

Designation of National Interest Electric Transmission Corridors
DOE-HQ-2023-0039

In 2007, DOE interpreted Sec. 216 to designate National Interest Electric Transmission Corridors (NIETC) across two wide geographic regions in an attempt to match available generation with need for cheaper electricity. However, DOE's interpretation couldn't withstand legal scrutiny and NIETCs were put on a shelf. Nothing was built.

Congress recently changed the statute in order to overrule the courts. Here we go again! This time, DOE seems poised to designate the entire continental U.S., or at least a significant part of it, as a "geographic area" that needs transmission, and then let profit-seeking transmission companies pick where they want a corridor designated. The inmates are running the asylum!

Sec. 216 instructs: "...the Secretary... shall issue a report... which may designate as a national interest electric transmission corridor any geographic area...".¹ A NIETC may only be designated on DOE's own motion. It does not allow DOE to abdicate its authority to designate NIETCs to for-profit transmission builders. Sec. 216 is pretty clear: DOE studies transmission congestion and then issues a report that designates NIETCs that benefit of consumers. Then transmission builders propose projects for the corridors DOE designates. The DOE must first designate the corridors before soliciting projects; otherwise it is serving nothing more than a passive role doling out favors to corporations. It's the perfect incubator for favoritism and government graft. DOE should not trust transmission builders to find the "best" projects for consumers; it must take an active role to determine which projects provide the most benefits for the lowest cost. The DOE is supposed to be encouraging beneficial transmission with NIETCs, but utter surrender to commercial interests goes too far. Once again, loose agency interpretation of a statute is guaranteed to end up in court, and nothing will be built.

Sec. 216 lists numerous reasons for designation of NIETCs,² none of which are for the purpose of unlocking federal funding and tools to build transmission. Yet the DOE claims, "DOE is considering this process for designating NIETCs in recognition of the fact[it] would unlock new financing and regulatory tools to spur investment in those areas". This is another example where DOE strays from the guiding statute in order to put a thumb on the scale for its desired outcome, and likely one that could not withstand judicial scrutiny. NIETCs have been turned into a prerequisite for government funding, instead of the need driven, consumer beneficial transmission corridors envisioned by Congress.

Transmission is a long-term, long-lead asset with a life often in excess of half a century. Building transmission must be approached with careful consideration of costs and alternatives to find the best solution for decades to come. Approaching transmission like a fire sale at Bloomingdales on payday is irresponsible. Sinking trillions into an asset that may no longer be used and useful in 50

¹ 16 U.S. Code § 824p (a)(2)

² 16 U.S. Code § 824p (a)(4)(A-H)

years is imprudent. Basing a long-term commitment on just one administration's energy policies is shortsighted. How wasteful will today's investments be when a different administration with different energy policies and priorities takes control of the White House? What exactly is "national energy policy," an undefined and subjective requirement for designating corridors? DOE should be approaching its task with an eye toward defending itself in future legal battles, instead of as a frenzied effort to get transmission built as fast as possible before the administration changes. Not everyone shares DOE's Pollyanna enthusiasm for new transmission.

The designation of NIETCs requires early notice and consultation with all affected landowners and communities along the corridor, not just "communities of interest." Simply opening comment to the public on an Environmental Impact or Assessment study is not sufficient. Not all landowner concerns are environmental or cultural. Many are financial, where designation of a corridor may impact agricultural or other businesses, or impact property values and future land use. Local governments may also have financial concerns about use of government resources, financial burdens, and tax revenue issues. Stakeholders will also want to make comment on the issue of need for the project and whether it is the best solution to decrease consumer energy costs. These issues are never part of an environmental study under NEPA, but they absolutely deserve to be heard and considered before a corridor is designated. DOE must hold public hearings along the route for non-NEPA needs assessments and economic impacts that are separate and apart from environmental study public hearings. Notice of such opportunities to comment shall be mailed to each impacted landowner and government. Applications, comments, and DOE's study and consideration of issues raised must be made public. Studying and awarding lucrative designations to commercial projects cannot be done in secret. Sunshine is always the best disinfectant.

It is not sufficient to require a one-sided "summary of engagements" (with the public) written by the transmission company as part of an application for a NIETC. That is not "consultation." Experience demonstrates that transmission company narratives of their actions, and community reactions, are heavily biased to color the company in the best light possible while ignoring public concerns. Landowners, governments, and other stakeholders must be allowed to present their side of the story after hearing the company's side, and the best way to do this is through transparency and publication of application materials combined with public comment opportunities that have been widely and extensively noticed. The public must be given an opportunity to consult and comment on possible corridor designation *before* the corridor is designated.

It is unclear what is meant by a "[s]ummary of known information about the presence of Communities of Interest as defined by DOE that could be affected by the NIETC...". It appears that DOE's definition of "Community of Interest" includes every community in geographic proximity to a proposed corridor that has been "historically marginalized." How will this be measured? Haven't we all felt ignored by our government at some point? And wouldn't a failure to consult with ALL communities impacted by a NIETC actually *create* marginalized communities? There is nothing to be gained by consulting *only* certain communities, who may not even be directly impacted by the corridor. If the idea is to consult with impacted communities in order to inform and effect meaningful interaction that ameliorates delaying opposition, this isn't the way to go about it. **Every person** deserves to be consulted if they will be impacted. Failure to consult equally with all stakeholders will fan the flames of anger and opposition directed toward the government, and ultimately towards the transmission project.

Perhaps DOE employees in Washington, D.C. would jump at the chance to throw their neighbors under the bus in exchange for personal gain, but that kind of behavior is entirely out of place in rural America. Offering certain communities money or other consideration in exchange for their support of a transmission project that doesn't actually impact them is nothing more than bribery. Landowners who lose real property are the only ones who must be compensated under the law. Others who are directly impacted by the project deserve consideration. There's a big difference between **compensation** for something lost or taken, and **reward** for certain behavior. Payments to nearby communities that have sacrificed nothing will only reflect badly on the transmission company and the government agency that facilitates this opportunism and greed. It pits neighbor against neighbor and causes community ill will that will long outlive the transmission project and spending spree of dirty money. Morals are still prized in rural communities.

The statutory requirement that any NIETC should “maximize existing rights-of-way”³ must be of the highest priority in order to quickly build new transmission that is not bogged down by land acquisition, litigation and vehement opposition. DOE's proposed rules do not adequately prioritize this requirement. Requiring a “summary” of “the feasibility for co-location of the qualifying project with existing facilities or location in existing corridors and transportation rights-of-way” from the applicant is not sufficient to meet this requirement. The applicant's information is presented in a way that makes the proposed corridor/project as easy and profitable as possible for the applicant. Landowner/community/environmental considerations will be rejected out of hand if they eat into the applicant's profits. The only way the “feasibility” could be accurately summarized is to open it to public comment and independent study. An applicant should be required to not only “summarize feasibility” but also actually present and compare one or more routes maximizing existing rights-of-way, which should be part of the public application and open for comment. A self-interested “summary” simply checks the existing right-of-way box without giving it due consideration.

The DOE is sending mixed signals on the importance of aligning corridors with existing rights-of-way. On slide 14 of the [National Interest Electric Transmission Corridors \(NIETCs\) Presentation](#) listed on DOE's website, the following is listed as a consideration: “Indication of the extent to which the proposed NIETC(s) could be made to align with existing rights-of-way, including utility rights-of-way, rail rights-of-way, highway rights-of-way, and multi-function energy corridors...” However, during its May 17 webinar that purportedly used the presentation slides, slide 14 was markedly different and did not mention use of existing rights-of-way. In fact, the webinar skipped over this consideration entirely. DOE must do more to highlight this very important consideration and require independent studies before designating a corridor outside an existing right-of-way. DOE must follow its Memorandum of Understanding with the Department of Transportation to establish a Joint Office of Energy and Transportation⁴ and the MOU's requirements that the office study, plan and fund high-voltage distributed current infrastructure in the rights-of-way of the Interstate System, and for constructing high-voltage or medium-voltage transmission pilots in the rights of way of the interstate system. The MOU also requires the Joint Office to develop a streamlined utility accommodations policy for high voltage and medium voltage transmission in

³ 16 U.S. Code § 824p (a)(4)(G)(i)

⁴ MOU, available at https://www.energy.gov/sites/default/files/2021-12/DOE%20DOT%20Joint%20Office%20MOU%2012.14.21_0.pdf

the transportation right of way. The DOE's NIETC program must be working in concert with its Joint Office of Energy and Transportation to pioneer co-location of electric and transportation infrastructure.

The DOE asks if it should prioritize applications for certain kinds of transmission projects, or create separate tracks for different types of projects. If DOE wants to be a leader, and not merely an obsequious industry follower, it must be clear on the types of projects it wants to see through designation of purposeful corridors. For instance, DOE could encourage transmission buried on existing road and rail corridors by designating a corridor that aligns with transportation rights-of-way, and then allowing developers to create innovative projects in the corridor that provide new transmission without any land use burdens. If DOE really wanted to move transmission along, it would design its NIETC designation rules to cultivate projects that require less sacrifice from impacted communities. New transmission proposed to be buried along existing transportation corridors should be evaluated on a different track than transmission proposing new overhead greenfield rights-of-way across private property. Buried transmission that doesn't require new rights-of-way would speed through consultation and permitting because it doesn't create new burdens on communities. Projects buried in existing transportation rights-of-way should not be bogged down by, or required to compete with, overhead projects that require new land and inspire opposition, appeals, and delay. Because transmission on existing transportation corridors does not create new impacts, it would not require an extensive review. Applications that use existing corridors and/or government property should be given preference over other projects that accomplish the same transmission goals, but require new land acquisition.

DOE has failed to acknowledge that the enabling legislation for NIETCs does not provide cost allocation for projects that are so designated. This dilemma must be solved before designating any corridors for particular projects. Who pays for a corridor project that benefits consumers and economic development in a corridor vs. who pays for a corridor project that benefits consumers and economic development in the end markets served by the corridor? This is one of the oldest arguments in transmission land and has not yet been solved. What's the point of designating a corridor for a particular project when it has no way to collect revenue?

Sec. 216 requires that the designation of a corridor "...would result in a reduction in the cost to purchase electric energy for consumers."⁵ It is unclear how DOE intends to meet this requirement before designating a corridor. If it is based on speculative studies, those studies must be re-examined post hoc to determine whether the corridor/project has actually reduced electric energy costs for consumers. All sorts of ex ante industry and regulatory claims about price reductions resulting from new transmission are made, but consumer prices just keep rising due to the huge amounts expended on new transmission that never actually reduces costs to consumers. Perhaps DOE would encourage more beneficial projects if it stated its intent to examine consumer prices post hoc and compare to those claimed ex ante. Consumers are not seeing any actual cost reductions in their electric bills.

The DOE has not examined the complications that can result from its proposed designation of narrow corridors that coincide with certain project proposals. If DOE designates a 200-ft. wide corridor for a proposed project's route, what happens if the route changes during permitting?

⁵ 16 U.S. Code § 824p (a)(4)(H)

Route changes would push the project outside the corridor, and therefore short-circuit any federal permitting process because a project outside a corridor does not fall under federal permitting jurisdiction. An inability to make beneficial route changes because they may stray outside the corridor hampers any effort to avoid certain obstructions or barriers that may be uncovered during environmental surveys or negotiations with landowners. The DOE must think carefully about the width of the corridors it plans to designate and take into account that transmission project re-routes can often be miles, tens of miles, or hundreds of miles away from the original route. Experienced routing professionals have not studied designating a narrow corridor in response to a particular transmission proposal, and the DOE must get some outside help on this very important issue that has the likely potential to tank future corridors that are designated.

It is shocking for DOE to propose that an Affected Environmental Resources and Impacts report be limited to only 20 pages. How does such a limitation thoroughly examine the profound environmental and cultural impacts of transmission on new rights-of-way? It doesn't. It simply demonstrates a lack of caring about the impacts, which is a governmental attitude that should have died in the last century. A limitation on the size of impact reports is nothing more than a corner-cutting exercise that facilitates faster industry profits at the expense of the environment and its citizens. There's absolutely no way to include all the relevant, necessary information, and do a thorough job of it, within 20 pages. This is DOE's most absurd idea yet.

In Question 2 of its RFI, DOE asks whether its approach to designation of NIETCs is "...overly burdensome on respondents." DOE seems to think its role here is to facilitate industry profits and/or environmental goals, not to ensure that we only build transmission that best serves consumers and is not overly burdensome on citizens. Who does our government work for? If not the citizens who fund and enable it, then it is not part of a functioning democracy. DOE has been working steadily over the past several years to gaslight stakeholders to believe that new transmission and generation is the ONLY solution to a cleaner energy future. There are many other tools in the toolbox that can aid the transition that do not depend on commandeering hundreds of thousands of square miles of private property. DOE's role is to examine all the tools available and determine which scenario, or combination of scenarios, best serves all citizens. DOE should be purposefully engaging all stakeholders in consultation and making all its actions public, instead of carrying on programs like NIETC designation in secret, lest the hoi polloi find out about it before they are supposed to and become a fly in the ointment.