

October 29, 2007

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

Re: Mid-Atlantic Area National Corridor,
aka Mid-Atlantic Area National Interest Electric Transmission (NIET) Corridor
Attn.: Docket No. 2007-OE-01

APPLICATION FOR REHEARING

Secretary of Energy Samuel Bodman and Director Kevin Kolar:

I am applying to the Department of Energy (DOE) for rehearing of the DOE's designation of the Mid-Atlantic Area National Corridor pursuant to Federal Power Act (FPA) section 313 as a party to the proceeding in Docket No. 2007-OE-01 who is aggrieved by the DOE's Report and Order filed in that docket.

I fall within the DOE's identification of "Parties to This Proceeding," as set forth in the DOE's National Electric Transmission Congestion Report and Order dated October 2, 2007, filed in Docket Nos. 2007-OE-01 and 2007-OE-02, on page 32, which is attached hereto as Exhibit 1. I also fall within the DOE's identification of "Parties to This Proceeding," as set forth in the DOE's October 5, 2007, Federal Register Notice of said Report and Order, filed in Docket Nos. 2007-OE-01 and 2007-OE-02, on page 57000, which is attached hereto as Exhibit 2. I filed comments with the DOE electronically at <http://nietc.anl.gov> re: the Draft Mid-Atlantic Area NIET Corridor Designation on July 4, 2007 (Comment No. 80948), in reliance on instructions provided on the Public Comment Form provided on the DOE website. My electronically-filed comments are attached hereto as Exhibit 3 and are also posted on the DOE website via the [Search Docket 01 Mid-Atlantic Area National Corridor Comments](#) link, which is posted on the DOE web page at <http://nietc.anl.gov/involve/reviewcomment/index.cfm>, which is attached hereto as Exhibit 4. My comments are also referenced in the DOE's Report and Order dated October 2, 2007, filed in Docket Nos. 2007-OE-01 and 2007-OE-02, in footnote 48 on page 33, which is attached hereto as Exhibit 5. My comments are also referenced in the DOE's October 5, 2007, Federal Register Notice of said Report and Order, filed in Docket Nos. 2007-OE-01 and 2007-OE-02, in footnote 48 on page 57001, which is attached hereto as Exhibit 6.

I reside at 15033 Walking Stick Way in Haymarket, Virginia. Haymarket is located within Prince William County, one of the fifteen counties in the Commonwealth that are included in the Mid-Atlantic Area National Corridor. As a resident of Prince William County, Virginia, I am aggrieved by the DOE's designation of the Mid-Atlantic Area National Corridor.

I presented oral comments at the Department of Energy's (DOE's) public meeting held in Arlington, Virginia, on May 15, 2007. The DOE's transcript of that meeting accurately reflects the contents of my oral comments but inaccurately identifies me as a resident of Kaymoor, West Virginia. The DOE's transcript of my oral comments (with my town and state of residence incorrectly stated) is attached hereto as Exhibit 7.

In my oral testimony, I referenced four sets of questions that have been asked repeatedly, that are not adequately addressed in the DOE's Frequently Asked Questions link, and that remain unanswered. These four sets of questions are attached hereto as Exhibit 8. They are also referenced in my electronically-filed written comments in Section I. Concerns Related to Process, Subsection B. Inability to Obtain Answers to Questions.

In my oral testimony, I also referenced a Freedom of Information Act (FOIA) Request that I had filed with the DOE in an attempt to gain additional information regarding the draft Mid-Atlantic Area NIET Corridor designation. My FOIA request is attached hereto as Exhibit 9. It is also referenced in my electronically-filed written comments in Section I. Concerns Related to Process, Subsection C. Inability to Obtain Response to FOIA Request.

In the DOE's above-referenced Report and Order, in **Section II. Mid-Atlantic Area National Corridor (Docket N. 2007-OE-01)**, Subsection A. Procedural Matters, Subsection 2. Fairness of the Designation Process, Summary of comments on page 33, the Department states:

“Many commenters, including numerous individuals, argued that the Department had failed to provide adequate opportunity for the public to review and comment on the draft National Corridors. ... Numerous commenters requested an extension of the comment period. In particular, commenters argued that the June 7 errata published by the Department warranted an extension of the comment period. Numerous individuals and organizations asserted that the Department had failed to reveal the data underlying the draft designations.⁴⁸”

In the DOE response that follows on pages 34-36, the Department states:

“The Department concludes that its process has been fair, open, and transparent, and that it has provided ample opportunity for public comment. ...

Regardless of the label one applies to the designation of National Corridors, DOE has employed procedures that satisfy all applicable procedural requirements. ...

The Department believes it has provided adequate disclosure of information. The May 7 notice identified the specific data the Department relied on ... Those data included memoranda that the Department has made available on its website. In addition, as noted in the May 7 notice, **the non-proprietary data** relied on in the Congestion Study has been available on the Department's website since September 27, 2006 (emphasis added).

... All interested persons had an opportunity to comment on the May 7 notice, and the Department has considered all timely filed comments.”

I do not agree with the DOE's position stated above. Regarding my FOIA request, which was processed and assigned a number on May 8, 2007, the 20-business day period during which the DOE should have responded to said request expired on June 6, 2007, yet I did not receive a final response to FOIA-2007-000418 until August 11, 2007. See the DOE's letter dated August 9, 2007, attached hereto as Exhibit 10, which states that "All documents considered and/or relied upon to prepare the Congestion Study and the draft National Corridor designation have been posted on the DOE website." It took the DOE approximately 65 business days to respond to my FOIA request; moreover, in its response to my FOIA request the DOE does not acknowledge the existence of any proprietary data it considered and/or relied upon much less attempt to exempt that data. Given the length of time the DOE took to respond to my FOIA request and the fast track the DOE has taken in designating the corridors, an appeal of the DOE's response was not a feasible option for me. I do not believe that I had an opportunity as a fully informed citizen to comment, nor do I perceive the DOE's process to have been fair, open, and transparent.

In Subsection D. Boundaries of the Mid-Atlantic Area National Corridor, Summary of comments on page 51, the Department states, "Numerous commenters argued that the Mid-Atlantic Area National Corridor is impermissibly broad." In the DOE response that follows, "[t]he Department concludes that its approach to defining the boundaries of the draft Mid-Atlantic Area National Corridor is consistent with the statute (FPA section 216)."

I disagree and urge the DOE to reconsider the breadth of the Mid-Atlantic Area National Corridor and the prudence of including the New York City area and the Washington, D.C./Metropolitan area within the same corridor. Any corridor that is designated should enhance, not undermine, our national security.

In Subsection E. Inclusion of Environmentally, Historically, or Culturally Significant Lands, Summary of comments on pages 63 and 64, the Department states, "Many commenters, including numerous individuals, argued that the Department should exclude National Parks, State parks, and other environmentally, historically, or culturally significant lands from any Mid-Atlantic Area National Corridor. ... Other commenters urged exclusion of various historic sites in the Piedmont and Shenandoah Valley regions of Virginia. ..." In the DOE response that follows, "[t]he Department concludes that the exclusion of environmentally, historically, or culturally sensitive lands from the Mid-Atlantic Area National Corridor is neither required nor necessary."

I disagree and urge the DOE to reconsider the inclusion of our national parks, other historic and cultural sites, and the proposed Journey Through Hallowed Ground within the Mid-Atlantic Area National Corridor. Any corridor that is designated should exclude these areas.

In Subsection F. Consideration of Alternatives under FPA section 216(a)(2), Summary of comments on page 67, the Department states, "Several commenters, including Governor O'Malley and Governor Kaine, argue that the Department should evaluate non-transmission solutions to congestion before designating the Mid-Atlantic Area National Corridor. Many of these commenters argued that FPA section 216(a)(2) requires such an evaluation." In the DOE response that follows:

“The Department concludes that consideration of non-transmission solutions to the congestion problems facing the Mid-Atlantic Critical Congestion Area is neither required nor necessary as a precondition to designating the Mid-Atlantic Area National Corridor. ...

Not only does the statute not require the Department to analyze non-transmission alternatives, such analysis is also not warranted as a matter of discretion. The primary concern of those arguing for analysis of non-transmission solutions to congestion or constraints is that National Corridor designation disadvantages those solutions, and thus, according to these comments, the Department should only make such a designation where it has determined that transmission is the best solution. As discussed in Section I.A above, the Department sees no basis to conclude that designation of the Mid-Atlantic Area National Corridor would either prejudice State or Federal siting processes against non-transmission solutions or discourage market participants from pursuing such solutions.

The Department concludes that the phrase “alternatives and recommendations from interested parties” as used in FPA section 216(a)(2) is ambiguous. For the reasons given above, the Department declines to interpret the phrase to mean non-transmission solutions to congestion or constraint problems. ... ”

I disagree and urge the DOE to reconsider non-transmission alternatives (including distributed generation and demand response) to designating the Mid-Atlantic Area National Corridor. Moreover, any corridor that is designated should establish conservation, energy efficiency, and demand response policies and procedures for all federal facilities located within the corridor and should require compliance therewith.

In Subsection H. Duration of the Mid-Atlantic Area National Corridor Designation, Summary of comments on page 84, the Department states, “Several commenters objected to setting a twelve-year term for the Mid-Atlantic Area National Corridor.”

In the DOE response that follows, the Department states:

“FPA section 216(a) does not itself impose any time limit on a National Corridor designation, nor does the statute require the Department to impose any such limit. ...

Nevertheless, in recognition of State concerns about open-ended National Corridor designations, the Secretary has decided to condition the Mid-Atlantic Area National Corridor designation by imposing a time limit on it. ... Given the time frames involved in planning and developing a transmission project, the Secretary concludes that it is appropriate to set a twelve-year term for the Mid-Atlantic Area National Corridor designation, subject to the Department’s right to rescind, renew or extend the designation after notice and opportunity for comment.”

I disagree and urge the DOE to reconsider alternative shorter lifespans for the Mid-Atlantic Area National Corridor. Furthermore, any corridor that is designated should include a summary of the “for cause” reasons the DOE may rescind, modify, or renew the corridor.

Finally, I have serious concerns about the potential eminent domain ramifications of the Mid-Atlantic Area National Corridor. On page 5 of the DOE's Report and Order dated October 2, 2007, the DOE states, "If the permit holder could not acquire a necessary right-of-way through negotiation with a private property owner, then the FERC permit would entitle the permit holder to acquire the right-of-way by exercise of the right of eminent domain in either Federal or State court. FPA sec. 216(e)(1), 16 U.S.C. 824p(e)(1)." Would the same body of federal law apply to citizens who reside in different states, or would respective state laws apply? Has the DOE determined the eminent domain law that would apply to the taking of private property for the siting of a transmission line pursuant to a permit issued by the Federal Regulatory Energy Commission (FERC)? Is a summary of the applicable eminent domain law available for citizens to review? I respectfully submit that if the DOE is unable to respond to these questions, which I have asked repeatedly over the past six months, it has no business designating a Mid-Atlantic Area National Corridor at this time.

Thank you for your consideration of this application for rehearing and the issues addressed herein.



Barbara Kessinger
15033 Walking Stick Way
Haymarket, VA 20169

Exhibit I

narrowly restricted to the merits of a proposed line rather than examining whether generation or demand resources can better satisfy the underlying needs. PaDEP also expressed concern that approval by one State of a portion of a multi-state project may prejudice FERC's review.

On the other hand, National Grid USA (National Grid) states that FERC's siting rules include a substantial measure of deference to existing regional, State, and local planning and siting processes.

DOE response

Congress specifically granted to FERC, rather than to DOE, the responsibility of reviewing any permit applications under FPA section 216(b). As required by FPA section 216(c)(2), FERC has issued regulations governing the process it will follow when reviewing any such applications. These regulations are being challenged in court.⁴⁶ Any allegations of inadequacy or inconsistency with statutory intent must be addressed there and are beyond the scope of these proceedings.

II. Mid-Atlantic Area National Corridor (Docket No. 2007-OE-01)

A. Procedural Matters

1. Parties to This Proceeding

The May 7 notice provided instructions on how to provide comments and how to become a party to the proceeding in this docket. Consistent with those instructions, the Department is granting party status in this docket to all persons who either: 1) filed comments electronically at <http://nietc.anl.gov> on or before July 6, 2007; 2) mailed written comments marked "Attn: Docket No. 2007-OE-01" to the Office of Electricity Delivery and Energy Reliability, OE-20, U.S. Department of Energy, 1000 Independence

⁴⁶See Piedmont Environmental Council, et al. v. FERC, 4th Cir., Nos. 07-1651, et al.

These commenters argued that the Department's position appears inconsistent with the plain language and legislative intent of FPA section 216(a)(2). NARUC asked that the Department clarify how constraints or congestion that adversely affects consumers can be "experienced," as required by the statute, if there is not yet generation that constrains or congests the system. OMS requests that the DOE reconsider its position or refrain from making these and similar findings in its final order on the two draft National Corridors. OH Siting Board states that DOE should reserve the issue regarding its authority to designate National Corridors for Conditional Congestion Areas for a future time.

DOE Response

The May 7 notice addressed the question of designating a National Corridor in the absence of current congestion in response to conflicting comments we received on the Congestion Study. Some commenters on the Congestion Study asked the Department to clarify that it was not foreclosing the possibility of designating National Corridors for Conditional Congestion Areas before the expected generation was developed; others argued that no such designations were permissible because the statute requires a showing that an area is currently experiencing congestion adversely affecting consumers. In the May 7 notice, we observed that there is no generally accepted understanding of what constitutes a "geographic area experiencing electric energy transmission constraints or congestion that adversely affects consumers," and the phrase, as used in the statute, is ambiguous. We noted that one way in which constraints can adversely affect consumers is by causing congestion that in turn adversely affects consumers. However, we also noted that if Congress had intended to limit the Secretary's designation authority over constraints to cases where constraints are currently causing congestion, then there would have been no need for the statutory language to refer to congestion or constraints. Further, we agreed with those commenters who argued that the total absence of a line connecting two nodes can be just as, if not more, limiting to consumers than the presence of a line that is operating at capacity and, therefore, that "constraint" includes the absence of transmission facilities between two or more nodes. Thus, we stated that 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 the absence of a transmission line, is demonstrably hindering the development of desirable generation. We noted that this interpretation would not only give meaning to all terms in the statutory phrase "constraints or congestion that adversely affects consumers," it would also be consistent with the statutory reference to "experiencing" a constraint. Under this interpretation, any National Corridor designation would necessitate a showing that a current lack of capacity exists and that such lack of capacity is having a current, tangible effect—generation that would be of benefit to the general public including consumers, is actually being hindered by the lack of capacity to bring it to market. Finally, we noted that we were leaving open the question of the type of information that would be required to demonstrate that a constraint actually is hindering the development or delivery of a generation source and that development or delivery of such generation source would be beneficial to consumers.

The Department is not relying on this interpretation of its statutory authority for either of the two designations being made in this report. Despite the characterizations of some commenters, in the case of both the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor, the Department's assertion of authority is based on the conclusion that congestion adversely affecting consumers is currently being experienced. Neither of these two designations relies on any interpretation of the scope of the Department's authority in the absence of current congestion. If and when the Department considers making a National Corridor designation in the absence of current congestion, it intends to provide such designation in draft form for public comment and to consult with all affected States prior to making any final decision. At that time, interested parties will have a full opportunity to raise any concerns they have about the adequacy of the Department's demonstration of authority. Further clarification is beyond the scope of these proceedings.

d. FERC's Process

Summary of Comments

Some commenters raise objections to FERC's process for reviewing permit applications under FPA section 216(b). These commenters dispute FERC's interpretation of FPA section 216(b)(1)(C)(i) allowing it to exercise jurisdiction where a State has denied, as opposed to simply delayed action on, an

application.⁴⁵ NJDEP expresses concern about how FERC will interpret the one-year timeframe for State action under FPA section 216(b)(1)(C)(i). PaDEP expresses concern that FERC's review will be narrowly restricted to the merits of a proposed line rather than examining whether generation or demand resources can better satisfy the underlying needs. PaDEP also expressed concern that approval by one State of a portion of a multi-state project may prejudice FERC's review.

On the other hand, National Grid USA (National Grid) states that FERC's siting rules include a substantial measure of deference to existing regional, State, and local planning and siting processes.

DOE Response

Congress specifically granted to FERC, rather than to DOE, the responsibility of reviewing any permit applications under FPA section 216(b). As required by FPA section 216(c)(2), FERC has issued regulations governing the process it will follow when reviewing any such applications. These regulations are being challenged in court.⁴⁶ Any allegations of inadequacy or inconsistency with statutory intent must be addressed there and are beyond the scope of these proceedings.

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⁴⁵ See, e.g., comments of the Delaware Department of Natural Resources and Environmental Control (DeDNR) and the Public Utilities Commission of Nevada and the Nevada State Office of Energy (Nevada Agencies).

⁴⁶ See *Piedmont Environmental Council, et al. v. FERC*, 4th Cir., Nos. 07-1651, et al.

From: NIETCwebmaster@anl.gov
Sent: Wednesday, July 04, 2007 12:18 PM
To: NIETCwebmaster@anl.gov
Subject: Receipt: NIETC and Congestion Study Comment 80948

Thank you for your comment, Barbara Kessinger.

Your comment has been successfully received and entered into the comment tracking system. Please note that there is no need to send a duplicate set of comments via mail or other means.

The comment tracking number that has been assigned to your comment is 80948. Once the comment document has been published, please refer to the comment tracking number to locate the response.

Comment Date: July 4, 2007 12:18:24PM CDT

NIETC and Congestion Study
Comment: 80948

First Name: Barbara
Last Name: Kessinger
Address: 15033 Walking Stick Way
City: Haymarket
State: VA
Zip: 20169
Country: USA
Email: bgkessinger@comcast.net
Corridor(s) for Comment: Mid-Atlantic Area National Corridor
Attachment: C:\moms files\BGKFamily\BGKessinger DOE Comments re Mid-Atlantic NIET Corridor.doc

Questions about submitting comments over the Web? Contact us at:
NIETCwebmaster@anl.gov or call the NIETC and Congestion Study Webmaster at (630)252-6182.

Written Comments re: the Draft Mid-Atlantic Area NIET Corridor Designation

Submitted by Barbara Kessinger of Haymarket, Virginia

July 4, 2007

I oppose the draft Mid-Atlantic Area NIET Corridor designation in its entirety. My concerns revolve around: (i) the process by which the proposed corridor has been formulated and continues to be considered, and (ii) the proposed corridor itself.

I. Concerns Related to Process

A. Different Meetings, Different Formats

As part of the process of identifying congestion areas and designating the proposed corridor, the DOE has formatted its meetings in ways that have encouraged open discussion in group settings with the energy industry but have discouraged the same with public officials and ordinary citizens. For example, at its public technical conference held in Des Plaines, Illinois, on March 29, 2006, attendees (primarily energy industry representatives) were provided with several opportunities to ask questions and obtain answers in an open forum, and closing remarks indicated that the DOE was looking forward “to continuing the dialogue.” To the contrary, at its public meeting held in Arlington, Virginia, on March 15, 2007, attendees (primarily public officials and ordinary citizens) were told that they had two minutes each to speak and that if they had particular questions they could pursue “a sidebar conversation” with someone from the DOE. By formatting these meetings in the ways that it did, the Department has integrated energy representatives and treated public officials and ordinary citizens as if they were an afterthought.

B. Inability to Obtain Answers to Questions

For three weeks following the DOE's issuance of the draft Mid-Atlantic Area NIET Corridor designation, I attempted to obtain answers to four sets of questions concerning the proposed corridor via multiple phone calls and emails to the DOE. Since all of these attempts were unsuccessful and realizing there would be no open question and answer session at the Arlington meeting, I submitted my questions for inclusion in the public record on May 15, 2007. Furthermore, I requested that answers to these questions also be included in the public record. Repeated attempts to obtain answers to my questions have been unsuccessful as of July 4, 2007, in that I have not received any electronic or other response from the DOE.

C. Inability to Obtain Response to FOIA Request

Largely because my questions remained unanswered, I submitted a broad Freedom of Information Act (FOIA) request to the DOE on May 5, 2007. I requested the DOE to make documents that it considered and/or relied upon in preparing its Congestion Study and its draft Mid-Atlantic Area NIET Corridor designation available for review. In a responsive email dated May 8, 2007, a representative of the DOE noted "that a substantial volume of data that is responsive to (my) request is already publicly available on DOE's web site." Since my FOIA request was processed and assigned a number on May 8, 2007, it is my understanding that the 20-day period during which the DOE should have responded to my FOIA request expired no later than June 6, 2007. The DOE has not yet apprised me whether other documents (besides those posted on its web site) were considered and/or relied upon in preparing its Congestion

Study and its draft Mid-Atlantic Area NIET Corridor designation, much less has it offered to make any such documents available for review. Repeated attempts to obtain a response to my FOIA request have been unsuccessful as of July 4, 2007, in that I have not received any electronic or other response from the DOE.

D. Different Audiences/Different Treatment

As part of the process of identifying congestion areas and designating the proposed corridor, the DOE has held over 60 outreach meetings within the energy industry over a one-year period but has offered approximately (according to the DOE) 55 million citizens in the mid-Atlantic area four public meetings and a mere 60 days of input. Apparently, public officials were either not consulted, not adequately consulted, or not consulted in equivalent ways. It also appears that citizens who reside in three or four counties in West Virginia and in two counties in Pennsylvania may not have received the same notice of the draft corridor designation or of public meetings as citizens who reside elsewhere. By conducting its business in the ways that it has, the Department has ubiquitously embraced industry representatives and largely ignored public officials and ordinary citizens.

E. Further Comments

The DOE should schedule additional meetings for public officials and ordinary citizens that include open question and answer sessions regarding the proposed corridor. The Department should keep in mind in announcing these meetings that the overwhelming majority of Americans do not read the Federal Register. The DOE should ensure that all citizens who reside in the proposed corridor are treated equally when they are provided notice of such meetings.

The DOE should respond in a timely manner to any and all questions it has received and should immediately respond to any and all FOIA requests for which a response is overdue.

The DOE should ensure that all citizens have the same opportunity to participate in the process by posting answers to questions as well as further documents that have been requested. The Department should provide an additional written comment period. The DOE should consult with all public officials whose districts would be impacted by the proposed corridor.

II. Concerns Related to the Proposed Corridor Itself

A. Corridor Is Too Broad

Clearly, this draft corridor designation is so broad that it makes a mockery of the word corridor. Why are the New York City area and the Washington, D.C./Metropolitan area included in the same corridor? Why are so many military bases included therein? The reach of this so-called corridor seems to undermine, not enhance, national security.

B. Corridor's Life Span Is Too Long

I cannot comprehend why any corridor designation this large would need to remain in effect for twelve years. Why couldn't portions of the corridor be rescinded within a shorter time frame? I have personally requested a summary of the "for cause" reasons the DOE could rescind, modify, or renew a corridor, but no such summary has been made available for review.

C. Corridor Has a Built-In Bias for Transmission Lines

I am concerned that the DOE seems to have constructed this corridor with a built-in bias for transmission lines. It is significant that at no time between

the release of its Congestion Study in August 2006 and the issuance of its draft corridor designations in April 2007 does there appear to have been any attempt made by the DOE to formulate for recommendation national energy policy that would mandate stewardship at the federal level. I am concerned that if the DOE approves this *electric transmission* corridor, demand response and generation options would not be considered on par with more high-voltage power lines.

D. Corridor Could Cause Uncertain or Inconsistent Eminent Domain Ramifications

I cannot discern what eminent domain law would apply to the taking of private property for the siting of transmission lines pursuant to any permits issued in the future as a result of this corridor being approved. Would the same body of federal law apply to property owners who reside in different states, or would respective state laws apply? I have personally requested the DOE to provide a summary of applicable eminent domain law, but again no such summary has been made available for review.

E. Corridor Could Cause Uncertain or Unintended Environmental Consequences

Obviously, this draft corridor designation raises numerous environmental concerns and even more questions. Would our national parks, much less other historic and cultural sites, be protected? Would federal recognition of the Journey Through Hallowed Ground currently being sought for part of the mid-Atlantic region be compromised? Environmental Impact Statements produced after corridor approval could not possibly adequately address these and other concerns.

F. Further Comments

The DOE should reconsider its inclusion of the New York City area and the Washington, D.C./Metropolitan region in the same corridor, as well as the inclusion of critical U.S. military bases. Moreover, the DOE should reevaluate the prudence of keeping such a large corridor intact for 12 years. If it has not already done so, the Department should prepare a summary of the for cause reasons the DOE could rescind, modify, or renew this corridor and provide it to citizens for their review.

The DOE should prepare for recommendation national energy policy that would mandate stewardship at the federal level in the event this corridor is approved. In fact, approval of this or any other corridor should be contingent upon the federal government implementing other energy solutions, including broad conservation measures, enhanced energy efficiency efforts, and maximum participation in demand-side management programs.

The DOE should thoroughly evaluate any and all federal and state eminent domain ramifications that could result if this corridor were approved. If it has not already done so, the Department should prepare a summary of applicable eminent domain law and provide it to citizens for their review. Furthermore, the DOE should prepare an Environmental Impact Statement, in which it should carefully identify any and all environmental consequences that might occur if this corridor were approved.

By way of summary, the Mid-Atlantic Area NIET Corridor drafted by the DOE should not be approved for final designation. Due process concerns raised by public officials as well as ordinary citizens are serious, well-documented, and numerous. Concerns about its size and life span, an apparent built-in bias for transmission lines, and the long-term potential for eminent domain abuse and environmental pillage are compelling. This corridor would not protect and promote the welfare of our great nation; indeed, it would cause significant and irreparable harm.

Exhibit 4



U.S. DEPARTMENT OF ENERGY

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View Public Comments, Public Meeting Materials, and Other Correspondence

Public comments, meeting transcripts, materials submitted at public meetings, and other correspondence for (1) the August 8, 2006, Congestion Study, and for (2) the May 7, 2007, Federal Register Notice on the draft National Interest Electric Transmission Corridor Designations ("National Corridors").

Comments Received in Response to the August 8, 2006, Federal Register Notice of Availability of the Congestion Study

Public comments submitted in response to the August 8, 2006, Federal Register Notice of Availability on the Congestion Study are available in a [searchable online database](#).

Comments and Other Correspondence on the May 7, 2007, Federal Register Notice on the Draft National Corridors

Public Comments Received

Public comments received are available in Adobe Acrobat format. Follow the links below to search and retrieve comments on the Mid-Atlantic Area National Corridor or Southwest Area National Corridor.

[Search Docket 01 Mid-Atlantic Area National Corridor Comments](#)

[Search Docket 02 Southwest Area National Corridor Comments](#)

Other Correspondence

- [Other Correspondence: Batch 1 \(8.1 MB\)](#)
- [Other Correspondence: Batch 2 \(2.7 MB\)](#)
- [Other Correspondence: Batch 3 \(3.6 MB\)](#)
- [Other Correspondence: Batch 4 \(3.9 MB\)](#)
- [Other Correspondence: Batch 5 \(4.1 MB\)](#)
- [Other Correspondence: Batch 6 \(779 KB\)](#)
- [Form Letter and Signatories: "As Realtors in the Utica..." \(147 KB\)](#)
- [Form Letter and Signatories: "I protest the Trans..." \(79 KB\)](#)
- [Form Letter and Signatories: "I am writing with regard..." \(171 KB\)](#)
- [Form Letter and Signatories: "As a resident of New York....." \(202 KB\)](#)
- [Form Letter and Signatories: "As a concerned citizen..." \(15 KB\)](#)

Public Meetings

May 15, 2007 Public Meeting in Arlington, VA

Comments

Exhibit 5

Avenue SW, Washington, DC 20585, that were received on or before July 6, 2007; or 3) hand-delivered written comments marked “Attn: Docket No. 2007-OE-01” at one of the public meetings.

2. Fairness of the Designation Process

Summary of comments

Many commenters, including numerous individuals, argued that the Department had failed to provide adequate opportunity for the public to review and comment on the draft National Corridors. For example, John Balasko argued that the Department should have done more to inform and involve the general public because, “If this corridor is adopted, no longer will landowners within the corridor be free to make sound land management decisions because the hammer of the Federal Energy Regulatory Commission and perhaps federal eminent domain is looming in the background.” CARI contends that designation of the draft Mid-Atlantic Area National Corridor would be a “rule” subject to the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (APA). Many commenters argued that more public meetings should have been held and that they should have been held along the routes of various proposed transmission projects within the draft National Corridors.⁴⁷ Numerous commenters requested an extension of the comment period. In particular, commenters argued that the June 7 errata published by the Department warranted an extension of the comment period. Numerous individuals and organizations asserted that the Department had failed to reveal the data underlying the draft designations.⁴⁸

⁴⁷ See, e.g., comments of Karen Smolar, Rand Carter, Dale Roberts, U.S. Sen. Clinton, and NY Rep. Destito.

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Many commenters, including a number of individuals, alleged that the draft National Corridor designations were the result of improper influence by transmission companies.⁴⁹ Some commenters complained that instead of conducting an independent study of congestion, the Department improperly relied on data and analyses from utilities or others with a vested interest in transmission expansion.⁵⁰

DOE Response

The Department concludes that its process has been fair, open, and transparent, and that it has provided ample opportunity for public comment. DOE does not agree that the designation

⁴⁷ See, e.g., comments of Karen Smolar, Rand Carter, Dale Roberts, U.S. Sen. Clinton, and NY Rep. Destito.

⁴⁸ See, e.g., comments of Greene County, Rick Layton, and Barbara Kessinger.

⁴⁹ See, e.g., comments of Diane Eisenberg ("The proposals smack of cronyism, a lack of transparency, and improper attempts by secretive private interests to influence national energy policy not for the public benefit but for their own profit.").

⁵⁰ See, e.g., comments of Toll Brothers, Inc. (Toll Bros.) and Jeffrey Brown.

of National Corridors is subject to the APA's informal rulemaking provisions. FPA section 216(a) does not expressly require rulemaking, and, in DOE's view, the designation of National Corridors constitutes informal adjudication under the APA. Absent a statutory or other legal requirement providing otherwise, the choice whether to use rulemaking or adjudication in a particular matter is the administrative agency's to make. The APA defines "adjudication" as "an agency process for the formulation of an order." 5 U.S.C. 551(7). An order is "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing." 5 U.S.C. 551(6). A report designating a National Corridor is the final disposition in declaratory form of how DOE chooses to address the results of the study it must conduct under FPA section 216(a), and, therefore, is an informal adjudication for APA purposes.

Regardless of the label one applies to the designation of National Corridors, DOE has employed procedures that satisfy all applicable procedural requirements. DOE complied with FPA section 216(a)(2) by soliciting comments on the Congestion Study through a notice of availability and request for comments published on August 8, 2006 (71 FR 45047). DOE allowed 60 days for submission of public comments on the Congestion Study. After considering the comments received pursuant to that solicitation, DOE published the May 7 notice and provided a 60-day public comment opportunity on draft National Corridor designations. The May 7 notice stated that public comments would be considered prior to DOE issuing a report as required by FPA section 216(a)(2). DOE provided this comment opportunity even though FPA section 216(a) does not require DOE to solicit comments on either the report or on any proposed or draft National Corridor designations. FPA section 216(a) only requires that DOE solicit comments on the study, upon which the report and any designation of National Corridors are based.

In addition, the Department held a series of public meetings on the draft National Corridors. Although the Department was not required to hold any public meetings, it announced in the May 7 notice that it would hold three public meetings. In response to numerous requests for additional meetings, the Department held four more meetings. With regard to complaints about the Department's failure to schedule meetings along the

routes of various proposed transmission projects, the Department notes that, as discussed in Section I.A above, designation of a National Corridor is not a siting decision, nor does such designation constitute approval or endorsement of any transmission project.

While some commenters argue that the June 7 errata warranted extension of the comment period, the Department notes that the counties inadvertently omitted from the narrative list were included in the previously available map of the draft Mid-Atlantic Area National Corridor. Further, given that the designations were issued in draft and the Department was soliciting comment on those drafts, including comment on its delineation of the boundaries of the draft National Corridors, persons concerned about counties in the general vicinity of the draft National Corridors were on notice on May 7, 2007, of the need to provide comments by July 6, 2007.

The Department believes it has provided adequate disclosure of information. The May 7 notice identified the specific data the Department relied on to: Establish the existence of congestion adversely affecting consumers, determine whether the Secretary should exercise his discretion to designate a National Corridor, and delineate the specific boundaries of the draft National Corridors. Those data included memoranda that the Department has made available on its Web site. In addition, as noted in the May 7 notice, the non-proprietary data relied on in the Congestion Study has been available on the Department's Web site since September 27, 2006.

The Department did not rely solely on data and information from any single source or category of sources. While conducting the Congestion Study, the Department contacted a wide range of stakeholders for publicly available and current data, and then, through the notice of inquiry and technical conference, opened the call for data to all entities. The Department then performed its own review of the information provided. All interested persons had an opportunity to comment on the May 7 notice, and the Department has considered all timely filed comments.

3. Adequacy of State Consultation Summary of Comments

Some commenters asserted that the Department has failed to adequately consult with affected States. For example, Virginia Governor Kaine states

Jody Erikson: Certain other people, I'm told, were there, so Chris Miller, are you here? Donna Widawski, are you here? If you guys can at least stand up, that would be great, so that I know that you're there. That's fine. We're on to the regular list.

Donna Widawski: I brought my own timer. I'm addressing this to Secretary Samuel Bodman. You don't know me, Mr. Bodman, because you never had a need to know me. I don't have high-powered lobbyists working on my behalf, nor was I part of the group of electric companies who gave over \$15 million in the last federal campaign cycle. My name is Donna Widawski. I'm a 47-year-old stay-at-home mom from Virginia whose only agenda is to do the right thing. This kitchen timer represents the marginalization of citizens' input into this NIETC designation. My question to you is this. Did you only give two minutes to speak to the CEO of Edison Electric, Tom Kuhn? And Steve Specker, CEO of Electric Power Research Institute, when you were a keynote speaker recently at a luncheon with them on May 7 in Redmond, Washington? Did the Department of Energy limit to two minutes the conversations they had with utility industry representatives and other energy special interest groups over a one-year period meeting more than 60 times?

Ordinary citizens were never part of DOE's decision-making process, nor were they represented before the Energy Department, while private companies seeking eminent domain powers were. I attempted to contact you directly, and although your staff was very polite, there was no time for you to meet with me. Mr. Bodman, this draft proposal is an insult to all hard-working citizens and reeks of influence. It's the large electric companies and lobbyists with cash and connections who have been given preferential treatment with this corridor proposal. They are the ones who have turned government into a game only they can afford to play. They believe that citizens like myself and those in this room are just a temporary bump on the road of government of, by, and for the privileged few.

There is an old saying out there. "The stink in the fish starts in the head." Mr. Bodman, this proposal stinks of influence and will have serious ramifications for generations to come if approved by you. Instead of taking direction from the power companies, how about doing what is right for all Americans? Thank you.

Jody Erikson: Daniel Thorne? Barbara Kessinger? Philip Fedora, Scott Billings.

Barbara Kessinger: My name is Barbara Kessinger. I reside in Kaymoor, West Virginia. Over the past 21 months, ordinary citizens like me have been virtually excluded from a supposedly public process. Not being regular readers of the Federal Register, we were not aware of the DOE's published notices. Not being affiliated with energy organizations, we were not invited to the DOE's 60-plus outreach meetings. Even during this draft designation public comment period, it's been difficult to participate. I've attempted unsuccessfully to obtain answers to several questions which are not adequately addressed in the DOE's Frequently Asked Questions link. I was never able to reach the technical and legal contact persons identified therein. Other individuals I did speak with, they were courteous, but they did not have technical or legal backgrounds. This has been very frustrating. To gain additional information and access thereto, I've submitted a broad Freedom of Information Act request. That request is being processed; however, my request for waiver of fees has been denied.

I've also requested that any documents that are released pursuant to my FOIA request be included in a reading room so other citizens can review them, but that request, I'm told, falls outside the scope of FOIA. I have reviewed documents in the DOE's documents claim, but my four sets of questions remain unanswered. This binder contains the questions on the front and copies of a couple dozen communications that have occurred during my attempts to become fully informed. As I stated in one of my e-mails, I need my questions answered to prepare my written comments. Again, this has all been very frustrating.

Other citizens, including our comrades in Pennsylvania, are having experiences similar to mine. Please consider designating a reading room that would provide access to more documents, and that would include a forum for citizens to ask and obtain answers to their questions. Please include my questions and your answers in the public record for the draft corridor designation process, just like you did for others at your Chicago conference. Thank you for this opportunity to speak today.

Jody Erikson: Phil Fedora, Scott Billing, Mitch Diamond.

Philip Fedora: Good morning. My name is Philip Fedora. I'm Assistant Vice President of Reliability Services at NPCC, Inc. Northeast Power Coordinating Council, Incorporated, is the international regional reliability organization for northeastern North America. NPCC, Inc., provides regional reliability member services and acts as a vehicle through which states and provinces can fulfill their political mandate to oversee the northeastern North American electric infrastructure through development, assessment and enforcement of regionally specific reliability criteria, including those addressing adequacy requirements.

The geographic area of NPCC totals approximately 1 million square miles and includes New York state, the six New England states, Ontario, Quebec, and the Maritime Provinces. The total population served is approximately 56 million people, and from an electric load perspective, 20% of the eastern interconnected load is served within the NPCC region. For Canadian electricity requirements, 70% of Canada's load is located within the NPCC region.

With that background, NPCC, Inc., respectfully submits the following comments for DOE's consideration regarding its Draft Mid-Atlantic Area National Corridor. While NPCC, Inc., supports DOE's approach to identify corridors for potential projects as opposed to specific routes for transmission facilities, the source and sink approach adopted may result in too narrowly defined corridor designations that may preclude consideration of additional transmission and supporting facilities outside of the specified corridor for the project that would be needed to meet NORC or ERO reliability standards and more stringent regional or local reliability criteria. These reliability considerations are not limited to the United States grid system, but can extend, in the case of the proposed draft mid-Atlantic area corridor, into Canada as well.

In closing, the draft mid-Atlantic corridor designation needs to be broad enough to allow for the complete reliable integration of any of the proposed corridor projects in order to mitigate any identified adverse reliability consequences beyond the immediate area where the projects are located. Thank you.

Jody Erikson: Scott Billing, Mitch Diamond, Bonnie Atkins.

Mitch Diamond: Good morning. My name is Mitch Diamond, and I'm an energy professional with over 30 years of experience advising senior energy executives and government decision makers on energy policy, technology, and business strategy. In my professional opinion, the designation of National Interest Electric Transmission Corridors is premature, and misses an important opportunity for good government energy policy. These proposed corridors are designed to enable the transfer of large quantities of coal-fired generation to coastal markets to relieve price congestion and some potential local overloads.

This designation has three major problems. One, this potential transfer of coal-fired electricity will have profound effects on greenhouse gas production, air pollution, water quality, fuel usage patterns, physical systems security, system vulnerability, and on pricing signals to producers and markets. No federal study of these effects has been conducted. Two, the designation of these corridors will provide a significant advantage to one solution, transmission, and a disadvantage to all other solutions, including technological improvements to the current network, demand side

Exhibit 8

Questions Regarding the Draft Mid-Atlantic Area NIET Corridor Designation

Submitted by Barbara Kessinger on May 15, 2007

1. Between the release of the National Electric Transmission Congestion Study on August 8, 2006, and the issuance of the draft Mid-Atlantic Area Corridor designation on April 26, 2007, was there any attempt made by the DOE to divide the mid-Atlantic region into two smaller regions so that the New York City area and the Washington D.C./Metropolitan area would no longer be interconnected? If so, please elaborate.
2. Has the DOE determined with certainty how long the corridor would be in effect, or is the 12-year period just an estimate? Would it be possible for the corridor to be narrowed over time as congestion problems are partially resolved? Is a summary of the “for cause” reasons the DOE could rescind, modify, or renew the corridor available for citizens to review?
3. Has the DOE determined the eminent domain law that would apply to the taking of private property for the siting of a transmission line pursuant to a permit issued by the FERC? Would the same body of federal law apply to citizens who reside in different states, or would respective state laws apply? Is a summary of the applicable eminent domain law available for citizens to review?
4. Between the release of the National Electric Transmission Congestion Study on August 8, 2006, and the issuance of the draft Mid-Atlantic Area Corridor designation on April 26, 2007, was there any attempt made by the DOE to formulate for recommendation national energy policy that would mandate energy stewardship (i.e., conservation, energy efficiency, and demand-side management) at the federal level? If so, please elaborate.

Exhibit 9

From: BGKessinger@comcast.net
To: kevin.kolevar@hq.doe.gov
CC: poonum.agrawal@hq.doe.gov
Subject: Freedom of Information Act Requests
Date: Saturday, May 05, 2007 3:11:43 PM

May 5, 2007

Director Kolevar:

So that citizens can adequately prepare their comments, written and oral, in response to the Department of Energy's issuance of its draft mid-Atlantic NIET Corridor designation, citizens desire to review data the DOE used to prepare its congestion study and to prepare its draft mid-Atlantic NIET Corridor designation.

Pursuant to the Freedom of Information Act, I am requesting the Department of Energy to make available for citizen review any and all data it considered and/or relied upon to prepare its congestion study during the timeframe August 1, 2005, through August 31, 2006, inclusive.

Pursuant to the Freedom of Information Act, I am requesting the Department of Energy to make available for citizen review any and all data it considered and/or relied upon to prepare its draft mid-Atlantic NIET Corridor designation during the timeframe August 1, 2006, through April 26, 2007, inclusive.

Please apprise me of a time and place when the records identified above can be made available for citizen review prior to Friday, May 11, 2007. Thank you.

Sincerely,

Barbara Kessinger
15033 Walking Stick Way
Haymarket, VA 20169
(703)754-3001



Exhibit 10

Department of Energy

Washington, DC 20585

AUG 09 2007

Ms. Barbara Kessinger
15033 Walking Stick Way
Haymarket, VA 20169

Re: FOIA -2007-000418

Dear Ms. Kessinger:

This is in final response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S. C. 552. You asked for all data DOE considered and/or relied upon through August 1, 2005, to August 31, 2006, to prepare its August 8, 2006, National Electric Transmission Congestion Study (Congestion Study) and all data DOE considered and/or relied upon between August 1, 2006, through April 26, 2007, to prepare its draft Mid-Atlantic Area National Interest Electric Transmission Corridor (National Corridor) designation.

A search was conducted by the Permitting, Siting and Analysis Division of the Office of Electricity Delivery and Energy Reliability for responsive data to determine if the DOE has in its possession documents responsive to these requests. All documents considered and/or relied upon to prepare the Congestion Study and the draft national Corridor designation have been posted on the DOE website. These documents are in the public domain and may be viewed at <http://nietc.anl.gov/>. The search did not locate any additional documents responsive to your requests. For this reason, the only responsive documents we are able to provide to you are those referenced above on the website indicated.

Pursuant to Title 10, Code of Federal Regulations (CFR), Section 1004.7 (b)(2), I am responsible for the determination that no documents exist in the Office of the Electricity Delivery and Energy Reliability that are responsive to these requests. Mr. Marshall Whitenton, Deputy Director, Permitting, Siting and Analysis Division, is responsible for the determination that no responsive documents exist in that office that are not already publicly available on the DOE website.

Pursuant to 10 CFR 1004.8, the adequacy of a search may be appealed in writing within 30 calendar days of receipt of a letter denying any portion of the requests. The appeal should be made to the Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615.



Printed with soy ink on recycled paper

Exhibit 10
(continued)

The written appeal, including the envelope, must clearly indicate that a Freedom of Information Appeal is being made. The appeal must contain all the other elements required by 10 CFR 1004.8. Judicial review will thereafter, be available to you: (1) in the district where you reside; (2) in the district where you have principle place of business; (3) in the district where the DOE records are situated; or (4) in the District of Columbia.

Fees to process the request did not exceed \$15.00, the minimum amount at which the Department assesses fees. For this reason, there are no fees associated with processing the request.

I appreciate the opportunity to assist you with this matter. If you have any questions about the request or this correspondence, please contact Mr. Morris at (202) 586-3159.

Sincerely,



Marshall E. Whitenton
Deputy Director
Permitting, Siting and Analysis

P.S.

Ms. Kessinger - this letter is a corrected version of the letter the Department sent you dated July 29. Thank you for catching our mistake.