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FAX

To	<u>Office of Electric Delivery and Energy Reliability, OE-20</u>	From	<u>Barbara Kessinger</u>
	<u>Attn: Docket No. 2007-OE-02</u>		
Company	<u>Department of Energy</u>	Phone number	<u>(703) 754-3001</u>
Fax number	<u>(202) 586-8008</u>	Fax number	_____
Date	<u>October 30, 2007</u>	Total pages	<u>13</u>
Job number	_____		

October 30, 2007

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

Re: Southwest Area National Corridor,
aka Southwest Area National Interest Electric Transmission (NIET) Corridor
Attn.: Docket No. 2007-OE-02

Dear Sir or Madam:

Please find attached, for filing in Docket No. 2007-OE-02, Notice of Errata regarding the Department of Energy's (DOE's) website-posted information regarding the filing of applications for rehearing regarding the above-referenced corridor.

Sincerely,



Barbara Kessinger, Esq.
California Bar. No. 176198

My contact information is as follows:
15033 Walking Stick Way
Haymarket, VA 20169
(703)754-3001
bgkessinger@comcast.net

October 30, 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

Re: Southwest Area National Corridor,
aka Southwest Area National Interest Electric Transmission (NIET) Corridor
Attn.: Docket No. 2007-OE-02

NOTICE OF ERRATA

Regarding the Department of Energy's (DOE's) Website-Posted Information
re: Filing Applications for Rehearing during the 30-Day Period that Is Scheduled to End 11/5/2007

Secretary of Energy Samuel Bodman and Director Kevin Kolevar:

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. I filed comments electronically with the DOE re: the Draft Mid-Atlantic Area NIET Corridor Designation on July 4, 2007 (Comment No. 80948), in reliance on instructions included on the Public Comment Form provided on the DOE website. My electronically-filed comments are posted on the DOE website via the Search Docket 01 Mid-Atlantic Area National Corridor Comments link. My comments are also referenced 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, in footnote 48 on page 33. My comments are also referenced in the DOE's Federal Register Notice of said Report and Order dated October 5, 2007, filed in Docket Nos. 2007-OE-01 and 2007-OE-02, in footnote 48 on page 57001.

Through July 6, 2007 (the end of the public comment period), the DOE's website provided information posted on its web page at <http://nietc.anl.gov/involve/comments/index.cfm> containing instructions for the electronic submission of public comments. Those filing comments electronically were instructed to select from three choices depending on the corridor(s) to which their comments pertained (Mid-Atlantic, Southwest, or both) but were not instructed to include any docket number(s) on their electronically submitted comments. By omitting this requirement from its instructions pertaining to electronic filing, citizens were imparted with the understanding that their comments would be marked/filed automatically within the appropriate docket file.

Comments submitted electronically are posted on the DOE's website. On the DOE's web page at <http://nietc.anl.gov/involve/reviewcomment/index.cfm> two links are provided as follows:

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

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

These links take citizens to electronically-filed comments that are organized alphabetically. The inclusion of the words "Docket 01" and "Docket 02" in the titles for the above-cited links corroborates citizens' understanding that it was not necessary to include a reference to the appropriate docket number on written comments filed electronically.

On October 2, 2007, the Department of Energy (DOE) issued its Report and Order that designates two national interest electric transmission corridors.

On page 32 of this Report and Order, in Section II. Mid-Atlantic Area National Corridor (Docket No. 2007-OE-01), Subsection A. Procedural Matters, Subsection 1. Parties to This Proceeding, the DOE states:

"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 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.**" (emphasis added)

See Exhibit 1 attached hereto.

On page 86 of this Report and Order, in Section III. Southwest Area National Corridor (Docket No. 2007-OE-02), Subsection A. Procedural Matters, the DOE states:

"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-02" to the Office of Electricity Delivery and Energy Reliability, OE-20, U.S. Department of Energy, 1000 Independence 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-02" at one of the public meetings.**" (emphasis added)

See Exhibit 2 attached hereto.

At 2:51PM on October 2, 2007, I received an electronic notice from nietcwebmaster@anl.gov that states:

“For more information about the National Interest Electric Transmission Corridors and Congestion Study, visit the National Interest Electric Transmission Corridors and Congestion Study Web site at (<http://nietc.anl.gov/index.cfm>), or contact us at: nietcwebmaster@anl.gov.

This electronic notice also states,

“Please forward this message to any party you feel may be interested in the National Interest Electric Transmission Corridors and Congestion Study.”

See Exhibit 3 attached hereto.

The <http://nietc.anl.gov/index.cfm> link referenced in the nietcwebmaster's October 2, 2007, electronic notice directs citizens to the DOE's web page that includes a link under the heading “**Information and Resources**” entitled Application for Rehearing NEW!, with a descriptive statement underneath the link that states: “Information on being a party to this proceeding and applying for a rehearing.” The Application for Rehearing NEW! link takes citizens to the DOE's web page at <http://nietc.anl.gov/rehearing/index.cfm> entitled “**Parties to This Proceeding and Applications for Rehearing.**” On this web page, the DOE states:

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

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, **DOE is granting party status in this docket to all persons who either:**

1. **filed comments marked “Attn: Docket 2007-OE-01” electronically at <http://niete.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 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. Only those persons who are parties to the proceeding in Docket No. 2007-OE-01 and who are aggrieved by the order in that docket may apply for rehearing pursuant to FPA section 313.”

(emphasis added)

"II. Southwest Area National Corridor (Docket No. 2007-OE-02)

The Department grants party status in Docket No. 2007-OE-02 to all persons who either:

1. **filed comments marked "Attn: Docket 2007-OE-02" electronically at <http://nietc.anl.gov> on or before July 6, 2007;**
2. **mailed written comments marked "Attn: Docket No. 2007-OE-02" to the Office of Electricity Delivery and Energy Reliability, OE-20, U.S. Department of Energy, 1000 Independence 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-02" at one of the public meetings. Only those persons who are parties to the proceeding in Docket No. 2007-OE-02 and who are aggrieved by the order in that docket may apply for rehearing pursuant to FPA section 313."**

(emphasis added)

On October 5, 2007, the DOE's National Electric Transmission Congestion Report and Order that designates two national interest electric transmission corridors was noticed in the Federal Register, beginning on page 56992, with the following heading:

"DEPARTMENT OF ENERGY

[Docket No. 2007-OE-01, Mid-Atlantic Area National Interest Electric Transmission Corridor; Docket No. 2007-OE-02, Southwest Area National Interest Electric Transmission Corridor]

National Electric Transmission Congestion Report

AGENCY: Department of Energy.

ACTION: Order."

On page 57000 of the DOE's Federal Register Notice of said Report and Order, in Section II. Mid-Atlantic Area National Corridor (Docket No. 2007-OE-01), Subsection A. Procedural Matters, Subsection 1. Parties to This Proceeding, the Notice states:

"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 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." (emphasis added)

See Exhibit 4 attached hereto.

On page 57014 of the DOE's Federal Register Notice of said Report and Order, in Section III. Southwest Area National Corridor (Docket No. 2007-OE-02), Subsection A. Procedural Matters, the Notice states:

"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-02" to the Office of Electricity Delivery and Energy Reliability, OE-20, U.S. Department of Energy, 1000 Independence 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-02" at one of the public meetings." (emphasis added)

See Exhibit 5 attached hereto.

The DOE's website provides a link to the DOE's October 5, 2007, Federal Register Notice of its Report and Order dated October 2, 2007, as follows: On the DOE's web page at <http://nietc.anl.gov/documents/index.cfm>, under the heading, "**National Corridor Designation Documents**," under the subheading "**National Electric Transmission Congestion Report**," there is an adobe file posted that is entitled, Federal Register Notice, National Electric Transmission Congestion Report (1.4 MB).

By way of summary, comments filed electronically (the vast majority of which did not include docket numbers) have been organized in files linked to "Search Docket 01..." and "Search Docket 02...", such wording being consistent with the content of the instructions previously provided for the electronic submission of public comments. Also consistent with the content of said instructions is the identification of parties to this proceeding provided in the DOE's

10/2/07 Report and Order (pages 32 and 86) and the DOE's 10/5/07 Federal Register Notice of said Report and Order (pages 57000 and 57014). However, the DOE's information currently provided on its website at <http://nietc.anl.gov/rehearing/index.cfm> on being a party to this proceeding and applying for a rehearing is inconsistent with the "Search Docket 01..." and "Search Docket 02..." -entitled links as well as the DOE's identification of parties to this proceeding contained on the pages set forth above, respectively, for the 10/2/07 Report and Order and the 10/5/07 Federal Register Notice of said Report and Order or at the very least ambiguous in regard to those who filed electronically. The information provided is being interpreted by ordinary citizens in two ways: (1) those filing comments electronically are only considered to be parties to this proceeding if they included in their comments the words "Attn: Docket 2007-OE-01" or "Attn: Docket 2007-OE-02"; (2) those filing comments electronically are automatically considered parties to this proceeding regardless of whether their comments included the words "Attn: Docket 2007-OE-01" or "...-02" because their comments were "marked "Attn: Docket 2007-OE-01" or "...-02" electronically (i.e., automatically) when they were submitted and moved to the appropriate docket file.

I have personally relied on the DOE's identification of parties contained in its 10/2/07 Report and Order and also in its 10/5/07 Federal Register Notice of said Report and Order, set forth on pages 32 and 57000, respectively, in preparing my application for rehearing as an identified party to this proceeding. I also have personal knowledge of other citizens who are unclear whether they have status to file an application for rehearing as a party to this proceeding, some of whom may be detrimentally relying on the DOE's website application for rehearing information page and not filing applications for rehearing because they do not believe they have been granted party status to do so.

Citizens have relied and will continue to rely on information and instructions posted by the DOE on its website. Scores of millions of Americans are impacted by the DOE's designation of national corridors, and thousands have submitted public comments. Citizens expect the DOE to provide consistent and unambiguous information and instructions on its website so they can make well-informed decisions.

I urge the DOE to immediately address this situation by changing its **"Information on being a party to this proceeding and applying for a rehearing"** on its DOE web page at <http://nietc.anl.gov/rehearing/index.cfm> so that it reflects and is consistent with the DOE's previously provided instructions for electronic filing as well as the DOE's broader identification of parties to this proceeding provided both in its 10/2/07 Report and Order on pages 32 and 86 and in its 10/5/07 Federal Register Notice of said Report and Order on pages 57000 and 57014. Moreover, I urge the DOE to extend its time period for the filing of applications for rehearing to thirty days beyond the date on which the DOE changes its information identifying parties to this proceeding on its web page at <http://nietc.anl.gov/rehearing/index.cfm>.

Thank you in advance for your immediate attention to the important matters addressed herein.

Barbara Kessinger

Barbara Kessinger, Esq.
California Bar. No. 176198

Exhibit 1

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.

Exhibit 2

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. Further, the Department does not intend to allow the termination of the Mid-Atlantic Area National Corridor designation as it may apply to an accepted permit application pending at FERC, or, once FERC has granted a permit, during the period in which the approved facilities are being constructed.

III. Southwest Area National Corridor (Docket No. 2007-OE-02)

A. Procedural Matters

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-02" to the Office of Electricity Delivery and Energy Reliability, OE-20, U.S. Department of Energy, 1000 Independence 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-02" at one of the public meetings.

B. Overall Comments on the Draft Southwest Area National Corridor

The Department received comments from State agencies and officials expressing a range of views about the draft Southwest Area National Corridor. Arizona Governor Napolitano and the Arizona Corporation Commission (ACC) both filed comments opposing designation of the draft Southwest Area National Corridor. Nevada Agencies,

Exhibit 3

From: nietcwebmaster@anl.gov
To: BGKessinger@comcast.net
Subject: DOE Designates National Interest Electric Transmission Corridors
Date: Tuesday, October 02, 2007 2:51:36 PM

**DOE Designates Southwest Area and Mid-Atlantic Area
National Interest Electric Transmission Corridors**

WASHINGTON, DC – U.S. Department of Energy (DOE) Assistant Secretary for Electricity Delivery and Energy Reliability Kevin M. Kolevar today announced the Department's designation of two National Interest Electric Transmission Corridors (National Corridors) – the Mid-Atlantic Area National Interest Electric Transmission Corridor, and the Southwest Area National Interest Electric Transmission Corridor. These corridors include areas in two of the Nation's most populous regions with growing electricity congestion problems. The Department based its designations on data and analysis showing that persistent transmission congestion exists in these two areas. Further information, including the complete National Electric Transmission Congestion Report and the maps, is available on the Corridors web site at <http://www.nietc.anl.gov>.

*Exhibit 3
(continued)*

For More Information

For more information about the National Interest Electric Transmission Corridors and Congestion Study, visit the National Interest Electric Transmission Corridors and Congestion Study Web site at (<http://nietc.anl.gov/index.cfm>), or contact us at: nietcwebmaster@anl.gov

Forward This Message

Please forward this message to any party you feel may be interested in the National Interest Electric Transmission Corridors and Congestion Study.

Exhibit 4

57000

Federal Register/Vol. 72, No. 193/Friday, October 5, 2007/Notices

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.

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 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.

⁴⁵ See, e.g., comments of the Delaware Department of Natural Resources and Environmental Control (DeDNREC) 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.

Exhibit 5

57014

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State and regional efforts may well resolve the congestion problems afflicting the Mid-Atlantic Critical Congestion Area without any invocation of FERC authority. However, as the May 7 notice documented, economic development, reliability, supply diversity, energy independence, and national defense and homeland security considerations all warrant designation of the draft Mid-Atlantic Area National Corridor.¹⁰¹ 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 a portion of one State.¹⁰² National Corridor designation provides, in a defined set of circumstances, a potential mechanism for analyzing the need for transmission from a national, rather than State or local, perspective. The comments the Department has received on the draft Mid-Atlantic Area National Corridor reveal the presence of the kinds of tensions that prompted Congress to create such a mechanism. The Department acknowledges that designation of the draft Mid-Atlantic Area National Corridor introduces a significant new possibility into the process of siting transmission, and that the existence of this possibility may pose challenges for States and may ultimately prove unnecessary. However, given the totality of circumstances, including the expanse of the congestion problem, the presence of looming reliability violations, and the significance of the Mid-Atlantic Critical Congestion Area to the security and economic health of the Nation as a whole, the Department concludes that it would be inconsistent with the intent of FPA section 216(a) to withhold the

processing at the state level is appropriate, it will not hesitate to suspend the pre-filing process while the state process continues¹⁰³.

¹⁰¹ See May 7 notice, Section VIII.C.

¹⁰² While some commenters have questioned the Department's authority to designate a National Corridor in reaction to the presence of congestion problems within a single State, courts have long recognized the inherently interstate nature of transmission, even transmission within one State. See *FPL*, 404 U.S. at 462. Congestion problems within one State may well raise issues of national concern. Nothing in FPA section 216(a) suggests that the Department is limited to addressing congestion that crosses State lines, provided that the Department determines that constraints or congestion are adversely affecting consumers and that designation is warranted, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate.

Federal safety net of National Corridor designation.¹⁰³

In sum, having found the presence of congestion that adversely affects consumers in the Mid-Atlantic Critical Congestion Area, the Secretary has the discretion to designate a National Corridor. The Secretary concludes, 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, that exercise of his discretion to designate the draft Mid-Atlantic Area National Corridor is warranted.

H. Duration of the Mid-Atlantic Area National Corridor Designation

Summary of Comments

Several commenters objected to setting a twelve-year term for the Mid-Atlantic Area National Corridor. For example, NARUC opposes the use of a twelve-year term as inconsistent with the statute. NARUC argues that the requirement that the Department conduct a congestion study every three years indicates that the factual basis for National Corridors must be reexamined and updated every three years, and, thus, only a three-year term, subject to three-year extensions, is permissible. NARUC states that use of a twelve-year term could easily result in a designation remaining in place long after congestion issues have been resolved.¹⁰⁴ NYFB advocates a nine-year term rather than a twelve-year term.

Other commenters, including National Grid and PJM, support a twelve-year term for the Mid-Atlantic Area National Corridor designation as consistent with planning needs.

RDOE Response

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. While the statute requires the Department to conduct a congestion study every three years, nothing in the statute suggests that a National Corridor designation based on one congestion study should sunset unless re-justified in the next congestion study.

Some commenters express concern about FERC retaining jurisdiction to issue permits within a National Corridor

¹⁰³ Further, whereas Congress could have completely preempted State siting of interstate transmission facilities, allowing for the potential exercise of limited Federal preemption in accordance with FPA section 216(a) does not intrude on any State rights or prerogatives.

¹⁰⁴ See also comments of OH Siting Board and The Wilderness Society.

after the congestion problem that motivated the Corridor has been resolved. However, as discussed in Section I.A above, FERC has clarified that only those transmission projects within a designated National Corridor that would significantly reduce the congestion identified by DOE would be eligible for a FERC permit. Therefore, even without an expiration date, a National Corridor designation would not result in any exercise of Federal permitting authority beyond that envisioned by Congress.

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. Any such time limit, however, must balance State concerns against the disruptive effect that regulatory uncertainty can have on transmission investment. 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. Further, the Department does not intend to allow the termination of the Mid-Atlantic Area National Corridor designation as it may apply to an accepted permit application pending at FERC, or, once FERC has granted a permit, during the period in which the approved facilities are being constructed.

III. Southwest Area National Corridor (Docket No. 2007-OE-02)

A. Procedural Matters

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://niste.anl.gov> on or before July 6, 2007; (2) mailed written comments marked "Attn: Docket No. 2007-OE-02" to the Office of Electricity Delivery and Energy Reliability, OE-20, U.S. Department of Energy, 1000 Independence 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-02" at one of the public meetings.