

UPDATE ON NATIONAL ELECTRIC TRANSMISSION CORRIDOR DESIGNATIONS

by
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On October 5, 2007, the Department of Energy (DOE) published a National Electric Transmission Congestion Report and Order in which it designated the Mid-Atlantic National Interest Electric Transmission Corridor and the Southwest Area National Interest Electric Transmission Corridor. The states affected by the Mid-Atlantic Area National Corridor are Delaware, Washington DC, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. California and Arizona are affected by the Southwest Area National Corridor. The National Corridor designations went into effect October 5, 2007 and will remain in effect until October 7, 2019 unless the designations are rescinded or renewed.

The Energy Policy Act of 2005 (EPACT 2005) charged DOE with identifying electricity transmission congestion.¹ EPACT 2005 also authorized the Secretary of the Department of Energy (Secretary) to designate geographic areas where transmission congestion occurs as National Interest Electric Transmission Corridors (National Corridors). The designation indicates that a transmission congestion problem exists and affects customers to the point that there is a national interest in eliminating it. The designation does not preempt State authority but it does provide the first step toward Federal Government siting authority. This means that if an applicant does not receive approval from a State to site a proposed new transmission facility within a National Corridor within a year, the applicant may then apply to the Federal Energy Regulatory Commission (FERC) for a permit to construct the facility.

FERC may issue a permit only if all of the conditions listed below are met:

- The facilities will be used for the transmission of electric energy in interstate commerce
- The project is consistent with the public interest
- The project will significantly reduce congestion in interstate commerce and protect or benefit consumers
- The project is consistent with national energy policy and will enhance energy independence
- The project maximizes, to the extent reasonable and economical, the transmission capabilities of existing towers or structures

DOE was charged with providing a backstop authority, a safety net, to be used as a method to analyze transmission requirements from a national perspective. DOE conducted a National Electric Transmission Study (as directed by EPACT 2005) and identified the Southwest and Mid-Atlantic as having critical transmission congestion and constraint problems. Determining where to site transmission facilities is very important to the people who live and work near those facilities. Many “interested parties” filed comments opposing the concept of National Corridors. DOE responded to the principal concerns of the interested parties in their October 2, 2007 report, however, they were virtually unchanged from those presented in the Draft report.

¹ Section 1221(a) of the Energy Policy Act of 2005 (EPAct) added a new section 216 to the Federal Power Act (FPA). New FPA section 216 requires the Secretary of Energy to conduct a nationwide study of electric transmission congestion within one year from the date of enactment of EPAct and every three years thereafter.

The designations are not intended to thwart state and local transmission planning.² Designation of a National Corridor does not:

- Mandate that additional transmission facilities must be built
- Direct anyone to build a transmission facility
- Preclude local generation, demand response and energy conservation as ways to resolve the congestion
- Determine a preferred route for a transmission solution
- Represent a siting decision

DOE used a source and sink approach to determine the boundaries of the National Corridors. “Source” is defined as an area of existing or potential generation and “sink” is defined as an area of consumer demand. The sink areas were determined by the load downstream of transmission congestion/constraints and the source areas were areas with underutilized generation capacity or areas with potential for developing renewable generation. The corridor boundaries were drawn to link the sources to the sinks; they connected the loads to sources of power. DOE used existing county boundaries for the corridor boundaries. If any part of the county is in the general source to sink corridor the entire county was included.

The FERC permit would constitute the construction permit and the developer would still need rights-of-way across each piece of public or private land. If the developer could not negotiate a right-of-way with a private property owner then the FERC permit would entitle the developer to acquire the right-of-way by exercise of the right of eminent domain. Eminent domain would not apply to Federal or State owned property. The developer would have to get permission from the Federal or State land managing agency to build a transmission facility.

Parties filed applications for rehearing and some parties requested that the designations be stayed. DOE has completed its consideration of the requests and the rehearing applications and the requests for stay have been denied. The DOE order denying rehearing is a final agency action. Parties to the proceeding who filed timely applications for rehearing have sixty days from the effective date of the order denying rehearing (March 11, 2008) to appeal in a Circuit Court of Appeals of the United States.

There are no other National Corridors besides the two mentioned above and DOE has not decided at this time whether they will designate additional National Corridors. For more information and to view maps of the National Corridors, visit: <http://www.oe.energy.gov/nietc.htm>.

² Under FPA section 216 (b)(1), FERC jurisdiction is triggered only when either: the State does not have authority to site the project; the State lacks the authority to consider the interstate benefits of the project; the applicant does not qualify for a State permit because it does not serve end-use customers in the State; the State has withheld approval for more than one year; or the State has conditioned its approval in such a manner that the project will not significantly reduce congestion or is not economically feasible.