

Congressman Dennis Kucinich and Congressman Darrell Issa  
Subcommittee on Domestic Policy  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington D.C. 20515

April 25, 2007

Dear Chairman Kucinich and Ranking Member Issa,

We, the undersigned, would like to express our concern with the process that the Department of Energy (DOE) has followed since June of 2006 for designating National Interest Electric Transmission Corridors (NIETC's). Two years ago, Congress gave new authority to DOE to designate NIETC's under §1221 of EPAct 2005, which amends §216 of the Federal Power Act. Once a NIETC corridor has been designated, utilities are granted unprecedented access to federal eminent domain powers to site and construct interstate transmission lines within the geographic area of a NIETC.

While the overall goal of NIETC designation is to reduce economic congestion and constraints on our nation's power grid, these designations should not be made in a vacuum, but instead must take into account important and long-standing policy considerations. NIETC designation would have enormous impacts to the communities within the path of a transmission project by threatening protected natural, historic and scenic resources and opening the door for federal override of the state regulatory decisions on proposed projects. We are submitting this letter to members of the subcommittee on Domestic Policy of the House Government Oversight and Reform Committee to ask that you raise the issues set forth in this letter below with the Department of Energy prior to NIETC designation anywhere within the United States.

The Department has yet to require utilities to come forward with a set of facts which prove the need for a transmission project, including the utility's own consideration of alternatives such as energy efficiency, demand response and distributed generation. Such inaction is exemplified in Allegheny and Dominion Powers' joint application to construct a 240 mile interstate transmission line which passes through parts of Pennsylvania, West Virginia and Virginia and is proposed within PJM Interconnection's southernmost NIETC request, the Allegheny Mountain Path. Neither utility has released data to support a conclusion that the proposed NIETC designation is in the best interest of the regional planning system. This lack of analysis gives an unfair advantage to utilities that have proposed transmission projects over alternative solutions to solving system constraints. Such data should be made available for public comment before any NIETC designation is made by DOE.

We are particularly concerned that the Department has proceeded towards NIETC designation without meeting the statutory requirements of §1221 of EPAct. First, there is accumulating evidence that the Department of Energy has not consulted with

stakeholders, particularly state governments and state utility regulators as to the merits of NIETC designation. DOE should consult with affected states to incorporate demand response, energy efficiency and distributed generation plans which have been implemented to reduce demand on the grid in the jurisdictions where additional transmission is deemed necessary. Second, the Department has not made a full analysis of alternatives to transmission in advance of NIETC designation. Third, DOE has not prepared a programmatic environmental impact statement (PEIS), as required by the National Environmental Policy Act (NEPA) prior to designating a corridor. A programmatic EIS is particularly required when an agency initiates a major new federal program which covers a region of the United States where there will be interrelated environmental and economic effects.

#### Failure to Consult with Affected States and Stakeholders

EPA Act §1221(a) directs “the Secretary of Energy, in consultation with affected States, [to] conduct a study of electric transmission congestions. After considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States), the Secretary shall issue a report” which may designate any area experiencing electric transmission constraints as a NIETC. Although a thorough analysis has not occurred for each state in the U.S., it is our understanding that state officials were not consulted in Virginia, Pennsylvania or Maine, three states primarily affected by requests for early NIETC designation. State identified and protected natural, cultural and historic resources should be respected. In addition, many states are currently developing statewide energy conservation plans that should be incorporated into DOE’s understanding of projected demand. Still other states have entered into regional compacts that preclude users from purchasing sources of energy which contribute to excessive carbon-dioxide emissions. Such actions by states should play a significant role in DOE’s transmission planning directive.

#### Failure to Consider Non-Transmission Alternatives

NIETC designation will affect materially resource allocations advantaging transmission infrastructure over other alternatives to meet our nation’s energy needs. Alternatives include demand response, energy efficiency, and distributed generation. EPA Act §1221(a)(2) requires DOE to undertake a serious and detailed study that considers all alternatives to reduce energy demand that could mitigate both the congestion and need for the construction of additional transmission lines before designating a NIETC.

In DOE’s August 2006 National Electric Congestion Study, the Department anticipated “congestion solutions will be based on a thorough review of generation, transmission, distribution and demand-side options, and that such options will be evaluated against a range of scenarios concerning load growth, energy prices, and resource development patterns to ensure the robustness of the proposed solutions.” We have yet to witness this analysis of alternatives to new transmission although DOE has indicated it may make NIETC designations within the next month.

### Failure to Prepare a Programmatic Environmental Impact Statement

In addition to the failure to meet the explicit statutory requirements under §1221, the Department of Energy has proposed to proceed with NIETC designation without preparing a programmatic EIS as required by NEPA. NEPA requires an EIS prior to any 'major federal action significantly affecting the human environment,' however it has not yet been incorporated into the Department of Energy's procedure dictating designation of a NIETC. As noted in the Piedmont Environmental Council comments on the Congestion Study, a major federal action generally comprises: (i) policies; (ii) plans; (iii) programs; or (iv) projects. DOE announced (together with Interior, Agriculture and Defense) that it would conduct a programmatic EIS in the process of designating transmission lines and oil and gas pipelines under §368 of EPCA 2005 which grants federal eminent domain powers to utilities operating on federal lands. We feel NEPA review should be a requirement for all energy corridors including NIETC designation.

The requirements of NEPA ensure that federal decision makers are informed as to the environmental and cultural consequences of an action. Without an EIS, a precipitous NIETC designation could undermine previously enacted federal, state and local policy decisions designed to maintain and protect public values. Lands which have been previously protected under federal or state policies should be excluded from being considered as throughways for the construction of power lines. These include historically, culturally and environmentally sensitive areas such as historic districts, battlefields, and lands under permanent conservation easement. The designation of a NIETC corridor would undermine the tax policies in place for land conservation which have been enacted to protect watershed, forest and agricultural lands and open space.

Given the high impact, political sensitivity and complexity of NIETC designation, it is essential that this new authority be used cautiously, and only after careful review and consideration of all alternatives. We understand the need and desire to relieve congestion on our nation's power grid but we also believe it should be done in a sensible and reasonable manner.

Sincerely,



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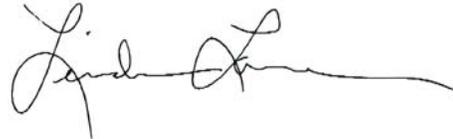
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