

# Vinson & Elkins

James J. Hoecker jhoecker@velaw.com  
Tel 202.639.6567 Fax 202.879.8967

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*Via Electronic Delivery*

Mr. Kevin M. Kolevar, Director  
Office of Electricity Delivery and Energy Reliability, OE-20  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

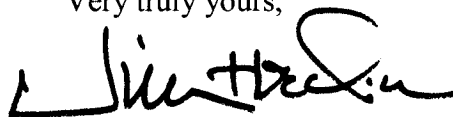
Re: Draft National Interest Electric Transmission Corridor Designation  
Attn: Docket Nos. 2007-OE-01 and 2007-OE-02

Dear Mr. Kolevar:

Enclosed please find comments of WIRES with regard to both the draft Mid-Atlantic National Corridor and the draft Southwest Area National Corridor.

Thank you for your attention to this matter.

Very truly yours,



James J. Hoecker  
Counsel to WIRES

Enclosure

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

<b>Draft National Interest Electric</b>	)	<b>Docket Nos.</b>	<b>2007-OE-01</b>
<b>Transmission Corridor Designation</b>	)		<b>2007-OE-02</b>
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**COMMENTS OF WIRES ON THE DRAFT NATIONAL INTEREST  
ELECTRIC TRANSMISSION CORRIDOR DESIGNATIONS**

WIRES, a coalition of companies and organizations formed to promote investment in electric transmission, respectfully submits these comments in response to the April 26, 2007, notice of Draft National Interest Electric Corridor (“NIETC”) Designations issued by the Office of Electricity Delivery and Energy Reliability of the Department of Energy (“DOE” or “the Secretary”) in the above-referenced dockets (“Corridor Designations”).<sup>1</sup> DOE’s proposed actions in these dockets are the first designations under Section 1221(a) of the Energy Policy Act of 2005 (“EPAct 2005”), which created Section 216 of the Federal Power Act (“FPA”). WIRES supports DOE’s actions, as discussed herein, and expresses its strong view that these and other Corridor Designations will (1) help strengthen the nation’s electricity-driven economy, and (2) support a rational planning process that ensures appropriate transmission expansions, preserves service reliability, and accommodates regional demands for clean energy, efficiency, and demand side arrangements, without disregarding important stakeholder rights and local values.

**I.  
EXECUTIVE SUMMARY**

- WIRES supports vigorous exercise of DOE’s authority under Section 216 of the FPA.

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<sup>1</sup> 72 Fed. Reg. 25,838 (May 7, 2007).

- WIRES finds DOE's two Corridor Designations appropriate and urges finalization of the proposed Designations.
- In light of the important objectives of the NIETC program, DOE can best serve the public interest by putting additional designations out for comment, and taking a positive stand in anticipating foreseeable developments and future energy priorities in addition to curing past patterns of grid congestion.
- WIRES emphasizes that opponents of DOE's designations unfairly and unwisely ignore the fact that DOE has sited no projects, has taken no property, has chosen no winners or losers, and pre-empted no state siting regime.
- Long-range transmission planning is critical to America's clean energy future.

## **II. COMMUNICATIONS**

All correspondence and communications regarding this filing should be addressed to the following:

Larry Bruneel  
President, WIRES  
ITC Holdings Corp.  
1300 I Street, NW  
Suite 300 West  
Washington, DC 20036  
Telephone: 202.216.9067  
Facsimile: 202.251.9563  
lbruneel@itc-holdings.com

James J. Hoecker  
Counsel to WIRES  
VINSON & ELKINS LLP  
1455 Pennsylvania Avenue, NW  
Suite 600  
Washington, DC 20004-1008  
Telephone: 202.639.6567  
Facsimile: 202.879.8967  
jhoecker@velaw.com

## **III. DESCRIPTION OF WIRES**

WIRES was formed in late 2006 to encourage the needed expansion and upgrade of the nation's high-voltage electric transmission system. Also known as the "Working-group for Investment in Reliable and Economic Electric Systems," 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 and economic efficiency through the upgrade of transmission facilities or

expansion of the grid.<sup>2</sup> WIRES' membership includes public utilities and transmitting utilities that own and operate transmission either on a stand-alone basis or within an integrated business structure. Its members also include a regional consortium of companies that includes transmission owning utilities and cooperatives and municipal utilities that are transmission-dependent. WIRES' associate members include construction companies, technology vendors, and independent system operators ("ISOs" or "RTOs").

#### **IV. BACKGROUND**

As WIRES made clear to the Federal Energy Regulatory Commission ("FERC") in the open access tariff rulemaking that resulted in Order No. 890,<sup>3</sup> systematic, forward-looking, and transparent planning of transmission expansion and upgrades is essential, both in regions of the country where the bulk power system is governed by regional transmission organizations ("RTOs") and in those regions where RTOs do not exist. WIRES believes that regional planning is so crucial to strengthening the transmission system and to the equitable and efficient allocation of the costs of doing so that it has adopted better regional planning as one of its Founding Principles.<sup>4</sup> FERC fundamentally agrees with this position. The provisions adopted in Order No. 890 to govern access to the interstate electric transmission system endorse thorough and open planning processes. DOE's Corridor Designations complement and will assist those planning efforts in the future. In addition, long-term transmission planning and open stakeholder

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<sup>2</sup> WIRES is the only organization solely dedicated to elevating the recognition and importance of electric transmission as a solution to the challenges facing the power industry, its customers, and the environment. Its members include National Grid USA, Trans-Elect (now "Trans-Elect Development LLC"), International Transmission Company ("ITC" or "ITC Holdings"), Oncor (formerly TXU Electric Delivery), and CapX2020 (a coalition of numerous publicly- and privately-owned utilities in the upper Midwest). These comments should be attributed to WIRES only.

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890*, FERC Stats. & Regs. ¶ 31,241 (2007).

<sup>4</sup> WIRES' Mission and Founding Principles are posted at [www.wiresgroup.com](http://www.wiresgroup.com).

processes, whether driven by reliability criteria, demand growth, market efficiency objectives, or the service obligations of load-serving entities, will ground DOE's designations in the evolving realities of the electricity marketplace, including the needs and views of energy consumers.

Although the DOE proposes two broad corridor designations, it makes clear that it does not view itself as a "super planner" of transmission. It perceives its role as limited to addressing persistent congestion on the grid. Moreover, DOE leaves the specific resolution of congestion problems in the form of new transmission facilities or other options to "market participants, applicable regional planning entities, and state authorities, among others." In sum, DOE has utilized the two principal findings of critical regional congestion and transmission constraints – in the Mid-Atlantic Area (Docket No. 2007-OE-01) (encompassing parts of Ohio, West Virginia, the District of Columbia, Maryland, Pennsylvania, New Jersey, and New York) and in the Southwest Area (Docket No. 2007-OE-02) (encompassing parts of California, Nevada, and Arizona)<sup>5</sup> – simply to identify those broad areas of the country that are already experiencing significant market inefficiency, high prices, and threats to reliability that should be resolved through enhancement of the transmission system. To that extent, this is what Congress intended in EAct 2005.<sup>6</sup>

Congress also contemplated such designations as a jurisdictional precondition for federal siting authority over such facilities, provided certain circumstances make exercise of that authority necessary. Neither federal "back-stop" siting authority nor any specific transmission project is at issue here, however. The NIETC process is not a complete answer to what ails

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<sup>5</sup> *National Electric Transmission Congestion Study*, U.S. Department of Energy, August 2006.

<sup>6</sup> WIRES observes that, based on a recent U.S. Senate colloquy about draft legislation that would strengthen the corridor designation process with respect to transmission for renewable energy projects (S. Amdt. 1609 to CLEAN Energy Act of 2007, H.R. 6, 110<sup>th</sup> Cong. (2007)), substantial Congressional support now exists for a more aggressive designation strategy.

transmission investment. It is instead a useful first step that will help planners and regulators identify and resolve issues in a timely fashion. Because this unique statutory scheme aims principally to encourage prompt action on projects that have major economic significance, misconceptions and controversy about the practical effects of DOE's designations have surrounded its action here.

Disputes over external factors such as FERC's backstop siting rules or certain specific transmission projects have unquestionably slowed DOE's implementation of Section 216. WIRES believes it is in the public interest for the NIETC provisions of EAct 2005 to be promptly implemented. WIRES therefore urges all interested parties to view DOE's actions in perspective, taking account of the need to designate corridors where congestion exists and where there is a need for solutions, including additional interstate and interregional transmission capacity to address the challenges of demand growth, stronger reliability rules, and the expansion of renewable and other remotely located electric generation.

## **V. Comments on NIETC Designations**

A. WIRES applauds DOE's draft Corridor Designations. As a recognition of persistent and widely recognized patterns of congestion on the grid, the designations merely reflect key realities of today's over-stressed transmission system. Congress, and now DOE, have pointed the way to doing something about the problem. DOE should therefore finalize these designations as soon as possible.

WIRES suggests that, going forward, DOE should address problems elsewhere in the country in manner that both anticipates future congestion problems and needs and expeditiously designates NIETCs. Given the length of time required for planning and construction of transmission, other draft designations based on areas of congestion or potential that have already

been identified in the Department's thorough congestion study should be put out for comment now. Specifically, WIRES emphasizes the following:

First, the statute affords the Secretary discretion in determining which geographic areas to designate under FPA Section 216. Section 216(a)(4) indicates that the Secretary may exercise his authority to designate corridors on the basis of the effects of congestion on the economic vitality or development of end-use markets, the potential for economic growth, and diversification of energy supplies, in addition to transmission capacity constraints. In addition, our domestic energy "independence," advancement of national policies, and even the national defense are relevant factors to be taken into account under the statute. DOE gives relatively limited consideration to these factors in the current Notice and its Notice instead suggests that these key considerations are not principal drivers of the designation process.

WIRES therefore urges DOE to broaden the range of factors that it will consider as warranting reinforcement or expansion of the transmission system in the public interest under FPA Section 216. Designations based on the potential for future demographic and technological shifts, new patterns of demand growth, and the location and availability of new generating resources would represent a necessary and appropriate way to help prepare for our domestic energy future and a fulfillment of the statute's purpose and promise. The growing importance of renewable forms of generation and cleaner coal-based generation (which will likely be remote from load to accommodate carbon sequestration), demands consideration in this context, for example. Implementation of Section 216 also represents an important potential forum for exploring transmission's role in facilitating demand-side management and enhancing system efficiency.

Second, designations can occur at the same time DOE is reviewing and updating historical congestion studies (annually), at a minimum. WIRES strongly recommends that DOE issue timelines for issuing the additional designations that it has committed to perform. The process thus far has been altogether too uncertain.

B. NIETC designations do not dictate that transmission will be built or where. Rather, they can be very important to the planning processes that are already occurring in other forums. State governments have recognized the value of thinking ahead about additions to the grid.<sup>7</sup> States like Texas, Michigan, and Wisconsin have made the expansion and reinforcement of transmission a priority objective. RTOs have adopted regional planning mechanisms. Potentially most important, FERC has mandated that utilities in all parts of the country engage in regional planning that meets specific criteria for coordination, transparency, openness, information exchange, regional participation, cost allocation, and other characteristics.<sup>8</sup> DOE-generated information on congestion and prices could assist these processes, and vice versa, but DOE must act aggressively and collect and publish information helpful to grid planning on a timely basis.

WIRES stresses that NIETC designations constitute an important but limited step in a larger process. Attacks on the designation step are short-sighted and unwarranted for several reasons:

First, DOE's Corridor Designations do not site facilities. They are not determinative of the outcome of transmission siting or planning processes. They do not, and will not, take property. The proposed designations do not pick winners and losers or specify a required route

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<sup>7</sup> See, for example, Wyoming Infrastructure Authority [<http://www.wyia.org/>], and the Rocky Mountain Area Transmission Study [<http://psc.state.wy.us/htdocs/subregional/home.htm>], Western Governors' Association, Clean and Diversified Energy Committee [<http://www.westgov.org/wga/initiatives/cdeac/index.htm>].

<sup>8</sup> *Order No. 890*, FERC Stats. & Regs. ¶ 31,241 (2007) at PP 418-602.

for any line. Despite their importance in facilitating regional transmission planning, designations proposed by the Secretary are of such geographic breadth that no specific facility could be sited or constructed without specific proposals, substantial analysis, and additional state or federal action by agencies other than DOE. In other words, the consequences of any such designations are so “remote and speculative” that they are arguably eligible to be categorically excluded altogether from review under the National Environmental Policy Act of 1969.<sup>9</sup>

Second, DOE’s approach defers to the states, as does the statute. States retain full authority to work with regional planning entities to identify the best solution to congestion problems within their borders and hopefully across the region, including transmission “smart grid” technologies, demand response, and technology solutions as appropriate. The need for transmission thus remains a matter that, in the first instance, will be taken up by local, state, and perhaps regional authorities.

Third, DOE’s designations do not preempt or undermine protection of environmentally or culturally sensitive areas or assets. DOE’s intent is to make designations sufficiently broad in scope to allow the developers of physical facilities the latitude to avoid sensitive areas. DOE’s approach is appropriately deferential to regional, state, and local planning and decision making and it effectively admits of more than one kind of solution to congestion, including distributed generation or demand response measures.

Finally, regional planners of major facilities within these corridors will still want and need stakeholder participation and political support. Such processes are not eliminated by virtue of a designation. Transmission owners and developers need to do a thorough and professional

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<sup>9</sup> See, e.g., *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004); *Southern Natural Gas Company*, 110 FERC ¶ 61,052 (2005); *Natural Resources Defense Council v. Morton*, 458 F.2d 827 (D.C. Cir., 1972).

job of advancing collaborative processes to assess project feasibility. Moreover, DOE and the FERC should collaborate, not necessarily to facilitate the exercise of pre-emptive federal jurisdiction over siting, but to accelerate regional planning and bring state officials and other stakeholders into the NIETC and planning processes as early and often as possible. Failure to plan or to collaborate is not an option.

C. DOE has acted properly under the statute to help ascertain whether and where new facilities are needed by identifying the source (generating capacity) and the sink (load) associated with the major interstate flow of power, and the congestion that separates them. This is an analysis that must be done one way or another. It is the predicate for making prudent plant additions. WIRES believes it is patently unrealistic, if not irresponsible, for needed transmission projects to be postponed indefinitely -- or until a crisis occurs -- because land-use issues are feared to be too challenging or in the hope that off-grid solutions or inchoate technological remedies will somehow rescue the situation.

Two other aspects of DOE's corridor merit comment. WIRES applauds DOE's determination that, in addition to congestion on existing facilities, the absence of transmission in strategic locations is among the critical challenges that the designation process is intended to address. For example, moving large amounts of remotely located renewable generation to load will unquestionably entail entirely new high-voltage network additions. In many circumstances, this recognition should make subsequent candidates for designation more or less obvious. Finally, it should also be noted that DOE's designations are key to implementing other aspects of EPAct and the evolving regional plans across the country. These factors and the long lead-time needed for new transmission facilities support the 12-year term for a designation announced by

DOE. The Secretary is therefore encouraged in the strongest terms to pursue implementation of more NIETC Designations.

## **VI. CONCLUSION**

In sum, DOE cannot and must not slow, or back away from, the NIETC process. Decision makers at all levels must begin to deal realistically with congestion problems created by inadequate transmission capacity, which the NIETC process was designed to identify and address. Transmission siting, like politics, is at bottom a local concern. WIRES therefore supports responsible exercises of local and state authority that prevent unreasonable infrastructural encroachments upon important natural or cultural assets or the rights of property owners. Planning and constructing the network of strategic transmission facilities is, however, no less a matter of regional and national importance than is the strength and reliable operation of the interstate highway system, the Internet or telecommunications networks, or the railroads. WIRES believes that the public and its representatives at all levels must be participants in planning processes, including those that lead to NIETC designations. Planning requires leadership, collaboration, and expedition in equal portions. If, as WIRES strongly contends, transmission infrastructure can be shown to serve the broad public interest if its adequacy can be ensured, then DOE's proposed Corridor Designations must be viewed as sound initial steps in that direction which deserve support.

WIRES therefore registers its support for DOE's initial efforts in this area and encourages a broad exercise of Section 216.

Respectfully submitted,

*/s/ Larry Bruneel*

*/s/ James J. Hoecker*

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Larry Bruneel  
President, WIRES  
ITC Holdings Corp.  
1300 I Street, NW, Suite 300 W  
Washington, DC 20036  
202.216.9067 – phone  
202.251.9563 – facsimile  
lbruneel@itc-holdings.com

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James J. Hoecker  
Vinson & Elkins L.L.P.  
The Willard Office Building  
1455 Pennsylvania Ave, NW, Suite 600  
Washington, DC 20004-1008  
202.639.6567 – phone  
202.879.8967 – facsimile  
jhoecker@velaw.com

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