

**Comments of the Western Interstate Energy Board and the Committee on  
Regional Electric Power Cooperation  
on  
DOE’s Notice of Inquiry on “Consideration for Transmission Congestion Study  
and Designation of National Interest Electric Transmission Corridors”**

The Western Interstate Energy Board (WIEB) and the Committee on Regional Electric Power Cooperation (CREPC) appreciate the cooperative approach the Department of Energy (DOE) has taken thus far in the implementation of Section 1221 of the Energy Policy Act of 2005. WIEB is an organization of 12 western states and three western Canadian provinces. Its geographic reach covers all areas of the Western Interconnection in the United States and Canada. This is important because the electric power systems of the western United States and Canada are inextricably linked. For example, much of the water used to generate electricity in the Northwest is stored in Canada. Power sale and exchanges between the western U.S. and Canada are central features of the western power market. CREPC is a joint committee of the Western Interstate Energy Board and the Western Conference of Public Service Commissioners. All state and provincial energy planning, regulatory, and siting agencies are eligible to participate in CREPC.

DOE’s willingness to engage the states and western power industry in discussions and to use existing analyses of the western transmission system developed in open transmission planning processes in the region is laudable and comports with the Governors’ request expressed in Western Governors’ Association [Resolution 05-30](#).

The implementation of Section 1221 has reached a critical stage, which is the development of criteria by which the Secretary may designate National Interest Electric Transmission Corridors (NIETC).

To ensure that Section 1221 contributes to the western objective of the expeditious permitting and construction of needed transmission, WIEB makes the following recommendations. Our comments are organized into (1) recommendations that would put the NIETC designation process into the context of the larger objectives of Section 1221; and (2) recommendations that respond to specific questions in the Notice of Intent (NOI).

**1. NIETC Designations Should be Done in the Context of All the  
Actions Required Under Section 1221**

**We recommend that DOE make no final decision on criteria for designating NIETCs until it and the Federal Energy Regulatory Commission (FERC) have established rules and procedures to implement Section 1221 in its entirety and there**

**is a clear process for coordinating NIETC designation with the designation of energy corridors on federal lands.**

The designation of NIETCs is one link, albeit a central link, in a chain of connected actions. DOE should not finalize criteria for the designation of NIETCs until the Department and FERC have defined in detail all the links in the chain of actions that will implement Section 1221.

To the greatest extent possible, both the criteria for designating NIETCs and the designation of NIETCs should align with criteria used to designate energy corridors on federal lands. DOE should explain how the criteria for designating NIETCs comport with the criteria that the Departments of Energy, Interior, Agriculture, Commerce and Defense are using to designate energy corridors on federal lands under Section 368. DOE should also explain how the designations of energy corridors under Section 368 are to be coordinated with DOE's designation of NIETCs.

The designation of a NIETC puts in motion a series of major federal actions which have not been defined. For example, the designation of an NIETC would likely trigger transmission permit applications to states and federal agencies. In turn, this action triggers the one-year clock for state review under Section 1221 which then triggers FERC authority to grant eminent domain to condemn private lands. To date, FERC has provided no rules explaining the nature of the application it will accept, establishing when the one-year clock begins, nor explaining whether and how FERC will weigh and consider alternatives to the sponsor's proposal, including non-wires alternatives. DOE has not explained whether or how it will advise FERC if the sponsor's project falls within the designated NIETC. Nor has DOE established procedures to fulfill its agency coordination obligations under Section 1221.

At a minimum, FERC rules must specify that the one-year clock for state action on a proposed transmission line within a NIETC does not begin until a complete application has been received by a state, as defined in state law. This will prevent abuse of Section 1221 by project sponsors whose interest may be to short circuit the careful review of their proposal by the states so that they can reach a friendly forum at FERC. Without this clarification, project sponsors have no incentive to ensure that their applications to the state are complete and well prepared. Moreover, project sponsors have no incentive to address any legitimate concerns raised by local stakeholders.

FERC should define the term "not economically feasible" as used in Section 1221's clause offering a federal override if state modifications to a transmission proposal render it uneconomic. The definition should require a demonstration that additional costs imposed by state modifications render a project both economically (overall costs outweigh benefits) and financially (out-of-pocket costs cannot be recovered) infeasible. In evaluating proposals for NIETC designation and for federal override, the benefits of a line should reflect the degree and persistence of congestion as well as the demand for and benefits of relieving that congestion. Further, the greater the benefits of a proposed line, the greater its ability to absorb state-imposed mitigation.

DOE should specify how it will advise FERC when it finds a sponsor's project falls within a corridor and the information it will provide to justify such a finding. This is particularly important if DOE designates geographically vague NIETCs.

In the West, the action or inaction of federal agencies has been the most critical element in permitting major new transmission. Prior to finalizing NIETC criteria, DOE should explain (1) how the responsibilities of federal agencies for the review of applications for required federal permits will be coordinated among the agencies, (2) whether and how these agencies will meet a one-year deadline for a decision under Section 1221, and (3) how the process and timeline for federal agency permitting actions will mesh with state siting processes which must be completed within one year of an application.

Consistent with the requirements in Section 216(a)(2) of the Federal Power Act, the Secretary should consult with states on how the needs that give rise to a potential NIETC designation are identified and evaluated. This will help expedite state reviews of projects proposed in NIETCs.

## **2. Recommendations in Response to NOI Questions**

*A. In the NOI, DOE has invited commenters to address how broadly or narrowly the Department should consider and define corridors. DOE “believes that defining corridors too narrowly would unduly restrict state authorities, FERC and other relevant parties in determining whether and how to authorize the construction and operation of transmission facilities to relieve the identified congestion.”*

- We are concerned that DOE will adopt too broad and vague definition of a NIETC. Final NIETC designations should be geographically specific although they need not be at the geographic granularity of designating a centerline for a transmission line. We understand DOE’s reluctance to specify precise locations for designated corridors. DOE does not want to impose its own solutions on transmission issues and it wants to avoid triggering the National Environmental Policy Act (NEPA) until an actual project is proposed.

However, the designated corridors must have some parameters. The designation of a “Montana to Los Angeles” NIETC is too vague and invites abuse, particularly since the condemnation of private property is involved. With such a vague designation, a sponsor could propose a line virtually anywhere and claim it is in the NIETC. Without some parameters on the NIETC’s location, no one can tell whether the proposed project is inside or outside the corridor. A case-by-case decision by the agency will be arbitrary at best. At worst, a proposed project will be subject to litigation over whether it is inside or outside the corridor. The litigation over this one point will take longer than a normal state permitting process, defeating the very purpose of the Act.

A vague designation such as “Montana to Los Angeles” will not be acceptable to the public. At some point, the public will want to see the discrete geographic boundaries of a NIETC on a map. This was amply demonstrated at the scoping meetings for the 368 PEIS, where the first question raised by the public was “where are these corridors located?” This question will come from developers who want to take advantage of the favorable regulatory treatment, local reviewing agencies concerned about preemption, and property owners concerned about condemnation.

A designated corridor could be broad enough to include a number of alternatives. However, it must have enough specificity so that developers, local stakeholders and local permitting agencies can tell whether a project is inside or outside the corridor.

*B. Should the Department distinguish between persistent congestion and dynamic congestion, and if so, how?*

- Yes. The Department should give greater weight to findings of persistent congestion. Indications of persistent congestion should be derived from: (1) comparison of historical flows over paths and the respective path ratings; (2) examining denials of transmission service requests; and (3) running of production cost models to simulate historic or near-term future congestion. In addition, where there is agreement on the reasonableness of assumptions, studies that examine congestion further into the future should be used, particularly where such future congestion implies potentially significant economic harm to a large number of consumers in the form of unreasonably higher rates.

*C. Should the Department distinguish between physical congestion and contractual congestion, and if so, how?*

- Yes. Findings of physical congestion should guide the Department’s conclusions on congested paths. In the Western Interconnection, the principle indicator of physical congestion should be a comparison of historical flows and Operating Transfer Capacity (OTC). Conclusions from such an analysis need to be informed by circumstances surrounding the specific path. For example, some of the most heavily used paths in the Western Interconnection were sized exactly to carry power from a designated powerplant. A high utilization rate on such a path is not necessarily an indication of congestion that needs to be relieved.
- It is also useful to examine contractual congestion, however, the finding of contractual congestion should not lead directly to an NIETC designation. Rather, it should trigger an evaluation of institutional options for relieving such congestion. It is inappropriate and costly to consumers for the federal government to push high-cost solutions to contractual congestion when other solutions are available.

*D. What specific transmission studies should DOE review and how far back should DOE look for such studies?*

- The relevant studies in the Western Interconnection are posted on the [WECC web site](#). We do not believe DOE should examine studies older than 2001.

*E. What categories of information would be most useful to include in the congestion study to develop geographic areas of interest?*

- Of highest value would be information from studies of historical physical congestion on paths because such studies contain the fewest speculative assumptions. In the Western Interconnection, DOE should compare historical flows with OTC. Paths where historical flows are near OTC should be investigated in more detail subject to the caveat discussed in Question C above.

*F. What criteria should be used in evaluating the suitability of geographic areas for NIETC status?*

- Any final NIETC designation criteria must be accompanied by administrative procedures explaining how the Secretary will apply such criteria. Given the vagueness of the statutory criteria the Secretary may use to designate NIETCs, it is important that DOE not only develop specific criteria for evaluating candidates for NIETC designation, but that the DOE have written administrative procedures on how the Secretary will apply such criteria in corridor designation decisions. Since corridor designations can lead to federal preemption of state laws and condemnation of private lands, these procedures should: (1) provide opportunity for the states and public to comment on a proposed NIETC designation by the Secretary; (2) require that NIETC designations be based on a preponderance of the evidence; and (3) be subject to a high standard of review.
- We note that the proposed criteria lack internal consistency and range from very detailed, site-specific criteria such as the location of “must run” reliability generators to vague, undefined criteria such as further national energy policy and energy security.

*Draft Criterion 1: Action is needed to maintain high reliability.*

- Few, if any, congestion areas should be identified using this criterion. Under WECC and NERC rules, and under future FERC-approved mandatory reliability rules, there should not be any instances where an operator is threatening reliability of the grid.

*Draft Criterion 2: Action is needed to achieve economic benefits for consumers.*

- The calculation of savings to consumers should reflect state energy policies as enacted in state law or reviews of load serving entity resource plans. Specifically, if a state policy places a high priority on acquiring renewable energy generation, makes a judgment about natural gas price risk, or establishes a carbon adder to reflect its determination of carbon risk, DOE should assume compliance with such policies in the calculations of economic benefits to consumers.

*Draft Criterion 3: Actions are needed to ease electricity supply limitations in end markets served by a corridor, and diversify sources.*

- DOE should ascribe some, but not significant weight to eliminating the need for “must run” plants, except in cases where there are no policies that preclude such generators from exercising market power. Where reliance on the “must run” plant violates NERC planning criteria, the problem should be rectified by action to require compliance with reliability standards. DOE should not substitute its judgment for that of entities that have the responsibility to maintain system reliability.

*Draft Criterion 4: Targeted actions in the area would enhance the energy independence of the United States.*

- DOE needs to further define what is meant by “targeted actions in the area would enhance the energy independence of the United States.” For example, as written, this proposed criterion fails to recognize the international characteristics of the western electric power system. In the context of the western electric power system, interdependence, rather than energy independence, contributes to the appropriate goal of stable and adequate supplies of electricity for consumers in the western United States.

*Draft Criterion 5: Targeted actions in the area would further national energy policy.*

- To reach such a conclusion, the Secretary should demonstrate that his/her finding that a specific NIETC designation would further national energy policy is consistent with other federal energy policies. The finding that the designation of an NIETC would further national energy policy should not be an aberrant conclusion that is inconsistent with other energy policies of the federal government. For example, if a corridor is designated because it is national policy to reduce reliance on natural gas for electric generation, then other federal policies must reflect the objective of reducing natural gas use for electric generation.

*Draft Criterion 6: Targeted actions in the area are needed to enhance the reliability of electricity supplies to critical loads and facilities and reduce vulnerability of such critical loads or the electricity infrastructure to natural disasters or malicious acts.*

- To avoid abuse of the application of this criterion DOE needs to identify what is meant by critical loads. Are these military bases, or hospitals, or government buildings, or telephone exchanges, etc.? We agree that case-specific assessments of such identified critical loads are needed. It is also important for DOE to consider non-transmission solutions for protecting these loads. Such non-transmission solutions may be lower cost and more secure than transmission solutions.
- DOE should support both proactive engineering to reduce/mitigate exposure of high-priority facilities, and a coordinated response and restoration plan in the event of natural disasters or malicious acts.

*Draft Criterion 7: The area’s projected need (or needs) is not unduly contingent on uncertainties associated with analytic assumptions, e.g., assumptions about future prices for generation fuels, demand growth in load centers, the location of new generation facilities, or the cost of new generation technologies.*

- We agree. The greater the uncertainties that drive the finding of congestion, the less weight DOE should ascribe to the congestion finding and the less it should rely on such studies when designating NIETCs.
- One exception to this general rule would be where, because of its characteristics, a generating resource is location constrained (e.g., wind or geothermal power plants). In the case of location constrained resources, DOE should consider state policies on the choice of fuels used to generate electricity and determine if the designation would advance state energy policies.

*Draft Criterion 8: The alternative means of mitigating the need in question have been addressed sufficiently.*

- We agree. The designation of an NIETC effectively short-circuits the consideration of non-transmission alternatives. In some cases, load-based generation and demand-side actions can be more cost-effective solutions to congestion. Unfortunately, once DOE designates an NIETC and a transmission project application is received in a designated corridor the state siting process has been compromised and the ability to consider and implement alternatives effectively constrained. We are particularly concerned that since FERC has no authority to order new load-based generation and limited authority to institute demand-side actions, its only choice will be to approve or deny the transmission application. For these reasons, we expect that little consideration to non-transmission alternatives will be given at FERC. Under Section 1221, the adequate consideration of non-wires alternatives must occur prior to the designation of an NIETC.

*G. Are there other criteria or considerations that the DOE should consider in making an NIETC designation?*

- Yes, DOE should consider the identification of *potential* NIETC designations prior to the formal NIETC designation. The designation of *potential* NIETCs would:
  - Send a signal to potential developers and states that the federal government is concerned with the need for more transmission capacity in an area.
  - Enable coordination of the NIETC designation process with federal permitting processes by allowing time to complete an EIS which will generate information on alternatives to specific transmission corridors prior to a formal NIETC designation. This will permit DOE to make a much more informed decision on an NIETC designation since significant analysis of alternatives will be available.
- DOE should develop an additional criterion that would state that the designation of a NIETC would further the energy policies of affected states as reflected in state law and state regulatory reviews of load serving entity resource plans.
- When considering the economic benefit of new transmission, DOE should also include the non-monetized impacts of transmission, such as the impact of a transmission corridor on agricultural lands, designated urban growth and

environmentally sensitive areas, and land values.

*H. Are certain considerations or criteria more important than others?*

- Yes, highest priority should be given to designation of transmission corridors that enable the achievement of state energy policy objectives.
- Priority should be given to designation of corridors from location constrained generation resource areas.
- Low priority should be given to the designation of corridors with contractual congestion but little physical congestion, unless there has been an evaluation which finds that solutions to contractual congestion are not feasible or more costly than building new transmission.
- Low priority should be given to designations that would rely on studies with a high level of uncertainty in the assumptions used.
- Low priority should be given to criteria that are vague and unverifiable, such as Draft Criteria 4 and 5.

We appreciate DOE's cooperative approach thus far in working with the western states and industry to shape the implementation of Section 1221 so that it will benefit western consumers. Careful analysis and cooperative efforts will be needed if the federal government's implementation of Section 1221 is to make a useful contribution to the development of needed transmission in the international Western Interconnection.