in regions served by its public utility subsidiaries NSP and NSP-WI, PSCo and SPS. In the various jurisdictions of our systems, state regulators are serious about their role in evaluating and determining the most appropriate solution for a specific electric supply issue whether it be a demand-side, a supply-side, or a transmission solution. Because the states already have such an important role in that process, XES does not recommend that the Department replicate their role. Rather, the DOE should focus on: 1) bringing national attention to constraints that impact local and regional reliability as a way to motivate local and state action necessary to lesson/remove the constraint, and 2) encouraging federal agencies, especially the National Forest Service, to expeditiously address requests to site transmission infrastructure on federal land.

With regard to issues surrounding cost allocation for new transmission and market-pricing mechanisms to address constraints, RTOs and state commissions are already engaged in these issues with stakeholders. Therefore XES does not believe the DOE needs to address these issues at this time.

Finally, the tenor of some comments made at the technical conference implied that the Department may be attempting to address a multitude of public policy issues surrounding various solutions to energy problems, potentially at the risk of losing focus and effectiveness. We believe that the DOE can best encourage transmission development throughout the country by publishing a robust, well-documented analysis of the constraints on our nation’s transmission infrastructure. National recognition and acknowledgement of such constraints will signal to

¹ XES is the service company for Xcel Energy Inc. (“Xcel Energy”), a Minnesota corporation and a holding company under the Public Utility Holding Company Act of 2005. XES performs a variety of administrative and general services for its affiliates within the Xcel Energy holding company system, including the Xcel Energy Operating Companies.

local and state authorities the need for them to partner with utilities and RTOs to address those reliability concerns.

Thank you for the opportunity to comment.

Sincerely,

Kimberly Erickson,
Director
Transmission Regulatory and Legislative Strategy
Xcel Energy