

29 Oct 2007

Office of Electricity Delivery and Energy Reliability, OE-20
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585
Fax 202-586-8008.

Subject: Formal request for Re-hearing of DOE Decision/Order Designating National Electric Transmission Corridors (Docket No. 2007-OE-01, Mid-Atlantic Area National Interest Electric Transmission Corridor; Docket No. 2007-OE-02, Southwest Area National Interest Electric Transmission Corridor

Dear Secretary Bodnam, we believe the decision issued in the recent subject order should be reconsidered and reversed. For the reasons cited below, as well as those included in our first submission to your offices, we respectfully request a re-hearing on this issue.

- 1) Several areas did not receive adequate consideration and weighting.
- 2) One or more procedural requirements appear to have been violated.
- 3) DOE may have misinterpreted the wording & intent within 2005 Energy Policy Act.
- 4) The approach taken enacting these corridors may violate Constitutional Rights.

FPA section 216(a)(4) states that the Secretary should consider the following in designating a national interest electric transmission corridor:

- (A) Economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity
- (B)(i) Economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and (ii) a diversification of supply is warranted
- (C) Energy independence of the United States would be served by the designation
- (D) Designation would be in the interest of national energy Policy
- (E) Designation would enhance national defense and homeland security

1) With respect to items A and B, we believe a full economic impact study should be conducted assessing the impact and potential unintended consequences of this ruling to all affected areas. For instance, the study must assess the economic vitality of the "end market served" but also the affect on long-term economic vitality of the areas potentially supplying additional coal-fired generation. Poverty rates are much higher in Western PJM than in Eastern PJM and average household incomes are in the range of 3-5X higher in much of the mid-Atlantic and Northeastern U.S. compared to more western areas like those in West Virginia, Pennsylvania, and Ohio.

2) It's our belief that these corridors will harm long-term economic growth prospects in areas of Western PJM and will cause damage to the public in all regions in terms of

environment and healthcare. Consider the EPA just announced \$32 billion in annual healthcare costs will be avoided from just one recent legal case resulting in a settlement against a large producer of coal-fired generation (AEP) in Western PJM. We believe health and environmental considerations would prove economic vitality and the public is not best served by these designations when compared to clean and distributed generation alternatives that can be accomplished without long distance transmission. For this reason, we request a full and open health and environmental impact study be conducted before any designation occurs.

3) We do not believe DOE's congestion study adequately assessed the "full costs" to the U.S. public of the type of generation (coal) that will primarily result from this designation. This is not merely speculation. U.S. citizens are already suffering the affects of the designations in terms of decreased property values, lost time and wages, etc. There are numerous long distance projects in various stages of review/approval to connect coal-fired plants in Western PJM to the East. These on-going projects are openly discussed by electric energy executives as offering the advantage of Federal backstopping using NIET corridor legislation. We're hearing that the threat of Federal backstopping is currently being used by private agents working for transmission companies to threaten and intimidate property owners into selling rights-of-way for future powerlines. These owners would not otherwise agree to such terms.

4) With respect to item (E) that the Secretary should consider, "that the designation would enhance national defense and homeland security," we do not believe a thorough evaluation of potential unintended consequences was conducted in this area. For instance, if these designations do in fact result in increased U.S. reliance on long distance transmission, do the Departments of Defense and Homeland Security concur this is best for the U.S. public? We believe the nation is better served by distributed and renewable generation that would serve facilities and installations vital to security by allowing them to "island." This will make them less susceptible to long distance transmission failures and vulnerabilities. NIETC designation serves as a disincentive for these better solutions.

5) With respect to procedures, FPA section 216 imposes several consultation requirements upon the Department. FPA section 216(a)(1) states that the Department shall conduct the congestion study in consultation with affected States. It's our understanding from comments made by State officials and members of Congress that this consultation did not occur and these elected officials were not given an opportunity to provide alternative solutions. Commenting on the 2005 Energy Policy Act, members of Congress have indicated it was not their intent to grant the Federal government the power to override States' authority in matters pertaining to powerlines when they voted.

6) We know the inputs your offices received from the public expressed opposition to these corridors by a wide margin. Communities in many areas have already been negatively impacted by NIET corridors and the uncertainty surrounding future land condemnation. Like many where we purchased, our plans, dreams, and finances are in limbo. With authority over transmission projects at the State level, we at least have the ability to intervene, make arguments, and offer alternative solutions. With a favorable

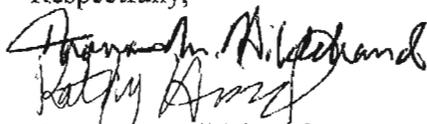
outcome in the State, we could move forward. Your order creates yet another layer of approval/dispute at the Federal level. This almost guarantees a timely outcome is unlikely and final decisions will potentially be made by individuals who are even further removed from the specifics of our cases and the needs of States. In addition, subjecting members of the public to a State approval process and then another at the Federal level is the equivalent of facing double jeopardy. Most people cannot afford to defend their rights and property once and what you have created serves to add new legal reviews and uncertainty. It's not clear what process will be used at the Federal level to hear arguments and receive inputs from individuals and organizations with respect to transmission projects.

7) We do not believe you have adequately addressed the potential issues between State and Federal Rights. For instance, WV State law now prohibits the taking of property through eminent domain for economic reasons. Clearly, transmission projects to reduce West to East transmission congestion are all about economics. We all know there are numerous alternatives to additional above ground long distance transmission lines. I'm sure you've heard much about them already. But, like with the coal mines and safety measures, these alternatives are not always given proactive attention by the power companies because they won't give shareholders that quick and easy return on investment and may be viewed with uncertainty by Wall Street analysts.

8) In your order, you referenced the Interstate Commerce Clause of Article I, explicitly authorizing the Federal government "to regulate commerce with foreign nations, and among the several states, and with Indian tribes." You stated that FERC's permit authority is limited to facilities that will be used for the transmission of electric energy in interstate commerce. We respectfully disagree with your interpretation of Article I. We believe "interstate commerce" must be agreed by and occur between two or more States willing to engage in such trade. In this case, however, all (or a majority) of States may not favor (i.e. deny a request for permit for a transmission project) this "interstate commerce" but might still be compelled to do so at the Federal level. Stated differently, by issuing this order, the DOE has effectively decided it can "facilitate commerce" between partners that may not desire to engage in such commerce.

We appreciate your consideration of these items.

Respectfully,



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