

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY**

**Considerations for Transmission Congestion Study and
Designation of National Interest Electric Transmission Corridors**

COMMENTS OF THE ORGANIZATION OF MISO STATES

In response to the U.S. Department of Energy's (Department) request for comments on its National Electric Transmission Congestion Study and the potential designation of National Interest Electric Transmission Corridors (NIETC), the Organization of MISO States, Inc. (OMS) submits the following comments. The OMS previously submitted comments regarding NIETC to the Department on September 17, 2004, and March 6, 2006. The OMS requests that the Department take notice of those comments when it considers these matters.

Members of the OMS that attended a meeting of the Organization of PJM States (OPSI) on September 18 in Maryland, understood the Department to express a desire for a dialogue with state commissions to seek consensus on an approach to NIETC policy that would comply with the new federal statutes as well as statutes governing state actions. Such a forum would be consistent with Section 216 of the Federal Power Act for the Department to engage in "consultation with the states." The OMS believes that a Department/state commission forum and the subsequent conduct of future congestion studies should be truly consultative by involving the states and seeking consensus. Such a forum would benefit from inclusion of the Federal Energy Regulatory Commission (FERC), Regional Transmission Organizations (RTOs), Regional Reliability Organizations (RROs), and others.

Congestion Study and Corridor Designation

In chapter 6 of its congestion study, the Department invited comment on any and all aspects of the study and the potential designation of NIETCs. In particular, the Department requested that commenters respond to the following three questions:

1. *Would designation of one or more National Corridors in these areas be appropriate and in the public interest?*

The OMS appreciates the Department's efforts towards identifying "Critical Congestion Areas." However, we are not persuaded that "Congestion Areas of Concern" and "Conditional Congestion Areas" can be so precisely forecasted as to warrant declarations of national corridors.¹ Rather than attempting to forecast future NIETCs, designations should be based on existing, persistent, and well documented problems that have not been resolved by local and regional entities such as RTOs, ISOs or other similar organizations.

Even some Critical Congestion Areas may not warrant designation if there are more cost-effective and timely solutions for resolving congestion in those areas. The OMS takes comfort in the Department's acknowledgement in the executive summary of the study that it will strive for a comprehensive regional solution that considers alternatives. Predicting future congestion and transmission constraints is often difficult and there may be better alternatives for eliminating or reducing congestion in the longer-term than the construction of new transmission facilities.

In addition to these practical concerns, the OMS believes that NIETC designations in areas beyond Critical Congestion Areas would exceed both the plain reading and Congressional intent of the Energy Policy Act of 2005. Specifically, new section 216 of the amended Federal Power Act states:

¹ The North Dakota Public Service Commission (NDPSC) and the South Dakota Public Utilities Commission (SDPUC) believe that NIETC designation in conditional congestion areas where electric transmission is needed to make use of plentiful and low-cost domestic resources is in the national interest. The NDPSC supports designation of a NIETC within the Dakotas–Minnesota conditional congestion area identified as one of the principle areas of interest in the Department's congestion study.

(a) Designation of National Interest Electric Transmission Corridors.

- (1) Not later than 1 year after the date of enactment of this section and every 3 years thereafter, the Secretary of Energy...in consultation with affected States, shall conduct a study of electric transmission congestion.
- (2) After considering alternatives and recommendations from interested parties (including 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.

The statute makes clear that NIETC designations may be made for areas actually “experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers.”² The statute does not provide for NIETC designations in areas that may experience congestion in the future or under certain circumstances.

With regards to the Department’s request for additional details and technical analysis, the OMS will largely defer to the individual state commissions and service providers that are more familiar with specific details regarding transmission congestion issues in their electric service areas. Instead, the OMS will focus on the question of whether designation of one or more corridors as NIETCs is appropriate and in the public interest.

The OMS submits that a NIETC designation can only be in the public interest if it would expedite or facilitate a transmission solution to a national interest congestion problem and only if the transmission solution is more cost-effective and timely than other solutions (e.g., generation, demand-response), as determined by the relevant regional planning process, either independently or in concert with the transmission solution. A comprehensive analysis by the Department, while more complicated, is essential. Furthermore, in areas served by RTOs, participation by the RTOs, stakeholders, and state commissions is

² The NDPSC and the SDPUC submit that the existing NDEX transmission capacity constraint adversely affects consumers by preventing the development of plentiful low-cost domestic resources needed for decreasing our national dependence on natural gas and foreign oil.

critical to achieving preferred solutions. To avoid unnecessary and costly duplication while ensuring a comprehensive analysis, the OMS urges the Department to use the databases, modeling tools, and expertise of the RTOs and their stakeholder processes as well as the relevant Regional Reliability Organizations, where possible.

It is important that the Department ensure that the congestion identified in an area is persistent, rather than transient and that the lack of a solution is the result of siting problems prior to designating an NIETC. Designation of an NIETC based on anything other than siting barriers is not in the public interest as it could result in an inefficient application of resources, may fail to resolve the constraint, and would be an inappropriate federal infringement on state siting laws.

In the event that an independent regional planning process determines that a transmission solution is the preferred approach to resolving a critical constraint, then the Department should, as required by law, consult with the affected state commissions prior to designating a NIETC. For example, if needed transmission is not being constructed due to a perception that cost recovery or other uncertainties are the primary barrier rather than siting, then a NIETC designation would be an unnecessary and inappropriate federal infringement on state siting jurisdiction and would not be in the public interest.

When the Department designates an NIETC, and when a transmission solution has been proposed within such NIETC, and under certain conditions outlined under Section 216(b) of the amended Federal Power Act, FERC may assume backstop siting authority for such transmission project. While this arrangement may expedite a transmission solution, it should not result in the Department attempting to manage or develop a specific solution to the identified congestion. Doing so would likely result in a biased and inefficient outcome. Instead, the Department should focus on identifying areas of congestion that are of national interest and allow the best solution to develop through existing regional planning processes. The OMS understands that this is the intent of the

Department. The federal/state processes for accomplishing this would be appropriately addressed in a Department/state forum.

While Section 216 of the FPA is silent on the issue of whether NIETCs should have a specific expiration date or be terminated after a certain event or circumstance has occurred, it is important that the NIETC designation not be allowed to continue after its stated objective(s) have been met. Allowing NIETCs to continue after their objective has been met will effectively result in the FERC maintaining its backstop siting authority when it is no longer necessary. This result is not only unnecessary, but also a potential federal infringement on state jurisdiction. Accordingly, the Department should take considerable care to ensure that a NIETC designation is removed promptly after its objective has been met. To that end, the OMS recommends procedures be developed for an NIETC designation to be removed as soon as the stated goal of the NIETC has been accomplished. While the FPA requires the Department to update its congestion study on a triennial basis, it would be appropriate to announce the termination of the NIETC designation in a timelier manner – at a minimum, no later than the Department’s annual status reports on the congestion studies.

For the above reasons, the OMS urges the Department to only designate corridors when they are truly necessary for solving a national interest congestion problem and only when the identified congestion is persistent, and only in cases where the prior failure to develop a solution is the result of siting problems.

2. How and where should DOE establish the geographic boundaries for a National Corridor?

The OMS agrees that a NIETC is a geographic area under section 216(a). However, we do not believe it necessary for the Department to completely specify the perimeter boundaries of a NIETC.³ As previously noted in response to the Department’s NOI, the OMS believes that NIETC corridors would be best defined as generalized paths. In most cases, specifying only source and sink

³ The Montana Public Service Commission notes its participation in the comments filed by the Committee on Regional Electric Power Cooperation (CREPC) taking the position that NIETCs must have defined geographical boundaries.

areas should provide sufficient NIETC definition without restricting the flexibility necessary for planners to develop routes that maximize system value while minimizing any adverse effects. In short, specific corridor widths or boundaries should be specified only when absolutely necessary and then, those boundaries should address the concerns that made them necessary without resulting in unnecessary routing restrictions.

Designating boundaries around corridor paths could have the effect of establishing federal transmission line corridors within states as utilities seek transmission routes within those federally designated paths. Land use planning should remain within the states' purview. Accordingly, the Department should consider the purpose for designation of a particular NIETC and attempt to designate only the geographic source and sink areas necessary to accomplish that purpose. Just because a proposed transmission project is located within the geographic area encompassed by the NIETC, it should not automatically be assumed that the project will address the circumstances for which the NIETC was designated. Accordingly, it is critical that the Department clearly define the goal of the NIETC so that only projects intended to address that stated goal would be eligible for the FERC backstop siting treatment specified in Section 216(b) of the amended FPA. Furthermore, NIETC designation should not be at the request of one particular provider or for a particular predetermined project and should not foreclose alternative solutions to reliability or congestion problems.⁴

3. *How would the costs of a proposed transmission facility be allocated?*

The OMS recommends that stakeholders work towards agreement on cost allocation methodologies through regional processes like that of the Midwest ISO's Regional Economic Criteria and Benefits (RECB) task force. Last year the

⁴ The Pennsylvania Public Utilities Commission clarifies its position that while section 216(a) of the FPA uses the term "geographic area" in defining the NIETC process, that is not equivalent to a designation of an area defined by political subdivisions. Political subdivisions have no impact on the physical flow of electricity, or on the physical limitations of the conductors, transformers, substations and other infrastructure of the interstate grid.

Midwest ISO filed a cost allocation methodology that was developed through the RECB task force process for transmission upgrades needed for system reliability and generator interconnections. This year the RECB task force is working to develop allocation methods for other regionally beneficial transmission upgrades in time for the Midwest ISO to make a November 1st filing with the FERC. We believe the final determination of cost allocation methodologies for new transmission will be a critical step towards realizing needed transmission expansions within the Midwest ISO footprint. However, the Department should have little or no role in the cost allocation policy development process.

Next Steps

The OMS shares the Department's expectation that regional transmission planning organizations will take the lead in working with state commissions, stakeholders and industry transmission experts to develop solutions to the congestion problems identified in the Department's congestion study. The Department's participation in regional and sub-regional planning processes through its power marketing administrations has been invaluable in the past. We look forward to the Department's continued contributions of planning expertise as well as modeling improvements and an expanded inter-regional effort in the years to come.

Conclusions

The OMS appreciates the Department's invitation to comment on both the congestion study and the potential designation of NIETCs. Because of the difficulty in predicting constrained areas and the potential for intervening solutions, the OMS is not convinced that Congestion Areas of Concern and Conditional Congestion Areas ought to receive designations as corridors.

When designating a NIETC it is important that the Department state its purpose and objective for the designation. Transmission projects that may be physically located within the geographic boundaries of an NIETC, but that are not applicable towards the stated NIETC designation purpose should not be eligible

for the FERC backstop siting treatment that may follow NIETC designation and the corridor designation. Furthermore, an NIETC designation should be removed as soon as its stated objective has been accomplished.

The OMS continues to believe that NIETCs would be best defined as generalized paths. In most cases, specifying only source and sink areas should provide sufficient NIETC definition without restricting flexibility for planners to develop transmission line routes that maximize system value while minimizing adverse effects.

The OMS supports initiation of a forum between the Department and state commissions Section “consultation with the states” that Section 216 of the Federal Power Act requires the Department to engage in.

The OMS looks forward to working with the Department, the Midwest ISO and its stakeholders, and the relevant Regional Reliability Organizations on future matters concerning NIETCs. The Organization of MISO States submits these comments because a majority of the members have agreed to support them. Individual OMS members reserve the right to file clarifying comments or minority reports on their own regarding the issues discussed in these comments. The following members generally support these comments:

- Illinois Commerce Commission
- Indiana Utility Regulatory Commission
- Iowa Utilities Board
- Kentucky Public Service Commission
- Michigan Public Service Commission
- Minnesota Public Utilities Commission
- Missouri Public Service Commission
- Montana Public Service Commission
- Nebraska Power Review Board
- North Dakota Public Service Commission
- Pennsylvania Public Utility Commission
- South Dakota Public Utilities Commission
- Wisconsin Public Service Commission

The Public Utilities Commission of Ohio abstained from these comments.
The Manitoba Public Utilities Board does not participate in these comments.

The Indiana Office of Utility Consumer Counsel, the Minnesota Department of Commerce, and the Iowa Consumer Advocate, as associate members of the OMS, support these comments.

Respectfully Submitted,

William H. Smith, Jr.

William H. Smith, Jr., Executive Director
Organization of MISO States
100 Court Avenue, Suite 218
Des Moines, Iowa 50309
Tel: 515-243-0742

Dated: October 12, 2006