

# Oppose Efforts to Restrict Funding For Designating National Interest Corridors Under the Energy Policy Act of 2005

On April 26, 2007, the Department of Energy (DOE) proposed the designation of two national interest corridors pursuant to its authorities under the Energy Policy Act of 2005 (EPAct 2005) and based on the findings of its August 2006 Congestion Study. Both the proposed Mid-Atlantic Area Corridor and the Southwest Area Corridor involve geographic areas with well-known and persistent transmission congestion problems. These problems require resolution through measures that may include the siting and construction of new electric transmission infrastructure, new generation including renewable energy, conservation, or some combination of these options. The proposed boundaries for each of the two corridors are broad so as to preserve maximum flexibility for states and FERC, if FERC becomes involved, to develop solutions.

Recently, opponents of specific transmission projects are mounting an effort to restrict funding for DOE to carryout any national interest corridor designations. Such an effort, if successful, would endorse a “business-as-usual” approach to long-standing transmission infrastructure and congestion problems. Unfortunately, the ultimate cost of delay and inaction will be borne by electricity consumers, who could face higher electricity costs or deteriorating reliability because of increased congestion in the system. **Please oppose any effort to restrict funding related to national interest corridor designations.**

## A national interest corridor designation does NOT:

- Usurp state authority to site transmission infrastructure or make choices about how to resolve electricity grid problems. State regulatory commissions retain their primary siting authority, with recourse to FERC only if a state cannot or will not act.
- Determine that transmission is the best solution.
- Constitute approval of specific transmission projects that may now or in the future be pending before state regulatory commissions. In fact, by drawing the boundaries of a national interest corridor designation broadly, DOE avoids favoring any particular solution and preserves maximum flexibility for the states to choose the appropriate solutions consistent with policy preferences.
- Truncate or diminish the rights of local stakeholders to become involved in siting decisions. State siting procedures are well-established and often begin long before the filing a formal application with a state regulatory commission. FERC has likewise established a comprehensive filing process modeled after that used for siting natural gas facilities and which includes a pre-filing process that cannot begin on any specific project until one year after an application has been filed with a state.
- Result in the taking of private property. Eminent domain authority will only attach to a proposed project when the appropriate approvals are granted by the states or FERC. Use of that authority is always a last resort for utilities who seek to negotiate for land acquisition and then requires court adjudication to protect the rights of landowners. The siting of transmission facilities, like the siting of roads, has always been considered a public purpose within the scope of the takings clause of the U.S. Constitution.

- Require a NEPA analysis or consideration of impacts on historic or cultural resources because a designation:
  - is not a determination that transmission must be built;
  - is not a proposal to build a transmission facility;
  - does not direct anyone to build transmission;
  - does not result in or plan for any ground-breaking environmental impacts;
  - does not irrevocably commit any resources to an activity with foreseeable environmental impacts;
  - does not control the outcome of any decision that FERC might make on the merits of an application that might come to it.

These analyses and consideration of alternatives will all take place during state proceedings and will be repeated by FERC should FERC's "backstop" siting authority be triggered.

### **Recent analyses of electricity grid capacity and power supply re-affirm the need for the EAct 2005 framework.**

- The Energy Information Administration's 2007 "Annual Energy Outlook" projects that electricity consumption will increase by 43% by 2030.
- The North American Electric Reliability Corporation (NERC) October 2006 long term reliability assessment projects a 19% growth in electricity demand in the next 10 years alone, with confirmed power capacity growing at only 6%.
- Without corrective measures, NERC also projects capacity margins will fall below minimum target levels needed to ensure reliability in New England, the Midwest, the Mid-Atlantic, the West, and Rocky Mountain areas, leading to electric reliability problems and price volatility as reserve margins grow smaller.
- DOE's August 2006 Congestion Study, required by EAct 2005, identified three kinds of congestion concerns: (1) critically congested areas which DOE has now proposed for national interest designation; (2) congestion areas of concern; and (3) conditional congested areas, those that would be congested if clean coal, renewable and other generating assets were to be built to transmit load to population centers. The proposed national interest corridors are the critically congested areas. DOE finds that the Mid-Atlantic Corridor will face problems with transmission of electricity supply to population centers within 5 years and customers are already experiencing higher prices. Similar pressures are identified for the geographic area comprising the proposed Southwest Area Corridor.

### **EAct 2005 carefully balances federal and state responsibilities for siting electric transmission facilities, using an approach that is different from the Natural Gas Act under which FERC exercises exclusive siting authority for natural gas pipelines.**

- While EAct 2005 continues to vest states with the primary responsibility for siting transmission, the framework encourages states to make timely decisions and consider both the local (in-state) and regional (interstate) benefits and consequences of their decisions. FERC is authorized to get involved only in rare situations where a state cannot or will not act.
- FERC's role is a "backstop" authority that fills gaps in siting authorities that have become apparent as the electricity grid has evolved from a system supporting local service providers to a system of highly interconnected regional networks transmitting large quantities of power across long distances.

**The transmission siting provisions of EAct 2005 encourage electric utilities to continue working with state regulatory commissions for the most timely siting decisions, while creating incentives for states to address regional problems with the electric transmission grid in a timely manner.**