UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

Re: Considerations for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors

SUPPLEMENTAL COMMENTS OF THE ISO/RTO COUNCIL

I. Introduction

The ISO/RTO Council[1] appreciates the opportunity to provide these supplemental comments in response to the Department of Energy's ("Department") invitation for further comment on the various proposals described at the Department's Technical Conference**.** The IRC submitted initial comments in response to the Department's Notice of Inquiry ("NOI") and uses this opportunity to supplement those comments based on the Department's preliminary description of implementation proposals set forth during the Technical Conference. The IRC will limit this supplemental filing to comment on two specific issues raised at the Technical Conference – the proposed process for handling designations of National Interest Transmission Corridors and the proposed criteria being utilized to determine such corridors – and to highlight questions about the Department's Draft Congestion Study.

II. Comments

A. <u>The Proposed Two-Step Process Is Unnecessary and Runs Counter to Congressional Intent in Directing the Establishment of National Interest Electric Transmission Corridors.</u>

At the Technical Conference, the Department outlined, as a preliminary proposal, a two-step process for National Interest Electric Transmission Corridor ("Corridor") designation. As the first step, the Department would, after issuing its Congestion Study, identify "Electric Transmission Constraint Areas". After such identification, specific transmission solutions to resolve those constraints would be submitted to the Department for approval. The Department would undertake a review of such transmission projects to see if the proposal suitably resolved the constraint and if so, the Department would then

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[1] The members of the IRC are the Alberta Electric System Operator ("AESO"); California Independent System Operator Corporation ("CAISO"); Electric Reliability Council of Texas ("ERCOT"); the Independent Electricity System Operator of Ontario ("IESO"); ISO New England Inc. ("ISO-NE"); Midwest Independent Transmission System Operator, Inc. ("MISO"); New York Independent System Operator, Inc. ("NYISO"); PJM Interconnection, L.L.C. ("PJM"); and the Southwest Power Pool ("SPP"). Due to their own unique jurisdictional circumstances, the Alberta Electric System Operator ("AESO") and the Independent Electricity System Operator of Ontario ("IESO") are not joining these comments. ERCOT, as the ISO for an intrastate interconnection, also is not participating in these comments.

designate such transmission project as part of a Department-designated Corridor.[2] The Department indicated an interest in providing a certain level of deference to projects arising out of regional, independent transmission planning processes but, on the other hand, felt the need for specific Department review and approval of transmission projects prior to Corridor designation.[3]

The IRC is concerned that the Department's two step process, although well-intentioned, unnecessarily complicates an already lengthy and litigious process for siting major new transmission lines. The IRC further notes that the proposed process blurs the lines between the Corridor designation and the process of siting transmission and as a result, runs contrary to the intent of Congress. Section 216 of the Energy Policy Act of 2005 represented a careful balancing of state and national interests and a detailed parsing of the respective roles of the Department and the Federal Energy Regulatory Commission ("FERC"). Congress intended for the Department to undertake its designation of "national interest" based on broad criteria set forth in the statute. Those criteria include considerations of national energy policy, homeland security, economic growth and diversification of supply. See e.g. Section 216(a) (4). Congress was careful, however, not to disturb state siting processes except in narrow circumstances – such as, a state's failure to site or its lacking authority to site a line within a corridor. See Section 216(b). By adding a second step where the Department would be reviewing and presumably approving in some form specific *transmission* projects as part of its Corridor designation, the Department runs the risk of duplicating, if not usurping, the role of state siting processes, and ultimately limiting the FERC's options in its exercise of backstop siting authority.[4] Moreover, the proposed two-step process adds significant legal and policy complications with the Corridor process as described below.

The Department's proposal to establish a process by which a Corridor may not be identified until a specific transmission project is identified as resolving a constraint is unnecessary, *because the Department's identification of a Corridor need not be synonymous with a ruling that only a transmission project can resolve an identified constraint*. By Congress' direction, the Department's designation is "based on (its) study of congestion". The designation of Corridors is not intended to supplant the development of solutions, which are considered in regional planning processes and ultimately reviewed in State (or potentially FERC) siting processes. The IRC believes that the Department should define Corridors broadly, and as noted by multiple commenters at the Technical Conference, in regions with ISOs/RTOs, defer to ISO/RTO planning processes to identify the transmission solutions to meet the problems identified by the designation of a

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2 DOE officials did make clear that this second review would not include the specific routing of transmission lines.

3 This description is based on the IRC's understanding of the Department's preliminary proposal. To the extent that the Department's proposal differs from this description, the IRC requests that the Department so clarify in its final rule.

4 For example, Congress assigned FERC and not the DOE with determining whether "*the proposed construction or modification*" is consistent with the public interest, will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers and is consistent with sound national energy policy and will enhance energy independence." See Section 216(b) 2 through Section 216(b) 5.

Corridor. Such solutions would then, in keeping with Congress' scheme, be considered at the state level where alternatives can be considered leaving FERC as the ultimate "backstop" authority for consideration of the identified solutions. Were the Department to continue with its proposed two-step proposal, then the Department's review of individual projects would simply duplicate existing RTO/ISO planning processes and effectively turn the Department into the ultimate "master planner" of the nation's power grid. It would also render as surplusage Congress' direction to the Commission to determine whether a specific "*proposed construction or modification*" benefits consumers, meets sound national energy policy and reduces transmission congestion in interstate commerce" *See* Section 216(b). Given that RTO/ISO planning processes are *already* subject to review at FERC and the results of RTO/ISO planning processes must be reviewed through state siting proceedings, little is accomplished by adding another layer of federal government review and approval.

In addition to the potential duplication of state and FERC siting processes, there are a number of reasons why the IRC believes that the "hand-off" to the RTOs/ISOs and then to the states should occur earlier in the Department's Corridor designation process and without the Department injecting itself into the determination of specific solutions:

- Congress intended the Corridor designation process to represent a determination that a particular area of congestion or particular reliability problem has national implications. Such a designation was designed as an additional tool to give developers of complex multistate transmission projects some assurance that the federal government has determined that there is a national rather than purely local interest in resolving the problem. The Department's proposed preliminary identification of a corridor as an "Electric Transmission Constraint Area" has no legal significance. It will not provide a developer with any legal assurance that the national interest has been identified. Rather, the specter of a two-step process, on top of state and FERC processes could well work to discourage the very new investment and more expedited processes that Congress was seeking;

- The Department's approval of specific projects could trigger the need for the Department to prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act cite[5] prior to taking final action. NEPA review is particularly unnecessary at this early stage of the process as it would be wholly duplicative of state and federal environmental reviews to be conducted through the siting process.

- By reviewing specific projects and accepting some and rejecting others, the Department will potentially limit FERC siting options at an early stage of the process and skew state siting decisions by labeling some alternatives as eligible for preemption by FERC while others would not

[5] National Environmental Policy Act, 42 U.S.C. §§ 4321-4347 (2000).

qualify for such preemption. A state concerned about preserving its jurisdiction will be forced to take this into account in its siting determinations;

- A two-step process, with a specific approval of alternatives, could cause greater uncertainty in the development of alternatives. Rather than being able to rely upon the results of the RTO/ISO Regional Transmission Planning Processes, investors determining whether to invest in upgrading generation or demand resources will now need to await the Department's process to determine if a particular project designated in an RTO/ISO plan will be "approved" by the Department. In a market where there may be a need to move quickly to address impending reliability issues, any such additional steps carry with them a potential "risk premium" and delay in investment;

- The Department review of specific projects in its proposed two-step process will invite appeals of its decisions. This will tend to cloud when the 12 month clock called for in the legislation for state siting review begins and cloud whether and when FERC has authority to proceed with backstop siting.

For all of these reasons, the IRC urges the Department to consider the model outlined by the IRC in its initial comments and reconsider the Department's preliminary proposal. At least in areas covered by regional independent planning processes administered by ISOs and RTOs, the Department should defer to those processes (and ultimately state and FERC siting processes) for the development of solutions to identified problems of national significance given the multiple regulatory reviews already in place to review the results of such processes[6]. Adding another step in the process would invite "forum shopping" and extended litigation to a process that already includes appropriate checks and reviews by states and ultimately FERC of the results of such planning processes.

B. <u>The Department's Use of Criteria for Identifying Corridors Should be Undertaken with Consideration of Specific Electric Paths.</u>

In its initial comments, the IRC supported the Department's originally proposed criteria in the context of the Department's designation being broadly defined as an identification of electrical paths between generation resources and loads rather than the approval of specific transmission projects. Should the Department proceed with approving specific projects, its proposed criteria are far too vague to determine whether one transmission project versus another transmission project is appropriate. Instead, the Department would need to develop criteria that analyze, among other things: violations

[6] The proposed DOE two-step process may be problematic for non-RTO/ISO areas as well. If DOE identifies significant areas of congestion which have national impacts consistent with Congress' defined criteria, it need not address how it examines specific solutions from RTO vs. non-RTO regions, instead leaving that issue to the states.

of NERC criteria, reviews of loop flows and other causes of congestion, the impact of planned generation on resolving the constraint, and the potential impact of "at risk" generation. The Department would need to develop sensitivity analyses around load forecasts. All of these steps are undertaken in the RTO/ISO planning processes making such a review unnecessary unless the Department were to certify transmission alternatives under its proposed two-step process. However, the need to revise the criteria in order to undertake a meaningful review and certification of projects highlights the very problem with reviewing alternatives: such detailed criteria would quickly run afoul of the much higher level criteria that Congress set forth to govern the Department's reviews in Section 216.

In conclusion, a proper framework for identifying Corridors would: (a) respect the limited role Congress intended for the Department; (b) avoid duplication with FERC-approved, independent, and open processes (*i.e.*, ISO/RTO planning processes) for identifying transmission solutions; and (c) recognize that the Department's designation of a Corridor pursuant to Section 216 need not mean that *only* transmission solutions are appropriate resource investments.

C. The Department Should Clarify its Methodology for Completing its Congestion Study.

Finally, the IRC notes that at the Technical Conference, Department consultants explained that its initial congestion study was limited to reviews of "thermal limits" in the Eastern Interconnection. No reason was provided as to why the criteria undertaken in the congestion study should be different in the Eastern versus the Western Interconnection and why the congestion analysis should be different. The IRC is also concerned that limiting the analysis to only thermal limits may miss important constraints in the Eastern Interconnection that are created by voltage issues. Moreover, it remains unclear whether the Department's Study intends to identify constraints that only raise economic congestion issues or whether the Study will also identify threats to grid reliability. The IRC has provided the Department with a great deal of public data and analysis concerning their respective transmission grids. The IRC is concerned about an overly narrow review of constraints in the Eastern Interconnection and the anomalies associated with different analyses and criteria used for the Eastern versus the Western Interconnection.

The Department should take steps to clarify its methodology and offer its Study for stakeholder comment prior to final publication.

III. Conclusion.

For these reasons, the IRC urges the Department to adopt a designation process focused on the identification of electrical interfaces which need to be crossed in order to resolve significant congestion and reliability problems identified pursuant to Congress' established criteria. The IRC also seeks to consult further with the Department to ensure that the criteria being examined in the Eastern Interconnection appropriately identify congestion and reliability challenges. The IRC stands ready to assist the Department in

providing additional information to support such a process, with the goal of enhancing the ability to get needed infrastructure built on a timely basis – not to slow it down or add barriers.

Respectfully submitted,

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