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November 5, 2007

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VIA HAND DELIVERY

Office of Electricity Delivery and Energy Reliability, OE-20
Attn: Docket No. 2007-OE-02
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

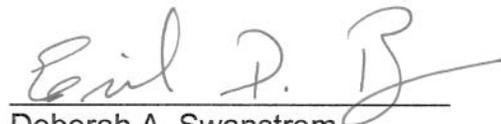
Re: *IMPERIAL IRRIGATION DISTRICT'S REQUEST FOR REHEARING OF THE
U.S. DEPARTMENT OF ENERGY'S REPORT DESIGNATING NATIONAL
INTEREST ELECTRIC TRANSMISSION CORRIDORS*

Enclosed for filing on behalf of Imperial Irrigation District, please find one (1) original and eight (8) copies of a Request for Rehearing of the U.S. Department of Energy's Report Designating the National Interest Electric Transmission Corridors.

We request that you please date stamp and return to the person delivering this package the two (2) additional copies of this rehearing that we have provided.

Thank you for your assistance with this rehearing request.

Sincerely,



Deborah A. Swanstrom
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Attorneys for Imperial Irrigation District

Enclosures

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**IMPERIAL IRRIGATION DISTRICT'S REQUEST FOR REHEARING OF THE
U.S. DEPARTMENT OF ENERGY'S REPORT DESIGNATING NATIONAL
INTEREST ELECTRIC TRANSMISSION CORRIDORS**

Imperial Irrigation District ("IID") respectfully requests rehearing of the Report issued by the U.S. Department of Energy ("DOE") on October 5, 2007 designating national interest electric transmission corridors or ("corridors") or ("NIETCs").¹ IID is the owner of a major transmission system in southwestern California and is in the process of developing even more transmission facilities in that region. IID recognizes DOE's Report was well-intended. If implemented properly, a corridor could be potentially beneficial in specific areas where congestion problems truly exist. DOE, however, acted contrary to law by designating overly broad corridors and, as a result, DOE's designations are at risk of being overturned on appeal.

The law plainly limits the scope of what DOE can legally designate as a national interest electric transmission corridor to "a geographic area experiencing electric energy

¹ *National Interest Electric Transmission Corridor Report Designating the Mid-Atlantic Area National Interest Electric Transmission Corridor and the Southwest Area National Interest Electric Transmission Corridor*, 72 Fed. Reg. 56,992 (Oct. 5, 2007) ("DOE Report" or "Report") (Page numbers cited in the IID Rehearing Request are based on memo page references not Federal Register page references). IID has party status in this proceeding because IID filed comments marked "Attn: Docket 2007-OE-02" electronically at <http://nietc.anl.gov> on or before July 6, 2007.

transmission capacity constraints or congestion that adversely affects consumers . . . ”²

The Southwest area national interest electric transmission corridor (“Southwest corridor”) designated by DOE, however, includes whole counties that DOE failed to show were constrained or congested, such as Imperial County in which IID actually has excess transmission capacity available. To remedy this flaw on rehearing, IID recommends DOE draw more reasonably-tailored corridor boundaries covering areas in the Southwest where DOE’s study showed congestion actually existed. To aid DOE’s decision-making, IID has attached maps showing areas where IID understands DOE’s study found congestion existed and where more reasonably-tailored boundaries could be drawn.³

I. IID IS A PROPONENT OF NEW TRANSMISSION FACILITIES, AS WELL AS A STEWARD OF THE ENVIRONMENT, INCLUDING FARMLANDS IN THE IMPERIAL VALLEY

IID is the nation’s largest irrigation district, providing both electric and irrigation services across 6,000 square miles of California’s Southwestern desert. IID owns or co-owns over 1,600 miles of transmission lines located in Imperial and Riverside

² Energy Policy Act (“EPAAct”) of 2005, § 1221, 16 U.S.C. § 824p(a)(2) (“EPAAct Section 1221 or Section 216 of FPA”).

³ Attachment A includes a map showing specific areas DOE concluded are actually constrained or congested at the current time and draws corridor boundaries around only those specific areas. Attachment B includes a map covering those same areas, but has wider boundaries based on DOE’s method of using county lines as boundaries. IID respectfully submits that an area actually must be constrained or congested currently to qualify for inclusion in a corridor and that a projection of potential future constraints or congestion is not a valid basis for designating a corridor around a projected area. If DOE nevertheless continues to include projected future constrained or congested areas in its designations, Attachment C includes two maps, one by county and one by paths, showing areas that DOE projects might become constrained or congested in 2008. Attachment D includes two maps, one by county and one by paths, showing areas that DOE projects might become constrained or congested in 2015. What is most important to note is that, in any of these scenarios, Imperial County still must be removed from the Southwest Corridor because DOE’s study failed to identify either existing or future constraints or congestion in Imperial County.

Counties in California as well as in Yuma, La Paz and Maricopa Counties in Arizona. IID also is in the process of developing several more lines in California and Arizona, both individually and jointly with other project partners in the West. Most recently, on October 9, 2007, IID's Board passed a resolution to study and develop a new IID transmission line extending to the Salton Sea area, where geothermal resources are located. This new line would add to the already existing transmission capacity IID has in that area and stimulate the development of more renewable resources. Simply stated, IID is a proponent of new transmission facilities.

As a political subdivision of the State of California, IID also considers itself to be a steward of the environment. It is important to IID that not only new transmission facilities are built, but that they are built in the appropriate location. The Imperial Valley, where IID's load is primarily located, contains a large amount of highly productive farmland and numerous canals used to irrigate this farmland. Land in the Imperial Valley is particularly fertile and there is a relatively constant amount of sunlight. As a result, farming can be done year-round – including in the winter when farms in other areas of the country are not productive. Imperial Valley farms therefore are important to this Nation's independence and security. They also are vital to the national economy: agricultural production in the Imperial Valley is valued at over \$1.3 billion per year.⁴

If a transmission line is constructed through the farmland on an all-new Right of Way, then the potential exists for interference to the gravity-fed surface and gravity fed subsurface drainage system. The subsurface tiled drainage design, unique to the Imperial Valley, allows for the rich soil to be used for farming while all the salt deposits

⁴ http://www.icfb.net/local_Info.html.

filter through the tile to be carried off by an elaborate gravity subsurface drainage collector system. Also, access roads to the Right of Way for transmission line patrol and maintenance are often overlooked in reviewing impact upon farmland. Any interference could render this highly productive farm land substantially less productive or unusable at all. Accordingly, care must be taken to site transmission lines in corridors outside of the farmlands and away from the complex network of tile drainage and collector systems necessary for irrigation of the farmlands. DOE failed to exercise this care.

Neglecting its duties under the National Environmental Policy Act,⁵ DOE did not perform any environmental assessment of the potentially significant impacts on farmlands in Imperial County. Nor did it provide a reasoned explanation for its decision to include Imperial County in the Southwest corridor, as required by the Administrative Procedure Act.⁶ In fact, DOE did not articulate anywhere in its Report the basis for including Imperial County, in particular, in the Southwest corridor. Making matters worse, DOE ignored plain language in the Energy Policy Act of 2005 (“EPAAct”) limiting the designation of corridors to geographic areas experiencing transmission constraints or congestion that adversely affect consumers.⁷ Nowhere in DOE’s congestion study⁸ or its Report did DOE find transmission congestion or constraints existed in Imperial

⁵ 42 U.S.C. § 4321-4347.

⁶ 5 U.S.C. § 511-599. *See also, e.g., Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1115 (D.C. Cir. 2002) (any agency “must be able to demonstrate that it has made a reasoned decision based upon substantial evidence in the record”) (*quoting Sithe/Independence Power Partners, L.P. v. FERC*, 165 F.3d 944, 948 (D.C. Cir. 1999)); *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 168 (1971) (there must be a rational connection between the agency’s findings and its conclusions).

⁷ 16 U.S.C. § 824p(a)(2).

⁸ Department of Energy, *National Electric Transmission Congestion Study* at 31 (Aug. 8, 2006) (“study” or “congestion study”).

County that adversely affects consumers. Consequently, DOE cannot lawfully include Imperial County within the overly broad corridor boundaries DOE developed.

For the reasons set forth herein and explained in earlier comments filed by IID,⁹ IID therefore urges DOE to correct its Report on rehearing by removing Imperial County from the Southwest corridor. On balance, the unnecessary, and indeed, unlawful, inclusion of Imperial County farmlands in the Southwest corridor harms, rather than benefits, the public interest.

II. DOE’S REPORT SHOULD BE CORRECTED ON REHEARING BECAUSE IT IS CONTRARY TO LAW, AN ABUSE OF ANY DISCRETION ACCORDED TO DOE, AND ARBITRARY AND CAPRICIOUS

A. DOE’s Report Fails To Even Articulate Why Imperial County Was Included In The Southwest Corridor, Let Alone Identify Exactly Where, If Anywhere, Congestion Exists In Imperial County

DOE’s Report is “intolerably mute”¹⁰ because it fails to even articulate why DOE included Imperial County in the Southwest corridor or to identify exactly where, if any where, congestion exists in Imperial County. DOE could not possibly have included Imperial County in the Southwest corridor based on a finding that the County is congested because DOE’s own congestion study did not identify any congestion specifically in Imperial County. Neither DOE’s congestion study nor its Report points to anywhere in Imperial County where congestion has been demonstrated to exist, let

⁹ *Comments of Imperial Irrigation District on the Southwest National Interest Electric Transmission Corridor Designation*, Docket No. 2007-OE-02 (Jul. 6, 2007) (“IID July 2007 Comments”); *Comments of Imperial Irrigation District on National Electric Transmission Congestion Study* (Oct. 10, 2006) (“IID October 2006 Comments”).

¹⁰ *Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 852 (D.C. Cir. 1970).

alone “persistent congestion” – which is the benchmark DOE claims it used.¹¹ In fact, IID’s transmission system, in locations in Imperial County, has over 1200 MW of excess capacity available. DOE’s Report therefore lacks reasoned explanation and is contrary to both the law and the facts.

IID speculates that DOE possibly might have included Imperial County in the Southwest corridor not because Imperial County is congested (which it isn’t), but instead because DOE perceives Imperial County to be a source area for generation to serve consumers in other counties containing congested transmission lines.¹² DOE’s Report failed to clearly state this rationale. Even if it had, however, DOE’s Report could not be upheld on appeal because a non-congested geographic area containing a generation source is not the standard enacted by Congress for designating a corridor.¹³

B. The Law Clearly Limits The DOE Secretary’s Authority To Designate A Corridor To A Geographic Area Experiencing Constraints Or Congestion

Congress specifically limited the scope of a national interest electric transmission corridor to a “geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers . . .”¹⁴ DOE does not have

¹¹ DOE states that Section 216 of FPA gives the Secretary the discretion to designate a National Corridor upon a showing of persistent congestion. DOE Report at p. 13. Also see DOE Report at p. 15-16 stating that there is persistent congestion in the Southern California Critical Congestion Area, but DOE does not specifically identify Imperial County as within that Area. DOE Report at p. 92.

¹² In its Report, DOE generally indicated that it examined sources and sinks when designating corridors, without identifying each of those specific sources or sinks. DOE Report at p. 13. & n. 14.

¹³ Even if a geographic area containing a generation source was the appropriate legal standard, it does not follow that ALL of Imperial County should be included in a designated corridor. To meet the test for reasoned decision making, the corridor would have to be more narrowly tailored to cover the specific area where a generation source is located.

¹⁴ See Section 216(a)(2) of FPA. DOE interpreted the statutory phrase “geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers” to

“discretion”¹⁵ to violate the law by designating other geographic areas that do not meet this standard: to the contrary, the DOE Secretary is obligated to uphold the law.

As DOE acknowledged in its Report, Congress entrusted DOE with the responsibility to “identify[] transmission congestion and constraint problems, and the geographic area in which these problems exist.”¹⁶ As DOE also admitted in its Report, Congress only authorized DOE to “designate areas experiencing constraints or congestion that adversely affect consumers,” not to designate all areas where more transmission may be needed.¹⁷ Nowhere in the statute did Congress authorize DOE to designate entire counties, such as Imperial County, where no constraints or congestion have been demonstrated to exist at all. Nor is it reasonable to infer that Congress intended this result.

If Congress wanted non-congested generation source areas to be included in corridors, along with congested transmission areas, it easily could have so stated. For example, Congress simply could have written the statute to read as follows: “the Secretary . . . may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers [, as

encompass “the load being adversely affected by congestion and the constrained transmission lines causing the congestion.” DOE Report at p. 96. Even assuming this is a reasonable interpretation, it does not follow that it is also reasonable to interpret this statutory phrase to include generation sources located in other counties. This statutory phrase makes no mention whatsoever of geographic areas containing generation sources.

¹⁵ DOE stated that “FPA Section 216(a) gives the Secretary the discretion to designate a Southwest Area National Corridor upon a showing of persistent congestion.” DOE Report at p. 90. Even under DOE’s own theory that Congress accorded it discretion to either designate or not designate a corridor containing persistent congestion, it does not follow that DOE can designate entire Counties lacking congestion, such as Imperial County.

¹⁶ DOE Report at p. 7.

¹⁷ *Id.*

well as any geographic area that could serve as a source of generation to serve these consumers,] as a national interest electric transmission corridor.” But, Congress did not do so. Particularly where, as here, it is foreseeable that states’ rights will be usurped by the designation of a national corridor, it is inappropriate for DOE to read into the statute language that does not exist.¹⁸ States’ rights, as well as the statutory language limiting the designation of corridors to constrained or congested areas, should be respected.

C. Even Assuming Congress Actually Had Authorized The Designation Of A Non-Congested Geographic Area Containing A Generation Source, DOE’s Report Would Still Be Unlawful Because It Fails To Reasonably Analyze All Relevant Generation Sources And Unfairly Singles Out Imperial County

Even assuming Congress actually did authorize DOE to designate a non-congested generation source area as a national interest electric transmission corridor – which it did not – DOE’s Report still would be unlawful because DOE failed to reasonably analyze all relevant generation sources. Instead, DOE arbitrarily and capriciously assumed, without properly analyzing power purchase agreements,¹⁹ that generation sources in Imperial County would be used to serve consumers in other counties containing congested transmission lines. It already has been established conclusively that the West operates as a single integrated market.²⁰ Therefore, power

¹⁸ As the Supreme Court noted in *FTC v. Bunte Bros, Inc.*, 312 U.S. 349, 351 (1941), “in ascertaining the scope of congressional legislation, a due regard for ... local and national interests in our federal scheme must always be in the background.... Deference to these local interests requires that we decline to find in the Act radiations beyond the obvious meaning or language unless otherwise the purpose of the Act would be defeated.” *Id.*

¹⁹ To the best of IID’s knowledge, DOE failed to perform any comprehensive analysis of power purchase agreements executed by utilities serving load in congested areas to determine each of the actual generation sources used to serve their load.

²⁰ See, e.g., *Public Utility District No. 1 v. FERC*, 471 F.3d 1053, 1069 (9th Cir. 2006) (“California is part of a single integrated electricity market in the West”) (*citing San Diego Gas & Elec. Co.*, 95 FERC ¶ 61,418 at P 62,556 (2001)).

supplies potentially could come from source areas across the West to serve these consumers, including potentially from as far away as the Pacific Northwest which has well-recognized historical trading patterns with California.²¹ Illustrating the unreasonable nature of DOE's interpretation of the law, if a source area actually did form a legitimate basis for designating a national interest electric transmission corridor, then nearly every, if not every, county in the entire western United States would be encompassed in a corridor. IID respectfully submits that is not what Congress intended, as evidenced by the plain language of 16 U.S.C. § 824p of the law.

D. DOE's Report Lacks A Rational Nexus To Its Own Congestion Study And Is Not Supported By Substantial Evidence

When Congress entrusted DOE with authority to designate national interest electric transmission corridors, it did so with the understanding that any such corridors would be based on the results of a proper congestion study performed by DOE in consultation with affected States. The law specifically provides that:

(1) Not later than 1 year after the date of enactment of this section and every 3 years thereafter, the Secretary of Energy (referred to in this section as the "Secretary"), ***in consultation with the affected States***, shall conduct a study of electric transmission congestion.

(2) After considering alternatives and recommendations from interested parties (including an opportunity for comment from affected states, the Secretary shall issue a report, ***based on the study***, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor.²²

²¹ As an example, "...the Pacific Northwest is able to export hydropower to the southern part of the [Western] region during the summer and import fossil-fueled generation during the winter from the south to help meet off-peak loads and allow reservoir storage to refill for the next peak cycle." *Removing Obstacles To Increased Electric Generation And Natural Gas Supply In The Western United States*, 94 FERC ¶ 61,272 at 61,976 (2001).

²² 16 U.S.C. § 824p(a)(1) and (2) (emphasis added).

But, DOE's Report designating corridors lacks a rational nexus to its own study and in view of legitimate criticisms lodged by state commissions and regional transmission planning organizations with expertise in analyzing congestion, there is good cause to question whether the study was performed properly in consultation with affected States.²³

The Western Electricity Coordinating Council's Transmission Expansion Policy Planning Committee ("TEPPC"), for example, stated that it was "concerned with the limited technical analysis used by DOE, lack of clarity in the definition and measurement of congestion, and lack of public vetting of the data and interpretation of analyses used by DOE."²⁴ In comments filed previously, TEPPC faulted DOE's proposed Southwest corridor because DOE's study did not conclusively establish a clear pattern of congestion on paths in the Southwest corridor.²⁵ The California Public Utilities Commission ("CPUC") likewise criticized DOE for determining incorrectly that congestion was prevalent throughout Southern California when DOE proposed the Southwest corridor. The CPUC pointed to data demonstrating congestion was not prevalent throughout Southern California,²⁶ and stated that "historical data did not show

²³ See e.g., *Comments of The Public Utilities Commission of the State of California*, Docket No. 2007-OE-02 (filed Jul. 6, 2007) ("CPUC July 2007 Comments") at p. 5-6, 26-27; *Comments of The Arizona Corporation Commission*, Docket No. 2007-OE-02 (filed July 6, 2007) ("ACC July 2007 Comments") at p. 11-12.

²⁴ See e.g., *Comments of The Western Electricity Coordinating Council, Transmission Expansion Policy Planning Committee* ("TEPPC"), Docket No. 2007-OE-02 (filed July 6, 2007) ("TEPPC July 2007 Comments") at p. 2.

²⁵ TEPPC July 2007 Comments at p. 2.

²⁶ DOE Report at p. 89.

substantial congestion in this area, especially when compared to other western transmission paths, and the simulation for 2015 showed this congestion to be mitigated by planned transmission projects.”²⁷

Despite flaws pointed out by these entities which are intimately familiar with congestion data in the Southwest area, DOE proceeded to designate an extraordinarily large corridor encompassing all of Southwest California as well as the entirety of three counties in Arizona. IID raised similar concerns about the overly broad size of the proposed Southwest corridor and lack of congestion, which were glossed over by DOE.²⁸ Under the law, however, DOE cannot just ignore the points raised by IID and other parties. DOE does not have the authority to selectively pick and choose certain portions of EPCRA to comply with while ignoring other parts. DOE must comply with every part of EPCRA and consider the seriously-pleaded contentions of a party.²⁹ The U.S. Court of Appeals for the D.C. Circuit, for example, has rejected FERC Orders when FERC ignored or neglected to deal with an important part of a problem raised by a party, or otherwise failed to offer an adequate explanation for a particular decision.³⁰

Even assuming DOE did conduct a proper congestion study, the course DOE followed to designate the Southwest corridor cannot be discerned reasonably from the results of that study. In the study, DOE determined the following lines were the most heavily-loaded in the West:

²⁷ CPUC July 2007 Comments at p. 33.

²⁸ IID July Comments at p. 1-2, 4-5 and 8.

²⁹ *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998) (citing *Laclede Gas Co., v. FERC*, 997 F.2d 936 at 945-48 (D.C. Cir. 1993); *North Carolina Util. Comm'n v. FERC*, 42 F.3d 659, 666 (D.C. Cir. 1994)).

³⁰ *Id.*

- (1) the Bridger West line in Wyoming and Idaho;
- (2) the Southwest of Four Corners-to-Cholla-to-Pinnacle Peak lines in New Mexico and Arizona;³¹
- (3) the Western Colorado to Utah line;
- (4) the lines from Wyoming to Colorado, and
- (5) the southern New Mexico path to El Paso.³²

Despite the fact that DOE identified transmission lines in the States of Wyoming, Idaho, Utah, Colorado and New Mexico as being the most heavily-loaded lines in the West, none of these States had any counties listed in the Southwest corridor at all.³³ In contrast, DOE did include Imperial County in the Southwest corridor, even though DOE's study failed to identify any congestion, let alone heavy congestion, in Imperial County. This is the epitome of arbitrary and capricious decision-making.³⁴

DOE's Report also is seriously flawed with respect to congestion the DOE study projected might occur in the future. DOE stated that it interprets the law to enable DOE to designate an area that is not currently congested, "so long as a constraint, including the absence of a transmission line, is hindering the development of generation."³⁵

But, DOE then claimed it did not actually rely upon this interpretation to designate the

³¹ The Southwest of Four Corners-to-Cholla-to-Pinnacle Peak lines originate in Farmington, New Mexico and connect to the Phoenix, Arizona area located in Maricopa County.

³² Study at p. 31.

³³ *Id.* DOE even admitted that "the level of congestion on paths into and within Southern California is lower than on other paths in the Western Interconnection." DOE Report at p. 92

³⁴ *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*quoting Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

³⁵ DOE Report at p. 30.

Southwest and Mid-Atlantic corridors.³⁶ With respect to these corridors, DOE alleged that its “assertion of authority is based on the conclusion that congestion adversely affecting consumers is currently being experienced.”³⁷ DOE also assured the parties that, if and when it makes a corridor designation in the absence of current congestion, it intends to provide such designation in draft form for public comment and will consult with affected states prior to making any final decision.³⁸

In reality, however, DOE actually did include counties that its own study indicates are not currently congested in the Southwest corridor. For example, DOE included Imperial County, Los Angeles County and Orange County in California. Some of these Counties were merely projected to potentially be congested in the future in DOE’s study, starting in approximately the years 2008 or 2015, while others, such as Imperial County, were not even projected to be congested at all. DOE included these Counties in direct contradiction of its own stated policy, as well as the law.

The law limits DOE’s designation authority to “a geographic area **experiencing** electric energy transmission capacity constraints or congestion that adversely affects consumers”³⁹ The word “experiencing” is written in the present tense, which in IID’s interpretation, indicates Congress intended the geographic area to be currently constrained or congested. IID’s interpretation comports with other language in the law requiring the DOE Secretary to conduct a congestion study every three years.⁴⁰ If an

³⁶ DOE Report at p. 31.

³⁷ *Id.* (emphasis added).

³⁸ DOE Report at p. 31.

³⁹ 16 U.S.C. § 824p(a)(2) (emphasis added).

⁴⁰ 16 U.S.C. § 824p(a)(1).

area is not currently congested, IID respectfully submits that the appropriate course for the DOE Secretary to follow is to conduct another study in three years and, if that future study shows actual congestion, designate the area at that time (provided, of course, there are no other reasonable alternatives and all relevant concerns raised by the parties have been taken in to account adequately).

As the CPUC articulated in its July 2007 comments:

DOE seems to believe that it is not required to either [sic] find congestion, or specific adverse effects, and that the constraints justifying a NIETC designation need only be "potential." Thus, the Draft Southwest National Corridor is legally infirm, because it presumes future congestion which may not come to fruition, because it fails to show an adverse public interest created by this congestion, and because the public interest that is identified as a justification for the designation -- the potential need for future transmission access to renewable resource areas -- is not supported by EPCAct section 1221.⁴¹

Furthermore, DOE cannot base its corridor designations on projections of future congestion now. DOE must remove counties projected to become congested in the future. However, if DOE does decide to designate corridors based on future projected congestion, then it must remove those counties which are currently congested, but not projected to be congested in the future. DOE cannot have it both ways; it must designate areas that are currently congested within the confines of the statutory language. DOE cannot base its current corridors on current congestion and future projected congestion. DOE must take the counties projected to be congested in the future out of the corridor designations and reassess in three years whether additional counties should be added and whether counties included in the current corridors should be removed.

⁴¹ CPUC July 2007 Comments at p. 4-5.

It is unreasonable for DOE to jump the gun and prematurely preempt state siting authority when DOE's study shows no current congestion, but merely projects congestion might occur in the future as far out as 2015. As the Western Congestion Area Task Force ("WCATF"), which was tasked by DOE to study congestion in the Western region, noted: "[p]roposed transmission additions have already been identified to alleviate the congestion in many identified Congestion Areas."⁴² IID likewise pointed out that many transmission projects, which are likely to relieve congestion, have been proposed or are in various stages of regulatory approval for the Southern California region.⁴³ IID encouraged DOE to take these projects into account, and allow FERC's newly-created regional planning requirements a reasonable opportunity to work,⁴⁴ before designating broad areas as a national interest electric transmission corridors. DOE failed to adequately consider the ability of these projects to alleviate alleged congestion and it ignored entirely IID's request that FERC's regional planning process be given a reasonable opportunity to work before DOE designates a final Southwest corridor.

E. DOE's Interpretation Of The Term Corridor Is Unreasonable

Based on an overly expansive interpretation of the term "corridor," DOE designated a corridor in the Southwest that is far broader than any level of actual or even potential future congestion warrants. According to DOE, Congress did not specify a particular geographic limit to a transmission corridor or otherwise define the term

⁴² Ex. Sum. WCATF May 8, 2006 at 2.

⁴³ IID July 2007 Comments at p. 1.

⁴⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, 72 Fed. Reg. 12,266, FERC Stats. & Regs. ¶ 31,241 at P 524 (2007) ("Order No. 890").

corridor in Section 1221 of EPAAct.⁴⁵ Therefore, in DOE's view, it is appropriate for DOE to draw boundaries using large county lines for simplicity.⁴⁶ DOE is mistaken.

First of all, Congress specifically limited a corridor to a geographic area experiencing transmission capacity constraints or congestion adversely affecting consumers. Even if it were shown that a capacity constraint or congestion actually exists on a particular transmission line or path, it is unreasonable to conclude that such constraint or congestion extends throughout an entire county. Typically, there are multiple lines or paths within a county and it would be extraordinarily unusual for most, let alone all, of those lines or paths to be constrained or congested. DOE's congestion study certainly did not show that every single line or path in every single county included in the Southwest corridor is constrained or congested.

Second, other extrinsic sources and common usage of the term corridor in the electric transmission industry further illustrate that DOE's use of extraordinarily broad county lines to draw corridor boundaries is unreasonable. The Merriam Webster dictionary, for example, defines "corridor" as it relates to land to be "a narrow passageway or route."⁴⁷ This is consistent with common usage of the term corridor in the electric transmission industry. To the best of IID's information and belief, the term "corridor" has never been defined in the electric transmission industry to encompass multiple counties spanning hundreds of miles in width, but instead always has meant a

⁴⁵ 16 U.S.C. § 824p.

⁴⁶ DOE Report at p. 98. "While the Department recognizes that counties are generally larger in the West than in the East, we continue to believe in the importance of establishing precise, easily identifiable boundaries for the Southwest Area National Corridor."

⁴⁷ <http://www.merriam-webster.com/dictionary/corridor>.

relatively narrow path or route within which a transmission line may be located.⁴⁸

Typically, some space is left on each side of the line within a corridor, which enables access for maintenance and the potential to expand the line in the future, but this space is measured in feet – not in hundreds of miles as DOE has done by using multiple county boundaries in two regions of the country.

The California Legislature has, for example, defined a corridor to be 1,500 feet wide. The California Energy Commission (“CEC”) was given additional transmission corridor planning and designation authority under California Senate Bill 1059, which was signed into law in September 2006.⁴⁹ Under Senate Bill 1059, the CEC is working with federal, state, and local agencies, as well as utilities, generators, and the public to set aside appropriate corridors to meet future transmission needs for California. Senate Bill 1059 specifically defines a transmission corridor as being no “more than 1,500 feet in width unless required to accommodate existing land uses identified in local general or specific plans.” This is a reasonable size and a sensible approach.

In contrast, DOE’s interpretation of the term corridor to include hundreds of counties spanning hundreds of miles across the United States is unreasonable. The two national interest electric transmission corridors cannot be considered “narrow” passageways or routes by any meaningful stretch of the imagination.

⁴⁸ *Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768, 776 (9th Cir. 2006) (230-kilovolt transmission line in a 125-foot-wide corridor).

⁴⁹ S.B. 1059, Stats. 2006, ch. 638, § 2; Cal. Pub. Res. Code § 25330-25341 (2007).

F. DOE Failed To Reasonably Demonstrate That Consumers Are Affected Adversely By Constraints Or Congestion In Each Of The Counties Designated By DOE In The Southwest Corridor, Let Alone To Support That Analysis With Any Substantial Factual Evidence

DOE's designation of an overly broad Southwest corridor also is flawed because DOE failed to demonstrate that consumers are affected adversely by constraints or congestion in each of the counties included by DOE in the Southwest corridor. Nowhere in its Report did DOE quantify or identify actual, adverse affects on any consumers in the Southwest corridor (let alone in Imperial County) arising from any specific transmission congestion or constraints. Instead, DOE presumed congestion always adversely impacts consumers because, for example, it prevents electricity buyers from consummating transactions with sellers who offer the lowest price and those buyers must instead purchase more expensive power.⁵⁰ This overly broad assumption lacks evidentiary support. It also is incorrect.

As the CPUC, which is charged with the responsibility of protecting electricity consumers, stated in its comments: "congestion and transmission constraints do not, in and of themselves, negatively affect consumers."⁵¹ While transmission constraints potentially can, in theory, affect consumers adversely, it does not follow that, in practice, consumers are always affected adversely by transmission constraints. For example, a consumer would not be adversely affected by a transmission constraint if local generation is available to serve the consumer's needs at a reasonable price and if

⁵⁰ DOE Report at p. 45.

⁵¹ CPUC July 2007 Comments at p. 19.

a demand side management program is implemented and available to serve the consumers needs at a reasonable price as well.

G. DOE Should Have Analyzed Alternatives Before Including Imperial County In The Southwest Corridor

Even assuming DOE’s study actually had shown that constraints or congestion existed in Imperial County that affect consumers adversely – which it did not – the law specifically obligates DOE to consider alternatives before designating a corridor.⁵² DOE failed to fulfill this requirement. DOE’s Report did not, for example, meaningfully analyze IID’s recommendation that DOE adopt a more reasonably-tailored corridor targeted to areas where congestion actually exists. DOE’s Report also did not analyze or mention at all, IID’s recommendation that DOE refrain from designating an overly broad corridor until FERC’s new regional transmission planning requirement is given a reasonable opportunity to work.

Moreover, DOE explicitly refused to consider any non-transmission solutions to congestion whatsoever before it proceeded to designate the Southwest corridor.⁵³ According to DOE, Section 216 of the FPA does not require DOE to consider non-transmission alternatives.⁵⁴ DOE contends the statute merely obligates it to consider transmission alternatives. The statute, in DOE’s view, relates to “transmission” corridors and, therefore, only transmission alternatives are relevant. The statute,

⁵² 16 U.S.C. § 824p.

⁵³ DOE Report at p. 16.

⁵⁴ *Id.* at § 824p(a)(2); DOE Report at p. 102.

however, does not expressly limit DOE's obligation to transmission alternatives: it simply says DOE must consider "alternatives."⁵⁵

It is commonly recognized in the electric industry that generation, especially when located close to load, can serve as an alternative to a new transmission facility. Local Generation normally alleviates the need for importing energy across long transmission lines. Given this fact, IID respectfully submits that DOE unreasonably interpreted and, indeed, violated the law when DOE refused to consider generation-related alternatives at all. It is a particularly egregious error for DOE to include entire counties, such as Imperial County, in the Southwest transmission corridor on the premise that they are "generation" source areas and then take the position that generation is irrelevant to the designation of transmission corridors when attempting to avoid an obligation to consider generation alternatives.

IID also agrees with comments filed by other parties that DOE should have taken into consideration alternative ways to reduce congestion, such as demand response programs implemented by the CPUC and the California Independent System Operator ("CAISO"). FERC has approved the CAISO's Market Redesign and Technology Upgrade Tariff demand response programs.⁵⁶ FERC recognized the importance of demand response for the effective and efficient operation of electricity market and directed federal and state regulators to work together to create more opportunities for

⁵⁵ 16 U.S.C. § 824p(a)(2).

⁵⁶ *Cal. Indep. Sys. Op. Corp.*, 116 FERC ¶ 61,274 at P 6 (2006). ("Sept. 21 Order").

demand response.⁵⁷ DOE should have taken these types of programs into consideration as suggested by the various intervenors.

H. DOE Should Have Conducted An Environmental Assessment Of Potentially Significant Environmental Impacts Before Designating The Southwest Corridor

DOE admitted in its Report that it did not perform any environmental impact analysis before designating the Southwest transmission corridor.⁵⁸ DOE effectively ignored its requirements under the National Environmental Policy Act of 1969 (“NEPA”).⁵⁹ This too is a reversible error.

NEPA requires DOE to include in “every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement ...on the environmental impact of the proposed action...”⁶⁰ In its rush to publish its Report, DOE failed to provide any information and certainly not a detailed report concerning the environmental impact of designating thousands of acres as transmission corridors thereby preventing any other use by the public. Congress sought to prevent this lack of environmental compliance when it specifically included language in the EPAct requiring DOE to adhere to all environmental laws: “nothing in [Section 1221] affects any requirement of an

⁵⁷ Sept. 21 Order at P 689.

⁵⁸ “While FPA section 216(a)(4) is not an exclusive list of the factors that the Department may consider when designating a National Corridor, the Department does not believe that any analysis of the effect of transmission construction on environmentally, historically, or culturally significant lands is warranted at the National Corridor designation stage.” DOE Report at p. 66.

⁵⁹ 42 U.S.C. § 4321-4347.

⁶⁰ *Id.* at 4322.

environmental law of the United States, including the National Environmental Policy Act of 1969.”⁶¹

DOE’s claim that it does not have to perform any environmental analysis at all, let alone a programmatic Environmental Impact Statement (“EIS”), when designating a corridor under EAct, is flatly contradicted by the opposite conclusion reached by its fellow federal agency, the Bureau of Land Management (“BLM”). BLM just conducted a programmatic Environmental Impact Statement to evaluate proposed energy corridors in the Western United States as part of Section 368 of EAct requirements.⁶² DOE likewise should do so. Unless and until DOE conducts a proper environmental review of the impacts to endangered species, agricultural lands, historic properties and Indian lands within the boundaries of the massive corridors it designated, DOE should withdraw its corridor designations and halt the implementation of those designations.

III. IID PROPOSES A SOLUTION AND RECOMMENDS A MORE REASONABLY TAILORED SOUTHWEST CORRIDOR

To remedy substantial flaws in DOE’s corridor designations, IID proposes specific, smaller corridors as alternatives to the broad Southwest corridor. IID analyzed DOE’s congestion study and prepared the alternatives based on congestion found in that Study.

Specifically, DOE’s congestion study identified certain western paths within California as having actual congestion, including path 66, which is the California-Oregon Intertie, and path 15 from Midway in Kern County to Los Banos in Merced County,

⁶¹ EAct Section 1221(j)(1).

⁶² EAct Section 368(a)(2).

California.⁶³ DOE found both of these paths to be congested between 25 and 50% of the time. DOE also found path 26 Northern-Southern California in Kern County, path 45 San Diego Gas and Electric Company to the Comisión Federal de Electricidad in Mexico (“SDG&E to CFE”) in San Diego County, path 46 West of the Colorado River line in San Bernardino County, and path 49 East of the Colorado River line in Arizona as congested between 0 and 25% of the time.⁶⁴ However, none of the California paths are in Imperial County.

DOE’s congestion study also projected congestion might occur on western transmission paths through 2008 and 2015.⁶⁵ Within the Southwest corridor, DOE identified paths 61 from Lugo to Victorville in San Bernardino County, California and 62 from Eldorado to McCullough in San Bernardino County, path 42 the IID to Southern California Edison line contained completely within Riverside County, as well as path 45 (“SDG&E – CFE”) and path 49 East of the Colorado River in La Paz and Yuma Counties, Arizona as projected to be congested in 2008.⁶⁶ Also, within the Southwest corridor, DOE identified paths 15, 26, 27 the IPP DC line in San Bernardino County and 45 in San Diego County as being congested in 2015.⁶⁷ None of the paths specified as being actually congested or projected to be congested in either 2008 or 2015 are located in Imperial County.

⁶³ Study at Appendix K “List of WECC Paths.” DOE relied on the WECC definitions of paths contained in Appendix J to formulate the figures in the Study.

⁶⁴ *Id.* and Study at fig. 4-2, fig. 4-3 and 4-4.

⁶⁵ Study at fig. 4-4 and fig. 4-6.

⁶⁶ Appendix K and Study at fig. 4-4.

⁶⁷ Appendix K and Study at fig. 4-6.

DOE's congestion study and DOE's review of existing studies created by other parties did not reveal that actual congestion exists in Imperial County or that congestion would occur in the future.⁶⁸ DOE unlawfully designated all of Imperial County in its Southwest corridor despite the fact that Imperial County was never identified as a county with transmission congestion under any criteria.⁶⁹

Therefore, IID is providing DOE with six maps of proposed transmission corridors that more accurately mirror their congestion study findings on actually congested paths.⁷⁰ The first corridor map includes paths within the Southwest corridor identified by DOE's congestion study as having actual congestion. In this map, IID designated sufficient land on either side of the path to site additional transmission lines if necessary. While IID asserts that county lines do not meet the statutory definition of corridor as provided under EPCRA, IID has still provided DOE with county boundary maps using DOE's congestion data. As stated, the second corridor map is broader and designates counties which contain paths within the Southwest corridor identified by DOE's congestion study as having actual congestion.

As IID asserted earlier, we do not believe that DOE has the authority to base corridors on projected congestion. However, if DOE nevertheless continues to include projected congestion, the maps provided by IID, as discussed below, are more reasonably tailored than the broad corridors drawn by DOE.

⁶⁸ Study at p. 31-38.

⁶⁹ Study at p. 34-35.

⁷⁰ See Attachments A, B, C, and D.

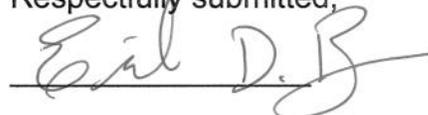
The third corridor map includes paths within the Southwest corridor identified by DOE's congestion study projected to have congestion in 2008. IID included sufficient land on either side of the path to site additional transmission lines if necessary. The fourth corridor map is broader and includes counties within the Southwest corridor identified by DOE's congestion study projected to have congestion in 2008. The fifth corridor map includes paths within the Southwest corridor identified by DOE's congestion study projected to have congestion in 2015. IID included sufficient land on either side of the path to site additional transmission lines if necessary. The sixth corridor map is broader and includes counties within the Southwest corridor identified by DOE's congestion study projected to have congestion in 2015.

IID respectfully requests that DOE review these maps, which are consistent with DOE congestion data, and designate a smaller Southwest corridor or corridors using these maps on rehearing.

IV. CONCLUSION

Wherefore, the Southwest corridor is overly broad and should be more reasonably tailored on rehearing to include the specific areas DOE's congestion study identified as congested and to exclude Imperial County which was not identified as a congested area in DOE's congestion study.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Erika D. Benson", written over a horizontal line.

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ATTACHMENT A

ACTUAL PROJECTED CONGESTION IN CALIFORNIA AND ARIZONA

by Path*



* Based on DOE Data - Fig. 4-3 and 4-4

ATTACHMENT B

ACTUAL PROJECTED CONGESTION IN CALIFORNIA AND ARIZONA

by County*



* Based on DOE Data - Fig. 4-3 and 4-4

ATTACHMENT C

2008 PROJECTED CONGESTION IN CALIFORNIA AND ARIZONA

by Path*



* Based on DOE Data - Fig. 4-4

2008 PROJECTED CONGESTION IN CALIFORNIA AND ARIZONA

by County*



* Based on DOE Data - Fig. 4-4

ATTACHMENT D

2015 PROJECTED CONGESTION IN CALIFORNIA AND ARIZONA

by Path*



* Based on DOE Data - Fig. 4-6

2015 PROJECTED CONGESTION IN CALIFORNIA AND ARIZONA

by County*



* Based on DOE Data - Fig. 4-6