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COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (PAPUC) submits these comments in response to the Notice of Intent and Request for Information (NOI/RFI) published in the Federal Register by the Department of Energy (Department) on May 15, 2023.¹ The NOI/RFI proposes modifying the process through which the Department designates National Interest Electric Transmission Corridors (National Interest Corridors).

I. INTRODUCTION

The National Interest Corridor process was first added to the Federal Power Act (FPA) by the Energy Policy Act of 2005 (EPAct of 2005).² As set forth in the EPAct of 2005, the Secretary of the Department shall conduct a study of electric transmission congestion in consultation with affected States every three years.³ Based on this triennial study of congestion (Needs Study), the Secretary is authorized to designate National Interest Corridors.⁴ This designation allows the Federal Energy Regulatory Commission (FERC) to issue one or more permits for the construction or modification of electric transmission facilities in a National Interest Corridor designated by the Secretary in certain circumstances, and second, like the Infrastructure Investment and Jobs Act

¹ Department of Energy, *Notice of Intent and Request for Information: Designation of National Interest Electric Transmission Corridors*, 88 Fed. Reg. 30956 (May 15, 2023).

² 42 USC § 13201 *et seq.*

³ Energy Policy Act of 2005, § 1221.

⁴ *Id.* (“After considering alternatives and recommendations from interested parties (including an opportunity for 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.”).

(IIJA),⁵ the Secretary was permitted to operate or participate in certain transmission facilities located in National Interest Corridors.⁶

The IIJA modified the original process of designating National Interest Corridors outlined in section 216(a) of the FPA by allowing the Department to base its designation of National Interest Corridors on information beyond the Needs Study, expanding FERC's backstop permitting authority, and providing for additional public-private partnerships for projects located in National Interest Corridors.

Additionally, section 50151 of the Inflation Reduction Act (IRA) of 2023 appropriates \$2 billion to the Secretary of Energy through September 30, 2030, for direct loans to non-federal borrowers for the construction or modification of electricity transmission facilities located within a National Interest Corridor designated by the Secretary of Energy under section 216(a) of the FPA.

Currently, there are no National Interest Corridors in effect. The PAPUC notes that in 2007, the Secretary of Energy designated two National Interest Corridors – the Mid-Atlantic Area National Corridor (including certain counties in Ohio, West Virginia, Pennsylvania, New York, Maryland, Virginia, New Jersey, Delaware, and the District of Columbia), and the Southwest Area National Corridor (including certain counties in California and Arizona) – after conducting a required congestion study in which it concluded that customers in these geographic areas are adversely affected by constraints or congestion. However, in 2011, the U.S. Court of Appeals for the Ninth Circuit vacated this congestion study.⁷

⁵ *Compare*, 42 U.S.C. § 18713.

⁶ 42 U.S.C. § 16421.

⁷ *California Wilderness Coalition v. U.S. Dep't of Energy*, 631 F.3d 1072 (9th Cir. 2011), (*California Wilderness*).

In 2015, the Department issued a Needs Study in which, citing the Ninth Circuit’s 2011 decision, it stated that the new study “differs from previous studies in the manner in which state consultation has been sought throughout the preparation of the study”.⁸ Concurrently, the Department also issued a *Report Concerning Designation of National Interest Electric Transmission Corridors*, concluding that the information it collected during the preparation of the draft congestion study, with the additional information received through a public comment process, did not provide a basis for the designation of a National Interest Corridor.

In its “Building a Better Grid Initiative” announcement, the Department recently stated that, in order to meet President Biden’s goal of 100 percent clean electricity by 2035 and a zero emissions economy by 2050, “[i]ndependent estimates indicate that [the U.S.] need[s] to expand electricity transmission systems by 60% by 2030, and may need to triple it by 2050.”⁹ The Department has since recognized that although “multiple pathways exist” for the U.S. to meet President Biden’s clean energy goals, “all require upgrading and expanding the Nation’s transmission infrastructure”,¹⁰ particularly, “deploying interstate high-voltage lines connecting areas with significant renewable energy resources to demand centers and linking together independently operated grid regions.”¹¹

With respect to its authority under section 216 of the FPA to designate National Interest Corridors, the Department indicated that, instead of designating National Interest Corridors on its own initiative, as it did originally, it intends to provide a process for the

⁸ U.S. Department of Energy, *National Electric Transmission Congestion Study* (September 2015), available at https://www.energy.gov/sites/default/files/2015/09/f26/2015%20National%20Electric%20Transmission%20Congestion%20Study_0.pdf.

⁹ <https://www.energy.gov/oe/articles/doe-launches-new-initiative-president-bidens-bipartisan-infrastructure-law-modernize>.

¹⁰ 87 Fed. Reg. 2769, 2770.

¹¹ *Id.*

designation of National Interest Corridors on “a route-specific, applicant-driven basis,”¹² in order to facilitate the efficient consideration of projects seeking a permit from FERC under section 216 of the FPA. The Department also said that it intends to “give particular consideration to proposed [National Interest Corridors] that, to the greatest degree possible, overlap with or utilize existing highway, rail, utility, and federal land rights-of-way.”¹³

II. COMMENTS

A. **The applicant-driven route-specific designation process violates the structure of the National Interest Corridor designation process and administrative law principles.**

The PAPUC submits that the National Interest Corridor designation process should be used only where likely projects will satisfy the broadest possible set of impacted entities. As described, the Department’s applicant-driven approach does not satisfy that touchstone, instead being implicitly tied to the interests of a small number of transmission developers and aggressive energy mix policies which are absent from Congress’ authorization to designate National Interest Corridors. Moreover, the Department’s proposal does not comport with the structure of geographic designation that Congress devised. We offer these comments in that light.

At the heart of the NOI/RFI is the Department’s intention to create an “applicant-driven, route-specific process to designate [National Interest Corridors].”¹⁴ The Department states that a “route-specific” National Interest Corridor means one that “encompass[es] narrow areas that are under consideration for the location of specific potential project(s), and which are sufficient for the construction, maintenance, and safe operation thereof in accordance with any applicable regulatory requirements.”¹⁵

¹² 87 Fed. Reg. 2769, 2773.

¹³ *Id.*

¹⁴ NOI/RFI at 30957.

¹⁵ *Id.* at 30956.

As the legal underpinning of the proposed applicant-driven, route-specific process, the Department states that “section 216(a) of the FPA directs the Department to conduct a study of electric transmission constraints and congestion on a triennial basis and, on the basis of that study and other information, designate geographic areas as [National Interest Corridors].”¹⁶ The Department further states that it is currently drafting a Needs Study which “will catalog both historical and anticipated electric transmission needs [and] identify high-priority national transmission needs[.]”¹⁷ The Department describes that “[s]ection 216(a)(2) of the FPA directs [it] to issue a report, based on the findings of the Needs Study or other information related to electric transmission capacity constraints or congestion, which may designate one or more [National Interest Corridors].”¹⁸ The Department notes that “section 216(a)(4) of the FPA, as amended by the IIJA, allows the Secretary to consider several additional factors in determining whether to designate a [National Interest Corridor].”¹⁹

The Department explains that “[s]ection 216(a)(2) requires the Secretary’s decision to designate a National Interest Corridor to be issued in a Designation of National Interest Electric Transmission Corridors Report (“Designation Report”).”²⁰ The Department reasons that “to reach a decision on an Applicant’s proposal for designation of a [National Interest Corridor] and prepare a Designation Report,” it will, among other things, “[c]onsider the results of the final 2023 National Transmission Needs Study,” “[e]valuate proposals for consistency with the statutory requirements for corridor designation as described in section 216(a)(2) of the FPA” and “[e]valuate the transmission needs that would be addressed by new or upgraded transmission capacity within the potential [National Interest Corridor], and how those needs compare or relate

¹⁶ *Id.* at 30957.

¹⁷ *Id.* at 30958.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ NOI/RFI at 30961.

to the needs identified in the Need Study and other additional factors as outlined in section 216(a)(4) of the FPA, as amended by the IIA.”²¹

While the Department asserts that the proposed applicant-driven, route-specific process considers the statutory criteria set forth in FPA section 216(a), there are significant weaknesses in the proposal’s statutory reasoning to support *how and by whom* those criteria are evaluated. Section 216(a)(1) states that “[n]ot later than 1 year after August 8, 2005, and every 3 years thereafter, the Secretary of Energy, in consultation with affected States and Indian Tribes, shall conduct a study of electric transmission capacity constraints and congestion.”²² Section 216(a)(2) requires that “the Secretary, after considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States and Indian Tribes), shall issue a report, based on the study under paragraph (1) or other information relating to electric transmission capacity constraints and congestion, which may designate ... a [National Interest Corridor.]”²³

Thus, the statutory process envisions the Department as the driving force behind both the initial report on capacity constraints and congestion under section 216(a)(1) as well as the subsequent report designating a National Interest Corridor under section 216(a)(2). While the statute does provide that the Department may consider “other information relating to electric transmission capacity constraints and congestion” in designating a National Interest Corridor under section 216(a)(2), nowhere does the statute specifically authorize an “applicant-driven” process for National Interest Corridor designation. Simply put, Congress only authorized the Department to independently exercise its judgment based on all available information. Changes in the IIA to adjust

²¹ *Id.*

²² 16 U.S.C. § 824p(a)(1).

²³ 16 U.S.C. § 824p(a)(2).

what information the Department may consider were meant only to ensure that the Department could exercise its judgment based on a plenary record.

For that matter, nothing in the statute specifically authorizes the Department to designate a “route-specific” National Interest Corridor. Rather, the statute envisions that the Department will designate National Interest Corridors as “any geographic area that... is experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers; or... is expected to experience such energy transmission capacity constraints or congestion.”²⁴ However, by ceding the initiative for National Interest Corridor designations to transmission developer applicants, and narrowing the type of geographic area that may be proposed for National Interest Corridor designation to route-specific corridors, the Department violates the plain meaning and structure of section 216(a).

Even if the Department claims a statutory basis in the “other information” clause of section 216(a)(2), such a claim is unconvincing when viewed in light of the “major questions” doctrine. Under that doctrine, even where “regulatory assertions had a colorable textual basis... given the various circumstances, common sense as to the manner in which Congress would have been likely to delegate such power to the agency at issue, made it very unlikely that Congress had actually done so.”²⁵

Here, Congress enacted a statute which puts the Department in the driver’s seat to designate National Interest Corridors in wide geographic areas—an approach the Department fully acknowledged and adhered to during its initial implementation of section 216(a) in 2007 and 2008. At that time, the Department acknowledged that “[a] National [Interest] Corridor designation is not a siting decision; it does not dictate the route of any transmission project... Instead, FPA section 216(a) assigns to the

²⁴ *Id.*

²⁵ *W. Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587, 2609 (2022).

Department the role of identifying transmission congestion and constraint problems, and the geographic areas in which these problems exist.”²⁶ Similarly, the Department explained that “section 216(a) does not shift to the Department the role of designing routes for transmission facilities, and a National [Interest] Corridor designation does not dictate or endorse the route of any transmission project.”²⁷

Finally and perhaps most presciently, the Department found that:

It would make little sense to interpret FPA section 216 as requiring [the Department] to designate narrowly-defined corridors that, in effect, would constitute siting decisions by [the Department], since any siting authority to be exercised under FPA section 216 is plainly the responsibility of FERC, not [the Department]. Thus, if Congress had intended a National [Interest] Corridor designation to pertain only to a specific electric transmission project, and had intended [the Department] to select specific routings, it seems likely that Congress would have authorized [it] to both make the National [Interest] Corridor designation and issue the construction or modification permit. Congress did not do so.²⁸

The Department’s earlier approach to National Interest Corridor designations hews more closely to the text of section 216(a) and it is contrary to the Department’s newly-stated approach. This inconsistency lends credence to the argument that the Department views its “enabling legislation” as an “open book to which the agency may add pages and change the plot line.”²⁹ At the very least, the Department must articulate compelling

²⁶ Office of Electricity Delivery and Energy Reliability, *Draft National Interest Electric Transmission Corridor Designations*, 72 FR 25838-01, 2007 WL 1306200 (May 7, 2007).

²⁷ *National Electric Transmission Congestion Report*, 72 FR 56992-02 (Oct. 5, 2007).

²⁸ *National Electric Transmission Congestion Report; Order Denying Rehearing*, 73 FR 12959-02 (Mar. 11, 2008).

²⁹ *W. Virginia v. Env't Prot. Agency*, 142 S. Ct. at 2609.

reasons *why* it is abandoning its previous positions regarding the designation of National Interest Corridors.³⁰

Although the Department acknowledges that its previous approach to National Interest Corridor designations suffered a legal setback in the case of *California Wilderness*,³¹ that setback does not provide a basis for the Department to adopt an applicant-driven, route-specific approach. Instead, *California Wilderness* involved two unrelated failures: (1) in preparing the congestion needs study under section 216(a)(1), the Department failed to consult with states as required by the statute;³² and (2) in designating National Interest Corridors, the Department failed to prepare an Environmental Impact Statement or Environmental Assessment in accordance with the National Environmental Policy Act.³³

There are also significant policy reasons to question the wisdom of the Department's proposed applicant-driven, route-specific approach. This approach blurs the line between National Interest Corridor designation and transmission facilities permitting. The Department appears to presume that most or all applicants for National Interest Corridor designations will be transmission line developers. For example, the Department "anticipates that, generally, routes proposed for potential designation as a [National Interest Corridor] may be associated with specific transmission projects under active development, meaning that a potential applicant has progressed beyond the preliminary

³⁰ See, *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("[T]he requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position. An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books. And of course the agency must show that there are good reasons for the new policy."). See also, *Hatch v. FERC*, 654 F. 2d 825, 834 (D.C. Cir. 1981), quoting, *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C.Cir.1970), cert. denied, 403 U.S. 923 (1971) ("An agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from tolerably terse to intolerably mute.").

³¹ NOI/RFI at 30959.

³² *California Wilderness*, 631 F.3d at 1083-1096.

³³ *Id.* at 1096-1106.

concept and has begun actively routing the project and engaging in community and landowner outreach, land surveys, or initiation of environmental compliance work.”³⁴

Privatizing the initiative for National Interest Corridor designations has at least two negative consequences. First, it takes the initiative away from the Department, which is tasked with “ensur[ing] America’s security and prosperity by addressing its energy, environmental and nuclear challenges through transformative science and technology solutions”.³⁵ Instead, the Department’s proposal allows private transmission developers to be the driving force behind decision-making in designating National Interest Corridors. There are other competing interests for land use beyond rail and other utilities, including the public’s use and enjoyment of its natural resources as protected by the Pennsylvania Constitution.³⁶

Second, the applicant-driven, route-specific approach skews the focus of the National Interest Corridor designation towards an inquiry into whether a specific transmission line is the presumptive solution to the congestion associated with the National Interest Corridor application, when in fact, the best solution may not even be transmission-dependent. In fact, the Department identified this problem in its earlier orders:

A National [Interest] Corridor designation is not a determination that transmission must, or even should, be built; it is not a proposal to build a transmission facility and it does not direct anyone to make a proposal. Transmission expansion is but one possible solution to a congestion or constraint problem; increased demand response, improved energy efficiency, and conservation, as well as siting of additional generation close to load centers are also potential solutions. Whether a particular transmission project, some other transmission project, or a non-transmission project is an appropriate solution to a congestion or constraint problem

³⁴ NOI/RFI at 30957.

³⁵ Available at <https://www.energy.gov/mission>.

³⁶ PA Const. Art. 1, § 27.

identified by a National [Interest] Corridor designation is a matter that market participants, applicable regional planning entities, and State authorities, among others, will consider and decide before any project is built.³⁷

However, it is difficult to fathom how any solution other than an applicant's route-specific transmission line proposal would get significant consideration under the Department's proposed approach to National Interest Corridor designations.

By way of example, when there is capacity available on existing transmission infrastructure to run additional high voltage transmission lines, a lower-cost and lower-impact solution to reducing congestion could be to add another line to existing towers instead of granting a non-incumbent transmission operator an opportunity to build a parallel project just a few hundred feet away from an existing right of way. So, if the Department relies upon a non-incumbent transmission operator's proposal without looking at other conceivable solutions to reducing constraints or congestion including upgrades scheduled to be made to existing transmission lines and capacity available on parallel existing routes, the route-specific approach risks marginalizing alternatives (*i.e.* other than building new transmission lines) to reducing congestion.

Furthermore, the policy rationale behind reducing congestion presumes that distant load centers should pay the same as nodes located close to generation. However, facilitating new generation in high-priced load zones can also solve economic congestion, an approach that may be working as intended in some regions. For example, "[t]he majority of current in-service generation and queued, future generation projects in PJM (most of which are renewable resources) are geographically located 100 miles or less from load centers."³⁸ But the Department's route-specific approach could well sideline

³⁷ Office of Electricity Delivery and Energy Reliability; *Draft National Interest Electric Transmission Corridor Designations*, 72 Fed. Reg. 25838-01.

³⁸ Initial Comments of PJM Interconnection, L.L.C., *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, FERC Docket No. RM21-17-000 (Oct. 12, 2021) at 9.

new generation as a means to combat congestion. The PAPUC is skeptical that Department's implicit goal to double or triple the amount of transmission lines nationwide combined with the applicant-driven corridor designation, with the intent to move essentially the same amount of energy around the country aligns with the Congressional intent underlying the National Interest Corridor process. Additionally, national strategies to keep demand and supply in close proximity to each other means less load is lost in the transport of electricity through transmission lines, that there are fewer lines to maintain and clear of vegetation, and perhaps fewer forest fires caused in part by high voltage transmission lines. In sum, unlimited transmission expansion is not a universal good. The Department's designation of National Interest Corridors must consider alternatives, and should be uncoupled from the interests of private developers.

B. The Department should clarify the information it seeks from applicants.

Beyond the information it proposes to request, the Department should also consider requesting the status of any transmission applications which are currently seeking approvals before state siting authorities. Section 216 contemplates that a National Interest Corridor may be designated after a project has already applied for approval at a relevant state siting authority.³⁹ While the Department requests the status of regulatory approvals and the project's inclusion in any local or regional transmission plan,⁴⁰ the Department should clarify that this includes applications made before a state siting authority that have not yet been resolved. Additionally, as discussed throughout these comments, a National Interest Corridor designation must be based on the need for more than one project, especially a small project. National Interest Corridors do not supplant transmission planning, transmission cost-benefit evaluation, and state permitting roles. Basing the National Interest Corridor designation on a single project would

³⁹ 16 U.S.C. § 824p(b)(1)(C)(i)(II).

⁴⁰ NOI/RFI at 30961, Required Application Information, (vii)(a), (b).

improperly invade those roles, which are not only best-suited to, but the mandate of those other entities.

In the same vein, the PAPUC recommends the Department expand on its request for the geographic boundaries which account for the sufficient size and scope to accommodate typical route changes. Because designations should not be driven by one conception of a project, the proposed geographic boundaries must consider the possibility that a specific project will not be the sole basis for a National Interest Corridor designation to be valid.⁴¹ Thus, “typical route changes” should be broadened to accommodate changes to the size of the project and route changes that would accompany a different project. If a specific project is not approved by the state or FERC, there is still the possibility that a different project might serve the regional needs better and therefore might be approved based on a different record. For example, in PJM, competitively planned projects are included in the regional plan as satisfying reliability criteria, market efficiency criteria, or both. There may be a project which fails to meet its evidentiary burden solely under one criterion, but in fact, might pass muster on the question of need if it were instead brought forward as a multi-value project. National Interest Corridor designation, and consequently the application seeking designation, must account for these types of possibilities.

C. The Department should consider advanced technologies in its designation process.

If despite these comments, the Department continues with its proposal to make determinations based upon applicant-driven proposals, the PAPUC supports the Department’s request for applicants to include a “discussion of whether planned or anticipated transmission project(s) within the potential [National Interest Corridor] would use innovative transmission technologies or combinations of technologies that would

⁴¹ NOI/RFI at 30960; Required Application Information, (i).

impact the size and scope of the proposed route”. Advanced transmission technologies which can reduce project size have the potential to reduce land use impacts and save consumers money. The transmission system provides its greatest reliability benefits not during the average day, where the transmission system experiences little congestion, but for peak days in the summer and winter. That extra transmission capacity needed for those days can go unused outside of peak times. Advanced technologies like dynamic line ratings allow for grid operators to get the most out of the system while improving efficient planning. They also allow minimization of project size. National Interest Corridors should be large enough to put landowners on notice, but no larger than needed to address the congestion which the designation is intended to resolve under FPA section 216.

When considering the designation of a National Interest Corridor based on whether planned or anticipated transmission projects would use dynamic line ratings specifically, the Department should consider areas where dynamic line ratings will be most impactful—namely, areas with wind. Presently, FERC requires transmission providers to use ambient-adjusted ratings (AARs) for their transmission lines.⁴² AARs consider ambient air temperature and solar heating on the line throughout the day.⁴³ Dynamic line ratings provide more granular information, including potential direct measurement of line conditions which adjust for ambient temperature and solar heating, but also wind, transmission line tension, and transmission line sag, among even more measurements. As one dynamic line ratings provider told PJM, “Dynamic Line Ratings provides increased line ratings above [AARs] ... when wind speeds are at their highest levels.”⁴⁴ Moreover, “[w]ind is the most significant factor when determining an increase

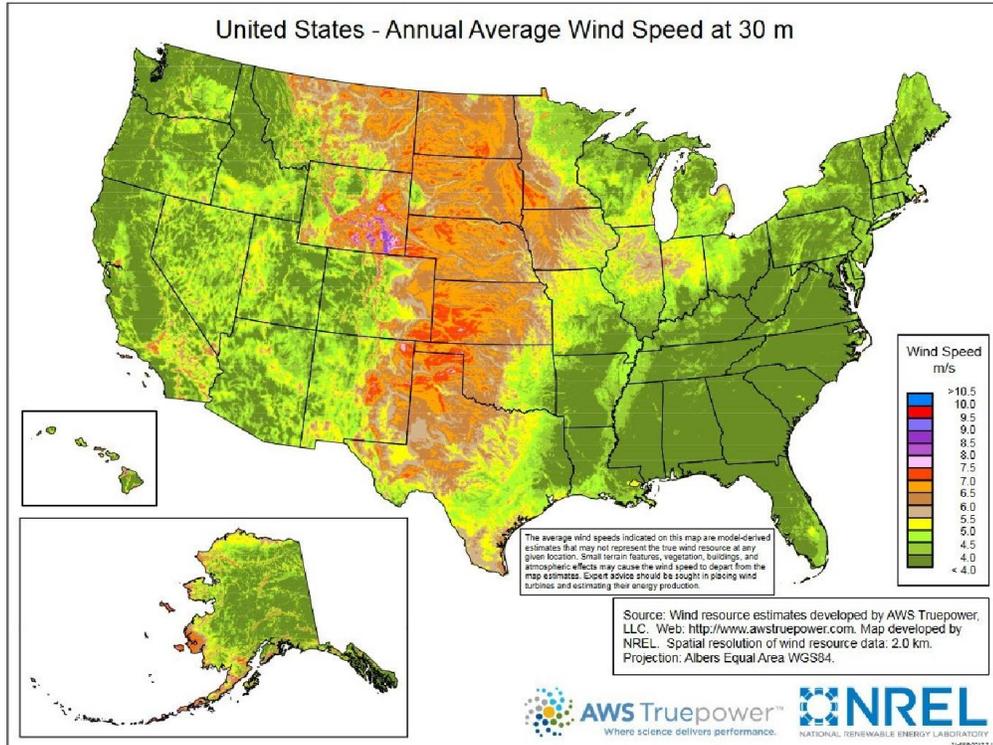
⁴² See, *Managing Transmission Line Ratings*, Docket No. RM20-16 (Issued December 16, 2021) (Order 881).

⁴³ Order 881, ¶4; 18 CFR § 35.28(b)(12).

⁴⁴ LineVision presentation to the PJM Dynamic Line Ratings Task Force, December 12, 2022, slide 20. Available at <https://www.pjm.com/-/media/committees-groups/task-forces/dlrf/2022/20221212/20221216-item-02---pjm---dlrf---linevision.ashx>.

in a line's rating and [AARs] do not take this into account.”⁴⁵

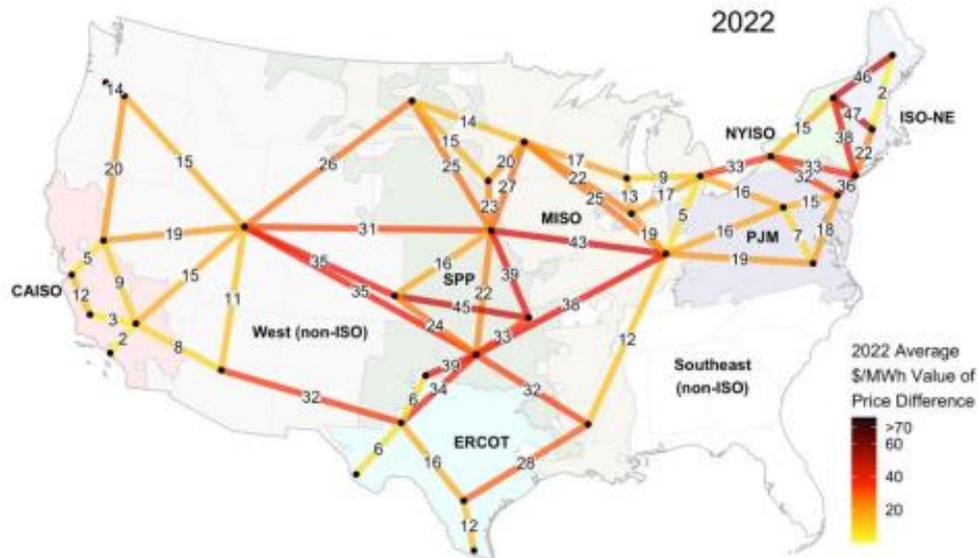
The National Renewable Energy Laboratory (NREL) has published data⁴⁶ which indicates that areas with high winds (and thus where dynamic line ratings are most useful) are well-aligned with areas that the Needs Study indicates National Interest Corridors are most needed.⁴⁷



⁴⁵ *Id.*

⁴⁶ Available at <https://windexchange.energy.gov/maps-data/325>.

⁴⁷ *Draft 2023 National Transmission Needs Study*, Figure IV-6, available at <https://www.energy.gov/sites/default/files/2023-02/022423-DRAFTNeedsStudyforPublicComment.pdf>.



While dynamic line ratings present an opportunity to minimize land use, the Department’s example of advanced conductors is also a good suggestion and could minimize land use impacts the same way. Finally, this request for information in the application should include non-traditional engineering alternatives such as including information on the feasibility of undergrounding lines.

Finally, the PAPUC supports the Department’s request for information about how the potential National Interest Corridor would address existing or expected transmission constraints that adversely affect consumers.⁴⁸ This is the central purpose of FPA section 216. Ultimately, if a transmission project will be sited by FERC in a National Interest Corridor, FERC must find that the project will *significantly* reduce congestion in interstate commerce. Requiring this consumer impact information during the National Interest Corridor designation process will help to ensure that all involved parties are best served by the projects located in the corridor.

⁴⁸ NOI/RFI at 30960; Required Application Information, (ii).

D. The Department must prioritize ‘No Regrets’ corridors that will significantly reduce congestion and cost effectively use federal funds.

A National Interest Corridor designation should occur where: (1) congestion is most significant; (2) scenario analyses indicate that transmission will be needed during a variety of futures; and, (3) transmission will create benefits for all states along a National Interest Corridor’s path.

This test serves several purposes. First, under section 216 of the FPA,⁴⁹ in order for FERC to issue a permit for the construction of a transmission project, the project applicant must demonstrate:

- (3) the proposed construction or modification is consistent with the public interest;
- (4) the proposed construction or modification will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers;
- (5) the proposed construction or modification is consistent with sound national energy policy and will enhance energy independence; and
- (6) the proposed modification will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.⁵⁰

As the PAPUC has discussed, while the Secretary *may* consider several of these factors, FERC *must* make these findings. Moreover, the congestion reduction of a transmission line must be significant. The cost of congestion should be much greater than the cost to construct to the ratepayers. A detailed cost-to-benefit analysis should be performed and costs to zones that will not benefit also should be included in the analysis.

⁴⁹ 16 U.S.C. § 824p.

⁵⁰ 16 U.S.C. § 824p(b)(3)-(6).

The Department should make this job much easier by designating National Interest Corridors in those areas where the existence of significant congestion is a foregone conclusion. There is no need to designate National Interest Corridors where the existence of significant congestion will be an evidentiary debate.

The second purpose of this test is to serve mutually beneficial transmission projects that may not need FERC approval. As the PAPUC stated in its comments on FERC's recent permitting NOPR, the PAPUC does not reject needed transmission projects. The Department properly notes in its NOI/RFI that there are financial benefits that the IJA and the Inflation Reduction Act make available to projects located in National Interest Corridors.⁵¹ Funding 'no regrets' solutions that harm no states along the transmission route will make the best use of those funds and provide benefits to all.

Finally, using federal funds for transmission projects that provide benefits in a variety of futures prevents buyers' remorse for states who would approve projects, the federal government who funded them, and landowners over whose land the projects pass. For less clear solutions, local and regional transmission planning processes still exist, and those processes will serve to adjudicate disputes over what potential benefits a transmission project may provide. The National Interest Corridor designation process cannot supplant the local and regional planning process.

⁵¹ NOI/RFI at 30959.

IV. CONCLUSION

The PAPUC respectfully requests the Department to consider these comments.

Respectfully submitted,

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