



November 5, 2007

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

Attn: Docket No. 2007-OE-01

#### APPLICATION FOR REHEARING

I am requesting rehearing pursuant to FPA section 313 in Docket No. 2007-OE-01, the report and order issued by the Department of Energy designating the Mid-Atlantic Area National Interest Transmission Corridor. I am a resident of Prince William County, Virginia, which is included in the corridor, and am aggrieved by the order issued in this docket.

I previously filed comments electronically at <http://nietc.anl.gov> on July 6, 2007, with respect to the draft designation of the Mid-Atlantic Area National Corridor. The comment tracking number assigned to my comments is 81137. A copy of my previously filed comments is attached to this request for rehearing.

This request for rehearing covers three areas raised in those comments and subsequently addressed by the Department in its report and order.

#### BOUNDARIES OF THE MID-ATLANTIC AREA NATIONAL CORRIDOR

The Department has improperly expanded the notion of a corridor to include an entire region of the country, contrary to Congressional intent in passing the Energy Policy Act of 2005.

The report and order states:

"The Department concludes that its approach to defining the boundaries of the draft Mid-Atlantic Area National Corridor is consistent with the statute. FPA section 216 does not explicitly define the term "national interest electric transmission corridor." FPA section 216(a)(2) does, however, authorize the Department to designate "any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers" as a National Corridor. 16 U.S.C. 824p(a)(2). 'Any geographic area' connotes no particular shape, proportion, or size. Thus, the language of FPA section 216(a) does not appear to limit the shape, proportion, or size for a National Corridor."

While it may be correct that the statute does not explicitly define “national interest electric transmission corridor,” the Department must adopt a reasoned, supportable definition as part of the designation process. Citing the term “any geographic area” as a basis for not rigorously defining the shape, proportion or size for a National Corridor ignores the context of the statutory language. The remainder of the relevant language establishes the context—a geographic area “experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers.”

Instead of attempting to define with any measure of precision those areas where electricity constraints and congestion are adversely affecting consumers, the Department argues that the language of the statute is ambiguous. It is not. While doing the necessary analysis to define the corridor as mandated by Congress may be difficult, the statute requires that type of substantive analysis. This level of analysis is conspicuously lacking throughout the corridor designation process.

It also is not enough for the Department to assert that it believes using a source-and-sink approach to delineating corridor boundaries is a reasonable interpretation of what it characterizes as an ambiguous statutory term. Leaving aside the questionable characterization of the statutory term as ambiguous, the relevant question is what other approaches did the Department consider and why did it fail to adopt them? A different approach, more in keeping with the statutory language, might have yielded more focused, less expansive boundaries for the proposed corridor.

A source-and-sink approach in the Mid-Atlantic Area Corridor requires extending the boundaries of the corridor far to the west to encompass existing, coal-fired generation sources. Although the Department maintains that broad boundaries are necessary to include different sources of generation, proponents of the corridor are already planning (or proposing) to use existing coal plants with underutilized capacity. The western boundaries of the corridor serve not to encourage new energy sources but only to perpetuate generating patterns focused on the present or near-term future. In addition, if the Department had more rigorously identified consumers being adversely affected, the sink areas along the east coast would have been more realistically determined, again potentially narrowing the corridor’s boundaries.

Throughout the report and order, the Department emphasizes that it is not assuming the role of system planners in designating corridor boundaries. In essence, however, the Department is adopting both the planning assumptions and preferred analytical method of entities with the most direct system and economic interests in the outcome of the corridor definition process. For example, the source-and-sink approach supports the stated planning process of PJM Interconnection for large portions of the proposed corridor, including the movement of electricity from west to east and an emphasis on transmission over generation and demand management solutions. Does the Department actually believe that choosing an approach to setting boundaries that conforms to, and supports, ongoing planning and development in major areas of the corridor is somehow not a form of future system planning?

Similarly, it is unacceptable for the Department to assert that comments objecting to using a source-and-sink approach fail to identify alternative source areas or specific corridor alternatives. That responsibility properly rests with the Department and cannot be shifted to others participants in the corridor designation process.

#### ENVIRONMENTAL ANALYSIS

The Department has failed to perform the required environmental analysis in designating the Mid-Atlantic Area National Interest Transmission Corridor.

In part this failure is related to the overly broad designation of the boundaries of the corridor. Because the boundaries are so imprecise, the Department argues that it need not, or cannot, perform environmental reviews, either because it is not proposing specific actions in the corridor or because potential impacts are speculative or impossible to predict. If the Department had actually designated more defined corridors—using a common sense definition with starting and ending points connected by a pathway with boundaries—it would have been able to address environmental impacts, as required by law.

In fact, the sweeping nature of the designated corridor and the related power it creates for Federal review of state transmission line decisions requires that the Department conduct an environmental review before finalizing its proposal. Instead, nothing in the record of this proceeding demonstrates that the Department has conducted any level of environmental analysis related to the proposed corridor designation.

As the report and order point out, the National Environmental Policy Act requires that all Federal agencies prepare an environmental impact statement (EIS) for “every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.” The Department maintains that designation of the corridor does not constitute a major Federal action and therefore that it is not required to prepare an EIS in this instance.

The Council on Environmental Quality’s regulations implementing NEPA, however, define a major Federal action, in part, as:

“(2) adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

(3) adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.”

It is clear that the Department’s designation of the corridor falls within the scope of these regulations. In designating the corridor, the Department is attempting to carry out a statutory program that sets in motion a new process for Federal backup siting of electric

transmission lines, a function that historically has been reserved to state regulatory bodies. The nature and geographic boundaries of the corridor that the Department is designating will determine the nature and scope of potential environmental impacts relating to new transmission facilities, for as long as ten years from final designation. To leave the assessment of those impacts to another agency, at a later time, as the Department proposes, ignores the mandates of NEPA.

The Department's assertion that the mere act of designating a corridor does not mean that new transmission projects will be built, and therefore that no EIS is required, also ignores both political and operational realities. The Congress in the Energy Policy Act sought to address what it saw as problems related to the siting of transmission lines. Its intent surely was not to create a legislative scheme that hampered the siting of future transmission lines, and it directed the Department to take the first steps in determining how best to proceed along a new policy path. The Department's own findings on congestion support the need for additional transmission and the Federal Energy Regulatory Commission (FERC) already has issued regulations for processing any applications it receives that fall within designated corridors.

In addition, regional transmission organizations are planning for future transmission resources within the proposed corridor and have already proposed specific projects. The number of new projects within the proposed corridor may be speculative, as the Department maintains, but the effect of the corridor designation is not—building new transmission lines will be more attractive because, if states move slowly or even reject applications, applicants may ask the Federal government to review their proposals a second time based on different criteria set out in the new legislation. While the initiative being launched by the Department is broad and not all of the outcomes are certain, there are obvious environmental impacts associated with the corridor designation that cannot be ignored and must be evaluated at this stage of the proceeding.

Preparation of a programmatic EIS would allow the Department to meet its environmental responsibilities associated with its corridor designations—actions that set policy and set the stage for site-specific actions that will affect the environment. The programmatic EIS would also allow for an assessment of cumulative impacts, a responsibility that falls on the Department, and should not be shifted, as the Department proposes, to the FERC. The Department's reading of its environmental responsibilities ensures that cumulative impacts—including the environmental impacts associated with generation to be used as the source of additional transmission—would be virtually ignored at every point in the process set out by the Congress. The Department would do no analysis, and the FERC would be limited in its ability to assess such impacts by the project-by-project nature of the filings it might receive.

Finally, it is unclear exactly how the Department has attempted to fulfill its environmental responsibilities associated with the designation of the corridor. Most of the discussion in the report and order attempts to justify the Department's position that there is no requirement to perform an EIS. The basis for the conclusion is not spelled out, however.

Is it the Department's position that the designation of a corridor can be considered a categorical exclusion, and thus that it falls outside the scope of NEPA? If so, there is no analysis supporting such a determination. Similarly, an EIS is not the only environmental review that Federal agencies perform in assessing the potential impacts of their actions. Did the Department conduct any level of environmental assessment—an assessment, for example, that resulted in a finding of no significant impact, and thus of no need to do an EIS? If so, then the record in this proceeding fails to show it.

Instead, it appears that the Department did little or nothing to determine how to meet its obligations for protecting environmental resources potentially affected by its actions, and then failed to inform the public of the process it followed in making its determinations.

#### NON-TRANSMISSION ALTERNATIVES

The Department has failed to consider non-transmission alternatives for addressing congestion in designating the corridor, in contravention of the plain language of the Energy Policy Act and the intent of the Congress.

FPA section 216(a)(2) says “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.” The section also stipulates that the Secretary shall do this “[a]fter considering alternatives and recommendations from interested parties (including an opportunity to comment from affected states) ...”

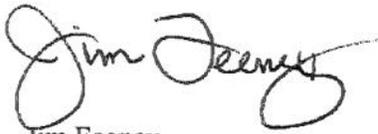
The Department contends that the statute does not specify the meaning of the term “alternatives.” The Department then goes on to argue that, despite the ambiguity, the term does not mean alternative solutions to congestion or constraint problems. Based on that reading of the statute, the Department refused to consider non-transmission solutions to congestion such as local generation, conservation or demand reduction in making decisions about a corridor designation. Instead, the Department concludes that the reference to alternatives and recommendations from interested parties “was intended to refer to comments suggesting National Corridor designations for different congestion or constraint problems, comments suggesting alternative boundaries for specific National Corridors, and comments suggesting that the Department refrain from designating a national Corridor.”

As a result of the Department's reading of the statute, it appears to believe that commenters—including the states directly affected by corridor designation—have little or no role to play in determining the best mix of solutions for addressing congestion and constraint problems in their geographic areas. If the Department's interpretation is to be accepted, only after the Department has identified the problems and proposed the boundaries for a corridor are public and state alternatives and recommendations appropriate for consideration.

While an agency has leeway in interpreting what it considers unclear language in a statute, it does not have the right to ignore the plain meaning of statutory language to suit its own purposes. Contrary to the Department's contention that the statute does not require analysis of non-transmission alternatives, and that such analysis also is not warranted as a matter of discretion, the Congress was precise in the language it used in the statute.

The statutory requirement for considering alternatives and recommendations from interested parties (including states) can more validly be read as intending to ensure a participatory process that would generate a balanced, thorough consideration of options before designating national interest corridors. Anything less, in fact, is inappropriate for implementing a significant, new, and precedent altering Federal role in transmission line siting and construction.

For all of the procedural and policy reasons stated above, I respectfully request that the Department grant rehearing on these three issues.



Jim Feeney

Attachment: Previously filed comments

Before the Department of Energy takes any further action on designation of a Mid-Atlantic Area National Corridor, it should correct a number of process and substantive deficiencies.

The Department should:

- Define more precisely the limits and/or boundaries of the corridor, relying less on political subdivisions like counties and focusing instead on more targeted problem areas;
- Develop consistent, generally applicable methods and criteria for identifying and quantifying physical and economic transmission congestion;
- Analyze transmission, generation and demand-side measures and then determine if transmission improvements best address congestion issues;
- Examine alternative transmission solutions, including alternate routes and new technologies;
- Do comparative, cost benefit analyses to identify alternatives with the lowest cost and highest benefit within and across energy areas/regions;
- Analyze the cross regional implications of transmission additions/upgrades to ensure proper coordination and compatibility;
- Complete required environmental impact analyses in accordance with the National Environmental Policy Act;
- Consult with states in a more meaningful way; and,
- Work closely with affected states to look at factors such as energy efficiency, consumption patterns and the development/integration of renewable energy resources.

As proposed, the Mid-Atlantic Area National Corridor improperly stretches the notion of a corridor to include an entire region of the country. This is not the outcome Congress intended in passing the Energy Policy Act of 2005. The Department should reconsider the scope of the proposed designation and do the analyses needed to identify realistic corridors in which a limited number of projects might need to be considered.

Defining the corridor so broadly makes it more likely that the Federal Government will exercise bypass authority, rather than backup authority, related to the siting of new transmission lines. Throughout the comment period, many members of Congress have expressed concerns about the Department's approach, even those who voted for the legislation in 2005. DOE needs to listen to the concerns being expressed in Congress and

define any corridors in a limited way that will maintain the balance that federalism demands.

The Department also needs to do a programmatic Environmental Impact Statement to address the specific and cumulative impacts of the proposed corridor designation, as required by the National Environmental Policy Act. Asserting that the Federal Energy Regulatory Commission will perform any necessary environmental reviews when applications are filed for projects within designated corridors does not meet DOE's obligations under the law. Under present plans, DOE will do no environmental review of designated corridors, and the FERC will only address impacts in specific applications filed for their review. No Federal agency will address cumulative impacts such as the consequences of increased generation from coal-fired plants, degradation of historic resources, or impacts on state energy plans and programs.

The EIS also should consider alternatives to transmission—such as generation and demand response—that can help remedy congestion and reliability issues. The Department is required to consider these alternatives as part of its congestion studies, but its analyses to date have not done so. By considering only transmission-related issues, the corridor designations will give market advantages to utilities planning to transmit electricity generated from coal-fired plants across long distances, rather than companies seeking to meet demands locally using strategies that include efficiency, conservation and distributed generation. In addition, the congestion studies have failed to include cost benefit analyses that can help determine the best mix of strategies for addressing electric supply problems.

Finally, DOE also has not adequately consulted with states affected by the proposed corridor designation, contrary to the requirements of Section 1221. To cite just one example, Governor Kaine in my state has complained about a lack of consultation and the improper consideration of Virginia's interests. As a result, the Governor has asked that Virginia be removed from the proposed Mid-Atlantic Area National Corridor. The Department's failure to include states with legitimate interests in the development of the corridor designations contradicts Congressional intent and ultimately will undermine the development of effective energy policies.