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November 5, 2007

Office of Electricity Delivery
And Energy Reliability
OF-20
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D. C. 20585

By facsimile: 202 586-8008

Re: Application for Rehearing; Docket No. 2001-OE-01

In accordance with the notice published in the October 5, 2007 issue of the Federal Register (Vol. 72, No 193, page 56992 et. seq.), please find the Application for Rehearing in the above-captioned matter. This request is being filed on behalf of the Honorable Martin O'Malley, Governor of Maryland, and the People of the State of Maryland.

Respectfully submitted

M. Brent Hare
Assistant Attorney General

**BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY**

**In The Matter of the Mid-Atlantic Area
National Interest Electric Transmission
Corridor**

Docket No. 2007-OE-01

**APPLICATION FOR REHEARING BY MARYLAND GOVERNOR
MARTIN O'MALLEY**

Pursuant to Section 313 of the Federal Power Act, petitioner Martin O'Malley, Governor of Maryland, acting by and through his attorneys, Douglas F. Gansler, Attorney General, and M. Brent Hare and Brent A. Bolca, Assistant Attorneys General, respectfully requests that the Department of Energy grant a rehearing of its order in Docket No. 2007-OE-01, issued on October 2, 2007, designating the Mid-Atlantic Area National Interest Electric Transmission Corridor. In support of this application, petitioner states:

1. On July 6, 2007, Governor O'Malley submitted comments to the Department of Energy (Department or DOE) regarding DOE's draft Mid-Atlantic Area National Interest Electric Transmission Corridor (NIETC). Governor O'Malley expressed concern about the expansive geographic scope of the draft designation, noting that the designation appears to go beyond the intent of the 2005 Energy Policy Act and that a much more refined corridor designation may be appropriate. Governor O'Malley also stated that DOE failed to make adequate efforts to work with the State of Maryland and its citizens in studying and formulating solutions to electric transmission congestion, and that it failed to properly consider non-transmission solutions to congestion and constraint issues. In seeking a rehearing of DOE's NIETC designation in the above-captioned docket, Governor O'Malley reiterates the issues raised in his July 6, 2007

comments, and expands upon them as follows.

2. Section 216 of the Federal Power Act (FPA) tasks DOE with studying electric transmission congestion, generating a report based upon that study, and, if appropriate, designating national interest electric transmission corridors. DOE was not intended, however, to perform these tasks unilaterally. On the contrary, Section 216 expressly directs DOE to conduct the electric transmission congestion study "in consultation with affected States." DOE failed to follow this legislative mandate. Rather than working in consultation with affected States, DOE conducted a congestion study on its own. Then after the study was completed, on August 8, 2006, DOE released its findings and offered to consider comments. Considering comments after a study has already been conducted is not the same as performing a study "in consultation" with affected States. DOE did not discuss, seek advice, solicit information, consider views, or work with the Maryland Public Service Commission or any other State agency with either the interest or expertise to assist DOE conduct its study. DOE's post-study offer to consider comments does not cure the fact that DOE failed to consult with Maryland while the study was being conducted, as is clearly required by Section 216. This critical error warrants a rehearing of this matter.

3. In addition to failing to consult with Maryland in conducting its congestion study, DOE has inappropriately refused to consider non-transmission solutions to congestion problems. DOE responded to this criticism in its report and order issued on October 5, 2007 in Volume 72, No. 193 of the Federal Register, by asserting that the Federal Power Act does not require or necessitate a consideration of non-transmission solutions as a precondition to designating a national interest electric transmission corridor. DOE's interpretation of the Federal Power Act is incorrect. In Section 216 of the FPA, Congress directed DOE to issue a report based upon its congestion study "after considering alternatives and recommendations from interested parties"

and comments from affected States. DOE asserts that the phrase “alternatives and recommendations” is ambiguous, and declines to interpret the phrase as referring to non-transmission solutions. DOE reasons that such an interpretation would necessitate a comparison of non-transmission solutions against transmission solutions, an exercise that DOE claims to be outside the scope of its responsibilities. DOE’s rationale, however, is undercut by Section 216(h)(9) of the FPA, which states that “[i]n exercising the responsibilities under this section, the Secretary shall consult regularly with—(A) the Federal Energy Regulatory Commission; (B) electric reliability organizations (including related regional entities) approved by the Commission; and (C) Transmission Organizations approved by the Commission.” Thus, even if the weighing of alternative solutions to congestion is not within DOE’s role or expertise, such a task is certainly within the role of the organizations that DOE is to regularly consult with while exercising its responsibilities under Section 216 of the FPA. Equally as unpersuasive is DOE’s claim that by analyzing and weighing competing remedies to congestion, it could supplant, duplicate, or conflict with the traditional roles of States and other entities. On the contrary, Section 216 (a)(1) clearly requires DOE to conduct congestion studies “in consultation with affected States.” Then, after considering the “alternatives and recommendation” of States and interested parties, DOE is required to issue a report that may designate a national interest electric transmission corridor. FPA § 216(a)(2). Thus, rather than supplanting the traditional role of States in energy infrastructure planning, the Federal Power Act, if properly followed, can facilitate the inclusion of States’ interests in how congestion problems are dealt with.

4. DOE’s Mid-Atlantic Area National Interest Electric Transmission Corridor encompasses an enormous geographic area, and includes nearly all of the State of Maryland. This designation is contrary to the intent of the Federal Power Act. Section 216 of the FPA

requires DOE to consider the designation of National Electric Transmission "Corridors." The scope of DOE's Mid-Atlantic Area designation is immense, stretching from New York to Virginia, and includes Washington D.C. and counties in Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. This is far from a "Corridor," as that term is commonly understood. DOE's Mid-Atlantic Area designation, therefore, is well beyond the scope intended by Congress, as expressed in the plain language of Section 216 of the Federal Power Act.

WHEREFORE, petitioner Governor Martin O'Malley respectfully requests that the Department enter an order granting petitioner's Application for Rehearing.

Respectfully submitted,

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