

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

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

Notice of Inquiry

**COMMENTS OF THE
TRANSMISSION ACCESS POLICY STUDY GROUP**

The Transmission Access Policy Study Group (“TAPS”) appreciates this opportunity to respond to the Department of Energy’s Notice of Inquiry, “Considerations for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors,” which was published in the Federal Register on February 2, 2006. 71 Fed. Reg. 5660. TAPS is not submitting extensive comments, because the Department has done a good job of translating the considerations set forth in new section 216 of the Federal Power Act into criteria for designating National Interest Electric Transmission Corridors (“NIETC”). TAPS’s comments provide factual background and recommendations that should guide the Department’s application of the criteria. TAPS will not here suggest specific geographic areas or transmission corridors that should be considered for NIETC designation. However, individual TAPS members may submit such comments.

TAPS is an informal association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.¹ It participates in

¹ TAPS is chaired by Roy Thilly, CEO of Wisconsin Public Power, Inc. Current members of the TAPS Executive Committee include, in addition to WPPI, representatives of: American Municipal Power-Ohio; Blue Ridge Power Agency; Clarksdale, Mississippi; ElectriCities of North Carolina, Inc.; Florida

policy proceedings at Department, the Federal Energy Regulatory Commission (FERC), the Federal Trade Commission and other federal agencies that deal with electric transmission and market power in the electric utility industry. As entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS members have supported initiatives to form truly independent, regional transmission organizations and to foster efficient investment in transmission and generation facilities. TAPS recognizes the critical importance of structurally competitive markets, transmission adequacy, and access to long-term power supply (without exposure to debilitating congestion charges) to achieving a workably competitive electricity industry and enabling TAPS members to continue to provide reliable service to their customers at a reasonable, predictable cost.

TAPS has been particularly active in the policy arena concerning transmission infrastructure. In response to the Department's July 22, 2004 Notice of Inquiry, "Designation of National Interest Electric Transmission Bottlenecks," 69 Fed. Reg. 43,833 (July 22, 2004), TAPS submitted its June 2004 White Paper, *Effective Solutions for Getting Needed Transmission Built at Reasonable Cost*, which described structural changes and regulatory actions that can work to get needed transmission built.² Among these changes is wider adoption of joint ownership transmission models, including transmission-only companies with inclusive ownership, such as the American

Municipal Power Agency; Geneva, Illinois; Illinois Municipal Electric Agency; Indiana Municipal Power Agency; Madison Gas & Electric Co.; Missouri River Energy Services; Municipal Energy Agency of Nebraska; Northern California Power Agency; Oklahoma Municipal Power Authority; Southern Minnesota Municipal Power Agency; and Vermont Public Power Supply Authority.

² The White Paper is available at <http://www.tapsgroup.org/sitebuildercontent/sitebuilderfiles/effectivesolutions.pdf>.

Transmission Company and Vermont Electric Power Company, and shared or joint transmission systems, such as those that exist in Georgia, Indiana and parts of the Upper Midwest. TAPS is confident that these models would be effective at getting transmission built in NIETCs and encourages the Department to support them.

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COMMENTS

- A. *Comments on Draft Criteria 2 (“Action is needed to achieve economic benefits for consumers”), 3 (“Actions are needed to ease electricity supply limitations in end markets served by a corridor, and diversify resources”) and 5 (“Targeted actions in the area would further national energy policy”)*

As noted at the outset, TAPS believes that the proposed criteria are generally on the right track. The Department also correctly links current inadequacies in the transmission grid to differences between the historical purpose of the transmission grid and the role that it must play in an era where competitive electricity markets are supposed to ensure reliable and economic power supply:

The electric system has been built by electric utilities over a period of 100 years, primarily to serve local customers and support reliability; the system generally was not constructed with a primary emphasis on moving large amounts of power across multi-state regions.

71 Fed. Reg. at 7660. However, the current inadequacies are not solely attributable to historical accident. In some cases, incumbent transmission owners (“TOs”) decided, and continue to decide, not to invest in needed transmission in order to forestall entry by competitive power supply, as the Federal Energy Regulatory Commission has observed.³

Market participants also complain that companies that own both transmission and generation under-invest in transmission because the resulting competitive entry often decreases the value of their generation assets. Much of this problem is directly attributable to the remaining incentives and ability of vertically integrated utilities to exercise transmission market power to protect their own generation market share.

NIETC designation should open the door to transmission investment by willing utilities, such as TAPS members, thus allowing economic electricity to reach end-users, lowering their costs, and advancing a national energy policy premised on access to competitive power supply markets.

In applying the proposed criteria, the Department should pay attention to evidence that end-users are denied access to lower cost power supply because of constrained transmission. Such evidence might consist of recurring, significant differences in locational marginal prices in parts of organized markets attributable to constraints that prevent the dispatch of lower-priced resources to serve load within a load pocket. Another kind of evidence would be the inability of transmission customers to secure transmission paths, particularly on a firm basis, or congestion hedges needed to contract with alternative suppliers in order to lower their power supply costs or ensure reliable service.

³ Proposed Pricing Policy for Efficient Operation and Expansion of the Transmission Grid, Notice of Proposed Policy Statement, Docket No. PL03-1-000, 102 F.E.R.C. ¶ 61,032, at P 15 (2003).

National energy policy, as reflected in EPAct 2005, also supports NIETC designations that expand investment in the grid by transmitting utilities other than incumbent TOs. FPA § 216b(1)(B). In addition, continued exclusive ownership of transmission by incumbent TOs is contrary to EPAct 2005's support for transmission investment, "regardless of the ownership of the facilities." FPA § 219(b)(1). Joint transmission ownership models, whether in the form of an inclusive, stand-alone transmission company or joint transmission systems, expand the universe of transmission owners and have a proven track record of getting transmission built at reasonable costs.⁴ NIETC designation would facilitate investments in the grid by a wider range of entities (e.g., municipals, cooperatives, private investors), and at the same time joint transmission models would make it more likely that transmission is, in fact, built. TAPS members either are participants in such joint ownership models⁵ or have approached incumbent TOs proposing such models as a means to encourage much needed transmission investment.⁶ TAPS believes that areas where interest in such models exists indicate a need for NIETC designation and that NIETC designations would encourage broader adoption of the models.

In examining proposals for NEITC designations, the Department should not credit claims of dominant TOs who resist such designations on grounds that the existing grid is

⁴ See White Paper at 9-13.

⁵ See *id.* and White Paper Appendix.

⁶ For example, TAPS members Lafayette Utilities System, Clarksdale, Mississippi, and the Missouri Joint Municipal Electric Utility Commission sent letters to Entergy offering to invest in rebuilding the Hurricane Katrina-destroyed transmission system, though Entergy has not exactly jumped at the offer. These letters are attached to the Comments of the Transmission Access Policy Study Group submitted in *Promoting Transmission Investment through Pricing Reform*, FERC Docket No. RM06-4-000, and available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=10925219>.

adequate to serve *their* end-users. Congestion also significantly and adversely affects the end-users of wholesale customers, such as TAPS members, that also rely upon the transmission grid. Current transmission inadequacies prevent these transmission users from obtaining economic access to alternative power supply, which increases costs and impairs the development of competitive power supply markets where willing buyers and sellers can transact.⁷ A number of TAPS members find themselves in areas where even very small transmission service requests (*e.g.*, from less than 1 MW to 10 or 20 MW) are denied and claimed to necessitate multi-million dollar upgrades.⁸

Finally, it would not be appropriate to require “participant funding” for projects in NIETCs which, given the nature of the AC grid, will broadly benefit end-users.

Participant funding forces one or more market participants to bear the cost of network upgrades that provide broad benefits that change over time on a dynamic AC grid,

⁷ In addition, transmission customers are often shut out of transmission planning and do not have access to information that might help support an NIETC designation. Thus, the absence of proposed designations from transmission customers, or designations that lack the same technical support as those coming from TOs, should not be construed as a lack of concern on the part of transmission customers.

⁸ For example, in December 2004, Ms. Anne Kimber, speaking on behalf of the Midwest Municipal Transmission Group and TAPS, described to FERC the efforts of a small city on the MidAmerican Energy Company system to take service from the Municipal Energy Agency of Nebraska (“MEAN”) at the end of its power contract: “According to the MAPP-MISO ‘scenario analyzer’ – the tool available to market participants to test the availability of transmission service, transmission from MEAN to Callender, Iowa (0.6 MW) impacted both MAPP and MISO (Alliant) flowgates. Frankly, it is hard to believe that a transmission request this small could cause such big problems.” Written Statement of Anne Kimber on Behalf of MMTG and TAPS for the December 7 Technical Conference, at 6, filed December 7, 2004 *available* at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=10328815>.

A recent system impact study conducted by Entergy for the proposed Plum Point plant in Arkansas identified a need for \$14-28 million in transmission upgrades to accommodate delivery of the output of the plant to two small towns having a combined load of 5 MW. The identified upgrades, including a 500 kV facility located near Little Rock, *i.e.*, south and west of the Plum Point plant, whereas the towns are northwest and north of Plum Point, perennially show up as requiring upgrades in order to accommodate virtually any variety of service request. *See* Motion for Late Intervention, Protest, and Reply of Missouri Joint Municipal Electric Utility Commission, filed on December 7, 2005 in *Entergy Servs., Inc.*, Docket No. ER05-1065-000, at 7-8, *available* at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=10898733>.

creating enormous free-rider effects, especially given the inherent lumpiness of efficient transmission upgrades. Further, where the market participant funding an upgrade receives Financial Transmission Rights (“FTRs”) in exchange, and theoretically as compensation, for its investment, the FTR would have no value (and potentially a cost) if the upgrade eliminated the very congestion that is supposed to fund the FTR. Such a result would not be consistent with EAct’s requirement that “all prudently incurred costs related to transmission infrastructure development pursuant to section 216” be recovered. FPA § 219(b)(4)(B). Without assured cost recovery, needed upgrades, even in NIETCs, will not be built. Thus, the cost of NIETC investments, regardless of ownership, should be rolled-in, preferably allocating the cost of high voltage, backbone transmission on a regional basis to spread the cost burden and match cost responsibility to the broad regional benefits that will be realized from a robust grid.⁹

B. Comment on Draft Criterion 8 (“The alternative means of mitigating the need in question have been addressed sufficiently”)

With respect to Draft Criterion 8, the Department explains that it “wishes to avoid designating NIETCs in ways that might unduly affect stakeholders’ decisions about how to meet specific needs, confer advantage on transmission options, or favor some transmission options over others.” 71 Fed. Reg. at 5662. TAPS notes that Draft Criterion 8 is not listed among the considerations set forth in section 216(a)(4) upon which the Department bases the other draft criteria. Indeed, EAct with its provision for backstop federal siting of national interest transmission corridors,¹⁰ its directive that the

⁹ See White Paper at 19-20.

¹⁰ EAct 2005 § 1221; FPA § 216.

Commission exercise its authority to facilitate the expansion of the grid to meet the reasonable needs of load-serving entities,¹¹ and its provision for incentive/performance-based rates to benefit consumers by ensuring reliability and reducing delivered power cost by reducing transmission congestion¹² reflect Congress's desire to create a robust grid that supports competitive markets and to remedy congestion that imposes costs on consumers, rather than protecting those who benefit from congestion.

In any event, transmission needs in areas likely to be designated as NIETCs are so great that there is little risk that transmission will squeeze out alternative means of addressing grid inadequacies. Even if an area receives an NIETC designation, transmission itself will remain difficult to site and construct. If there are non-transmission alternatives that could be brought on line before the transmission upgrade, there is nothing in section 216's siting authority that would prevent such projects from going forward. Thus, NIETC designations alone should not create roadblocks to non-transmission projects. If problems arise in the future, the Department can consider modifying the NIETC designation criteria at such time.

Undue concern for the alleged competition between transmission and non-transmission solutions could also delay or stymie needed investment. The PJM transmission planning process places proposed transmission upgrades identified as serving economic needs on "hold" for 12 months to give the "market" an opportunity to

¹¹ EPAAct 2005 § 1233; FPA § 217(b)(4).

¹² EPAAct 2005, § 1241; FPA§ 219.

come forward with alternatives.¹³ However, PJM is “very, very disappointed” with the results of this process,¹⁴ and it recently testified:¹⁵

Do we want a “minimalist” transmission grid that essentially serves as an “add-on” facilitating the reliable movement of power from generation sited close to load? In other words, should the transmission system merely be a facilitator for a model based on local generation? Or are we looking for a strong transmission system that, by its design, links distant generation to load in order to address both economics and reliability and accommodate an array of generation alternatives from which load can choose? The “rules of the road” and the costs to build one system versus another are vastly different....

In many ways, the Energy Policy Act of 1992 answered this question in favor of the strong superhighway to support a competitive generation industry.... Assuming that we wish a strong transmission system to provide load with many options, we believe a new set of “building blocks” is needed.

The Department similarly should stay focused on supporting a strong transmission system.

C. *Comment on Question: “Should the Department distinguish between physical congestion and contractual congestion, and if so, how?”*

Whether congestion is deemed physical or contractual, it can impose costs that could qualify an area as an NIETC. For example, where a transmission customer can schedule transmission only on a non-firm basis, even though it needs firm transmission,

¹³ *PJM Interconnection, LLC*, 105 F.E.R.C. ¶ 61,123, PP 21-24 (2003).

¹⁴ Transmission Investment Technical Conference, *Transmission Independence and Investment*, Docket Nos. AD05-5-000 and PL03-1-000, Transcript at 70, 72 (Apr. 22, 2005), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=10526335>.

¹⁵ Written Remarks of Audrey Zibelman, PJM’s Executive Vice President, at the April 22, 2005 Transmission Investment Technical Conference, *Transmission Independence and Investment*, Docket Nos. AD05-5-000 and PL03-1-000, at 5, available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=10507109>.

significant costs can be imposed, especially if the congestion prevents transmission customers from contracting for needed generation or building a plant needed to bring economic power to end-users. On a system with financial transmission rights, there may be significant, unhedged congestion charges, which raise costs to consumer and discourage investment in generation. In other areas, incumbent TO practices with respect to setting aside transmission capacity as Transmission Reserve Margin (“TRM”) or Capacity Benefit Margin (“CBM”) can reduce the amount of transmission capacity available to the market, thus foreclosing otherwise economic transactions.¹⁶ In these and similar cases, if an area otherwise qualifies as an NIETC, the underlying characterization of the congestion should not be determinative.

¹⁶ For example, the contract path between two or more systems may well cause actual, physical flows to occur on other systems (“loop flows”). TOs may have increased the size of their TRM or CBM set-asides because of claimed loop flows on their systems caused by contract paths between neighboring systems.

D. Comment on Question: “Should the Department distinguish between persistent congestion and dynamic congestion, and if so, how?”

If “dynamic” congestion means congestion that comes and goes depending upon system conditions and “persistent” means congestion that is always present, the Department must bear in the mind that the economic costs and reliability consequences of dynamic congestion could be as great as, if not greater than, persistent congestion. Whether “dynamic” or “consistent,” an area or corridor should receive NIETC designation if it otherwise meets the proposed criteria.¹⁷

Respectfully submitted,

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¹⁷ TAPS here is not suggesting that a rare occurrence of transmission congestion should necessarily give rise to an NIETC designation and the potential investment in transmission infrastructure associated with it. In such cases, the designation criteria seem unlikely to be satisfied in any event.