Q&A: Transmission Siting Provisions of the Energy Policy Act of 2005

What is a National Interest Electric Transmission Corridor (National Interest Corridor) under Section 1221 of the Energy Policy Act of 2005 (EPAct 2005)?

A National Interest Corridor is: (1) a "geographic area" where congestion in the electricity grid is raising the cost of electricity to consumers or jeopardizing reliable service and (2) for which resolution is in the national interest. As prescribed by EPAct 2005, a triennial analysis of grid capacity prepared by the Department of Energy (DOE) provides the basis for any such designation.

What is the effect of a National Interest Corridor Designation?

A designation puts states, utilities, and stakeholders on notice that there are electric grid issues with regional impacts that require a timely resolution. It is not a finding that transmission is the best solution, nor does it mandate that transmission lines be built or be built at any specific location. States retain the primary responsibility for deciding how to resolve congestion or grid capacity problems, including how and where to site transmission. Recourse to the Federal Energy Regulatory Commission (FERC) is authorized in the rare circumstance where a state cannot or will not act promptly to resolve the congestion or assure reliability.

Why is the Department of Energy proposing to designate two National Interest Corridors?

DOE's 2006 Congestion Study identified the Mid-Atlantic and the Southwest-Southern California regions as areas where congestion and inadequate grid capacity are imposing a multi-billion dollar annual cost on consumers, can lead to reliability problems that could be experienced as voltage reductions, brownouts or rolling blackouts, and are making it less likely that renewable resources such as wind generation and clean coal technologies can be developed to meet the nation's need for electricity. The DOE study also found that fuel source diversity in the two areas is low, which it found especially problematic given the volatility of natural gas prices. Roughly 26% (55 million people) of the nation's population reside within the two areas, which are central to the nation's economy and are the location of important national security installations. These same areas were identified as congested in the 2002 National Grid Study and in other regional and subregional grid analyses, yet little progress has been made towards addressing the concerns.

Does a National Interest Corridor Designation usurp state authority to site transmission lines?

Just as before the enactment of EPAct 2005, the states remain the primary authority for siting transmission even within a designated national interest corridor. Limited recourse to FERC is provided in three circumstances, all of which are in the power of each state to control and which reflect gaps in state authority that have become apparent as the electricity grid has evolved to support the bulk transfer of power across large distances. These circumstances are: (1) if the state has no jurisdiction over a transmission project proponent, (2) if the state can not evaluate both in-state and interstate benefits of a proposed project; and (3) if the state does not act to approve a proposed project within 1 year or unreasonably conditions the project so that it no longer resolves congestion or is rendered uneconomic. The 1-year clock is triggered by the

formal filing of a siting application and does not include pre-filing activities involving data collection, environmental analysis and considerable public outreach, which often begin years before the formal filing of an application.

By providing limited access to FERC for siting decisions, does a national interest corridor designation reduce or eliminate an electric utility's incentive to work through a state process for approvals?

No. Electric utilities continue to have a strong incentive to reach agreement with a state on the siting of power lines. Recourse to FERC will likely add 2-4 years to the time it takes to site a transmission line on top of the time and resources invested at the state level. Thus, the most timely decision will come through an agreement with the state. Backstop authority is an important reminder to a state to act expeditiously and can assist in resolving disputes between states and encouraging multi-state collaboration on solutions.

Does the designation of a National Interest Corridor grant eminent domain authority to any party or result in the taking of private property?

No. A National Interest Corridor designation does **not** confer eminent domain authority, Such authority is granted under the respective laws of the 50 states or, under federal law, only when FERC issues a construction permit for a transmission project. Similar eminent domain authority is available to energy companies when FERC approves pipeline projects. The use of eminent domain authority to acquire property necessary for the construction of power lines when acquisition cannot be negotiated has long been recognized as a valid public purpose under the U.S. Constitution and is enforceable only through the courts. EPAct 2005 does not permit the condemnation of federal or state lands.

Does a national interest corridor designation adversely affect historic, cultural, scenic or natural resources or the environment?

No. A corridor designation is a label, prioritizing a need without dictating a solution. Although proposed solutions may have a potential adverse effect, if approved, those effects will be evaluated and mitigation measures determined during any state siting process as historically the case has been. FERC has established a comprehensive pre-filing and post-filing process for evaluating and addressing such impacts should its authority be triggered, to which all relevant procedural and substantive requirements of federal law apply, including those to ensure that the nation's natural resources and the environment are protected.

Why is the broad geographic boundaries proposed for each national interest corridor a good thing?

The broad geographic boundaries proposed by the Department of Energy for each of the National Interest Corridors preserve maximum flexibility for the affected states, utilities, and stakeholders to address the grid problems that prompted the proposed designations, whether through additional generation, transmission, conservation, or a combination thereof. Through broad geographic boundaries, the Department of Energy avoids favoring one solution over another and assures that a designation cannot be construed as an endorsement of any proposed transmission projects.