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**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY**

Mid-Atlantic Area National Corridor : Docket No. 2007-OE-01

**COMMENTS
Submitted on Behalf of
The Ohio Power Siting Board**

I. Introduction

The Ohio Power Siting Board (OPSB or the Board) submits the following comments pursuant to the May 7, 2007, Notice of the Secretary of the U.S. Department of Energy (hereinafter the "May 7th Notice") regarding the proposed designation of a National Interest Electric Transmission Corridor (NIETC) in the above- referenced docket. The OPSB appreciates the Secretary's decision to solicit comments before taking final action on any specific corridor designations. In addition to our own comments presented herein, the OPSB also supports the comments submitted by the Organization of MISO States (OMS).

The OPSB is an independent entity and is charged with reviewing the basis of need and environmental, ecological, and social impacts of siting and construction of major utility facilities in Ohio. The multi-agency Board is comprised of seven voting members, including the chair of the Public Utilities Commission of Ohio (PUCO), the directors of the Ohio Environmental Protection Agency, the Ohio Departments of Agri-

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culture, Development, Health, and Natural Resources; and a public member appointed by the governor from a list of nominees (who must be engineers). The four non-voting members on the Board include two members from the Ohio House of Representatives and two from the Ohio Senate. The chairman of the PUCO chairs the OPSB, and the Board's staff is drawn from the member agencies' staffs to contribute to an efficient State siting process. Before construction can begin on any major utility facility within the state of Ohio, a certificate of environmental compatibility and public need must be obtained from the OPSB. In evaluating an application for construction of a major utility facility, the Board considers the regional and interstate impacts of such a project.

The OPSB and its member agencies have a direct interest in the proposed Mid – Atlantic corridor designation by the U.S. DOE. The new NIETC designation identifies several counties in eastern Ohio within the proposed corridor and further identifies this Eastern Ohio area as being the source of underused generation capacity and/or potential alternative generation capability that could purportedly be utilized to satisfy the *wants* of the Mid-Atlantic corridor. However, this new designation focuses on an interpretation of the Secretary's discretion to designate corridors under Section 216 of the Federal Power Act (FPA) as "*conditional congestion areas*." The OPSB is puzzled by the Secretary's interpretation in light of the fact that the identified western-most edge of the proposed eastern-looking NIETC corridor was identified as a future conditional area of *interest* identified in the U.S. DOE's recent 2006 "Congestion Study."

II. Summary

The OPSB respectfully submits that the Secretary's interpretation of his authority to designate corridors, particularly as it relates to conditional congestion areas, is inconsistent with the legislative intent of the Energy Policy Act of 2005 (EPAAct). These comments address the following concerns:

- First, the definition of congestion and the Secretary's far-reaching interpretation of his scope of authority by which it intends to exercise actual discretion under section 216 of the FPA to designate a corridor in the public interest if a constraint is restricting deliverability below *desired* levels without also considering any adverse effects to satisfy a cost –benefit threshold analysis;
- Second, the issuance of permits for construction of infrastructure in Ohio, while overlooking and dismissing Ohio's existing siting authority; and,
- Third, the economic impacts upon Ohio.
- We also join the OMS in making specific recommendations to the Secretary.

III. Discussion

Under Section 216(a) of the Federal Power Act, the Secretary is required to issue a report on the congestion study, which "may designate geographic areas experiencing electricity energy capacity constraints that adversely affect consumers as a national interest transmission corridor." The May 7th Notice attempts to define the complete scope of the term, "constraints or congestion that adversely affect consumers." Yet after con-

cluding that the term is “ambiguous,” the DOE leaps to the far-reaching conclusion that the Secretary has the authority to designate a corridor:

. . . upon showing of the existence of a constraint, including the total absence of a transmission line, that is hindering the development or delivery of one or more generation sources that is in the public interest regardless of whether there is congestion and without the need for any additional demonstration of adverse effects on consumers. . . .

The DOE takes no action in the notice with respect to conditional congestion areas, but concludes that:

. . . were the Secretary to designate a national corridor for one of these areas, the Secretary would need only to demonstrate the existence of a constraint that was hindering the development or delivery of a generation source that is in the public interest, and would not need to rely on demonstration of future, or even present, congestion. . . .

Under this DOE conclusion, situations could exist where, for example, there may be a “desire” to schedule the sale of low-cost Midwest, coal-fired generation for delivery to distant locations where the price for electricity is high but actual transfer capability is limited. The DOE defined conditional congestion areas in the 2006 congestion study as having “some transmission congestion at present, but significant congestion would result if large amounts of new generation resources were to be developed without simultaneous development of associated transmission capacity.” Coincidentally, the Secretary has accepted PJM’s definition of congestion as the price separation between two points.

Section 216(a)(4) of the FPA identifies several factors that the Secretary may consider when determining whether to designate a corridor. Although some of these considerations relate to the development of diversification of energy supplies, the statute not-

ably does not mention “hindrance” to the development or delivery of generation capability that is in the public interest. Moreover, EPAct uses the phrase, “public interest” in numerous instances, including a reference in Section 216 pertaining to FERC’s finding that transmission facilities are in the public interest. What is not clear is how this definition including “desired” levels of scheduled flows comports with the plain language of the statute.

IV. Transmission Constraints Limiting Power Delivery from Underutilized Generation and/or to High Price Areas in PJM and NYISO and Consideration of Economic Impacts of Transmission Costs

There may often appear to be economic winners on one end of a transmission line and losers on the other. If the cost of electricity in the source area becomes more valuable when a new line links that source to customers in a distant, higher-priced local supply area, the customers in the low-priced source area may actually become losers if they see the prices of their local power rise to the level of the distant higher prices. Conversely, consumers in the distant areas served by a new transmission line may be perceived to be the winners. However, the notion of winning lower cost electricity may prove illusory. In assuming that prices will go down with new transmission, it assumes that high-cost local market-power concentration might be avoided by purchasing energy from other producers through long-distance transmission. Since generation was built to serve local or regional demand, any additional capacity increases will result in additional environmental, operational, transportation and fuel costs, that, in conjunction with bidding into a different wholesale market, may limit or eliminate the expected price devia-

tions. There is no doubt, however, with these implications all taken into account, there will be negative impacts on the source.

Section 216 of the FPA provides that the Secretary may designate as a national corridor any geographic area “experiencing” constraints or congestion that adversely affects consumers. But how can a constraint or congestion that adversely affects consumers be experienced if there is not yet the generation that constrains or congests the system? It appears that the DOE identification of conditional congestion areas will determine whether and where generation facilities will actually be constructed.

While the Midwest, including Ohio, recognizes the regional demand for electric power supplies, the generation reality is contrary to the DOE assertion that there exists excessive or underutilized power generation. The Midwest power fleet, according to numerous law suits, is not only old but uncontrolled in emissions and also the “regional source” of such declared negative environmental impacts in what appears to be identified as the sink areas by the DOE corridor determination. Calls for diminished Midwest power production from traditional sources and parallel outcries of unbalanced electricity prices do not pass any cost/benefit consideration or judgment of reasonableness. In the case of potential massive retirements of generation in the Midwest, some of which may be forced due to these law suits in actions by the “sink area”, the question that needs to be raised and answered is about the real (future) availability of supply sources. We don’t want to find ourselves in a “field of dreams”. Local investments to replace retirements not only depend on state regulations but also on the willingness of the financial community to share a portion of the risk associated with the environmental and societal (cost)

impacts on the generation locations. These considerations need to embrace the notion of a carbon-constrained future in which emissions will be reflected not only in the wholesale market price of electricity, but more importantly in the cost to the local consumers on their electricity bills. This may have very undesirable consequences for the industrial health of the Midwest and should not be dismissed in the final determination of the National Corridor by the Secretary. Ohio stands to lose a lot.

Also in regard to the risk to Ohio and who pays or benefits from new transmission assets, the PUCO has filed numerous comments with the Federal Energy Regulatory Commission (FERC or Commission). The Secretary apparently disregards FERC policy implications in any consideration of “public interest” determinations. Most recently, The Public Utilities Commission of Ohio (PUCO) filed comments (jointly with the Kentucky Public Service Commission) in FERC Docket Nos. EL05-121-000 and EL05-121-002. On April 19, 2007 the Federal Energy Regulatory Commission issued Opinion No. 494 Order on Initial Decision. Under this Opinion, FERC ordered a plan for allocating transmission costs among the PJM Interconnection region transmission service customers. In this Opinion, the Commission accepts a PJM suggestion, with no apparent evidence or opportunity to challenge in the proceeding, to allocate on a region-wide basis the costs of new, centrally-planned facilities that operate at or above 500kV, finding that the benefits of these systems are sufficiently broad and a region-wide postage stamp rate is appropriate.

The fact is that the Commission approved the Going Forward Principles in Docket No. EL02-111. These principles state: “An important factor in determining whether these

standards have been met in any long-term transmission pricing structure is the degree to which cost responsibility for facilities is assigned to those who use or benefit from such facilities, regardless of whether those users or beneficiaries are located inside or outside the transmission owners' footprint."¹ In its 1994 Transmission Policy Statement, the Commission stated that greater pricing flexibility is appropriate "in light of the significant competitive changes occurring in the wholesale generation markets, and in light of our expanded wheeling authority under the Energy Policy Act of 1992 (EPAAct)." The Commission noted those recent events underscored "the importance of ensuring that our transmission pricing policies promote economic efficiency, fairly compensate utilities for providing transmission services, reflect a reasonable allocation of transmission costs among transmission users, and maintain reliability of the transmission grid."²

In the FERC Midwest Independent System Operator, Docket No. ER06-18-000, the PUCO stated that bulk transmission projects can provide a benefit to more than just the local transmission operator who constructs the facility. Therefore, the costs of bulk transmission projects should be recovered from transmission users that *benefit* from a project. PUCO supported, and this Board supports, the just and reasonable standard followed by the Commission and used by state commissions for retail rate cost recovery determination. We still stand by these convictions. FERC affirmed that facilities below

¹ Midwest Independent Transmission System Operator, Inc., 106 FERC ¶ 61262 (2004) (Order Accepting Agreement Establishing Going-Forward Principles and Procedures, and Extending Dates at n. 10) (March 19, 2004).

² *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, Policy Statement, FERC Stats and Reg., ¶ 31,005 at 31,136 (1994) ("Transmission Pricing Policy Statement").

345 kV shall be cost allocated to those who benefit. We commend FERC for recognizing that those who benefit shall be made responsible for the cost, but the Commission did not go far enough. The Commission failed to recognize that projects 345 kV and above should also be allocated utilizing a “beneficiary pays” approach.

The reason the OPSB believes it is important to note these FERC policies is the significant financial impact that will result in Ohio by merely the transmission itself in conjunction with this other Federal agency policy decision. FERC has ruled that all new high voltage transmission projects 500 kV and above which have been approved through the PJM Regional Transmission Expansion Process (RTEP) may recover costs through a postage stamp component as FERC is imposing. With this ruling, Ohio customers would be responsible for a portion of all projects 500 kV and above, whether the project will provide a direct benefit to Ohio consumers or not. In fact, as discussed earlier, we believe that a negative effect will result by generation costs alone for Ohio consumers.

To demonstrate Ohio’s concern, one has only to look at PJM’s regional transmission expansion plan. Under the plan, cost numbers to date for projects 500 kV and above, DP&L, which represents a mere 2.5% of PJM’s load, was assigned zero costs under a beneficiary pays approach. With the Commission's Opinion No. 494, at the end of 5 years, they will now be allotted approximately \$7.33 million, with no benefit accruing to them, as demonstrated in a prior beneficiary pays methodology. With the inclusion of an AEP/Allegheny or other DOE designated transmission national corridor project, an additional \$13 million cost assignment could result. This end result would be a \$20 million increase in DP&L’s transmission costs (please note, these are conservative estimates,

as no incentive such as CWIP or others are taken into account, merely the cost of the transmission expansion). This Ohio company's annual transmission revenues are currently \$40 million, therefore the methodology this Commission has imposed results in a 50% increase to this company, with no demonstrated benefits, as evidenced by the flow-based methodology. AEP represents approximately 16.9% of PJM's load and, under the socialization rate making principles adopted by FERC, will be responsible for \$67 million in additional costs, from projects listed in the current transmission plan (whereby under the old method they would not have been allocated anything). AEP-OH is approximately 44% of AEP's East Zone total load; this would be a cost increase of \$30 million a year to Ohio consumers for projects above 500kV. These projects provide no positive reliability impacts to Ohio as evidenced by the flow-based methodology.

The moral of the story here is the Federal agencies appear to impose requirements on states without taking into consideration their sister agency directives and the multiplied effects and negative financial impacts on individual states and their customers. Much is at risk here for Ohio and much has been simply disregarded and dismissed in the corridor designation. Where does this fit into any "public interest" designation?

V. The Issuance of Permits for Construction of Infrastructure in Ohio, while Overlooking Our State's Siting Authority

With regard to the duration of the corridor designation, the notice states that "DOE intends to adopt a default approach." Establishing a fixed time frame of any length (including the proposed 12 year horizon) may lead to circumstances in which the congestion that led to the designation of the corridor is eliminated, but the corridor designa-

tion nevertheless remains in effect for years. This designation timeframe and the uncertainty it inflicts gives rise to OPSB concerning property rights for our citizens. In addition to the preemption of Ohio's power siting jurisdiction, the OPSB is skeptical that the combination of DOE corridor designation with FERC siting and rate-making authority is conducive to implement and construct needed facilities to ensure reliable services for electric customers at just and reasonable costs.

While the DOE provides a constructional description for a triangle, it fails to illuminate or provide any engineering, design or other rationale for starting its corridor in Ohio. In addition to this glaring omission in deciding whose property may be at jeopardy for a prolonged period of time, DOE, as was reported to be the case in the State of Maine (Public Utility Law Project of New York, Tuesday April 24, 2007, "DOE Designates 'National Interest Electric Transmission Corridor' in New York after Critical Hearing," p. 4) has once again failed to contact or meet with regulatory or government representatives in the process of conducting the study or coming to the conclusion that Ohio is a part of a problem leading to corridor designation. In addition to violating the law (EPA Act 05) which requires consultation with the affected States prior to the issuance of the corridor report, consulting with Ohio siting officials prior to the congestion study and DOE conclusions leading to the NIETC designation, would have quickly revealed flaws and erroneous decisions regarding the Midwest conditions. DOE did not adequately explain (nor even attempt to do so) why it decided to specify a single corridor, including the Ohio connection, which was not identified anywhere in the draft designation document. The DOE 2006 Congestion Study only identified a single substation at the eastern border of

Ohio as being congested, with no extension into Ohio. This begs the question of how DOE designated that situation as “conditional congestion” that now deserves NIETC designation.

VI. Conclusion and Recommendations

FERC Commissioner Suedeen G. Kelly stated in the May, 17, 2007 Commission meeting:

It is not reasonable to conclude that Congress’s intent in enacting Section 216 was to ensure the construction of transmission lines at the expense of a thoughtful, timely, and reasoned state determination, even where such a determination is the denial of a permit (certificate).

The OPSB concurs with Commission Kelly’s dissenting Opinion in Docket No. RM06-12-001 (item c-4).

The Ohio Power Siting Board believes that the DOE is overstepping the statutory authority granted to it under section 216 of the FPA. The process of designating national corridors at a minimum must include more openness and transparency. As a result, the Secretary should reserve the issue regarding its authority to designate conditional areas for a future time pending a fully vetted analytical process which will allow the DOE to gain experience with the tasks involved in designating areas for NIETC corridors to address adversely affected consumers. There are more constructive ways to determine whether transmission is the only barrier to cost-effective development or deployment of renewable and other generation sources.

The OPSB also joins the OMS, in part, in recommending that the Secretary:

- (1) Establish an explicit process to modify the default term of a corridor, particularly after the stated goal of the designation has been achieved.
- (2) Further substantiate and explain the selection and selection matrix (rational) of source areas for the Mid-Atlantic corridor.
- (3) Further make more transparent and explain the selection and designation of the vast geographical area of portions of New York and PJM as a single corridor.
- (4) Refrain from dictating potential or supposed optimization of congestion resolutions based on non-verifiable inputs or cost/benefit based evidence.

Fully consider the potential impacts, including scenarios in the abstract or theoretical, that national corridor designation may (will) have on regional and local markets, customers and the configuration, robustness and reliability of the interconnected electric system.

VII. Communications

All future correspondence and other communications regarding the subject of this docket should be addressed to:

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The OPSB looks forward to working with the Secretary and all stakeholders, including Regional Reliability Entities, on future matters concerning the designation and implementation of national corridors.

Respectfully Submitted,

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