ARIZONA CORPORATION COMMISSION

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TELECOPIER TRANSMITTAL SHEET

TO: **Office of Electricity Delivery & Energy Reliability**
OE-20
U.S. Dept. of Energy
Attn: Docket No. 2007-OE-02
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Resent
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FROM: **Arizona Corporation Commission**

DATE: **November 5, 2007**

RE: Docket No. 2007-OE-02

NUMBER OF SHEETS TO BE FAXED: 73 **(including this cover sheet)**

The Arizona Corporation Commission is submitting its Application for Re-hearing in the above referenced docket number.

If You Have Any Questions Or Concerns Regarding This Fax, Please Contact: Monica at (602) 542-3402

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

IN THE MATTER OF THE FINAL NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDOR DESIGNATIONS – FINAL SOUTHWEST AREA NATIONAL CORRIDOR; 72 Fed. Reg. 56,992 (October 5, 2007); NOTICE AND OPPORTUNITY FOR WRITTEN AND ORAL COMMENT; 16 U.S.C. § 824p(a)(2)	**DOCKET NO. 2007-0E-02** **THE HONORABLE SAMUEL W. BODMAN, SECRETARY, UNITED STATES DEPARTMENT OF ENERGY** **APPLICATION FOR REHEARING OF THE ARIZONA CORPORATION COMMISSION**

INTRODUCTION

On October 5, 2007, the United States Department of Energy ("DOE" or the "Department") published a notice in the Federal Register (the "October 5, 2007 Notice").[1] The October 5, 2007 Notice included DOE's decision to issue final designations for two National Interest Electric Transmission Corridors ("NIETCs"). It also included DOE's responses to comments received on draft designations issued for the corridors.

DOE issued the final designations in accordance with Section 1221 of the Energy Policy Act of 2005.[2] DOE designated a Southwest Area National Interest Electric Corridor ("Southwest Corridor") in Docket No. 2007-OE-02[3]; and a Mid-Atlantic Area National Interest Corridor ("Mid-Atlantic Corridor") in Docket No. 2007-OE-01.[4] The designations became effective on October 5, 2007; and are effective until October 7, 2019.[5] Arizona counties included in the Southwest Corridor are La Paz, Maricopa, and Yuma.[6]

On May 7, 2007, DOE published a notice in the Federal Register (the "May 7, 2007

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[1] 72 Fed. Reg. 56,992 (October 5, 2007) ("Final Designations").
[2] See Pub. L. 109-58 (August 8, 2005); 119 Stat. 946 ("EPAct 2005"); and codified as 216 of the Federal Power Act ("FPA"); *see* 16 U.S.C. § 824p.
[3] Final Designations at 57,025.
[4] *Id.*
[5] *Id.*
[6] *Id.*

Notice").[7] The May 7, 2007 Notice included draft designations for the above corridors. The data on which DOE relied to make its draft designations are included in the May 7, 2007 Notice. In the notice, DOE included responses to comments received for its National Electric Transmission Congestion Study ("Congestion Study").[8] The Congestion Study was issued on August 8, 2006. DOE also solicited comments on the draft corridors.[9] DOE explained that interested persons did not need to refer to the Congestion Study in their comments on the draft corridors.[10]

In both the Draft Designations and Final Designations, DOE identified the Palo Verde Market Hub in Arizona as a "source area" of generation for use in a "sink area" of the corridor.[11] The "sink area" of the corridor is most of southern California.[12] In the Draft Designation, DOE also included Clark County in Nevada in the Southwest Corridor.[13] The Mead Market Hub is located in Clark County.[14]

DOE identified source areas that are separated from sink areas by one or more constraints. In the Final Designations, DOE explained:

> The result of this analysis was the identification of two categories of source areas: (1) The closest locations with substantial amounts of existing, underused generation capacity separated from the identified sink area by *one or more constraints identified as causing congestion* adversely affecting consumers; and (2) the *closest locations with the potential for substantial development* of wind, geothermal, or solar generation capacity separated by *one or more of the constraints identified as causing congestion* adversely affecting consumers.[15]

DOE clarified the second consideration above. DOE stated, "the statute does not appear to foreclose the possibility of National Corridor designation in the absence of current congestion, so long as a constraint, including absence of a transmission line, is demonstrably hindering the development of

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[7] 72 Fed. Reg. 25,838 (May 7, 2007) ("Draft Designations").
[8] *Id.* at 25,839.
[9] *Id.* at 56,995; *see also* 71 Fed. Reg. 45,047 (August 8, 2006) (Notice of issuance of the Congestion Study; and notice of opportunity to comment).
[10] *Id.* at 25,849-25,850.
[11] *Id.* at 25,921; *See also, Id.* at 25,918-25,919 and Figure IX-5 at 25,920. For the Final Designations *see* Final Designations at 57,017.
[12] Draft Designations at 25,918 (including the cities of Los Angeles, San Bernardino, Riverside, Anaheim, and San Diego).
[13] Draft Designations at 25,923.
[14] Final Designations at 57,017.
[15] *Id.* (emphasis added).

desirable generation."[16] DOE then "delineated the draft Southwest Area National Corridor by identifying the counties linking the identified source areas with the sink areas."[17]

In response to comments by the ACC and the CPUC, DOE clarified its identified source areas. The Department stated that it "extended the draft Southwest Area National Corridors only so far into those source areas as needed to encompass *one or more possible strong points on the transmission network that serves* [the sink areas]."[18]

The ACC filed comments in Docket No. 2007-OE-02 on July 6, 2007 in compliance with DOE's May 7, 2007 Notice.[19] Thus, the ACC has party status under the requirements of the notice.[20] The ACC is also an "aggrieved party" because the Department did not adequately address its concerns. The ACC's concerns were provided in its July 6, 2007 filing and in prior correspondence with the Department. They are further explained below. The ACC incorporates its July 6, 2007 filing and all prior written correspondence with the Department.

The ACC's grounds for rehearing below include all information provided in Docket No. 2007-OE-02. They also include information provided in Docket No. 2007-OE-01 to the extent the information is relevant to both dockets. One additional issue must be addressed in this introduction.

The ACC recently issued a decision in a siting matter that is referenced in the Final Designations. The siting matter is ACC Docket No. L-00000A-06-0295-00130 (Case No. 130). The subject matter of the case was a project commonly known as Devers/Palo Verde 2 ("DVP2"). Two issues must be addressed related to this project.

First, Mr. Kevin M. Kolevar, Director, Office of Electricity Delivery & Energy Reliability, made public comments that are a mischaracterization of the ACC's decision. The Arizona Republic interviewed Mr. Kolevar following DOE issuance of the final designations. The following passage was included in an article published by the Arizona Republic on October 3, 2007:

> Energy Department officials said Tuesday that Arizona regulators had valid concerns when they rejected the so-called "Devers Palo Verde

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[16] *Id.* at 57,000.

[17] *Id.*

[18] *Id.* at footnote 112 (emphasis added).

[19] See Attachment A.

[20] See Draft Designations at 25,838; and Final Designations at 57,026.

2" line in May, but that they don't see the issue as Arizona vs. California.

> "If we continue down the path of each state looking at its own needs, we will continue to run into reliability problems across the region," said Kevin Kolevar, the DOE assistant secretary for electricity delivery and energy reliability. "It is simply not tolerable to have the states in a region turning their backs on one another. This is a regional issue, and we need regional solutions."[21]

The ACC cannot comment specifically about the project because it is the subject of pending litigation.

However, the ACC provided substantial evidence to DOE about its contributions to the regional transmission grid. As stated in its July 6, 2007 comments, Arizona law specifically provides for the needs of other states in line siting matters. The ACC has a strong track record of providing for the needs of Arizona and neighboring States. Mr. Kolevar's implied accusations are not supported by the facts of Case No. 130 nor any other line siting matter decided by the ACC.

DOE did address the issue of conflicts between regional needs and the needs of States and portions of States. DOE stated:

> Given the increasingly interconnected nature of the transmission grid and wholesale power markets, siting of electricity infrastructure poses increasingly complex questions about how to balance equitably all competing interests. Tensions can exist between what is perceived to be best for a region as a whole versus what is perceived to be best for an individual State or an individual portion of one State.[22]

Notwithstanding the above truism, designation of a corridor must be based on substantial evidence.

Second, if any State is falling behind in its contributions to the regional grid, it is California, not Arizona. The ACC provided relevant information in its July 6, 2007 comments. The ACC also notes that DPV2 was presented as an economic only project to the California Independent System Operator ("CAISO").[23] In the Final Designations, DOE noted:

> The California Public Utilities Commission (CPUC) opposes designation of a Southwest Area National Corridor that would include all of southern California. However, CPUC notes that since issuance of the May 7 notice, ACC has rejected an application by Southern California Edison Company (SCE) to construct the Devers-Palo Verde 2 (DPV2), which according to CPUC, would increase transfer capability between the desert Southwest and southern California....Thus, CPUC supports designation of a National Corridor that is more narrowly targeted than the draft Southwest Area National

[21] Attachment B at 2.

[22] Final Designations at 57,021.

[23] Attachment A at 21:4-7.

Corridor, such as a National Corridor along the Arizona section of the proposed DPV2 route.[24]

The ACC has and will continue to support projects that provide for the needs of a regional transmission grid. The ACC is statutorily bound to weigh the public interest with the need for economic, reliable and adequate (i.e. resource adequacy) facilities. The ACC applies its obligations equally to ratepayers in Arizona and California. Economic only projects are possible under Arizona law. But such projects must still satisfy the requirements of Arizona law, i.e. the above balancing test for the public interest. Furthermore, nothing in EPAct 2005 precludes balancing the public interest in the manner required by Arizona law.

Finally, the ACC is not bound by any law to provide economic subsidies to California or any other State. Congress did not intend EPAct 2005 to allow one State to extort economic subsidies from other States; particularly if economic subsidies would threaten the other State's need for economic, reliable and adequate electric transmission system.

The ACC respectfully requests DOE to rehear the above captioned matter. Grounds for rehearing are set forth below and in the ACC's July 6, 2007 filing and prior written correspondence. The ACC further requests DOE to stay its decision issued on October 5, 2007 in accordance with 16 U.SC. § 825(I)(c).

GROUNDS FOR REHEARING

Neither the May 7, 2007 Notice, nor the October 5, 2007 Notice, presented substantial evidence supporting the designation of a Southwest Corridor. Throughout the DOE process set out in EPAct 2005, DOE has received information that inclusion of Arizona counties is contrary to the intent of the act. Inclusion of Arizona counties is also contrary to the Department's own rationale for its designation. The ACC sets out some of the grounds for rehearing below. However, rehearing is also appropriate based on the ACC's prior written filings and correspondence with the Department.

I. DOE Erred by Failing to Adequately Consult with the ACC and the ACC's Commissioners in Accordance with FPA Section 216(a).

Federal Power Act Section ("FPA") 216(a)(1) provides, "[t]he Secretary of Energy…., in

[24] Final Designations at 57,015.

consultation with affected States, shall conduct a study of electric transmission congestion." FPA Section 216 does not include a definitions section and does not define "affected States."[25] FPA Section 216(a)(2) further provides, "After considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States), the Secretary shall issue a report, based on the study, which may designate....a national interest electric transmission corridor."[26] The distinction between the two sections is ambiguous.

DOE acknowledged, "It is difficult to know which States are 'affected' until the conclusions of the congestion study are known."[27] The ACC agrees. The Department also explained, "[t]he most significant state of the entire process under FPA section 216(a) is the National Corridor designation state."[28] Again, the ACC agrees. DOE accurately describes the ambiguity of the process of "consultation." However, the Department failed to implement a consultation process that complies with the intent of the statute.

In its Draft Designations, DOE described its outreach efforts to provide "opportunities for input" from affected States. The ACC recognizes the significant efforts made by DOE. Nevertheless, DOE did not consult with Arizona in compliance with the intent of FPA Section 216(a). The Department noted that the ACC and other interested parties "....argued that the Secretary should not designate any National Corridors without further consultation with affected States."[29] DOE did not adequately address the parties' concerns. Instead, it merely argues, "[t]here are practical difficulties in conducting the level of consultation that some may prefer in the context of a study with the magnitude of the Congestion Study within the statutorily mandated deadlines."[30] The Department misinterpreted the ACC's concerns.

In the Final Designations, DOE further addressed parties' concerns that it did not adequately consult with affected States.[31] DOE concluded as follows:

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[25] 16 U.S.C. § 824p.
[26] *Id.*
[27] Draft Designations at 25,850.
[28] *Id.*
[29] *Id.*
[30] Final Designations at 57,002.
[31] *Id.* at 57,001.

> [T]he Department believes that its consultation with States, as documented in the May 7 notice, satisfied the requirements of FPA section 216(a)(1)....
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> The Department has sought to ensure that it understands the concerns of the States within the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor; that it has accommodated those concerns where possible consistent with its obligations under FPA section 216(a); and that it has fully explained its position where it concludes that it cannot accommodate those concerns.
>
> [T]he Department engaged in additional consultation with each of the affected States within the draft National Corridors....as documented in Section I.C above.[32]

The Department also repeated the practical considerations described in the Draft Designations.

In Section I.C of the Final Designations, the Department described its consultation as follows:

> The Department sent a letter to the Governor of each of the States within the draft National Corridors....on April 26, 2007, requesting an opportunity to consult with them on the draft designations....Arizona: The Department met with staff from the Governor's Washington DC office on May 9, 2007.[33]

In the Draft Designations, DOE states that it "held numerous meetings with State officials to discuss the Congestion Study."[34] In footnote 35, the Department listed the meetings. DOE held conference calls with several public utilities commissions, including the California Public Utilities Commission ("CPUC").[35]

In Section 1.3 (Consultation with States and Regional Entities) of the Congestion Study, the Department described steps taken for consultation prior to issuing the study on August 8, 2006. The Department stated:

> It initiated a series of conference calls in December 2005 and January 2006 with several electric reliability organizations, regional transmission operators, electric trade organizations and their members, *and the states* to describe DOE's study plan and request parties' cooperation, comments, information, and suggestions.[36]

The Congestion Study did not identify the State representatives with which DOE consulted.

The ACC appreciates the practical difficulties of consulting with every State and the District of Columbia. But practical difficulties of consulting with affected States are irrelevant under EPAct

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[32] Final Designations at 57,002.
[33] *Id.* at 56,996, footnote 18.
[34] Draft Designations at 25,850.
[35] *Id.* at footnote 35 ("CPUC, conference call, Sept. 20, 2006).

2005. Consultation with affected States is mandatory. The ACC also appreciates the Department's consultations with the Governors of affected States. Such consultation provides critical input from affected States. Notwithstanding such consultation, the intent of FPA Section 216(a) requires consultation with State siting authorities.

On February 27, 2007, the ACC notified the Department that it was the appropriate State representative in Arizona for consultations in accordance with FPA Section 216.[37] The ACC did not receive a response from the Department. On May 24, 2007, the ACC invited the Department to participate in an open meeting at the ACC.[38] The ACC did not receive a response from the Department. Given that the Department held a conference call with the CPUC, the ACC does not understand why it did not receive responses to its requests.

FPA Section 216 is titled "Siting of Interstate Electric Transmission Facilities." Section 216(b) directly addresses the role of State siting authorities. It also addresses limitations on backstop siting authority given to the Federal Energy Regulatory Commission ("FERC"). In its Final Designations, DOE stated, "FPA Section 216(a)(3) requires the Department to conduct the congestion study and issue the report in consultation with any appropriate Regional Entity."[39] FPA Section 216(a)(3) refers to entities described in FPA Section 215 on electric reliability.

Obviously, the context of both sections of the statute suggests that "consultation" is necessary with all regional entities and State representatives with appropriate expertise. State siting authorities have technical expertise necessary for the consultation process created by FPA Section 216. Consultation with the Governors of affected States is not a substitute for consultation with State siting authorities.

The ACC appreciates the Department's responses to some of its written comments in the Final Designations. But the Department only responded to the ACC's written comments provided by its legal counsel. Even though DOE responded to individual comments throughout its Final Designations, it did not respond to comments made by individual ACC Commissioners. The ACC Commissioners

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[36] *National Electric Transmission Congestion Study*, U.S. Department of Energy, 2006 at 6.
[37] Attachment C at 1.
[38] Attachment D at 1.
[39] Final Designations at 56,993.

are responsible for determining the public interest in line siting matters in Arizona.[40] Failure to consult with the Commissioners or respond to the Commissioners' concerns violates the intent of FPA Section 216.

Additionally, addressing written comments by the ACC's legal counsel is not adequate consultation. The DOE has not alleged that the term "consultation" is ambiguous. Therefore, the term should be given its common meaning. Black's Law Dictionary defines "consultation" as an "act of consulting or conferring."[41] Webster's New Collegiate Dictionary defines "consulting" as "providing professional or expert advice."[42] Webster's New Collegiate Dictionary defines "confer" as "to come together to compare views or take counsel."[43]

DOE erred by not adequately consulting the ACC, and the ACC's Commissioners. The steps taken by the Department show an understanding of what is necessary for consultation. DOE took those steps with other State siting authorities. The failure of the Department to consult with the ACC is discriminatory and in violation of FPA 216.

DOE also stated that identification of "affected" States could not occur until issuance of the Draft Designations. The ACC agrees. But the ACC disagrees that consultation with affected States after the Draft Designations was discretionary. FPA Section 216(a)(1) requires consultation with affected States. If affected States were not identified until May 7, 2007, DOE was required to consult with them after that date. The ACC formally requested such consultation on two occasions. DOE did not act on either request. Therefore, DOE did not comply with FPA Section 216(a)(1).

The ACC respectfully requests the Department to stay its Final Designations. The Department should consult with State siting authorities in all affected States, including the ACC. DOE should also consult with the ACC's publicly elected officials. Designation of final corridors should only occur after consultation with State siting authorities in affected States.

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[40] See Arizona Revised Statute ("A.R.S.") § 40-360.07(B). See generally, Arizona Constitution § 15.

[41] Black's Law Dictionary, 6th edition abridged, West (1991).

[42] Webster's New Collegiate Dictionary, G & S Merriam Co. (1981).

[43] Id.

II. DOE Erred by Basing its Designation for the Southwest Corridor on Contractual Congestion Rather than Physical Congestion; and by Failing to Adequately Analyze Physical Congestion.

In its Final Designation, DOE claims that contractual congestion is sufficient to designate a corridor. DOE defined congestion as a first step in its analysis. DOE explained:

> In the Congestion Study, the Department defined "congestion" as the condition that occurs when transmission capacity is not sufficient to enable safe delivery of all scheduled *or desired wholesale electricity transfers* simultaneously. This definition was based on common usage within electric system operations.[44]

The Department provided only two sources in support of its definition.[45] DOE further argued, "Whenever there is congestion on a transmission path, there is simply not enough transmission capacity to accommodate all the desired power transactions."[46] Finally, DOE reasoned, "Given the definition of "congestion," *any congestion* prevents some users of the transmission grid from completing their preferred transactions."[47]

DOE's analysis is not based on substantial evidence. There is no common usage of the term "congestion." For example, DOE noted, "TEPPC[48] questions whether the Western Area Power Administration (WAPA) data on denial of transmission service requests cited in the May 7 notice reveal an actual lack of physical capacity as contrasted to a contractual issue."[49] The CPUC agreed that the data on physical congestion did not support designation.[50]

DOE's response was inadequate. DOE stated, "[t]he WAPA data questioned by TEPCC are but one category of data used in the May 7 notice to establish the presence of persistent congestion."[51] In its July 6, 2007 comments, TEPPC cited three categories of data used by DOE to identify congestion: 1) data provided by Western Congestion Analysis Task Force, dated May 8, 2006; 2) analyses by CAISO; and 3) denied transmission requests from WAPA.[52]

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[44] Final Designations at 57,003.
[45] *Id.* at footnote 62.
[46] *Id.* at 57,004.
[47] *Id.* at 57,003 (emphasis added).
[48] The Transmission Expansion Policy Planning Committee ("TEPPC") is a committee of the Western Electricity Coordinating Council ("WECC").
[49] *Id.* at 57,015.
[50] *Id.*
[51] *Id.* at 57,016.
[52] TEPPC's July 6, 2007 comments at 2.

The ACC acknowledges that the data may be relevant, but disagrees that they represent substantial evidence. It is also noteworthy that the CAISO footprint is a reorganized market, with market clearing prices. WECC includes cost-of-service markets. Therefore, WECC is in a better position to analyze congestion more broadly than the data used by DOE allows.

TEPPC questions whether the data show a clear pattern of physical congestion. WECC is an electric reliability organization as defined by FPA Section 215(a)(2).[53] Physical congestion is a far greater concern for reliability than contractual congestion. TEPPC recommends "a clear and concise definition of congestion that includes a method for measurement."[54] The ACC agrees. Without a sufficient, relevant and reliable definition of congestion, designations of corridors are not based on substantial evidence.

Moreover, neither physical nor contractual congestion can be analyzed in a vacuum. State energy, regulatory and environmental policy choices have significant effects on both physical and contractual congestion. In competitive markets, contractual congestion is transitory by definition. Eventually, market participants will bid up prices where they are low and any contractual congestion will be eliminated. Additionally, contractual congestion may be the result of state policy choices.

Therefore, designation should be based on physical congestion rather than contractual congestion. Obviously, contractual congestion may be the result of physical congestion. In competitive markets, persistent price differentials will eventually result in new transmission projects. The same is probably true for cost-of-service markets. Accordingly, persistent physical congestion is a necessary showing for designation of a corridor. In order to identify persistent physical congestion, DOE should reconsider its definition of "congestion."

DOE provided a definition of "constraints" in its Congestion Study. DOE stated, "The term *transmission constraint* may refer either to a piece of equipment that limits electricity flows in physical terms, or to an operational limit imposed to protect reliability."[55] Inexplicably, DOE did not further analyze transmission constraints for the purpose of designating corridors. In its Draft Designations, DOE explained:

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[53] See also 16 U.S.C. § 824o.

[54] TEPPC's July 6, 2007 comments at 2.

[55] Congestion Study at 3 (emphasis in the original).

> As the Department is not issuing any draft National Corridors today based on the existence of constraints in the absence of persistent congestion, it is unnecessary in this notice to reach the question of what type of information that would be required to demonstrate that a constraint is hindering the development or delivery of a generation source that is in the public interest.[56]

The Department's explanation demonstrates an abuse of discretion in collecting substantial evidence prior to designation. TEPPC and WECC do not believe DOE collected sufficient evidence on congestion. FPA Section 216 also requires an analysis of both congestion and constraints.

Not all constraints require a remedy. Not all congestion, even persistent congestion, requires a remedy. The ACC disagrees with DOE's claim that a designation is not a remedy.[57] Some constraints or congestion could be the result of (1) efficient market choices; and (2) efficient state siting processes that fairly balance stakeholder interests. The standard of substantial evidence requires a more complete analysis, including identification of the cause(s) of constraints or congestion.

III. DOE Erred by Failing to Consider the Costs of Externalities, Including But Not Limited to, State Energy, Regulatory and Environmental Policy Choices.

In its Final Designations, DOE states:

> [T]he Department concludes that Congress intended the Department to consider the effects on consumers beyond increases in the delivered price of power, some of which effects may not be easily monetized.[58]

The ACC agrees with the above interpretation. However, DOE did not discuss or analyze whether effects, which may not be easily monetized, influenced its decision to designate. Instead, DOE appears to only be addressing the issue of whether "the costs of relieving congestion are less than the costs of the congestion itself."[59]

The ACC agrees with commenters who argue that DOE should not designate a corridor if the costs of relieving the congestion are less than the costs of the congestion. However, the ACC's July 6, 2007 comments addressed a much more significant issue. DOE appears concerned about differences in commodity prices on either side of a constraint. But it fails to consider the causes of price differentials. The ACC argued that the differences in costs are misleading because they do not include

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[56] Draft Designations at 25,844 at footnote 15.
[57] Attachment A at 7:1-2.
[58] Final Designations at 57,015; *see also Id.* at 57,004.
[59] *Id.*

the cost of externalities. The ACC is particularly concerned about the costs of externalities related to State energy, regulatory, and environmental policy choices.

In its Final Designations, DOE states, "The Department concludes, based on its technical expertise and *policy judgment*, that it is reasonable to interpret the phrase "congestion that adversely affects consumers" to include congestion that is persistent."[60] DOE did not address the ACC's concerns. The data upon which DOE relies is meaningless if it is not interpreted within the context of non-monetized costs.

In both its Draft and Final Designations, DOE discussed its use of historical locational marginal prices ("LMPs") to identify persistent congestion.[61] In its Draft Designations, DOE discussed use of cost differentials for the Southwest Corridor. CAISO does not yet have an LMP congestion management system. Therefore, DOE relied on other cost differentials to demonstrate persistent congestion.

In particular, DOE relied on other CAISO measures.[62] DOE's reliance on California data, and lack of any reference to Arizona data, is unduly discriminatory. Additionally, the data fails to include the cost of relevant externalities. In its July 6, 2007 comments, the ACC identified differences in non-monetized externalities between Arizona and California.

As we stated in our comments, differences in LMPs are appropriate if they reflect non-monetized externalities. DOE erred by not considering the causes of price differentials over specific constraints. It also erred by not analyzing the costs of non-monetized externalities.

IV. DOE Erred by Finding the Terms "Corridor," "Alternatives and Recommendations from Interested Parties," and "Geographic Areas Experiencing Electric Transmission Capacity Constraints or Congestion" are Ambiguous; and by Using a "Source-and-Sink Approach" to designate the Southwest Corridor.

DOE seeks to justify its "source-and-sink approach" on findings of ambiguity for various terms in FPA Section 216. The terms are not ambiguous. DOE's analysis is a substitute for the findings intended by Congress. Congress intended DOE to designate corridors only upon a showing of substantial evidence. Substantial evidence is required for the considerations in FPA Section 216(a)(4).

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[60] *Id.* at 57,004 (emphasis added).

[61] See e.g. *Id.* at 56,996.

[62] Draft Designations at 25,916.

DOE's "source-and-sink approach" is unduly discriminatory because it creates a bias for the location of transmission lines and generation.

In its Final Designations, DOE alleges:

> The term "geographic area experiencing electric transmission capacity constraints or congestion that adversely affects consumers" envisions an area that encompasses the load being adversely affected by congestion and the constrained transmission lines causing such congestion, but the statute is ambiguous with regard to the precise scope of the area. The Department believes that its source-and-sink approach to delineating the boundaries of the draft Southwest Area National Corridor represents a reasonable interpretation of this ambiguous term.[63]

DOE further claims the term "corridor" is ambiguous. In its Draft Designations, DOE alleges:

> [T]he statute does not define the term "corridor." While this term is commonly understood to refer generally to some sort of path between different areas, the specific meaning of the term in this context is ambiguous. After careful consideration of the overall purpose and effect of [FPA Section 216(a)], as well as comments received, the Department has concluded that, *while there may be circumstances where a project-based approach would be appropriate*, in general the Department will use a source-and-sink approach to defining National Corridors.[64]

Finally, DOE asserts, "the phrase 'alternatives and recommendations from interested parties' as used in FPA Section 216(a)(2) is ambiguous."[65]

For the latter finding, DOE misinterprets parties' concerns about DOE's failure to consider non-transmission alternatives. More importantly, a finding of ambiguity would render the statutory phrase meaningless. The ACC recognizes the difficulty of weighing all of the evidence on the draft designations. But DOE cannot avoid its statutory obligations by finding ambiguity when there is contradictory evidence.

DOE's findings of ambiguity for "corridors" and "geographic areas experiencing transmission capacity constraints or congestion" are not consistent with the intent of Congress. DOE leverages its findings to justify its source-and-sink approach. As discussed below, it also leverages the findings to identify boundaries for corridors. The source-and-sink approach is fundamentally flawed.

DOE argues that the approach does not create a bias for transmission solutions. DOE claims

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[63] Final Designations at 57,017.

[64] Draft Designations at 25,848 (emphasis added).

[65] Final Designations at 57,010.

that designation only provides for a federal forum for review of projects.[66] DOE consideration of the "benefits" of designation is incomplete. If benefits are considered, it is an abuse of discretion to ignore the costs.

Inappropriate designations, or designations not based on substantial evidence, impose an unfunded mandate on affected States. Such designations also could be unduly discriminatory. Because of designations, affected States must defend their siting decisions in federal forums. EPAct 2005 did not provide compensation to affected States to participate in federal forums.

Designations also could be discriminatory for two reasons. First, a State's siting process and decision making could fairly balance all stakeholder interest. Congress intended EPAct 2005 to create a very limited federal safety net. If a safety net is used when it is not needed, DOE's designation would be unduly discriminatory for the affected State. Second, a source-and-sink approach creates a bias against source areas. Source areas would be forced to provide both transmission and generation to sink areas. If sink areas are not contributing their fair share of resources to the regional grid, source areas would be subsidizing them.

DOE conclusively dismisses these concerns:

> A number of the comments seem premised on the assumption that designation of a Southwest Area National Corridor would create a bias in favor of long transmission lines running the full length of the Corridor, and in particular long transmission lines to generation located in Arizona. The Department regards such an assumption as unfounded.[67]

The CPUC's comments on the Draft Designations demonstrate that DOE's conclusion is wrong. The CPUC wants a project specific corridor. For the CPUC, the only purpose of a Southwest Corridor is for California to access cheaper power at the Palo Verde Hub. In its July 6, 2007 comments, the ACC provided information on why prices at the Palo Verde Hub are supportive of a designation.

V. DOE Erred by Finding that the Arizona Counties Could Increase Supply Diversification in southern California; and Have Substantial Amounts of Existing, Underused Generation Capacity.

As stated above, DOE identified three counties in Arizona as a source area. DOE asserts that

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[66] *Id.* at

[67] *Id.* at 57,019.

the counties include locations of generation and transmission. It explains that Arizona generation and transmission could relieve congestion in southern California. Specifically, DOE stated:

> The results of this analysis was the identification of two categories of source areas: (1) The closest locations with substantial amounts of existing, underused generation capacity separated from the identified sink area by *one or more constraints identified as causing congestion* adversely affecting consumers; and (2) the *closest locations with the potential for substantial development* of wind, geothermal, or solar generation capacity separated by *one or more of the constraints identified as causing congestion* adversely affecting consumers.[68]

The ACC addressed both categories in its July 6, 2007 filing. The ACC will not repeat those comments again in this Application for Rehearing. But several issues bear repeating. For the first category, existing, underused generation capacity is a snapshot at a single point in time. The generation capacity identified by the Department will not be underused at the relevant time. By the time a project in the Southwest Corridor could be sited by FERC and constructed by a project sponsor, the unused capacity will be necessary for local uses.

For the second category, the ACC noted that both California and Arizona have aggressive renewable portfolio standards. The ACC also noted that more renewable energy projects are being located in California than in Arizona. Therefore, the closest location with the potential for development of renewable energy projects is California. DOE has not presented substantial evidence that Arizona is a location with potential for substantial development of renewable energy. Instead, the ACC provided information that Arizona is unlikely to develop enough projects to satisfy its own portfolio requirements.

The ACC must reiterate one final issue already discussed in its July 6, 2007 comments. The unused capacity cited by DOE is gas-fired generation. Gas-fired generation is being retired in California. Access to gas-fired generation in Arizona would not increase supply diversification in California as contemplated by Congress. Generation in Arizona is only necessary for southern California because gas-fired generation is being retired in that State.

VI. DOE Erred by Designating the Boundaries of Corridors Using County Boundaries; and by Designating the Southwest Corridor for a 12-Year Period.

[68] *Id.* at 57,017 (emphasis added).

The ACC addressed the first issue in Section IV above. Nevertheless, a few additional comments are necessary. In its Final Designations, DOE eliminated Clark County from the Southwest Corridor. The ACC offers no opinion on the exclusion of Clark County. However, in its Draft Designations, DOE identified the Mead Hub as a potential source of generation for southern California.

The data relied upon by DOE shows different trends for the Palo Verde Hub and the Mead Hub. Congestion and congestion revenues appear to be decreasing for the Palo Verde Hub. On the other hand, congestion and congestion revenues appear to be increasing for the Mead Hub.[69] The disparate treatment of the Palo Verde Hub and the Mead Hub is unduly discriminatory to Arizona. DOE claims that its designations are not project based. Yet the only current project identified is DPV2. DOE has not identified substantial evidence to support inclusion of the three Arizona counties.

The ACC also agrees with many commenters' concerns about using county boundaries to designate the boundaries of the Southwest Corridor. For example, Governor Napolitano pointed out that "Arizona counties are some of the largest in the country."[70] DOE's use of county boundaries results in overly broad corridors. DOE's argument that corridors must be broad to allow FERC to consider alternates[71] is not persuasive. As previously discussed, a designation imposes unnecessary costs on affected States. Therefore, the boundaries should be drawn narrowly.

DOE also states that county boundaries create certainty[72] and are an easy way to identify boundaries for designating corridors.[73] The ACC agrees with many commenters who argue that broad boundaries create uncertainty.[74] DOE's choice of county boundaries should not be based on the ease of implementation.

DOE's choice of county boundaries also discriminates against affected States that have counties large in geographic area. The costs of defending State siting decisions at FERC and in federal

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[69] Draft Designations at 25,915-25,916, Tables IX-1 and IX-2.
[70] Final Designations at 57,017.
[71] *Id.* at 56,994.
[72] *See e.g. Id.* at 57,008.
[73] Final Designations at 57,017.
[74] *Id.*

courts are significant. Affected States with large counties should not be subjected to more opportunities for federal preemption than States with smaller counties.

Finally, the duration of the Southwest Corridor is unreasonable and arbitrary. The designation is the first of its kind. Analytical processes and data gathering are very likely to improve with the next Congestion Study. Therefore, even if subsequent designations have longer durations, the first designation should be of short duration. DOE's response is not adequate. DOE claims that termination of a designation could affect projects pending at the time.[75] DOE could terminate an existing designation and grandfather projects still at FERC.

VII. DOE Erred by Finding that the Term "Constraints or Congestion that Adversely Affects Consumers" is Ambiguous.

In its Final Designations, DOE found that the term "constraints or congestion that adversely affects consumers" is ambiguous.[76] DOE assumes that persistent congestion adversely affects consumers. DOE defined the terms "constraints" and "congestion" in its Congestion Study. Thus, DOE appears to claim that "adversely affects consumers" is ambiguous. DOE is attempting to avoid providing substantial evidence on adverse effects. DOE's only attempt to identify adverse effects is provided in Table IX-3. DOE argues that "buyers must rely on power from less-preferred generating sources."[77]

Although the term "adversely affects consumers" requires some interpretation, it is not ambiguous. The only issues that must be decided are the quantity and nature of adverse effects requiring a designation. DOE recognizes the issues, but does not adequately address them. DOE identified two types of adverse effects: (1) "congestion results in parts of the transmission system being so heavily loaded that grid operators have fewer options for dealing with adverse circumstances or unanticipated events"; and (2) "as congestion increases consumers are exposed to increased risk of blackouts, forced interruptions of service, or other grid-related disruptions."[78]

In the Draft Designations, DOE received the following comments from the CPUC:

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[75] *Id.* at 57,021.
[76] *Id.* at 56,995.
[77] Draft Designations at 25,916.
[78] Final Designations at 57,004.

> CPUC noted that one of the studies provided to DOE concluded, based on physical flow data from 1999 through 2005, that Arizona-to-southern California was not among the areas found to be experiencing heavy path usage. CPUC noted that the year 2008 simulations cited in the Congestion Study as indicating high economic significance of congestion from Arizona into southern Nevada and southern California actually show that the highest simulated congestion costs occur on lines from Arizona into southern Nevada.[79]

DOE's response was evasive. It stated, "the Department believes that the totality of circumstances in southern California warrant its identification as a Critical Congestion Area."[80]

As discussed in Section VIII below, the data cited by DOE do not rise to the level of substantial evidence. DOE identified different types of adverse effects on consumers. DOE's claim of ambiguity should not be not be an "out" for identifying substantial evidence. DOE should identify portions of the grid that have so few resource options that reliability is jeopardized. DOE should identify evidence showing a risk of grid-related disruptions. Finally, DOE should provide all relevant information it has related to potential adverse effects on consumers.

VIII. DOE Erred by Finding that Persistent Congestion is Sufficient Evidence for a Determination that Constraints and Congestion are Adversely Affecting Consumers; and Evidence Cited by DOE does not Satisfy the Requirements of FPA Section 216(a)(4).

In its Final Designations, DOE stated, "FPA section 216(a) gives the Secretary the discretion to designate a National Corridor upon a showing of the existence of persistent congestions, as persistent congestion has adverse effects on consumers."[81] The data relied upon by the Department neither demonstrates persistent congestion, nor demonstrates adverse effects on consumers. DOE's own rationale appears to assume that persistent congestion causes adverse effects on consumers. Even if DOE could demonstrate persistent congestion, FPA Section 216(a)(4) requires more before a designation can be made.

In its Draft Designations, DOE stated, "the Department has documented the existence of persistent congestion into and within the Southern California Critical Congestion Area, as well as the constraints causing that persistent congestion."[82] The documentation does not provide substantial

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[79] Draft Designations at 25,860.
[80] *Id.*
[81] Final Designations at 56,995.
[82] Draft Designations at 25,916.

evidence of the existence of persistent, physical congestion. Nor does it provide substantial evidence of adverse effects. DOE argues that "[t]he Palo Verde and Mead branch groups were the most congested in 2006 with binding hours of 15 and 13 percent respectively."[83]

The percentages cited are not substantial. Accordingly, the ACC disagrees that 15% represents congestion that requires a designation. DOE only included historical data for the years 2004-2006. Although, DOE never defined "persistent," three years of data is insufficient. Importantly, the term "persistent" does not appear in FPA Section 216. Nevertheless, Webster's New Collegiate Dictionary defines "persistent" as "existing for a long or longer than usual time or continuously."[84]

The data in Table IX-1 do not satisfy the definition of persistent. For the Day-Ahead Market, the Palo Verde branch group was congested for the following percentages of hours: (1) 22% for 2004; (2) 23% for 2005; and (3) 15% for 2006. For the Hour-Ahead Market, the Palo Verde branch group was congested for the following percentages of hours: (1) 7% for 2004; (2) 8% for 2005; and (3) 8% for 2006.[85] None of the data indicates there is persistent physical congestion. Rather, the data indicate that physical congestion is declining on the Palo Verde branch group.

Congestion revenues collected by CAISO do not support a conclusion for contractual or physical congestion. Again, DOE only presents data for 2004-2006. But the data indicate the opposite of DOE's conclusion. In Table IX-2, congestion revenues for the total of the Day-Ahead Market and the Hour-Ahead Market were: (1) $21,713,209 for 2004; (2) $19,771,012 for 2005; and (3) $17,070,548 for 2006.[86] DOE did not include enough information to evaluate whether the congestion revenues were material for the size of the relevant markets. Again, none of the data indicates there is persistent contractual congestion. Rather, the data indicate that contractual congestion is declining on the Palo Verde branch group.

DOE did provide other CAISO information on congestion revenues. DOE did not rely on that information for designation. The information puts congestion revenues for the Palo Verde branch

[83] *Id.* at 25,915 (Apparently, CAISO identifies the branch from the Palo Verde Market Hub as PALOVRDE_BG. *See e.g.* Table IX-1.).
[84] Webster's New Collegiate Dictionary, G & S Merriam Co. (1981).
[85] Draft Designations at 25,915, Table IX-1.

group into perspective. DOE quoted CAISO's 2006 Annual Report on Market Issues and Performance:

> Total estimated intra-zonal congestion costs for 2004, 2005, and 2006 were $426 million, $222 million, and $207 million, respectively. These costs have been declining over the period due to installation of appropriately located generation and transmission upgrades.[87]

The data demonstrates that the problem is not persistent physical constraints or congestion between Palo Verde and southern California. The problem is within California.

DOE also points to capacity reservations denied by WAPA to demonstrate persistent congestion. The data in Table IX-3 is for path SP15 in California.[88] The path from Palo Verde to southern California is path 49.[89] The data does not support a finding of persistent physical or contractual congestion from Palo Verde to southern California.

FPA Section 216(a)(4) sets out considerations for designation. A mere showing of persistent congestion does not satisfy FPA Section 216(a)(4). DOE also failed to provide substantial evidence on any of the considerations for designation.

For FPA Section 216(a)(4)(A), the data in Table IX-2 do not demonstrate lack of adequate or reasonably priced electricity. DOE relies on the fact that transmission customers cannot accomplish all of their preferred transactions. No competitive or regulated markets guarantee market participants will accomplish all of their preferred transactions.

For FPA Section 216(a)(4)(B), DOE failed to provide substantial evidence that economic growth may be jeopardized by limited sources of energy. DOE pointed to the size of California's economy and its growth rate.[90] In the ACC's July 6, 2007 comments, similar data was provided for Arizona and Maricopa County. Arizona will soon face its own resource adequacy problems.[91] DOE did not cite any evidence that the economic growth in southern California may be jeopardized by limited sources of energy. It only speculated about the possibility. Speculation is not substantial

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[86] *Id.* at 25,916, Table IX-2.
[87] *Id.* at 25,916, fn 103.
[88] *Id.* at Table IX-3.
[89] *Id.* at 25,915.
[90] Final Designations at 56996.
[91] Attachment A at 20:19-21:3.

evidence.

Furthermore, DOE did not identify any advantages for developing new sources of energy in Arizona compared to California. More renewable energy is being developed in California than Arizona.[92] Finally, DOE did not provide substantial evidence related to FPA Sections 216(a)(4)(C)-(E).

IX. DOE Erred by Not Adequately Analyzing Adverse Effects on Consumers to Determine Whether Congestion or Constraints Adversely Affect(s) Consumers

The final ground for rehearing is also addressed in Section VII above. DOE's identification of adverse effects is one of the most debated issues by commenters. DOE states:

> [T]he term "congestion that adversely affects consumers" in FPA Section 216(a)(2) does not dictate a two-step analysis----first to determine the level of congestion and second to determine the specific resulting adverse effects----before a National Corridor designation may be made.[93]

DOE's interpretation of the statutory language renders "adversely affects consumers" meaningless.

DOE's interpretation is contrary to the rules of statutory construction. In its July 6, 2007 comments, the ACC also provided detailed information and analysis on evidence related to adverse effects. DOE's interpretation is not based on substantial evidence. It is simply a way to minimize its statutory obligations. DOE should gather evidence and analyze adverse effects as described in the ACC's July 7, 2007 comments.

CONCLUSION

The ACC respectfully requests the Secretary to rehear the above captioned matter. Upon rehearing, DOE should make findings of fact consistent with the ACC's Application. Additionally, DOE should not designate a Southwest Corridor that includes the Arizona counties of La Paz, Maricopa, and Yuma. The ACC further requests DOE to immediately stay its October 5, 2007 decision in accordance with 16 U.SC. § 825(I)(c). Finally, the ACC requests that the stay remain in

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[92] Final Designations at Table IX-5.
[93] Final Designations at 57,003.

place until DOE issues a final decision on rehearing.

RESPECTFULLY SUBMITTED this 5th day of November, 2007.

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Original of the foregoing filed by hand delivery this 5th day of November, 2007 with:

Attn: Docket No. 2007-OE-02
Draft Southwest Area National Corridor
Office Electricity Delivery and Energy Reliability
OE-20, U.S. Department of Energy
1000 Independence Avenue, SW.,
Washington, DC 20585

ATTACHMENT A

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

IN THE MATTER OF THE DRAFT NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDOR DESIGNATIONS – DRAFT SOUTHWEST AREA NATIONAL CORRIDOR; 72 Fed. Reg. 25,838 (May 7, 2007); NOTICE AND OPPORTUNITY FOR WRITTEN AND ORAL COMMENT; 16 U.S.C. § 824p(a)(2)	**DOCKET NO. 2007-0E-02** **THE HONORABLE SAMUEL W. BODMAN, SECRETARY, UNITED STATES DEPARTMENT OF ENERGY** **WRITTEN COMMENTS OF THE ARIZONA CORPORATION COMMISSION**

INTRODUCTION

On May 7, 2007, the Honorable Samuel W. Bodman, Secretary of the United States Department of Energy (the "Secretary") ("DOE" or the "Department"), issued a draft designation of a National Interest Electric Transmission Corridor ("NIETC") for an area including three counties in the State of Arizona. The Arizona Corporation Commission (the "ACC") appreciates the efforts of the Department to use a robust stakeholder process. The ACC looks forward to future consultation with the Department. The ACC also thanks the Department for an opportunity to file written comments on draft designations.

DOE issued the draft designation in accordance with Section 1221 of the Energy Policy Act of 2005 ("EPAct 2005").[1] Three Arizona counties are part of the Draft Southwest Area National Corridor ("Draft Southwest Corridor"). The counties are Maricopa, Yuma and La Paz.[2] In the Arizona portion of the corridor, DOE designated the Palo Verde Hub as a "source area" of generation for use in a "sink area" of the corridor.[3] The "sink area" of the corridor is most of southern California.[4] The Federal Register notice requires written comments no later than July 6, 2007.

[1] See Pub. L. 109-58 (codified as 216 of the Federal Power Act ("FPA"); 16 U.S.C. § 824p); *See also*, 72 Fed. Reg. 25,838, 25,838.

[2] 72 Fed. Reg. 25,838, 25,923 (May 7, 2007)

[3] *Id.* at 25,921; *See also, Id.* at 25,918-25,919 and Figure IX-5 at 25,920.

[4] 72 Fed. Reg. 25,838, 25,918 (May 7, 2007) (including the cities of Los Angeles, San Bernardino, Riverside, Anaheim, and San Diego).

One of purposes for the notice is to notify interested persons on how to obtain party status.[5] Written comments establish party status.

All of the specific data on which DOE relied to make its draft designations are included in the Federal Register notice. In the notice, DOE included responses to comments made related to its National Electric Transmission Congestion Study issued on August 8, 2006 ("Congestion Study").[6] Nevertheless, DOE explained that interested persons do not need to refer to the Congestion Study in their comments on the draft National Corridors.[7]

Section 216(a)(1) of the FPA requires the DOE to consult with "affected States" prior to designating a corridor.[8] EPAct 2005 did not provide a statutory definition for "affected States." Even though DOE did not define the term, it makes clear that a State in a draft corridor is an "affected State."[9]

DOE also stated that it would contact "the Governors of each State in which the draft National Corridors would be located to arrange consultation."[10] Consultation is necessary because of the effects of potential designations. Federal and State roles in siting bulk transmission facilities could be dramatically altered following a designation. DOE stated that:

> The effect of a National Corridor designation is to delineate geographic areas within which, under certain circumstances, the Federal Energy Regulatory Commission (FERC) may authorize "the construction or modification of electric transmission facilities." FPA section 216(b); 16 U.S.C. 824(p)(b).[11]

DOE proposes a term of 12 years for a designation.[12]

In its original Federal Register Notice, DOE scheduled one public comment session for the Draft Southwest Corridor.[13] DOE added two new public comment sessions for this corridor on June

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[5] *Id.* at 25,841.
[6] *Id.* at 25,839.
[7] *Id.* at 25,849-25,850.
[8] *Id.* at 25,838.
[9] *Id.* at 25,850.
[10] *Id.*
[11] *Id.* at 25,838.
[12] *Id.* at 25,851.
[13] *Id.* at 25,838.

7, 2007. DOE scheduled one of the sessions for June 21, 2007 in Phoenix, Arizona.[14] In that session, the following ACC Commissioners provided public comment in their capacities as elected officials: (1) Chairman Mike Gleason, (2) Commissioner William A. Mundell, (3) Commissioner Jeff Hatch-Miller, and (4) Commissioner Kristen K. Mayes. Commissioner Gary Pierce was unable to attend because of a prior commitment.

The Arizona Corporation Commission hereby files its written comments in conformance with the requirements in the Federal Register notice. The ACC requests party status in Docket No. 2007-0E-02. Furthermore, the ACC respectfully requests DOE to consult with it, in addition to consulting with the Honorable Janet Napolitano, Governor of the State of Arizona, prior to making a final decision on the Draft Southwest Corridor. The ACC is vested with authority to site transmission and generating facilities by the Arizona Constitution and Arizona Statutes. Therefore, the ACC is uniquely qualified to provide state consultation as required by Section 1221(a) of EPAct 2005.

In addition to these comments, ACC Commissioners may provide separate written comments to recap their oral comments on June 21, 2007. The ACC respectfully requests DOE to not designate a Southwest Corridor for the reasons provided herein.

LEGAL STANDARDS FOR DESIGNATION AND DOE FINDINGS

Prior to designating corridors, Section 216(a)(1)-(3) of the FPA required DOE to conduct a study of electric transmission congestion and constraints. Neither EPAct 2005 nor FPA defines "congestion" or "constraints." After consultation with interested parties and affected States, DOE issued its Congestion Study on August 8, 2006. In its notice for comments on draft corridors, DOE stated that it is "no longer accepting comments on the Congestion Study."[15] But in the notice, DOE responds to comments on the Congestion Study.

Although EPAct 2005 did not define "congestion," DOE defined congestion in the Congestion Study. Congestion is defined as "the condition that occurs when transmission capacity is not sufficient to enable safe delivery of all scheduled *or desired* wholesale electricity transfers

[14] 72 Fed. Reg. 31571.
[15] 72 Fed. Reg. 25,839.

simultaneously."[16]

Additionally, DOE defined two new terms for use in designating corridors. DOE defines "Critical Congestion Areas" as "areas where the current and/or projected effects of congestion are especially broad and severe."[17] DOE proposes the Draft Southwest Corridor to address perceived problems resulting from the "Southern California Critical Congestion Area."

DOE also defined "Congestion Areas of Concern." However, DOE is not proposing draft corridors for Congestion Areas of Concern at this time. DOE only proposed draft corridors for Critical Congestion Areas.

The Congestion Study provided two definitions of "constraint." The first definition is for "transmission constraint." The second definition is for "constrained facility."

A transmission constraint is defined as "a limitation on one or more transmission elements that may be reached during normal *or contingency system operations*."[18] The definition did not create an exception for contingency occurrences that result from state choices of reliability standards. For example, use of Remedial Action Schemes ("RAS") or Special Protection Schemes ("SPS") for N-1 contingencies present special problems.

Designing a system requiring a SPS for an N-1 contingency is contrary to ACC siting practice. SPS cause system operations that would have been averted with different reliability standards. A constrained facility is defined as "a transmission facility (line, transformer, breaker, etc.) that is approaching, at, or beyond a System Operating Limit or Interconnection Reliability Operating Limit."[19]

DOE's draft designations rely in part on historical data and modeling results from the Congestion Study.[20] DOE used five modeling "metrics" in the Congestion Study to identify congestion areas. The modeling metrics include data related to physical and economic constraints on

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[16] *Id.* at 25,843 (emphasis added).

[17] *Id.* at 25,839. The other new term is "Congestion Areas of Concern" and is defined as "areas where a large-scale congestion problem exists or may be emerging but more information and analysis appear to be needed to determine the magnitude of the problem." *Id.* One Congestion Area of Concern identified was the Phoenix-Tucson area. *Id.*

[18] *Id.* at 25,843 (emphasis added).

[19] *Id.*

[20] *Id.* at 25,839.

transmission facilities studied by DOE. For the Draft Southwest Corridor, DOE relied on modeling results for the years 2008 and 2015.[21]

After issuing a congestion study in accordance with FPA § 216(a)(1), the Secretary must proceed to a second step. FPA § 216(a)(2) provides, "After considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States), the Secretary shall issue a report, based on the study, which may designate any geographic area experiencing electric energy transmission capacity *constraints or congestion that adversely affects consumers* as a national interest electric transmission corridor."[22] The phrase "that adversely affects consumers" generated considerable debate.

The ACC opposes designation of the Draft Southwest Corridor because DOE misinterpreted the statute and failed to consider sufficient, reliable and relevant evidence. DOE acknowledged that the above phrase is ambiguous:

> [T]here is no generally accepted understanding of what constitutes "constraints or congestion that adversely affects consumers....The term is ambiguous and the statute attaches no modifiers to the term to specify the *particular type or magnitude of adverse effect* intended.[23]

In the Federal Register notice, DOE notes that the Congestion Study "did not attempt to define when constraints or congestion 'adversely affect[s] consumers.'"[24]

The Secretary cannot designate a corridor unless there is sufficient, reliable and relevant data and analysis supporting adverse effects. The Department wisely noted, "[n]evertheless, congestion remedies are not free; therefore, *not all congestion is worth fixing.*"[25] The ACC agrees.

But the cost of remedies is not the only reason congestion should not automatically result in a designation. Congestion could be the result of (1) efficient market choices, (2) efficient state siting processes that fairly balance various factors and stakeholder interests, and (3) state and federal choices related to energy policies, environmental policies and appropriate land use, etc.

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[21] *Id.*
[22] FPA § 216(a)(2) (emphasis added).
[23] 72 Fed. Reg. 25,843 (emphasis added).
[24] *Id.*
[25] *Id.* at 25,844 (emphasis added).

DOE analyzed its evidence by evaluating whether 1) congestion adversely affects consumers and 2) constraints adversely affect consumers. DOE issued two conclusions regarding the standards. First, DOE concluded:

> While the Department is not attempting in this notice to define the complete scope of the term "congestion that adversely affects consumers" as used in FPA section 216(a)(2), the Department concludes that *the term includes congestion that is persistent*. Thus, the Department believes that FPA section 216(a) gives the Secretary the discretion to designate a National Corridor upon a showing of the existence of persistent congestion, *without any additional demonstration of adverse effects on consumers.*[26]

The Department also claims that "any congestion, by definition, *thwarts customer choice*, because it prevents users of the transmission grid from completing their preferred power transactions."[27]

The ACC strongly disagrees with the Department's position. The Secretary must demonstrate adverse effects on consumers in accordance with FPA § 216(a)(2). The resolution of adverse effects on consumers is the primary purpose of EPAct 2005. The Act provides a process to solve congestion and constraints that *cannot* be solved by State siting processes. The Department also did not identify all consumers who could be adversely affected by congestion or constraints.

More importantly, the Department did not identify consumers that *could be adversely affected by a designation*. Instead, the Department asserts that there is no need "to speculate about any theoretical indirect effects a National Corridor designation would have on the market."[28] The Department's assertion strips "adversely affects consumers" of all meaning. The intent of EPAct 2005 is to correct market and regulatory failures.

Consumers could be adversely affected if a designation results in undue interference with (1) efficient market choices, (2) Federal policy choices, and (3) State policy choices. In other words, congestion and constraints may not thwart customer choice, but instead may be the result of customer choice. Congestion and constraints may also exist because of Federal and State policy choices. Rational choices by market participants and Federal and State authorities are not market or siting failures.

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[26] *Id.* (emphasis added).
[27] *Id.* at 25,843 (emphasis added).
[28] *Id.* at 25,845.

A remedy is not needed for a problem that does not exist. The Department appears to agree that designation of a corridor is a remedy. The Department pointed out:

> FPA section 216 *empowers* the Department to make designations when it finds constraints or congestion adversely affecting consumers, *a finding that is not dependent on actions of others.*[29]

The ACC agrees that EPAct 2005 provided two remedies for market and siting failures: (1) designation of a National Corridor; and (2) Federal Energy Regulatory Commission ("FERC") backstop authority.

But a finding of adverse effects on consumers should depend on the actions of others. There are no adverse effects on consumers if State siting authorities are timely addressing constraints and congestion. The Department is not "empowered" to provide a remedy where none is needed. Congress enacted EPAct 2005 to identify and solve problems. It did not enact the legislation to create an unnecessary layer of government regulation. EPAct 2005 was not intended to allow an agency to interfere with open markets.

Second, DOE concluded:

> Again, the Department is not attempting in this notice to define the complete scope of the term "constraints that adversely affect consumers" as used in FPA section 216(a)(2). However, the Department concludes that the term includes *not only constraints that cause persistent congestion, but also constraints that hinder the development or delivery of a generation source that is in the public interest.*[30]

Apparently, DOE is referring to two different scenarios. First, DOE identified generation sources that may have excess capacity and insufficient transmission capacity to deliver to the market. Second, DOE identified areas where new generation could be developed if sufficient transmission capacity was available.[31]

To evaluate both scenarios, the Department considered the type of markets operating in a potential corridor. The Department differentiated between organized markets and cost-of-service markets. Organized markets are operated by Regional Transmission Organizations ("RTOs") or

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[29] *Id.* at 25,846 (emphasis added).
[30] *Id.* at 25,844 (emphasis added).
[31] *Id.* at 25,918.

Independent System Operators ("ISOs"). Prices in organized markets are clearing prices which include congestion pricing. Prices in cost-of-service markets are primarily set by rate-of-return regulation. Wholesale prices in these traditional markets are set by bi-lateral contracts.

The Department appears to rely heavily on differences in Locational Marginal Prices ("LMPs"). The Department explained:

> When a constraint is binding, separate prices result on either side of the constraint. Market participants can then see and respond to these different LMPs. Those customers who choose to have power transmitted over the binding constraint are assessed a transactional congestion charge *based on the difference between LMPs on either side of the constraint.*[32]

Despite the discussion on LMPs, the Department refused to consider the effects of seams[33] issues on congestion. Without explanation, the Department concluded that congestion underlying the draft corridors are not caused by seams issues.[34]

The Department also failed to consider implications of LMPs in corridors with both organized markets and cost-of-service markets. In the Draft Southwest Corridor, the California market is considered an organized market. Arizona's electric market is a cost-of-service market. LMPs may not reflect an "apples to apples" comparison of costs included and not included in LMPs.

The Western Interstate Energy Board and the Committee on Regional Electric Power Cooperation (the "WIEB") partially described the problem. WIEB provided the following comment:

> The calculation of savings to consumers should reflect state energy policies as enacted in state law or reviews of load serving entity resource plans. Specifically, if a state policy places a high priority on acquiring renewable energy generation, makes a judgment about natural gas price risk, or establishes a carbon adder to reflect its determination of carbon risk, DOE should assume compliance with such policies in the calculations of economic benefits to consumers.[35]

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[32] *Id.* at 25,843, fn. 13.

[33] The Department defined seams as follows: "Seams are interregional differences in market design that result in market inefficiencies." *Id.* at 25,854, fn. 45.

[34] *Id.* at 25,854.

[35] Western Interstate Energy Board and the Committee on Regional Electric Power Cooperation's comments on DOE's February 2, 2006 Notice of Inquiry ("NOI") (71 Fed. Reg. 5660) on "Consideration for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors." WIEB Comments at 5.

WIEB also recommended, "When considering the economic benefit of new transmission, DOE should also include non-monetized impacts of transmission..."[36]

For differences in LMPs, non-monetized cost components make it unreasonable to use differences across constraints to justify designation. If one state has higher LMPs because more cost components are monetized, its LMPs cannot be compared to a state that has not monetized them. To do so would penalize a state for not having policies that monetize all cost components, e.g. air emissions, use of ground water, etc.

The ACC agrees with the Department's goal of serving the public interest. However, not all congestion or constraints are contrary to the public interest. The Department inappropriately assumed that all persistent congestion or constraints harm the public interest. No evidence or analysis supports this broad, unfounded conclusion. Evidence sited by the Department is incomplete and fails to account for changing market conditions.

The Department should interpret the concept of "adversely affects consumers" within the context of the entire statute. The Department should also identify and analyze *market failures, federal policy, and state policy* reasons for congestion and constraints. If congestion and constraints are caused by efficient market factors or policy choices of State and Federal agencies, the Secretary should not designate a corridor.

Moreover, if State siting processes are efficient, transparent and responsive to the market, the Secretary should not designate a corridor.[37] Robust state siting processes reflect an efficient market. For example, efficient state siting processes demonstrate cooperation between market participants and state regulators. Federal involvement is unnecessary in the above factual circumstances.

Nevertheless, the required starting point for determining adverse affects on consumers is FPA § 216(a)(4). The factors listed in the statute are particularly relevant for determining adverse effects.

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[36] *Id.* at 7.

[37] *See, e.g.*, Members of the Western Congestion Analysis Task Force's March 6, 2006 comments on DOE's February 2, 2006 Notice of Inquiry ("NOI") (71 Fed. Reg. 5660) on "Consideration for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors." WCATF at 3. ("DOE should exercise restraint overall and particularly in states with a well developed statewide program and a proven track record in the siting and successful, timely construction of energy facilities.").

FPA § 216(a)(4) of the FPA provides the following legal standard for designating corridors:

> (4) In determining whether to designate a national interest electric transmission corridor under paragraph (2), the Secretary *may consider* whether –
>
> (A) the economic vitality and development of the corridor or the end markets served by the corridor, may be constrained by a 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) the energy independence of the United States would be served by the designation;
>
> (D) the designation would be in the interest of national energy policy; and
>
> (E) the designation would enhance national defense and homeland security.[38]

The use of the word "may" in the statute raises two important issues. First, is the Secretary required to use the above factors to designate a corridor? Second, may the Secretary consider factors other than those in the list?

Rules of statutory construction for distinguishing between the use of "may" and "shall" are well established. But the starting point of relying on ordinary, lay usage is not dispositive. In *Thompson v. Clifford*,[39] the D.C. Circuit Court of Appeals explained:

> We do not share the District Judge's confidence that the mere contrast of "may" and "shall" isolates congressional intent respecting the Secretary's administrative authority in this area.... 'May' ordinarily connotes discretion, but neither in lay nor legal understanding is the result inexorable. Rather, the conclusion to be reached 'depends on the context of the statute, and whether it is fairly to be presumed that it was the intention of the legislature to confer discretionary power or to impose an imperative duty.'[40]

The context of EPAct 2005 and Section 1221 require the Secretary to consider the factors listed in FPA § 216(a)(4). The language of FPA § 216(a)(2) requires a designation if the Department

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[38] PL 109-58, August 8, 2005, 119 Stat 594 at 389 (emphasis added); codified as 16 USC § 824p.
[39] *Thompson v. Clifford*, 408 F.2d 154, 132 U.S.App.D.C. 351 (C.A.D.C. 1968).
[40] *Id.*, 408 F.2d at 158, 132 U.S.App.D.C. at 355 (citations and quotations omitted).

determines congestion or constraints adversely affects consumers. Obviously, Congress enacted the legislation (1) to determine if transmission problems exist or will occur in the near term;[41] and (2) to encourage solutions for those problems. Within that framework, the factors in FPA § 216(a)(4) are minimal considerations for determining adverse affects on consumers.

The Department may and should consider relevant factors not listed in FPA § 216(a)(4). In *Allied Local and Regional Manufacturers Caucus v. U.S. Environmental Protection Agency,*[42] the D.C. Circuit Court of Appeals held:

> Allied contends that EPA impermissibly considered two further factors not listed in the statute....Although it is true that "an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider,"....that is not the case here. *Nothing in section 183(e) suggests that Congress intended to limit EPA's consideration to the five factors specified in the statute. Indeed, the structure of the section suggests the contrary.* Subsection (2)(A) first directs the agency to "establish criteria"; subsection (2)(B) then directs that "[i]n establishing the criteria," the agency "shall take into consideration" the five listed factors. *The reasonable inference taken by EPA is that while it must consider the five listed factors, it is not barred from considering additional ones.*[43]

The structure of FPA § 216 is similar to the EPA statute at issue in *Allied Local and Regional Manufacturers Caucus*. It is a two step process. The first step is FPA § 216(a)(2), which requires the Department to identify areas of congestion and constraint. The second step is designation of corridors using the factors listed in FPA § 216(a)(4). Under the authority of *Allied Local and Regional Manufacturers Caucus*, the Department can consider additional factors. The intent of Congress in Section 216 *requires* consideration of additional factors. Congress obviously realized that it could not identify all factors relevant to designation of national corridors.

Accordingly, it wisely created a stakeholder process to advise the Department. FPA § 216(a)(2) requires the Department to consult with affected States and interested parties prior to

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[41] The term is probably three years because FPA § 216(a)(1) requires the Department to conduct a congestion study every three years.

[42] *Allied Local and Regional Manufacturers Caucus v. U.S. Environmental Protection Agency*, 215 F.3d 61, 342 U.S.App.D.C. 61 (C.A.D.C. 2000).

[43] *Id.*, 215 F.3d at 78, 342 U.S.App.D.C. at 78 (citations and quotations omitted).

designation. Congress did not intend for FPA § 216 to supersede state siting processes.[44] The intent of Section 216 is to use the stakeholder process to identify other relevant factors for use in making a designation.

The Department appears to agree in part with this interpretation. The Department explained:

> [T]he most reasonable interpretation of FPA section 216 is that the Secretary may make National Corridor designations based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate.[45]

However, the Department went too far and concluded that "the Secretary has *broad authority* to designate National Corridors."[46]

To support its assertion, the Department states, "FPA section 216(a), as well as other provisions of EPAct, evince concern about the need to strengthen transmission infrastructure throughout the Nation."[47] DOE also cites FPA § 216(b) in support of its conclusion. It claims that, "*Given the limitations on the exercise of FERC's permitting authority*, there is no need to interpret narrowly the Secretary's National Corridor designation authority."[48]

The ACC does not agree with the Department's conclusions. EPAct 2005 was structured to be a process of cooperative federalism. FPA § 216(a)(2) limits the Secretary's discretion by requiring consultation with market participants and affected States. The statute emphasizes consultation with affected States. One reason for consultation is to allow States an opportunity to correct deficiencies in their laws or siting processes. EPAct 2005 was intended to fill gaps in state authority or laws, not to

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[44] *See, e.g.*, FPA § 215(i)(2) ("Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard [of the Electric Reliability Organization ("ERO")]..."). *See also*, FPA § 216(i)(1) ("The consent of Congress is given for three or more contiguous states to enter into an interstate compact, subject to approval by Congress, establishing regional transmission siting agencies...."); and FPA § 216(i)(4) ("The Commission shall have no authority to issue a permit for the construction or modification of an electric transmission facility within a State that is a party to a compact...").

[45] 72 Fed. Reg. 25,838 (May 7, 2007) at 25, 845.

[46] *Id.* at 25,844 (emphasis added).

[47] *Id.*

[48] *Id.* (emphasis added).

replace them.

EPAct 2005 is not legislation which creates a federal administrative appeals process. Congress did not intend FPA § 216 to interfere with efficient regulated markets. Efficient regulated markets appropriately balance consumer interests with competitive, wholesale markets. States are in a much better position to balance stakeholder interests than DOE and FERC. They should have the opportunity to do so without the threat of a federal appeals process.

Balancing stakeholder interest typically results in some stakeholders not getting everything they want. Disgruntled stakeholders should not be able to hold States hostage by the specter of federal oversight. States already spend significant resources on difficult regulation. They should not have to spend even more resources to defend their regulatory decisions.

FPA § 216(b)(1) appears to limit FERC's jurisdiction to site transmission facilities. But DOE's and FERC's interpretations of both sections (a) and (b) would create unlimited backstop jurisdiction. If the Secretary has unfettered discretion to designate corridors, he may assign any factor sufficient weight to exercise his discretion. The Department's conclusions about "adverse effects on consumers" demonstrate the potential problem. The Department claims that the Secretary does not need to directly demonstrate adverse effects.

Thus, the Secretary could ignore data that demonstrates consumers are not adversely affected by congestion or constraints. If regulated markets are efficient, congestion and constraints will be timely addressed when consumers are adversely affected. Designation of a corridor before markets have an opportunity to work is contrary to the public interest.

Furthermore, designation of transmission corridors tips the market toward transmission solutions.[49] Other solutions may better serve the public interest. Market signals for better solutions,

[49] *See, e.g.*, WIEB Comments on DOE's February 2, 2006 Notice of Inquiry ("NOI") (71 Fed. Reg. 5660) on "Consideration for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors." WIEB Comments at 2 ("[T]he designation of an NIETC would likely trigger transmission permit applications to states and federal agencies."). *See also*, WCATF Comments at 10 ("Once the Department has designated a NIETC, if siting shifts to the FERC, it is unlikely that consideration will be given to non-wires solutions. Once built, new transmission will give new generation an artificial economic advantage over distributed generation and demand-side management (DSM).").

e.g. local generation, may be dampened or extinguished.[50] The Department's claim that it is not pre-selecting solutions is not convincing.[51]

The structure of EPAct 2005 limits the Secretary's discretion to designate National Corridors. FPA §§ 216(a) and (b) implicitly prohibit interference with State siting processes with proven track records. The ACC agrees with the Pennsylvania Public Utility Commission's ("PAPUC") position:

> [T]he Department should not make any designation that does not clearly identify the national interests requiring protection and without making findings of fact that those interests requiring protection are better served by a National Corridor designation than by another approach that would be less intrusive of State laws and policies.[52]

The Secretary should not designate a corridor without making the following findings of fact: (1) State siting processes are inadequate to address identified congestion and constraints;[53] and (2) market failures cannot be corrected without federal involvement. The ACC agrees with comments made by the California Public Utilities Commission ("CPUC"). The Department cited the CPUC's comments:

> CPUC stated that National Corridor designation is *unwarranted unless there is evidence that State and regional processes are not addressing the problem in a timely manner.*[54]

At the public comment session in San Diego on May 17, 2007, Mr. Larry Chaset, a representative of the CPUC, stated that the agency opposed designation if the Devers Palo Verde 2 ("DPV2") project was approved.[55] On June 6, 2007, the ACC denied a permit for the project.[56] The

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[50] *Id.* at 25,845. *See also,* Comments of the New Jersey Board of Public Utilities ("NJBPU") and Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources and Trade LLC (collectively "PSEG") on DOE's February 2, 2006 Notice of Inquiry ("NOI") (71 Fed. Reg. 5660) on "Consideration for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors.").

[51] *Id.* ("[T]he statute does not call for the Department to analyze and decide upon solutions.").

[52] *Id.* at 25,846.

[53] *See, e.g.,* WCATF Comments at 3 ("DOE should exercise restraint overall and particularly in states with a well developed statewide program and proven track records in the siting and successful, timely construction of energy facilities.").

[54] 72 Fed. Reg. 25,838 (May 7, 2007) at 25,910.

[55] Transcripts of May 17, 2007 public comment session at 8.

ACC recognizes that the CPUC may now change its position. Notwithstanding a possible change in position, the ACC believes the CPUC's initial position has substantial merit.

The ACC respects and appreciates the comments of the Western Congestion Analysis Task Force ("WACTF"), submitted on March 6, 2006. The WCATF stated, "DOE should develop an additional criterion that would state that the designation of an NIETC would further the energy policies of affected states as reflected in state law and state regulatory review of load serving entity resource plans."[57] If a state's laws and regulatory processes are effective, a corridor is not necessary.

The Department's interpretation of FPA § 216(b)(1) is not supported by FERC Order 689[58] and FERC's Order Denying Rehearing.[59] In Order 689, FERC pointed out that FPA § 216(b)(1)(C) "does not explicitly define the full range of State actions that are deemed to be withholding approval."[60] It then held, "[W]e believe that a reasonable interpretation of the language in the context of the legislation supports a finding that withholding approval includes *denial of an application*."[61]

FERC apparently believes that FPA § 216(b) gives it very broad authority. According to FERC, "withholding approval" is no different than improperly conditioning approval.[62] FERC's reasoning is flawed. Conditions that don't relieve congestion or create unnecessary economic burdens are exceptions to approvals. FERC would not have jurisdiction if a State approved a project with no conditions, or if the conditions met the statutory requirements.

Congress intended FERC action only if a State failed to follow its own siting law or if the law did not meet certain criteria. The ACC agrees with the Department's statement that FPA § 216(b)(1) limits FERC jurisdiction.

If a State has legal authority that complies with FPA § 216(b)(1), and properly implements its

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[56] *In The Matter Of The Application Of Southern California Edison Company And Its Assignees In Conformance With The Requirements Of Arizona Revised Statutes Sections 40-360.03 And 40-360.06 For A Certificate Of Environmental Compatibility Authorizing Construction Of A 500 kV Alternating Current Transmission Line And Related Facilities In Maricopa And La Paz Counties In Arizona*, Docket No. L-00000A-06-0295-00130, Decision No. 69638 (June 6, 2007).

[57] WCATF Comments at 12.

[58] 117 FERC P 61202, 2006 WL 3337395 (F.E.R.C.) ("Order 689").

[59] 119 FERC P 61154, 2007 WL 1453175 (F.E.R.C.) ("Order Denying Rehearing").

[60] Order 689 at ¶ 26.

[61] *Id.* (emphasis added).

[62] *Id.* at ¶ 27.

authority, FERC has no jurisdiction. "Withholding approval" must satisfy a State's obligation under the statute, i.e. a State cannot "withhold approval" or "deny" an application unlawfully. In the Order Denying Rehearing, Communities Against Regional Interconnection ("CARI") appropriately pointed out that:

> Senate Report 109-78....states that EPAct 2005 would authorize the Commission "to issue siting permits if a State withholds approval *inappropriately*."[63]

An applicant should have the burden of proof to demonstrate a denial was unlawful before FERC takes jurisdiction. If a State satisfies its obligations under EPAct 2005 and state law, FERC does not have appellate authority to overrule a State's decision.

FERC's reasoning that "withholding approval" is equivalent to a "denial" should cause the Department to construe its authority narrowly. FERC's holding is a transparent attempt to expand its jurisdiction beyond Congress' intent. In its Order Denying Rehearing, FERC argued:

> [I]f Congress had not intended the Commission to have jurisdiction to site a transmission facility in the face of a denial of such authorization under other circumstances, it could have plainly said so.[64]

Congress chose the language "withhold approval," and could have chosen "denied" if that is what it intended. There is no controversy requiring statutory construction.

The ACC agrees with the comments of CARI in the Order Denying Rehearing:

> CARI argues that the term carefully chosen by Congress was "withheld," and based both on the common dictionary definitions and the canons of statutory interpretation, that term clearly does not include a valid, formal administrative denial appealable to a state court.[65]

The ACC also agrees with CARI's argument that:

> Congress did not intend to give the Commission preemptive and appellate jurisdiction when a state licensing entity appropriately exercises its authority to determine the approval or denial of a license application.[66]

The Department should similarly designate a National Corridor only when there are market or

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[63] Order Denying Rehearing at ¶ 14 (emphasis added).
[64] *Id.* at ¶ 20.
[65] *Id.* at ¶ 10.
[66] *Id.* at ¶ 14.

regulatory failures. Designation should not be a vehicle for federal appellate jurisdiction.

The term "corridor" also presents concerns for designation. EPAct 2005 did not define "corridor." The ACC disagrees that DOE's "sink and source" approach is sufficient to designate a final Southwest Corridor. The Department described the generally agreed upon "sink and source":

> [T]he Department would identify a sink (the congested or constrained load area) and a source (an area of potential supply), and then draw a National Corridor connecting these two areas.[67]

The appropriate definition of "corridor" has been extensively debated by the energy industry. The WCATF Corridor Definition Subgroup issued a "Corridor Definition White Paper" to help frame the debate. The paper offered a starting point for the definition of a "corridor." A corridor was preliminarily defined as a connection between two economic hubs, control areas, congestion zones or planning areas.

The ACC agrees in part with two conditions to the preliminary definition: (1) "Just as FERC's backstop authority is limited to situations in which state and local siting approval has failed, the designation criteria should be similarly limited."; and (2) "The onus should be on players in the region to solve the problem before resorting to federal action."[68] However, the conditions should be changed to reflect the intent of EPAct 2005.

For the first condition, the standard should not be that state and local siting authorities failed to give approval. The standards should be whether state and local siting authority is adequate and has been lawful. For the second condition, the standard should not be that a federal appellate process is a process of last resort. The standard should be whether players have been given sufficient opportunity to participate in the state or local process.

The ACC also agrees with the Subgroup's concern that a definition of "corridor" could "lead to an automatic preemption of local, state and regional authority."[69] If FERC's interpretation of its backstop authority is upheld in a case, then DOE's "sink and source" definition of corridor would

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[67] 72 Fed. Reg. 25,838 (May 7, 2007) at 25,847.

[68] Corridor Definition White Paper, developed by the WCATF Corridor Definition Subgroup for discussion at the WCATF Meeting on February 2, 2006 at 4.

[69] *Id.* at 5.

create broad preemption in affected States. The ACC agrees with the Subgroup's suggestion that "a review for obvious environmental constraints" is necessary.[70]

Furthermore, the ACC agrees with the Western Interstate Energy Board's ("WIEB") position that physical congestion should be given greater weight than contractual congestion. In some circumstances, contractual congestions should not even be considered.

For example, if contractual congestion is the result of state policy choices, the Department should not use this criterion to designate a corridor. Differences in LMPs are extremely problematic under these circumstances. If DOE relies on differences of LMPs on two sides of a constraint, a corridor could interfere with market choices on each side of the constraint.

In its notice, the Department admitted, "While this term is commonly understood to refer to generally to some sort of path between specific areas, the specific meaning of the term in this context is ambiguous."[71] Nevertheless, the Department proposes to adopt the "sink and source" approach. The Department addressed concerns about broad corridor boundaries. It provided the following description of the concerns:

> The Department recognizes that some States are concerned that specification of broad boundaries could result in unintended expansion of Federal siting authority to include proposed transmission projects that happen to be located in a National Corridor but are unrelated to the problem that prompted the National Corridor designation.[72]

The Department does not share the concerns of States. Again, it relies on FPA § 216(b) limiting FERC's jurisdiction.[73] As explained above, the Department's reliance is misplaced because FERC interprets its jurisdiction so broadly. Under FERC's interpretation, any project in a NIETC that is sited or not sited by State authorities is subject to its jurisdiction.

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[70] *Id.* at 6.
[71] 72 Fed. Reg. 25,838 (May 7, 2007) at 25,848.
[72] *Id.* at 25,849.
[73] *Id.*

DOE DID NOT IDENTIFY ADVERSE AFFECTS ON CONSUMERS IN CALIFORNIA THAT REQUIRE A CORRIDOR

Under FPA § 216(a)(2), the Secretary cannot designate a corridor unless a congestion study demonstrates adverse effects on consumers. The Congestion Study identifies southern California as a Critical Congestion Area.[74] The Department claims that the study shows "historical, persistent congestion caused by numerous well-known transmission constraints into and within California."[75] It also claims that congestion will continue or worsen in the future.[76]

Figures IX-1 through IX-4 show congestion identified by the Congestion Study. The Transmission Expansion Study Planning Committee ("TEPPC") on behalf of the Western Energy Coordinating Council ("WECC") provided comments on the Draft Southwest Corridor. TEPPC states, "[T]he data does not support an unequivocal finding of congestion on paths within the draft NIETC as compared to other paths within the western interconnection."[77] Figure IX-2 supports TEPPC's statement.

Figure IX-2 is "Congestion on Western Transmission Paths as Identified from Historical Data, 1999-2005." It categorizes physical congestion by the amount of time a transmission path is operating over 75% of its Operating Transfer Capability ("OTC"). Path 49 is a WECC path connecting Arizona to southern California. Path 49 had flows between 15% and 18% of its OTC.[78] Path 49 was in the least congested category. The data does not support DOE's conclusion that there is historical, *persistent* congestion on Path 49.

The Department is apparently relying on information from the California Independent System Operator ("CAISO") to identify Path 49 as congested. Figures IX-1, IX-3 and IX-4 show congestion on Path 49. The Department states that it reviewed branch group congestion data reported by CAISO. The ACC assumes that this congestion is economic congestion rather than physical congestion. The

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[74] *Id.* at 25,910.
[75] *Id.*
[76] *Id.*
[77] Comments of WECC/TEPPC on DOE Draft National Interest Electric Transmission Corridor Designations, submitted July 6, 2007 at 2.
[78] 72 Fed. Reg. 25,838 (May 7, 2007) at 25,915.

Department relied on the following data:

> In the day ahead market....[t]he Palo Verde and Mead branch groups were the most congested in 2006 with binding hours of 15 and 13 percent respectively. Congestion on Palo Verde, in terms of binding hours, diminished somewhat in 2006 as compared to 2004 and 2005, but the congestion prices increased.[79]

The Department should consider all relevant economic factors if it is relying on economic congestion for its designation. Economic factors should include both quantified factors and non-quantified factors.

Even though the CPUC opposed designation, the California Energy Commission (the "CEC") conditionally supports a designation because of "the State's history of impediments in developing needed transmission capacity."[80] The CEC also argued that lack of "reasonably priced power" should result in a designation, even if constraints don't cause congestion.[81] The CEC's statements raise important issues.

The ACC strongly opposes a designation that creates an economic subsidy from one state to another. Arizona and California have substantially different policies and regulations that create differences in LMPs. If a corridor is designated to equalize LMPs, Arizona will subsidize California ratepayers for choices made by California voters and regulators. Therefore, a difference in LMPs is not evidence of adverse effects on California consumers.

Additionally, the Department should consider California's failure to site sufficient transmission for its own needs. FPA § 216(a)(4)(A) provides that constraints may be the result of lack of adequate electricity. But the Department should not designate a corridor without analyzing the reason for resource inadequacy. Evidence cited by the Department does not support a corridor in Arizona.

Designation of a Southwest corridor is unfair because Arizona would be required to provide resource adequacy to California. Arizona does not have resource advantages for siting gas-fired

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[79] *Id.* at 25,915. Note also that the Mead line was not included in the proposed Draft Southwest Corridor.

[80] *Id.* at 25,909.

[81] *Id.* at 25,842.

generation compared to California. Instead, California has greater access to natural gas transmission and storage than Arizona.[82] Yet California has failed to site sufficient generation to meet its needs. Attachment 1 is a graph that includes new generation and retired generation from 1999 through 2006.

In the DPV2 case, Southern California Edison ("SCE") stated:

> Because the southwest has less expensive permitting, land, emission-offset, and labor expenses, the CAISO estimated the fixed costs of a new combined-cycle plant to be about 13 percent less in Arizona than in California.[83]

SCE explained, "Merchant power plant developers have been attracted to Arizona by the availability of natural gas infrastructure, the low cost of land, and a favorable regulatory environment."[84] SCE cited reductions in NO_x emissions in California to support the project. It admitted that emissions would increase in Arizona. Gas-fired generation in California would be retired if Arizona gas-fired generation is sent to California.[85]

The DPV2 case is a good example of why FPA § 216(a)(4)(A) must be interpreted carefully. FPA § 216(a)(4)(A) refers to constraints with "lack of *adequate or reasonably* priced electricity."[86] Prices that incorporate costs related to State policy choices are not inadequate or unreasonable. For example, California has one of the most aggressive emission performance standards in the country.[87] A comparison of California's standards to Arizona's standards for select pollutants is included in Attachment 13. The Department acknowledged the standard in its evaluation of supply diversity.[88] LMPs should reflect the higher standards. Also, higher fixed costs to construct a plant in one state versus another state are not evidence of lack of reasonably priced electricity.

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[82] *See,* Hearing Exhibit S-27 at 9 in ACC Docket L-00000A-06-0295-0130, *In The Matter of the Application of Southern California Edison Company for a Certificate of Environmental Compatibility Authorizing Construction of a 500 kV Alternating Current Transmission Line and Related Facilities in Maricopa and La Paz Counties in Arizona*, Decision No. 69638 (June 6, 2007) (Power Point Presentation of Staff witness Bob Gray).

[83] Final EIR/EIS issued October 2006 at A-12.

[84] *Id.* at A-10.

[85] *See, Id.* at A-11 ("The Proposed Project's primary economic benefit would be the increased ability to import low-cost generation from the southwest and displace higher-cost generation in California.").

[86] FPA § 216(a)(4)(A) (emphasis added).

[87] *See,* California Senate Bill No. 1368, Chapter 598.

[88] 72 Fed. Reg. 25,838 (May 7, 2007) at 25,918.

ARIZONA DOES NOT HAVE SUFFICIENT SOURCES TO BE INCLUDED IN THE DRAFT SOUTHWEST CORRIDOR

The Department identified Arizona as a source area for southern California. The Department claims that Arizona has:

> Substantial amounts of existing, under-used generation capacity (see Table IX-4), and locations with potential for substantial development of wind, geothermal, or solar generation capacity.[89]

For potential development of renewable generation in Arizona, the Department points to IX-5.[90]

The Department also issued the following finding of fact:

> [T]he Department finds under FPA section 216(a)(2) that there are "constraints or congestion that adversely affects consumers" in the Southern California Critical Congestion Area.[91]

The Department listed the following adverse affects: (1) "buyers must rely on power from less-preferred generating sources"; (2) "a smaller range of generators is able to serve load"; and (3) "grid operators have fewer options for dealing with adverse circumstances or unanticipated events, all of which adversely affects consumers."[92] Apparently, the suggested adverse affects are intended to justify Arizona as a source area for southern California.

The first conclusion obviously refers to the lowest cost generation. Because the LMPs in California reflect higher externalities, the conclusion does not satisfy FPA § 216(a)(4)(A). Buyers in California should not be able to rely on Arizona generation that does not reflect the same externalities. If they can, then the cost of externalities would be borne by Arizona consumers and the benefits would accrue to California consumers.

The second conclusion is contradicted by the evidence. California has been retiring older gas-fired generation. The Department provided a list of generators in Arizona that currently have

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[89] 72 Fed. Reg. 25,838 (May 7, 2007) at 25,918.
[90] *Id.* at fn. 115.
[91] *Id.* at 25,916.
[92] *Id.*

excess power.[93] All of the Arizona generation is gas-fired. The range of available generators to serve load would not be increased by a corridor. The same data contradicts the third conclusion. Grid operators, e.g. CAISO would not have additional options because Arizona generation would simply replace California generation. Conclusions 2 and 3 do not satisfy FPA § 216(a)(4)(B).

The Department also concluded that "reliability considerations warrant designation of a National Corridor for the Southern California Critical Congestion Area."[94] The Department relied primarily on the following factual statements:

> [1] the loss of a single critical transmission path could necessitate the curtailment of approximately 1,500 MW of load; [and]
>
> [2] CAISO states that in the event of a double-line contingency on [the South of Lugo Path] at peak load,anywhere from 500 to 1,000 MW of load would need to be curtailed.[95]

The ACC agrees that reliability is a significant concern in California.

But a corridor may only add to the problem. As stated above, corridors create economic advantages for transmission solutions. CAISO and transmission operators in California also rely on SPS schemes. Reliability problems may be caused in part by over use of SPS schemes. Additionally, local generation is preferable to new transmission if potential loss of transmission lines creates reliability concerns. Arizona has fewer reliability concerns because it sites sufficient transmission and local generation. It also does not rely on SPS schemes for routine operating circumstances.

The Department next analyzed adverse effects on consumers under FPA § 216(a)(4)(B)(ii). The Department identified southern California's dependence on gas-fired generation as the primary concern for supply diversification. The Department noted:

> During 2005, about 38 percent of the electricity generated within California was produced from units fueled by natural gas....One of the consequences of congestion in southern California is that it prolongs and exacerbates the area's dependence on natural gas.[96]

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[93] *See, Id.*, Table IX-4 at 25,919.

[94] *Id.* at 25,918.

[95] *Id.* at 25,917. Note that the numbers are confusing because a double-contingency would result in less lost load than a single-contingency.

[96] *Id.*

The ACC does not dispute the facts cited by the Department.

However, these facts do not support designating Arizona as a source area for southern California. Figure IX-5 identifies the Palo Verde Hub area as a source of non-renewable generation. The non-renewable generation is gas-fired generation as identified in Table IX-4. All six generating stations identified in Table IX-4 are gas-fired.

The data in Table IX-4 is also for 2005. The Department modeled the years 2008 and 2015, but did not forecast capacity factors for the generation in the table. The ACC anticipates that any excess generation will be needed for Arizona demand by approximately 2010.[97] The projected increase in capacity factors can already be seen for 2006 data. For example, the July capacity factor for Red Hawk increased from 67.7% to 74.6%. The December capacity factor for Red Hawk increased from 32.3% to 50.7%.

Three of the six plants identified in Table IX-4 are not in the Draft Southwest Corridor. Desert Basin Power is near Casa Grande, Arizona and in Pinal County. Griffith Energy is south of Kingman, Arizona and in Mojave County. South Point Energy Center is near Bullhead City, Arizona and in Mojave County. The plants should not be used to justify Arizona as a source area because they are not in the corridor.

Two of the plants, Red Hawk and West Phoenix, are owned by Arizona Public Service ("APS"). As utility owned plants, they are subject to cost-of-service regulation and must be available for APS ratepayers. As stated above, Arizona's demand growth will eliminate any excess capacity at the utility owned plants and merchant plants identified by the Department.

For the reasons stated above, the Department should eliminate the following Arizona plants from Table IX-4: (1) Desert Basin Power, (2) Griffith Energy, (3) Red Hawk, (4) South Point Energy Center, and (5) West Phoenix. The only plant that could be in the table is the Mesquite Generating Station.

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[97] See, Hearing Exhibit S-29 at 8-9 in ACC Docket L-00000A-06-0295-0130, *In The Matter of the Application of Southern California Edison Company for a Certificate of Environmental Compatibility Authorizing Construction of a 500 kV Alternating Current Transmission Line and Related Facilities in Maricopa and La Paz Counties in Arizona*, Decision No. 69638 (June 6, 2007) (Power Point Presentation of ACC Staff witness Matthew Rowell).

Figure IX-5 raises several issues. First, the identified areas of potential renewable resources are not even located in the Draft Southwest Corridor. Thus, they cannot be used to support a designation. Second, Arizona has far fewer areas of potential development than California.

Why should Arizona's limited areas of renewable resources be considered a source area for southern California? California and Arizona both have very aggressive renewable portfolio standards. Figure IX-5 shows that California is in a better position to meet its standards with in state resources than Arizona. Accordingly, Arizona is not a source area for southern California that will provide supply diversification.

DOE DID NOT IDENTIFY AND ADDRESS ADVERSE AFFECTS ON CONSUMERS IN THE PHOENIX SOURCE AREA OF THE DRAFT SOUTHWEST CORRIDOR

FPA § 216(a)(4)(A) provides that the Secretary may consider "the economic vitality and development of the corridor, *or the end markets served by the corridor*, may be constrained by a lack of adequate or reasonably priced electricity."[98] In applying this factor, the Department seems to interpret it to only cover "sink" areas. The Department also seems to interpret FPA § 216(a)(4)(E) ("the designation would enhance national defense and homeland security") as only applying to "sink" areas.

A reasonable reading of the statute is that the factors apply to both ends of a potential corridor. DOE acknowledges that the term "corridor" is "commonly understood to refer generally to some sort of path between different areas . . . ."[99] Notwithstanding the commonly understood meaning of "corridor," the Department only applied the statutory factors to southern California. For example, the Department provided the following observations and conclusions:

> The Southern California Critical Congestion Area is home to 20.7 million people (7.0 percent of the Nation's 2005 population) and produces about $950 billion of gross national product (7.7 percent of the 2005 gross national product). Given the large number of military and other facilities in the Southern California Critical Congestion Area that are extremely important to the national defense and homeland

[98] FPA § 216(a)(4)(A) (emphasis added).

[99] 72 Fed. Reg. 25838 at 25848.

> security, as well as the vital importance of this populous area to the Nation as an economic center, any deterioration of the electric reliability or economic health of this area would constitute a serious risk to the well-being of the Nation.

The ACC assumes the above reasoning applies to southern California as a "sink" area. But the Department never considered whether similar reasoning could be applied to Arizona.

The Arizona Power Plant and Line Siting Committee and the ACC have sited sufficient generation and capacity to meet current and near term needs of Arizona. However, Arizona's economic growth is highly dependent on future expansions of electric infrastructure. Even if Arizona could currently be considered a "source" area, it is very possible that it could become a "sink" area in the future.

On March 22, 2007, the United States Census Bureau issued a press release identifying Maricopa County as the fastest growing county in the Nation. (See Attachment No. 2). The U.S. Census Bureau stated:

> Maricopa County, Ariz., gained 696,000 residents between 2000 and 2006, the largest numerical increase of the nation's 3,141 counties, according to estimates released today by the U.S. Census Bureau. This increase surpasses the total population of all but 15 U.S. cities. Maricopa County, which includes Phoenix, has 3.8 million residents, making it the nation's fourth largest county.[100]

The U.S. Census Bureau also cited data related to the percentage increase in Arizona's population. Arizona's population grew 20.2% between April 1, 2000 and July 1, 2006. The growth rate made Arizona the second fastest growing state in the Nation during that time period.[101] From July 1, 2005 to July 1, 2006, Arizona became the fastest growing state in the Nation.[102]

Arizona also has significant military installations including the Yuma Proving Grounds and Luke Air Force Base. Attachment 5 is a map of land uses in the three counties included in the Draft Southwest Corridor. Military installations cover a significant geographic area in the three counties. Additionally, the Yuma Proving Ground has expressed an interest in increasing its area within the Draft Southwest Corridor in the near future.[103]

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[100] Attachment No. 2 at 1.
[101] Attachment No. 3 at 1.
[102] Attachment No. 4 at 1.
[103] Attachment No. 6.

The location of military installations has affected siting of utility infrastructure in Arizona. A project for natural gas storage was rejected because of its proximity to Luke Air Force Base. The project was the Copper Eagle Gas Storage, L.L.C. ("Copper Eagle").[104] Copper Eagle would have been the only significant market area storage in Arizona. Copper Eagle would have provided economic and reliability benefits to end users in Arizona.

Storage injections are typically made during summer months when the price of natural gas is at a seasonal low. Furthermore, if supplies on interstate gas pipelines are limited for any reason, storage can provide supplies increasing reliability.

The Yuma Proving Ground affected the routing of the Palo Verde Devers 1 ("PVD1") transmission line. In the original application, the line would have crossed a portion of Yuma Proving Ground.[105] The route was changed to have no towers on land in the Yuma Proving Ground.

The U.S. Bureau of Economic Analysis provides statistics on growth rates in real gross product. From 1997 to 2004, Arizona was rated as the fastest growing State at an annual growth rate of 5.5%.[106] In contrast, DOE noted that California electric load is currently growing at about 1.5% annually.[107] Arizona's growth and economy are as important to the Nation as California's growth and economy. The Department should consider these facts prior to designation.

If the Department designates the three Arizona counties as a source area for southern California, there will likely be adverse affects on consumers in Arizona. Arizona's economy is highly dependent on new development. Growth of new development may be dramatically reduced if Arizona does not comply with emissions standards.[108]

On June 6, 2007, the U.S. Environmental Protection Agency ("EPA") issued a final finding

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[104] *Copper Eagle Gas Storage, L.L.C.*, FERC Docket No. CP02-188-000, April 25, 2002.

[105] *In the Matter of the Application of Southern California Edison Company, in conformance with the requirements of Arizona Revised Statutes Section 40-360, et seq., for a Certificate of Environmental Compatibility for two segments of the Arizona Portion of one 500 kV transmission line between the Palo Verde Nuclear Generating Station (under construction) near Wintersburg, Arizona and the Devers Substation (existing) near Palm Springs, California*, Decision No. 49226, Line Siting Case No. 34, June 15, 1978.

[106] Attachment No. 7 at 1.

[107] 72 Fed. Reg. (May 7, 2007) 25,838 at 25,918.

[108] *Poor air imperils growth in Valley*, January 11, 2006, The Arizona Republic. Attachment No. 8.

on the attainment status of the Phoenix Planning Area.[109] Phoenix "did not attain the 24-hour National Ambient Air Quality Standard (NAAQS) for particulate matter of 10 microns or less (PM-10) by the deadline mandated in the Clean Air Act (CAA or the Act), December 31, 2006."[110] Arizona must submit a plan by December 31, 2007 for reducing PM-10 by 5 % per year and must reach attainment within 5 years.[111] If Arizona fails to meet any of the standards or deadlines, it would be sanctioned by loss of federal highway funds.[112]

The Maricopa County Air Quality Department tracks emissions from three plants in Table IX-4 (i.e. Mesquite Generating Station, Redhawk Generating Facility and West Phoenix).[113] Mesquite Generating Station had the highest settlement amount for air quality violations from January 2006 to March 2007.[114] In addition to nonattainment for PM-10, portions of Maricopa County are in nonattainment for carbon monoxide ("CO") and ozone. Attachment 11 is a map of Arizona's nonattainment areas.

Arizona will suffer adverse effects on consumers if it is designated as a source area for southern California. Increased emissions from higher generation and increased use of scarce groundwater could have a significant impact on Arizona's growth. Such externalities must be balanced with the need for a corridor.

The ACC strongly believes that designation of a corridor in Arizona is contrary to the public interest. Designation of three Arizona counties as a source area for southern California is not supported by available data. Most importantly, the ACC agrees with the CEC[115] that consideration of a State's environmental resources is necessary before a final designation. Consideration of a State's

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[109] 72 Fed. Reg. (June 6, 2007) 31,183. Attachment No. 9.
[110] *Id.* at 31,183.
[111] *Id.* at 31,184.
[112] *Id.*
[113] *See, 2005 Periodic Emissions Inventory for PM_{10} for the Maricopa County, Arizona Nonattainment Area*, Maricopa County Air Quality Department, issued May 2007 (the data also include emissions of $PM_{2.5}$, NO_x, SO_x, and NH_3).
[114] Attachment No. 10.
[115] 72 Fed. Reg. (May 7, 2007) 25,838 at 25,909 ("[The CEC] remains concerned whether DOE will designate a National Corridor in a manner that adequately considers California's environmental resources, legislation concerning State designation of electric transmission corridors, and use of existing rights of way.").

environmental resources is necessary to determine whether the resources are sufficient to support a "source" designation.

DOE DID NOT IDENTIFY MARKET FAILURES OR INADEQUATE SITING PROCESSES IN ARIZONA

Previously, the ACC has provided information to the Department demonstrating its successes in siting both generation and transmission. The ACC urges the Secretary to not designate a Southwest Corridor unless there is evidence of inadequate siting processes. Arizona's siting statute, Arizona Revised Statute 40-360 *et seq*, became effective August 13, 1971. Since that time, the ACC has issued decisions in 132 cases.

The siting statute provides applicants a Certificate of Environmental Compatibility (the "Siting Certificate"). The Siting Certificate is a permit allowing a utility to construct facilities included in an application. In the 132 cases, the Commission has only denied 3 applications.

Since the year 1999, the ACC has approved 18 power plants and 21 major transmission projects across Arizona. The transmission projects include lines ranging from 115 kV to 500 kV. They cover approximately 600 linear miles, and include a substantial number of associated substation facilities. This past approval rate is equivalent to approximately 100 linear miles of transmission corridor per year. The ACC anticipates this growth of transmission facilities to continue for the foreseeable future. The projects approved by the ACC since 1999 are listed in a table in Attachment No. 12.

Arizona's siting statute and processes are a success. Arizona has cited projects to meet the electric needs of Arizonans and users of the Western Grid.[116] Unlike California, there have been no major market failures. The only difficulty for siting transmission in Arizona is related to land use. Arizona has vast areas of environmentally sensitive land, Federal land, and military facilities.[117]

The ACC agrees with the CPUC on the solution needed for the West. The Department noted that:

> [The] CPUC also argued that instead of designating National Corridors in California, the Department should make certain

[116] *See, e.g., Grand Canyon Trust v. ACC*, 210 Ariz. 30, 107 P.3d 356 (Az.App.2005).
[117] See Attachment No. 5.

designations of energy corridors on Federal land under EPAct section 368.

Designation of energy corridors over Federal land in Arizona would make some projects easier to site. Energy corridors over Federal land would also decrease the time between application and construction of transmission facilities.

The ACC respectfully requests the Secretary to not issue a final designation for the Draft Southwest Corridor. The above arguments support the ACC's request. Finally, the ACC looks forward to consultation with the Secretary and the Department prior to a final designation.

RESPECTFULLY SUBMITTED this 6 day of July, 2007.

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http://nietc.anl.gov

Copies of the foregoing mailed this 6 day of July, 2007 to:

Attn: Docket No. 2007-OE-02
Draft Southwest Area National Corridor
Office Electricity Delivery and Energy Reliability
OE-20, U.S. Department of Energy
1000 Independence Avenue, SW.,
Washington, DC 20585

ATTACHMENT B

THE ARIZONA REPUBLIC
October 10, 2007

BUSINESS online print edition

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ARIZONA'S HOME PAGE

Feds push power route in Ariz.

State's utility commissioners balk at move to boost Calif. energy supplies

Ryan Randazzo
The Arizona Republic
Oct. 3, 2007 12:00 AM

Arizona electricity customers could see higher prices and less available power, thanks to a U.S. Department of Energy decision Tuesday to help relieve California's congested power grid, state officials said.

The DOE declared 10 counties across Southern California and Arizona a critical corridor, a designation that allows federal regulators to approve power lines in the area even if the states reject them.

The decision could have a direct impact on Arizona because in May the state's Corporation Commission blocked Southern California Edison from doubling a power line that runs from Arizona to the Palm Springs, Calif., area.

The commission now says it expects the utility to ask federal regulators to overrule that decision.

The commissioners originally denied the utility's request because they fear the line will increase Arizona prices and lower rates for Californians because natural-gas-fired power plants west of Phoenix would be able to sell more power to the pricier California market.They also said it could drain resources and add pollution to one state at the benefit of another.

And Arizona faces a growing demand for power.

"They are treating California's symptoms and not the disease," said Arizona Commissioner Jeff Hatch-Miller, who added that he will ask the DOE to reconsider the move. "The real solution is for California to start building the resources they need in their own state and share with us on an equal basis."

Tuesday's decision, which designated two such corridors - the one in California and Arizona and another in the mid-Atlantic region - was done under the auspices of the 2005 Energy Policy Act. The law gave the federal government the right to approve new power-transmission towers, even if states choose not to build them.

In creating the corridors, the department said its goal is to "keep reliable supplies of electric energy flowing to all Americans."

Energy Department officials said Tuesday that Arizona regulators had valid concerns when they rejected the so-

called "Devers Palo Verde 2" line in May, but that they don't see the issue as Arizona vs. California.

"If we continue down the path of each state looking only at its own needs, we will continue to run into reliability problems across the region," said Kevin Kolevar, the DOE assistant secretary for electricity delivery and energy reliability. "It is simply not tolerable to have the states in a region turning their backs on one another. This is a regional issue, and we need regional solutions."

Price impact unclear

Arizona Public Service Co. and Salt River Project officials said it's unclear what the line would actually do to prices for Arizonans, although officials from both utilities said they aren't taking a position on whether it needs to be built.

"On a macro level, California prices are high and Arizona prices are low, so adding a line expansion would tend to levelize them," said Rob Kondziolka, manager of transmission planning for SRP. "When you ask how much it is, it is hard to state."

Southern California Edison residential customers have paid 16.6 cents per kilowatt-hour of usage this year on average, compared with 8.9 cents per kilowatt-hour for SRP customers.

Arizona regulators are worried California utilities will bid up the price of electricity, but local utilities said they watch out for their customers.

"Any off-system sales we do come only after the needs of our own customers have been taken care of," APS spokesman Jim McDonald said.

Corporation Commission officials, however, were more certain of the impact.

"Evidence showed that a power line between California and the Palo Verde hub would raise prices and reduce our power supply at the very time we are growing at a record rate," Commissioner Kris Mayes said. "This is obviously a very concerning decision."

Southern California Edison sued the commissioners for rejecting the line, calling it an illegal restraint on interstate commerce meant to keep Arizona electricity prices "artificially low."

The utility issued a statement Tuesday in support of the corridor designation but said there has been no decision to get the line decision overruled.

Generally speaking, California customers face more severe electricity constraints than Arizonans. During an August heat wave, California customers were asked to curb usage to prevent blackouts.

Challenge ahead

Arizona regulators plan to challenge the Federal Energy Regulatory Commission's authority to overrule them and approve the line.

"I'm hopeful the FERC commission will have the same view I have, that the increased water demands (from

generating electricity at power plants) and using our limited resources in Arizona will hold sway," Commissioner Gary Pierce said.

"We don't believe FERC has the complete (overruling) authority they think they have."

He suggested Southern California Edison explore purchasing Colorado River water for Arizona to compensate for water used in the generation of electricity for California.

Gov. Janet Napolitano wrote the DOE to oppose the corridor before Tuesday's announcement, saying "additional (pollution) emissions will be added to Arizona's environment when Arizona utilities add generation capacity to replace the power sent to California."

Some support

The Arizona Competitive Power Alliance represents nine independent power companies, including those that run Mesquite, Harquahala, Arlington Valley and other natural-gas-fired power plants near Palo Verde Nuclear Generating Station, west of Phoenix.

They support the line because they could sell power to Southern California Edison.

"The plants are often idle," director Greg Patterson said. "Arizona cannot be an energy island. If we choose to be an energy island, it will be much more expensive for consumers."

But corporation commissioners said Arizona will need the alliance's power by 2010.

"We've been planning for growth, permitting facilities and lines, and we will need that electricity," Commissioner William Mundell said.

"California hasn't kept up with their current population. This is a power grab by California."

All five commissioners said they are prepared to take the matter to court.

"We are not done," Mundell said. "We lost the battle but not the war."

Reach the reporter at ryan.randazzo@arizonarepublic.com, or (602) 444-4331.

ATTACHMENT C

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

National Electric Transmission Congestion Study	))))

COMMENTS OF THE
ARIZONA CORPORATION COMMMISSION

The Arizona Corporation Commission ("ACC") files these comments to the Department of Energy ("DOE") in response to the DOE August 2006 National Electric Transmission Congestion Study (hereinafter, "the DOE Study") and the possible designation of a National Interest Electric Transmission Corridor (hereinafter, "National Corridor") in Arizona.

I. OVERVIEW

As discussed below, we recognize that the DOE Study may appropriately be a consideration for a National Corridor in Arizona, however prior to any such final designation by the DOE, it is imperative that DOE consult with and reach consensus with the State of Arizona (specifically the Arizona Corporation Commission) as well as other appropriate stakeholders to confirm that all pertinent factors are considered.

The State of Arizona has a long history of cooperation and collaboration among electric transmission owners and users to ensure the most effective use of Arizona's transmission infrastructure. Additionally, a proven line siting process for Arizona has been in place for many years in which proposed transmission line projects within the state are fully reviewed and evaluated with proper consideration for issues brought by all stakeholders.

In the interest of fair representation to the residents of Arizona and the entities regulated by the Arizona Corporation Commission, we therefore advise DOE that the ACC is the appropriate Arizona State Representative for the siting of electric transmission facilities in Arizona. Additionally, we request that DOE consult with the ACC prior to any Arizona National Corridor designations in accordance with provisions of the Federal Power Act (Sec. 216).

II. COMMUNICATIONS

Address all communications related to these comments to:

Mr. Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

III. COMMENTS ON THE DOE STUDY

The DOE Study is the first study of the Nation's transmission grid and has similarities to our own Arizona transmission assessment updated every two years and further described below in Section IV. We appreciate that the DOE Study is a work in progress much like the Arizona transmission assessment. In reviewing the DOE Study and various filed and otherwise available comments, we find that as with our own continuing Arizona reviews of the state's electrical system, there are factors that deserve further consideration in the next preparation of the Study (presumably 2009 for DOE).

For example, the Phoenix to Tucson Congestion Area of Concern, as noted in the DOE Study, has been a consideration in Arizona transmission planning forums for many years. This recognition and other load requirements in the area south of Phoenix has led to ACC approval in 2004 of a double circuit 500 kV transmission line between the Palo Verde Generation Hub west of Phoenix and the Pinal West Substation south of Phoenix. Additionally, with continued ACC approval in 2005, this Palo Verde to Pinal West project was expanded through the Casa Grande area (south and almost half way to Tucson from Phoenix) and back to the southeast side of Phoenix as a 500 kV/230 kV double circuit line including new substation facilities. Engineering and land procurement is presently underway for this combined 150 mile long project with construction expected to begin this year. This extension of the Phoenix area transmission grid to the south provides an opportunity for others to complete the connection to Tucson and these scenarios are being studied by utilities and various planning groups described in Section IV B.

We note also that one important corridor for Arizona is the Tucson to Nogales corridor, which is not mentioned in the DOE Study. This corridor has important reliability and delivery implications for South Central Arizona. Following extensive hearings with all stakeholders, a 345 kV double circuit line 65 miles in length was approved by the ACC in 2001 between south Tucson and the border with Mexico at Nogales to tie with generation sources in Mexico. This project would have addressed various reliability and supply problems in this area; however, the project has not started construction due primarily to Federal preemption with regard to permitting and routing through National Forest Land. We consider this Tucson to Nogales corridor to be of greater concern to the Arizona transmission grid than the Phoenix to Tucson Congestion Area of Concern in the DOE Study. Therefore we question the evaluative tools used in the DOE Study.

We have no doubt appropriate comments such as the examples noted above will be solicited by DOE at the appropriate time and fully considered for the next iteration of the DOE Study. We recognize the extended opportunity for input and therefore have offered the above examples as Arizona proceedings requiring more consideration in the next DOE Study. Additionally, we will further address the possible designation of National Corridors in Arizona in the following discussion.

It is our understanding that National Corridors may be designated in Critical Congestion Areas, Congestion Areas of Concern and Conditional Congestion Areas (as defined in the DOE Study). Additionally, it is inferred from the available documentation that the Secretary may also deem any other geographic area a National Corridor based on information that is not clearly

defined. While it is commendable that DOE now plans to issue any National Corridor designations in draft form to States, regional entities and the general public to allow additional opportunities for review and comment, we believe a more clearly defined overall process for National Corridor designations is needed. Regional and state planning groups would then be in a position to prepare their studies and recommendations with consideration for possible DOE action.

We offer below the key points that should be included in a National Corridor designation process:

- Establish procedures for consultation with appropriate state agencies
- Establish criteria or metrics for National Corridors
- Determine how the criteria or metrics are evaluated and weighted
- Define the draft designation decision based on the criteria or metrics
- Define the "stakeholder" review of the draft designation
- Define the final designation criteria based on "stakeholder" review and other allowable interest
- Define the criteria for appeal

IV. REVIEW OF THE ARIZONA COLLABORATIVE PROCESS FOR TRANSMISSION PLANNING

A. Arizona Corporation Commission Biennial Transmission Assessment

The ACC prepares a Biennial Transmission Assessment ("BTA") every two years with the first BTA completed in 2000 and the fourth BTA for 2006 now in the final stage of completion. This BTA is intended to inform the ACC and other affected parties regarding the adequacy of the existing and planned transmission facilities in Arizona to meet the present and future energy needs of Arizona in a reliable manner.

The BTA preparation utilizes Ten-Year studies, Reliability Must Run (RMR) studies, and other technical reports and documents required of and filed with the Commission by the various regulated electric transmission organizations in the state.

In the 2006 BTA, a set of guiding principles were used to determine whether the Arizona transmission system will be adequate during the next ten year period. The reliability of an existing or planned electric system under existing, alternative or future operating conditions can only be determined by technical simulation studies, including load flow, stability and short circuit analysis. Such studies require the application of a set of study criteria to measure the system's performance. In assessing the Arizona transmission system adequacy, ACC Staff

critically reviewed and analyzed pertinent transmission planning documents and addressed the following questions:

1. Do the proposed Arizona transmission system plans meet the load serving requirements of the state during the 2006-2015 time period in a reliable manner?

2. Was the transmission planning process conducted in accordance with the transmission planning principles and good utility practices accepted by the power industry?

3. What steps were taken in the new transmission planning studies to effectively address the ACC's concerns raised in the earlier BTAs about the adequacy of the state's transmission system to reliably support the competitive wholesale market emerging in Arizona?

4. Do the generation interconnection practices in Arizona adequately reflect technical aspects of the generation interconnection policies as defined in Federal Energy Regulatory Commission Orders?

5. Do the transmission plans adequately reflect North America Electric Reliability Council's ("NERC") latest activities related to compliance with the transmission planning standards, as well as compliance with Western Electricity Coordinating Council ("WECC") reliability standards?

The resultant transmission assessment represents the professional opinion of ACC Staff. The BTA is not an evaluation of individual transmission provider's facilities or quality of service. The BTA report does not set ACC policy and does not recommend specific action for any individual Arizona transmission provider. It assesses the adequacy of Arizona's transmission system to reliably meet existing and future energy needs of the state.

In the 2006 BTA, ACC Staff concluded that the collaborative process between the ACC and Arizona utilities, which began in previous BTAs, has continued to evolve in a constructive manner. Transmission owners have been responsive to many issues raised by ACC in prior BTA's, including the level of ability of the Palo Verde transmission system to handle full generation output, Palo Verde Hub reliability issues and the economic viability of generators at the Palo Verde Hub, clarifying the criteria and study processes that Arizona utilities utilize to formulate their RMR plans, and a number of other issues that are discussed in the report.

B. Arizona Transmission Planning Forums

Extensive regional planning studies have been conducted in Arizona and the Western United States overall by numerous transmission planning and government agency groups. Additionally, these planning and government agency groups work together through various organizations to achieve a synergy that further enhances and validates the conclusions and recommendations that arise from these collaborations. Noted below are some of the Arizona and

Western Area groups that have and will continue to ensure that transmission planning in Arizona and connected areas in the West is effective and continually improving:

The Southwest Area Transmission ("SWAT") regional planning group[1] includes two states (Arizona and New Mexico) and parts of four others states (Southern California, West Texas, Southern Nevada, and Southern Colorado) to promote regional planning in the Desert Southwest. The SWAT regional planning group includes four main subcommittees, which are overseen by the SWAT Oversight Committee. They are:

1. SWAT Arizona-New Mexico Regional Transmission

   The SWAT Arizona-New Mexico regional transmission subcommittee was formed to study the Eastern Arizona and Western New Mexico regional transmission system, including (but not limited to) the Four Corners, Springerville and Greenlee/Hidalgo areas. This regional analysis includes the participation of: Arizona Public Service, Western Area Power Administration, Southern California Edison, California Independent System Operator, Public Service Company of New Mexico, Tucson Electric Power, PacifiCorp, Tri-State GT, Dine Power Authority, BHP Billiton, Navajo Tribal Utility Authority, Salt River Project, Southwest Transmission Cooperative, and other interested Parties.

2. SWAT Colorado River Transmission (CRT)

   The SWAT Colorado River Transmission subcommittee was formed to study the area within the geographic region from Palo Verde to the Colorado River and southern Nevada to Yuma, Arizona. This regional analysis includes the participation of: Arizona Power Authority, Western Area Power Administration, Nevada Power, Southern California Edison, Imperial Irrigation District, California ISO, Arizona Public Service, Salt River Project, Tucson Electric, Central Arizona Project, and other interested Parties.

3. SWAT Central Arizona Transmission EHV

   The SWAT Central Arizona Transmission subcommittee, formerly know as the CATS Study Group, studies the Central Arizona EHV transmission system. This regional analysis includes the participation of: Arizona Public Service, Salt River Project, Southwest Transmission Cooperative, Tucson Electric, Western Area Power Administration and other interested Parties.

   A subcommittee to the CATS EHV subcommittee is the CATS HV subcommittee. This group was formed to study the HV Transmission system in the Central Arizona region. This regional analysis includes the participation of: Arizona Public Service, Salt River Project, Southwest

[1] http://www.azpower.org/swat/description.asp

Transmission Cooperative, Tucson Electric, Western Area Power Administration, Central Arizona Project, ED-2, ED-3, ED-4 and other interested Parties.

4. SWAT New Mexico Transmission

The SWAT New Mexico Transmission Subcommittee was formed to study the New Mexico and Southwest Texas region. This regional analysis includes the participation of: Public Service Company of New Mexico, El Paso Electric, Tri-State GT and other interested Parties.

WestConnect[2] is composed of utility companies providing transmission of electricity in the Southwestern United States. The members work collaboratively to assess stakeholder and market needs and to develop cost-effective enhancements to the western wholesale electricity market. WestConnect is committed to coordinating its work with other regional industry efforts to achieve as much consistency as possible in the Western Interconnection.

The Western Electricity Coordinating Council ("WECC")[3] was formed on April 18, 2002, by the merger of the Western Systems Coordinating Council, Southwest Regional Transmission Association, and Western Regional Transmission Association. The WECC encompasses a vast area of nearly 1.8 million square miles and is responsible for coordinating and promoting electric system reliability. In addition to promoting a reliable electric power system in the Western Interconnection, WECC supports efficient competitive power markets, assures open and non-discriminatory transmission access among members, provides a forum for resolving transmission access disputes, and provides an environment for coordinating the operating and planning activities of its members.

Membership in WECC is voluntary and open to any organization having an interest in the reliability of interconnected system operation or coordinated planning. WECC provides the forum for its members to enhance communication, coordination and cooperation—all vital ingredients in planning and operating a reliable interconnected electric system.

V. REVIEW OF THE ARIZONA LINE SITING PROCESS[4]

In 1971, the Arizona Legislature required that the ACC establish the Arizona Power Plant and Transmission Line Siting Committee ("Committee"). The Committee provides a single, independent forum to evaluate applications to build power plants (of 100 megawatts or more) or transmission projects (of 115,000 volts or more) in the state. The Committee holds meetings and hearings that are open to the public.

The Committee was created after the Legislature found that existing law did "not provide adequate opportunity for individuals, groups interested in conservation and the protection of the

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2 http://www.westconnect.com

3 http://www.wecc.biz/

4 http://www.azcc.gov//utility/electric/linesiting-faqs.htm#a

environment, local governments, and other public bodies to participate in a timely fashion in the decision to locate a specific major facility at a specific site."

Members of the Committee are:

- State attorney general or the attorney general's designee. (Chairman of Committee)
- Director of the Arizona Department of Water Resources or the director's designee.
- Director of the Arizona Department of Environmental Quality or the director's designee.
- Director of the energy office of the Arizona Department of Commerce or the director's designee.
- Chairman of the Arizona Corporation Commission or the chairman's designee.
- Six members appointed by the Arizona Corporation Commission to serve for a term of two years. Three of the members shall represent the public, one member shall represent incorporated cities and towns, one member shall represent counties and one member shall be actively engaged in agriculture.

The Committee Chairman directs the flow of the meeting and makes procedural decisions in accordance with Arizona law. However, each member of the Committee, including the Chairman, has a single vote. In general, the Committee has 180 days from the date the application is filed to come to a decision.

The procedures for the Committee's activities are set forth in law and administrative regulations. After an application to build a power plant or transmission line is filed with the ACC, copies are sent to all members of the Committee. The Chairman of the Committee sets a hearing date and provides public notice of the hearing date and location. Any member of the public can attend the hearing. The hearing will include testimony and exhibits from the applicant, and testimony and exhibits from any groups or individuals who are granted party, or intervener, status. There is cross-examination of the witnesses by the parties. The Committee members also ask questions of the witnesses, and may ask for additional information. After all the information is before the Committee, the Committee members will discuss the matter and will take a vote on whether to grant or deny a "Certificate of Environmental Compatibility," which is a formal document that is necessary before the power plant or transmission line can be built. If granted, the Certificate is then forwarded to the Commission for review and action. If denied, the applicant may request that the Commission rehear the matter.

The Legislature envisioned the plant and line siting process as a public process that benefits from public input. The Chairman of the Committee will call the meeting to order and allow time for public comment. If there are many people who wish to speak, the Chairman may impose a time limit for each person making public comment.

Factors for consideration for issuing a Certificate of Environmental Compatibility include:

- Existing plans of the state, local government and private entities for other developments at or in the vicinity of the proposed site.
- Fish, wildlife and plant life and associated forms of life upon which they are dependent.
- Noise emission levels and interference with communication signals.
- The proposed availability of the site to the public for recreational purposes, consistent with safety considerations and regulations.
- Existing scenic areas, historic sites and structures or archaeological sites at or in the vicinity of the proposed site.
- The total environment of the area.
- The technical practicability of achieving a proposed objective and the previous experience with equipment and methods available for achieving a proposed objective.
- The estimated cost of the facilities and site as proposed by the applicant and the estimated cost of the facilities and site as recommended by the committee, recognizing that any significant increase in costs represents a potential increase in the cost of electric energy to the customers or the applicant.
- Any additional factors which require consideration under applicable federal and state laws pertaining to any such site.

The Committee has fairly broad discretion and can require that a plant or transmission line conform to certain conditions.

Within the parameters of the law, the Commission can also amend an application to include conditions it deems necessary for a project to be in the broad public interest.

Since the year 2000, the ACC has approved more than 20 major transmission projects across Arizona ranging from 115 kV to 500 kV and totaling approximately 600 linear miles of transmission corridor plus associated substation facilities. This past approval rate of

approximately 100 linear miles of transmission corridor per year in Arizona is anticipated to continue for the foreseeable future.

VI. ARIZONA REVISED STATUTES

The Arizona Revised Statutes ("A.R.S.") promulgate several actions, policies and procedures described in these "Comments". Applicable statutes are noted below with a brief description of the statute. The full text of the statutes is available online at: http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=40.

A.R.S. §40-360.01 requires the establishment of a power plant and transmission line siting committee (further discussed in Section V herein).

A.R.S. §40-360.02 requires every person contemplating any transmission line within the state to file a Ten Year Plan with the Arizona Corporation Commission on or before January 31 of each year and for the Arizona Corporation Commission to determine the adequacy of existing and planned transmission facilities in the state to meet present and future energy needs in a reliable manner (further discussed in Section IV. A herein).

A.R.S. §40-360.07 requires any utility contemplating any transmission line within Arizona to obtain a Certificate of Environmental Compatibility from the Arizona Corporation Commission prior to construction. The Commission is to conduct and record a review of applications for Certificates of Environmental Compatibility and conduct related appeals. The Commission "shall balance, in the broad public interest, the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of the state".

A.R.S. §40-360.06 describes the factors to be considered by the Arizona Corporation Commission in issuing a Certificate of Environmental Compatibility.

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VII. Conclusion

For the reasons stated above, it is prudent for the State of Arizona (specifically the Arizona Corporation Commission) to have significant representation in any decision by DOE to designate National Corridors in Arizona. Accordingly, the ACC anticipates DOE notice of proposed National Corridors in Arizona and consultation with the ACC prior to final corridor designations so that any pertinent information not considered and of benefit to Arizona may be included.

Dated: February 27, 2007

Respectfully submitted by the Arizona Corporation Commission

Jeff Hatch-Miller, Chairman

William A. Mundell, Commissioner

Mike Gleason, Commissioner

Kristin K. Mayes, Commissioner

Gary Pierce, Commissioner

ATTACHMENT D

ARIZONA CORPORATION COMMISSION

May 24, 2007

Mr. Kevin Kolevar, Director
Office of Electricity Delivery and Energy Reliability
U. S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Kolevar:

RE: Arizona Open Meeting

We have reviewed the Department of Energy's ("DOE") Draft National Interest Electric Transmission Corridor ("NIETC") Designations and are encouraged by your recent May 8, 2007 Announcement that a public meeting will now be held in Phoenix, Arizona during the month of June, 2007. This is a necessary step in the Arizona public process for resolving important public issues and your recognition of our obligations is appreciated.

Notwithstanding the positive discussion likely to be gained at your June meeting in Phoenix, we would further appreciate you and your appropriate staff appearing at an "Open Meeting" at the Arizona Corporation Commission ("ACC") in Phoenix, Arizona for a face-to-face discussion between you and the five ACC Commissioners on the NIETC issue. This additional "Open Meeting" is a regularly conducted public forum covering a wide variety of issues under the purview of the ACC that will allow additional and documented input on this important Arizona topic. Accordingly, please let us know who to contact at your agency to arrange this meeting or please call the ACC's Executive Director, Brian McNeil, at (602) 542-3931 for arrangements.

We remain committed to having our existing Arizona state process receive greater recognition in the NIETC process and this will be a common theme you will likely hear in the upcoming meetings discussed herein. An Arizona line siting process that has a proven track record over many years and is recognized as public, judicial and rigorous must be afforded the consideration it deserves, in our opinion. We regret we did not have the opportunity for substantive discussion before issuance of the Draft NIETC Designations as we anticipated based on our earlier correspondence with DOE. However, it is appropriate for us now to take full advantage of our upcoming discussion opportunity.

When the ACC conducts state business in Arizona, the general practice for public issues is to provide public notice and hold hearings. This is required in part by statute (Arizona Revised Statute §40-360.04) but primarily this ACC policy represents good business practice with due consideration of the public. These Draft NIETC Designations present a variety of concerns to Arizona, a large portion of which is clearly now designated as a "source" of electric power and Southern California is the "sink" for that electric power. It is in the interest of these same good business principles employed in Arizona that we believe a DOE public process in Arizona can be initiated with the two meetings described.

Sincerely,

Mike Gleason, Chairman

William A. Mundell, Commissioner

Jeff Hatch-Miller, Commissioner

Kristin K. Mayes, Commissioner

Gary Pierce, Commissioner

c: Brian C. McNeil, Executive Director
Ernest G. Johnson, Utilities Division Director
Christopher C. Kempley, Chief Counsel