UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

Office of Electric Transmission and Distribution

Designation of National Interest
Electric Transmission Bottlenecks

COMMENTS OF THE ORGANIZATION OF MISO STATES

I. SUMMARY

In response to the U.S. Department of Energy's (DOE) Notice of Inquiry (NOI) published in the Federal Register on July 22, 2004, 69 Fed. Reg. 43833, the Organization of MISO States (OMS) hereby submits the following comments. The NOI seeks comments on issues relating to the identification, designation and possible mitigation of National Interest Electric Transmission Bottlenecks (NIETBs). It states that by publicly identifying and designating NIETBs, DOE will help mitigate transmission bottlenecks that are a significant barrier to the efficient operation of regional electricity markets, threaten the safe and reliable operation of the electric system, and/or impair national security. OMS shares these goals, but it believes that DOE's approach may impede current mechanisms already in place to achieve these goals.[1] In any NIETB designation process, DOE must work closely and in conjunction with the applicable regional, state and local entities, and it must not hamper current mechanisms addressing bottlenecks.

[1] The North Dakota Public Service Commission (NDPSC) believes DOE's designation of NIETBs can complement current mechanisms already in place to achieve these goals. NDPSC views NIETB designation as assisting to mitigate the most critical transmission constraints identified through state and regional transmission planning processes.

The OMS is a regional state committee comprised of fourteen state regulatory commissions[2] and the regulatory authority of Manitoba encompassing the footprint of the Midwest Independent Transmission System Operator (MISO). The OMS appreciates the DOE's request for information regarding NIETBs and as such the OMS wishes to submit comments to the DOE as it initiates its inquiry concerning NIETBs. However, as an initial matter, the OMS has two concerns. First, what will be done with the information gathered in the inquiry? Second, what action does the DOE intend to take in response to the information being gathered? Appropriate answers to these questions are crucial in order to understand how the DOE's proposed national designation process achieves its stated goals.

II. APPROPRIATENESS OF CRITERIA

In the NOI, DOE points to the DOE Secretary's Electricity Advisory Board (EAB) Transmission Grid Solutions Report issued in 2002 in which the Board recommends that to be designated a National Interest Electric Transmission Bottlenecks (NIETB), the bottleneck must meet one of three criteria:

> 1. The bottleneck jeopardizes national security; 2. The bottleneck creates a risk of widespread grid reliability problems or the likelihood that major customer load centers will be without adequate electricity supplies; or 3. The bottleneck creates the risk of significant consumer cost increases in electricity markets that could have serious consequences on the national or a broad regional economy or risks significant consumer cost increases over an area or region.[3]

The NOI requests comments on these criteria as well as on a number of related questions. Are the EAB's recommended criteria for designation of NIETBs appropriate and sufficient? If not, what should they be? For example, should DOE also consider disaster recovery, economic

[2] Members of the OMS are listed in the conclusion of this comment.

[3] NOI at 43834.

development, and the enhancement of the ability to deal with market and system contingencies in designating NIETBs?

The OMS believes that an independent effort by DOE to identify NIETBs that meet the three recommended criteria would be duplicative of the efforts of FERC, the Regional Transmission Organizations (RTOs) and Regional State Committees (RSCs). In particular, the Midwest ISO either has in place, or is in the process of developing, policies that will identify bottlenecks that exhibit the reliability or economic concerns outlined in criteria two and three. Furthermore, there are potential infrastructure security concerns associated with designating a bottleneck as a threat to national security, as suggested by criterion number one.[4]

The EAB's report also suggests "additional criteria" regarding congestion and the exercise of market power. Again, the Midwest ISO either already has, or will shortly have, policies or procedures in place to address these concerns. As explained in more detail below, there are RTO and ISO policies that are designed to both identify and resolve the problems associated with transmission system congestion. Furthermore, there are market monitors in place that have authority to address the potential exercise of market power that may result from transmission bottlenecks.

If the DOE chooses to move forward to implement NIETB procedures, one criterion that may warrant consideration for designation is bottlenecks that are the result of seams between RTOs and other transmission operators. Bottlenecks at seams are potentially critical, as they occur where two or more different entities are involved and where transmission connections bridge systems, states and even countries. Accordingly, it is vital that such bottlenecks not be

[4] NDPSC believes that transmission bottlenecks restricting the development of significant and economic domestic energy resources should be considered under criterion number one because these bottlenecks cause increased dependence on foreign energy.

allowed to either persist or develop. While FERC has made some progress on this issue in the Midwest, it has been slow. Should progress falter, the OMS believes that it would be helpful for the DOE to address these particular types of bottlenecks.

Economic development may also serve as a useful criterion for designation of a NIETB in order to alleviate such transmission bottlenecks. Supporting load growth, new resources, and business and market structures should be considered in the identification of NIETB. Significant economic development opportunities may only be captured if sufficient transmission is available in certain areas. For example, low cost resources may be available in remote areas that can only be utilized if transmission limitations are relieved. In addition to the lower cost of these resources, there could also be benefits from encouraging a more diverse portfolio of resources. Economic development also can be served by developing processes to alleviate bottlenecks that might interfere with the proper functioning of electricity markets.

III. ROLE OF REGIONAL ENTITIES

DOE also asks what should be the role of transmission grid operators, utilities, other market participants, regional entities, states, federal agencies, Native American tribes and others in the process of identifying, designating, and addressing NIETBs?

OMS recognizes that transmission constraints are becoming more prevalent nationwide, and regional entities such as RTOs are working to identify regional needs and bottlenecks. In the Midwest, MISO and Mid-Continent Area Power Pool (MAPP) are developing regional transmission plans to identify and mitigate the negative impacts transmission constraints have on both reliability and the cost of electricity in the Midwest. These plans also incorporate elements

intended to resolve local and regional needs. However, it is unlikely that the resolution of local and regional transmission issues will resolve the needs of other regions.

Nevertheless, the OMS believes that the identification and mitigation of bottlenecks is best performed at the state and regional level, using those practices that are currently in place. The OMS also supports a stakeholder process that recognizes differences in regional transmission constraints and provides regional solutions for the alleviation of these constraints. The OMS believes flexibility is needed to accommodate regional differences. The DOE should not independently designate NIETBs since it does not have institutional, detailed knowledge of local transmission issues and other system intricacies. In contrast, regional transmission plans from an RTO should be the primary source for identifying bottlenecks. RTOs have the requisite knowledge and operational understanding of the transmission system and would be best able to identify transmission constraints that endanger reliability and adequacy of the electric system and reduce the efficiency of electricity markets.

The DOE designation of NIETBs needs to serve a useful purpose. Criteria numbers (2) and (3) are set up to identify problem areas that FERC's Order 2000 already addresses. Specifically, Order 2000 requires RTOs, such as MISO and PJM to:

1. Independently calculate Total Transmission Capability and Available Transmission Capability (confirmed in the FERC's April 28, 2003 White Paper on Wholesale Power Market Platform)[5]

[5] RTO function 5, in Appendix A to FERC White Paper on Wholesale Market Platform, April 28, 2003. The White Paper was issued to clarify the requirements of Order No. 2000, Regional Transmission Organizations, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 at 31,226-27 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996- December 2000 & 31,092 (2000), affirmed sub nom. Public Utility District No. 1 of Snohomish County, Washington, et al. v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

2. Be responsible for planning and for directing or arranging necessary transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable, and non-discriminatory transmission service and coordinate such efforts with appropriate state authorities.[6]; and
3. Ensure the integration of reliability practices within an interconnection and market interface practices among regions and RTOs ... within an electrical interconnection (are required to) coordinate to resolve seams issues.[7]

FERC has also issued orders to MISO, PJM, and SPP that have consistently pushed those regional organizations toward a coordinated fulfillment of these required functions.[8] MISO also has regional seams negotiations and joint-operating agreements already completed, or well underway, with PJM, MAPP, and SPP. The OMS states are working with all these entities to assist in that process. Up to now, the state-federal cooperative relationship has enjoyed both: (1) A sharing of overall jurisdiction on transmission issues, with FERC having the lead on certain issues, states having the lead on others, and OMS helping to build consensus among its member states; and (2) DOE support of OMS through funding and information building activities. The relationship between FERC, MISO, and the OMS is starting to produce measurable success in resolving difficult issues. Furthermore, with other RTOs working to develop RSCs, the potential exists for similar success in other regions. Accordingly, the OMS appreciates DOE's recognition that it "must work with State, regional and local government officials to encourage proposals

[6] RTO function 7, ibid.

[7] RTO function 8, ibid.

[8] See, e.g., Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., 106 FERC ¶ 61,251 (2004) and Southwest Power Pool, Inc., 106 FERC ¶ 61,110 (2004).

from industry participants and to monitor progress toward elimination of designated bottlenecks"[9] rather than take a unilateral approach.

In addition, if the DOE does move forward to implement NIETB procedures, it should do so only in consultation with affected states so that state regulatory commission findings are an integral part of any declaration of bottlenecks. If need be, most state regulatory commissions have the ability to order utilities to build transmission infrastructure to alleviate a specific bottleneck. Further, state commissions have a keen participatory interest in both the MISO expansion planning and approval processes, based partly on the fact that transmission projects will be subject to individual state permit processes.

The OMS believes that DOE should work toward coordinating federal agency facilitation of state siting efforts. In the past, federal land and waterway agencies have significantly delayed transmission expansion proposals, both during and after state permitting reviews.[10] As the OMS continues to work on effective regional strategies that address the challenges of coordinating the

[9] NOI at 43833.

[10] AEP's Wyoming-Jacksons Ferry project in Virginia and West Virginia is often cited as an example where federal agencies have had a major timing impact on transmission development. Details on that project's permitting history (spanning the years 1990 to 2001), and a discussion of Western states' problems with federal permits for transmission projects can be reviewed at http://www.westgov.org/wga/initiatives/energy/preemptfacts.pdf. DOE may also have a lead role of coordinating federal agency permit review when a Presidential Permit is required for international border crossings (four OMS states have land boundaries with Canada). A recent example, including a discussion of the complex timing and coordination required, is described in detail for an Arizona-Mexico project at http://www.ttclients.com/tep/eis.htm. The Minnesota Department of Commerce cites a series of state siting procedures for interstate transmission projects that were complicated by federal agency jurisdiction, and where there was significant uncertainty whether federal agency permits could be obtained after the state issued permits. All of the projects (Chisago-Apple River 230kV, Prairie Island-Eau Claire 345kV, Arrowhead-Weston 345kV) were proposed to cross the Minnesota-Wisconsin boundary, which is in large part coincident with the St. Croix River (National Scenic Riverway) and the Mississippi River (National Scenic Byway, National Wildlife Refuge). The Department also cites difficulties in how federal land crossings and/or right-of-way sharing are addressed during or following state siting procedures when national forests (DOA-FS), tribal reservations (DOI-BIA), airports (FAA), navigable rivers (Corps of Engineers-Civil), military installations (DOD), and interstate highways (DOT) are involved.

state siting of interstate projects, DOE could make a critical contribution by leading a similarly tasked initiative among federal agencies.

IV. IDENTIFYING BOTTLENECKS

The NOI also seeks comment on how might DOE identify bottlenecks in regions where much pertinent data are not available, in contrast to regions where transmission expansion plans have been developed and made public?

The OMS finds that this question does not apply to areas with operational RTOs or independent system operators or to areas such as the western interconnection states that have a long history of joint transmission planning. For areas such as the Southeast or those where electric transmission is provided by federal power administrations or authorities, OMS believes that the DOE should work closely with FERC and its jurisdictional transmission providers and owners in the area to obtain the necessary information.

DOE ACTIONS TO MONITOR PROGRESS

The NOI requests comments on what actions should DOE undertake to facilitate and monitor progress towards mitigation of designated NIETBs?

As explained above, FERC, RSCs and the RTOs have implemented numerous policies and programs intended to facilitate and monitor progress towards mitigation of transmission bottlenecks. These policies are in effect for a large portion of the United States. In these regions, the DOE's efforts to mitigate transmission bottlenecks would be most effective through close coordination with FERC, RTOs, RSCs and other stakeholders.

For about 40 years, various administrations have touted the compelling economic and reliability advantages of consolidating the existing three grids in the continental United States into a single national grid. However, there are too few interconnections between the three grids for unrestricted flow of power. The previous system designs result in limits on transfer capacity that do not automatically permit a single non-constrained market for economic purposes. Accordingly, within the three interconnections, the DOE might play a useful role in resolving differences among regions that have RTOs and those that do not. The OMS supports the DOE's continued commitment to the integration, participation, and coordination of the Tennessee Valley Authority and other federal power marketing agencies with RTOs.

DOE could also facilitate and monitor progress towards mitigation of designated NIETBs and stand ready to provide funding mechanisms for transmission expansion projects intended to alleviate NIETBs.[11]

VI. CONCLUSION

The Organization of MISO States submits these comments because a majority of the members have agreed to support them. The following members generally support these comments. Individual OMS members reserve the right to file clarifying comments or minority reports on their own regarding the issues discussed in these comments.

Montana Public Service Commission
North Dakota Public Service Commission
Minnesota Public Utilities Commission
Nebraska Power Review Board
Missouri Public Service Commission
Iowa Utilities Board
Wisconsin Public Service Commission
Illinois Commerce Commission

[11] Montana believes that any public funding mechanisms should not distort private investment decisions related to transmission projects.

Indiana Utility Regulatory Commission
Kentucky Public Service Commission
Pennsylvania Public Utility Commission
Michigan Public Service Commission

The Public Utilities Commission of Ohio will submit its views in a separate statement.

Members not participating in these comments are:

Manitoba Public Utilities Board
South Dakota Public Service Commission

The Minnesota Department of Commerce and the Iowa Consumer Advocate, as associate members of the OMS, participated in the preparation of these comments and support these comments.

Respectfully Submitted,

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Dated: September 17, 2004