U.S. DEPARTMENT OF ENERGY

Draft National Corridor Designations: Frequently Asked Questions

April 26, 2007

1. What is a National Interest Electric Transmission Corridor?

Section 216(a) of the Federal Power Act (created by section 1221(a) of the Energy Policy Act of 2005) directs DOE to identify transmission congestion and constraint problems. In addition, section 216(a) authorizes the Secretary, in his discretion, to designate geographic areas where transmission congestion or constraints adversely affect consumers as National Interest Electric Transmission Corridors (National Corridors).

A National Corridor designation itself does not preempt State authority or any State actions. The designation does not constitute a determination that transmission must, or even should, be built; it is not a proposal to build a transmission facility and it does not direct anyone to make a proposal to build additional transmission facilities. Furthermore, a National Corridor is not a siting decision or does it dictate the route of a proposed transmission project. The National Corridor designation serves to spotlight the congestion or constraint problems adversely affecting consumers in this area and under certain circumstances could provide FERC with limited siting authority pursuant to FPA 216(b).

2. Is DOE designating National Corridors at this time?

DOE is issuing two draft National Corridors designations, in relation to the two Critical Congestion Areas identified in the August 2006 Congestion Study. If, after consideration of all comments on these drafts and consultation with the affected States, the Secretary of Energy decides that designation of either or both areas is appropriate, he will issue one or more orders doing so.

3. How would this designation affect me should one or both draft National Corridors become final?

These designations serve as an important indication by the federal government that, at a regional level, a significant transmission constraint or congestion problem exists – one that is adversely affecting consumers and that has advanced to the point where we have a national interest in alleviating it. In other words, the federal government is *not* dictating *how* the states, regions, transmission providers or electric utilities should meet their energy challenges. It is a way of focusing in on the areas of the country that are most congested – and whose consumers stand to benefit most from it.

On a more specific level, the designation of a National Corridor is a necessary first step in providing the federal government – through the Federal Energy Regulatory Commission – siting authority that supplements existing state authority. The Energy Policy Act of 2005 provides a potential siting venue at FERC for transmission facility proposals within a National Corridor. In practice, this will mean that if an applicant does not receive approval from a State to site a proposed new transmission facility within a National Corridor, then FERC may consider whether to issue a permit and to authorize the construction of the facility. Before FERC would issue such a permit, it would conduct a full National Environmental Policy Act review and consider alternatives. Such a federal permit would empower the project developer to exercise the right of eminent domain to acquire necessary property rights to build the facilities. However, that authority could only be exercised if the developer could not acquire the property by negotiation, and even then would not apply to property owned by the United States or a State, such as national or state parks.

4. Where are the two draft National Corridor designations located?

The draft Mid-Atlantic Area National Corridor is a contiguous area covering parts of Ohio, West Virginia, Pennsylvania, New York, Maryland, and Virginia, and all of New Jersey, Delaware, and the District of Columbia. In the States not wholly included, it includes the following counties and cities:

- *Ohio counties:* Belmont, Carroll, Columbiana, Harrison, Jefferson, and Stark.

- *New York counties:* Albany, Bronx, Broome, Cayuga, Chenango, Clinton, Columbia, Delaware, Dutchess, Erie, Franklin, Fulton, Genesee, Greene, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Seneca, Suffolk, Sullivan, Ulster, Wayne, Westchester, and Wyoming.

- *Pennsylvania counties:* Adams, Allegheny, Armstrong, Beaver, Bedford, Berks, Blair, Bradford, Bucks, Butler, Cambria, Centre, Chester, Clearfield, Clinton, Columbia, Dauphin, Delaware, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Somerset, Susquehanna, Union, Wayne, Washington, Westmoreland, Wyoming, and York.

- *Maryland:* The city of Baltimore, and all counties except Somerset.

- *West Virginia counties:* Barbour, Berkeley, Braxton, Brooke, Calhoun, Clay, Doddridge, Gilmer, Grant, Hampshire, Hancock, Hardy, Harrison, Jackson, Jefferson, Lewis, Marion, Marshall, Mineral, Monongalia, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, and Wood.

Virginia: The cities of Alexandria, Harrisonburg, Fairfax, Falls Church, Manassas, Manassas Park, and Winchester, and the following counties: Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Loudon, Madison, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Stafford and Warren.

The draft Southwest Area National Corridor is a contiguous area including parts of California, Arizona, and Nevada. The counties included, by State, are:

- *Arizona counties*: La Paz, Maricopa, and Yuma
- *California counties:* Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.
- *Nevada counties*: Clark.

5. How did DOE determine the boundaries for the National Corridors?

DOE concluded that a source-and-sink approach was the most appropriate means for determining a general area to be included in a National Corridor. Such an approach is consistent with the common usage of "corridor" as an area linking two other areas. Such an approach also is consistent with the physical properties of the electrical grid, because a transmission line into a congested or constrained load area will not benefit that load unless the line connects with a source of power that could help to serve the load.

In general terms, the geographic extent of the sink area in a National Corridor is determined by the geographic distribution of the consumers adversely affected by the congestion or constraints – in other words, the location of load "downstream" of the limiting transmission constraints. With regard to the source area(s) used to develop the currently drafted National Corridor designations, the Department identified areas with substantial amounts of existing under-utilized generation capacity as well as areas with potential for substantial development of renewable generation.

After DOE identified the sink and source areas (and a general area for the envisioned National Corridor), it sought to determine specific, readily identifiable boundaries for the draft Corridor. Specific boundaries are consistent with the plain meaning of the statutory term "geographic area," and they also provides greater clarity and ease of administration to those entities concerned with whether a particular project or land area would be encompassed within a National Corridor.

To determine specific boundaries for the two currently drafted National Corridors, DOE decided to rely on county boundaries. That is, if part of a county is included in the general source-to-sink area, that entire county is assumed to be within the National Corridor, and the outer perimeter of the group of affected counties is the proposed boundary for the draft Corridor as a whole.

DOE acknowledges that determining the exact perimeters for a National Corridor under a source-and-sink approach is more of an art than a science, and there will rarely be a clear reason to draw a boundary in one place as opposed to some number of miles to the left or right. In addition, DOE recognizes the need to draw National Corridor boundaries so that

they could encompass a range of potential projects and a range of potential routes. Further, the Department need not attempt to interpret State laws on siting preferences. The determination of the best route for a specific project will be made by siting authorities, who are better positioned to make such a determination.

6. The statute requires DOE to consider "alternatives and recommendations from interested parties." Doesn't that mean DOE is required to evaluate non-transmission solutions to congestion?

DOE regards the designation of a National Corridor as identifying an important problem, as opposed to identifying a solution or a process for selecting a solution. DOE emphasizes that transmission expansion is not the only possible solution to a congestion or constraint problem: increased energy efficiency, demand response, and conservation, as well as siting of additional generation close to load centers are also potential solutions. Given the statutory role assigned to DOE, there is no need for DOE to undertake a comparative analysis of transmission and non-transmission solutions. Indeed, DOE believes that expanding its role to include making findings on the optimal remedy for congestion could supplant or otherwise duplicate the roles of States and other entities.

Thus, DOE does not interpret the language in FPA section 216(a) directing the Secretary to consider "alternatives and recommendations from interested parties" before making a National Corridor designation to require an analysis of non-transmission solutions to congestion. Rather, DOE interprets this language to refer to comments suggesting National Corridor designations for different congestion or constraint problems, comments suggesting alternative boundaries for specific National Corridors, as well as comments suggesting that the Department refrain from designating a National Corridor.

7. Why is DOE not conducting a Programmatic Environmental Impact Statement under the National Environmental Policy Act (NEPA)?

NEPA review is not required for the designation of a National Corridor under FPA section 216(a)(2). Section 102(2)(C) of NEPA requires that all Federal agencies include an environmental impact statement in "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment."

A National Corridor designation is not a determination that transmission must, or even should, be built; it is not a proposal to build a transmission facility and it does not direct anyone to make a proposal. DOE's designation of a National Corridor does not itself result in or plan for any ground-breaking environmental impacts. In addition, National Corridor designation does not irrevocably commit any resources to any activity having foreseeable environmental impacts; designating National Corridors does not control FERC's substantive decision on the merits as to whether to grant or deny a permit application. Thus, National Corridor designation is not a "proposal for a major Federal action significantly affecting the quality of the human environment" that falls within the purview of NEPA.

It should be noted that all proposals for Federal siting permits will be subject to, as appropriate, project-specific NEPA review. In addition to NEPA, proposals for such permits will also be subject to other environmental and cultural reviews, including, but not limited to, review under the National Historic Preservation Act. Nothing in FPA section 216 alters the applicability of federal environmental and cultural statutes and regulations.

In addition, DOE is not designating a narrow corridor around any particular line proposed by any applicant such that the designation would appear to give any advantage to a particular transmission line. National Corridor designation does not either endorse transmission options or foreclose future options for addressing congestion, including non-transmission options.

8. Does the designation of National Corridors increase the likelihood that private property owners will be subjected to the exercise of eminent domain?

The designation of a National Corridor itself does not result in any exercise of eminent domain. A National Corridor designation is not a determination that a transmission facility must or even should be built. Whether construction of a transmission facility, as opposed to increased energy efficiency, demand response, and conservation, or siting of generation closer to load, is the appropriate means of addressing congestion in a National Corridor is a matter that market participants, applicable regional planning entities, and State authorities, among others, will consider and decide before any project is built. In the event that a transmission facility is approved for construction, whether a State siting agency or FERC will route that project across a particular landowner's property and whether the project sponsor will be able to reach a consensual agreement with that landowner or must rely on either State or Federal right of eminent domain will depend on the circumstances.

9. How are environmentally sensitive lands affected by a National Corridor designation?

In determining the boundaries of the two proposed National Corridors, DOE did not carve out environmentally sensitive lands because the statute does not exclude such lands from inclusion in a National Corridor. In the event of a FERC siting proceeding, FERC would conduct a review under the National Environmental Protection Act, which would include analysis of alternative routes for that project, including route realignments necessary to avoid adverse effects on the environment, landowners, and local communities. Therefore, DOE has attempted to make the draft National Corridors broad enough to encompass a range of alternative routes for potential transmission projects, thus leaving the determination of the best route for a specific project to the siting authorities, who are better positioned to make such a determination.

Further, nothing in FPA section 216 alters the applicability of Federal environmental and cultural statutes and regulations. Thus, any permit issued by FERC would be subject to any approvals required under Federal environmental or cultural laws. Such approvals would include approvals that are required from the Fish and Wildlife Service, and from State agencies that administer the Clean Water Act, the Clean Air Act and the

Coastal Zone Management Act (which are Federal statutes administered by State agencies).

Finally, any routing of a transmission facility through property owned by the United States or a State would be subject to the consent of the appropriate Federal or State land-managing agency, because the statute does not grant the holder of a FERC permit the right of eminent domain over such land.

10. How long will the National Corridor Designations remain in effect?

DOE intends that an initial designation would be for a period of 12 years, unless it finds reason in a specific case to set some other initial term. The Department also recognizes the disruptive effect that regulatory uncertainty can have on transmission investment. Therefore, the Department would not terminate a National Corridor designation if an accepted application for a permit to site a transmission facility in that National Corridor were pending at FERC or, if a permit were to be granted by FERC, during the period in which the approved facilities were being constructed. The Department will stipulate in any National Corridor designation order that the designation may be modified, rescinded, or renewed by DOE for cause at any time, after a period of public notice and comment and consideration of the comments.

11. Are more data and information available beyond that released in the two draft National Corridor designations?

DOE included substantial amounts of data and information in the body of the Federal Register Notice and its associated appendices. It has also made data and information pertaining to the 2006 Congestion Study available on its website http://nietc.anl.gov.

12. Will DOE accept comments on the draft National Corridor designations?

DOE welcomes comments on the draft National Corridor designations and has opened a 60-day public comment period following publication in the Federal Register. Please refer to the Federal Register Notice for information on the comment process. The full text of the notice is available at http://nietc.anl.gov.

13. Will DOE be holding public meetings during the public comment period on the draft National Corridor designations?

During the public comment period, the Department intends to hold three public meetings to discuss these drafts. Two public meetings will be held on the Draft Mid-Atlantic Area National Corridor Designation and one public meeting will be held on the Draft Southwest Area National Corridor Designation.

DOE invites all interested parties to participate in the public meetings and to provide oral and written comments at these sessions in addition to submitting comments in response to the Federal Register Notice on Draft National Interest Electric Transmission Corridor Designations.

The locations for the public meetings are:

- May 15, 2007—Arlington, Virginia;
- May 17, 2007—San Diego, California; and
- May 23, 2007—New York, New York.

14. What are the next steps for DOE with respect to the requirements that it publish a study of electric congestion every three years?

In 2006, the Department announced that, in addition to the statutory requirement under section 216(a) of FPA that the Department release a congestion study every three years, DOE would issue annual progress reports in addition to the triennial studies. Accordingly, the Department is beginning a review of mitigation activities underway in each of the congestion areas identified in last year's Congestion Study. The activities that will be examined include the status of transmission projects that are proposed, permitted and completed since last August study. We will also be identifying new or proposed local generation, demand response programs, and energy conservation and efficiency programs affecting congestion in the identified congestion areas. The Department intends to issue this congestion alleviation progress report in August 2007.

15. Section 216(a) requires DOE to conduct a Congestion Study every three years. Does this draft designation mean no further Corridor designations should be expected until completion of the next Congestion Study in 2009?

At this time, DOE is issuing two draft National Corridor designations in relation to the two areas identified in the August 2006 Congestion Study as "Critical Congestion Areas," which are experiencing especially acute and urgent congestion problems. DOE has made no decision whether draft National Corridors should be issued with respect to the additional congestion areas that were identified in the Congestion Study.

16. Will DOE consult with States and other stakeholders affected by the two draft National Corridor designations?

In addition to soliciting written comments from all interested parties and scheduling three public meetings, DOE has contacted for consultation the Governors of all the States in which the two draft National Corridors are located.

17. Where do I get more information?

Please visit the DOE Office of Electric Delivery and Energy Reliability website at http://nietc.anl.gov for further information. You may also sign up for automatic updates via email at this website. In addition, you may contact David Meyer in DOE's Office of Electric Delivery and Energy Reliability at 202-586-1411. For legal information, please contact Mary Morton, DOE Office of General Counsel, at (202) 586-1221**.**

All press inquiries should be directed to DOE's Office of Public Affairs, at (202) 586-4940.