

**UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY**

**COMMENTS OF WIRES ON THE REQUEST FOR WRITTEN
COMMENTS REGARDING A 2009 CONGESTION STUDY UNDER
SECTION 216 OF THE FEDERAL POWER ACT**

WIRES, a coalition of companies and organizations formed to promote investment in electric transmission, respectfully submits these comments in response to the June 4, 2008 request for comments on the preparations of the Department of Energy (“DOE”) to formulate and issue the 2009 Congestion Study, as required under section 216 (a)(1) of the Federal Power Act (“FPA”).¹ DOE’s Office of Electricity Delivery and Energy Reliability (“OEDER”), which is responsible for administering the statute, invites comment on “what type of analysis should be performed” in order to “identify and understand the significance and character of transmission congestion.” OEDER principally asks parties to identify how the location, duration, frequency, magnitude, and significance of transmission congestion may have changed since its 2005 study.

I.

COMMUNICATIONS

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¹ 73 Fed. Reg. 31,846 (June 4, 2008).

II.

DESCRIPTION OF WIRES

WIRES was formed in 2006 to encourage the needed expansion and upgrade of the nation's high voltage electric transmission system.² WIRES is a non-profit alliance of companies and organizations that (1) provides a forum within which transmission owners, operators, investors, and customers can work to promote a regulatory and investment climate that supports a robust transmission grid, and (2) works to ensure a uniformly high level of reliable electric service, economic efficiency, and access to diverse clean energy resources through the upgrade or expansion of transmission facilities. Through its recent report, Integrating Locationally-Constrained Resources Into Transmission Systems: A Survey of U.S. Practices, WIRES has sought to infuse the promising current policy discussion about the need for renewable energy and reductions of greenhouse gas emissions with a realistic perspective on the role of electric transmission and the obstacles to its development. It similarly encourages creative and realistic approaches to designating National Interest Electric Transmission Corridors ("NIETC"), to the extent permitted by current law.

III.

WIRES COMMENTS ON THE 2009 CONGESTION STUDY PROCESS

WIRES has in the past supported the corridor designation process as administered by OEDER. Its past designations are clear reflections of patterns of congestion on the interstate grid and the resulting threat posed by such problems to the reliability of the bulk power market. Although WIRES would have preferred that DOE act with greater dispatch, the Department made important corridor designations in the face of public objections that threatened to slow the

² See www.wiresgroup.com.

process with little corresponding benefit to stakeholders. We have pointed out that, given its limited legal effect and its marginal significance in advancing the cause of infrastructure investment, the corridor designation process became more controversial than any potential positive impacts could justify. DOE nevertheless deserves credit for its actions in attempting to carry out the clear intent of Congress.

The principal challenge for OEDER now is to improve upon its previous record under section 216. In WIREs' view, that would entail an analysis of both the need for transmission to relieve congestion and the need for transmission to serve a number of additional national priorities. In that regard, the statute accords DOE substantial discretion to determine where NIETCs should be located on the basis of the development of specific end-use markets, the potential for economic growth and diversification of energy supplies, and factors important to energy independence, execution of national energy policy, and the national defense.³ Arguably, the law also sanctions analysis of corridors for transmission that potentially serves the vast clean energy resources that are constrained by the remote geographic location of critical "fuels" such as wind and solar resources.

Despite this, it appears that, based on OEDER's Notice, DOE will prepare a new congestion study in 2009 that will continue to administer the statute in a restrictive way that does not fully address the current and future needs of the modern grid, and will not utilize the Department's clear authority to broaden the scope of its analysis beyond physical congestion. As WIREs has noted in past comments, the regulatory scheme of section 216 of the FPA has inherent flaws that OEDER may feel it cannot escape. In our view, the principal flaw is that, as structured, application of the statute is bound to be largely retrospective. In other words, corridor

³ FPA Section 216 (a)(4).

designations are in large part based on studies of historical congestion, even though DOE intends to model future transmission constraints as part of its analysis. That simply means that the federal siting of projects within corridors designated under section 216 is very unlikely to be a factor in addressing either the lack of market access that inhibits renewable energy resource development, current concerns about economic security and how to achieve energy independence, or our pressing interest in economic development.

In sum, WIRES cannot foresee how FPA section 216, as currently administered, can accelerate or guide transmission development and thereby contribute to necessary reliability and energy enhancements, support needed job creation, or assist the revitalization of the economy. That is not to say that the states will not step up to expedite consideration of these facilities or that policymakers will not give a needed boost to regional transmission planning efforts that can help rationalize today's balkanized and inefficient method of regulating transmission. But, absent meaningful changes in the law, these remain only possibilities.

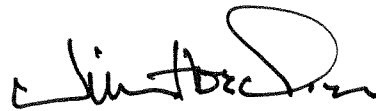
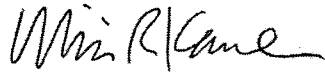
IV.

CONCLUSION

WIRES strongly encourages DOE to refresh its view of section 216 and incorporate use of more current criteria when designating NIETCs. Its Notice hopefully will elicit the data and information that OEDER wants in order to ascertain recurrent sources and locations of congestion on the grid. Nevertheless, that leaves a substantial part of Congress' objectives unaddressed. While improvements in federal law may ultimately be the appropriate remedy for the regulatory uncertainty that afflicts transmission siting and development, we recognize that

DOE personnel must act according to existing law as they find it. In light of the pressing economic and energy issues facing the country, WIRES urges OEDER to reexamine Section 216 during this process and fully use the tools already at its disposal.

Respectfully submitted,



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