



Frequently Asked Questions

The Department of Energy's Order Denying Rehearing of the Department's National Electric Transmission Congestion Report and Order

March 6, 2008

- **What is the effect of the Department's Order Denying Rehearing?**

The Department of Energy Order Denying Rehearing, signed March 6, 2008, is a final agency action by the Department on the applications for rehearing and requests for stay of the Department's National Electric Transmission Congestion Report and Order (72 FR 56992, Oct. 5, 2007). This order denying rehearing applications and requests for stay will be effective upon the date of its publication in the Federal Register, which is expected to be Tuesday, March 11, 2008. The National Corridor designations were effective October 5, 2007, and will remain in effect until October 7, 2019, unless the Department rescinds or renews the designations in future proceedings after notice and opportunity for comment.

- **Can this order be appealed?**

Pursuant to Federal Power Act (FPA) section 313, parties to the proceeding who filed timely applications for rehearing who wish to challenge the Department's October 5, 2007, Report and Order designating the two National Interest Electric Transmission Corridors have sixty days from the effective date of the order denying rehearing to appeal in a Circuit Court of Appeals of the United States

- **What took so long for the Department to issue its final decision on the rehearing requests?**

The Department received more than 60 properly filed requests for rehearing and wanted to consider them thoroughly before making final decisions about them. On December 3, the Department issued an order that extended the period for its review of the requests for rehearing. That order did not specify a closing date for the consideration of the rehearing requests.

- **Why did the Department not make any changes to its October 5, 2007, National Corridor order?**

The Department carefully considered properly filed requests for rehearing and other comments it received before making its final decision. As is apparent in today's Order, the Department addressed all the significant and relevant issues raised in the requests and comments, either directly in this order or by reference to DOE's 2006 Congestion Study, the May 7, 2007, Draft National Interest Electric Transmission Corridor Designations, and the Report and Order of October 5, 2007. Upon careful review, none of the arguments raised in the applications for rehearing persuaded the Department to alter its initial decision to designate the two National Corridors.

- **Who can appeal today's action by the Department?**

Section 313 of the FPA permits all parties to each of the two dockets who filed timely applications for rehearing to appeal today's order. As explained in the order, the right to appeal is limited to those individuals who:

- a. Appropriately filed comments on the May 7, 2007, notice soliciting comments on two draft National Corridor designations – the draft Mid-Atlantic Area National Corridor and the draft Southwest Area National Corridor (72 FR 25,838, May 7, 2007);

and

- b. Timely filed an application for rehearing of the October 5, 2007, Congestion Report and Order.

The Department also received several filings that did not meet the requirements of FPA section 313 needed to qualify as applications for rehearing, either because they were filed by non-parties or were filed late. The Department reviewed and considered all of the submissions, treating as comments the submissions from filers who did not qualify as applicants for rehearing. However, those commenters are not eligible to seek appeal of the Order under FPA section 313.

- **Where can parties seek appeal?**

Pursuant to section 313, parties that properly requested rehearing may appeal to the U.S. Circuit Court of Appeals for the District of Columbia or any other U.S. Circuit Court of Appeals in which they have standing.

- **What happens to the cases already filed by several plaintiffs opposed to the National Corridor Designations?**

Several plaintiffs have filed with U.S. District Courts in the Third Circuit and the Ninth Circuit. The U.S. Department of Justice is the Department's legal representation in these cases. To our knowledge, no court decisions have been made in these cases.

- **Now that the Department has denied the applications for rehearing, when can transmission developers apply to the Federal Energy Regulatory Commission (FERC) for a permit from FERC?**

FERC has issued final transmission siting rules which were published in the Federal Register on December 2006 (71 FR 69440). DOE refers you to FERC for questions regarding its authority. However, in general, FPA section 216(b) provides that FERC may, after notice and an opportunity for a hearing, issue permits for the construction or modification of electric transmission facilities in a National Corridor one year after the designation of that National Corridor. The two National Corridors discussed here were designated on October 5, 2007.

- **When will the Department issue more National Corridor designations?**

The Department has made no decision on whether to designate additional National Corridors. The Department has stated that as a matter of policy, if the Department should consider designating a National Corridor, it will first issue the designation as a draft and seek full public comment before issuing a final order.

- **Is the Department working on the next Transmission Congestion Study, which is due by August 2009? Will this be a public process?**

The Department will shortly release details on a proposed plan for consultation with the States and other interested parties concerning design and preparation of the *2009 National Electric Transmission Congestion Study*, as required by the Energy Policy Act of 2005.

- **What impact will these designations have on transmission development?**
 - State authorities will continue to have primary responsibility for deciding how to resolve transmission congestion problems, evaluating transmission projects, and the siting of transmission facilities.
 - EPAct authorizes the Federal Energy Regulatory Commission (FERC) to issue, under certain circumstances, permits for new transmission facilities within a National Corridor.
 - Generally, if an applicant does not receive approval from a State to site a proposed new transmission project within a National Corridor within a year, a person proposing to build an interstate electric transmission facility may apply to FERC to issue a permit for the construction of the project.
 - In 2006, FERC issued regulations that stipulate that only those transmission projects in a National Corridor that would significantly reduce congestion into or within the congestion area would be eligible for a FERC permit.
 - FERC's authority to issue permits for the construction or modification of electric transmission facilities does not extend to State or Federal property within the National Corridors.

BACKGROUND

National Electric Transmission Congestion Study:

- As directed by the Energy Policy Act of 2005 (EPAct), the U.S. Department of Energy (DOE) conducted the National Electric Transmission Congestion Study, which provides analysis of generation and transmission capacity across the U.S. and identifies critical areas that need attention due to transmission congestion and constraint problems.
- Based on data analysis and research documented in this study, EPAct authorized the Secretary of Energy to select and designate geographic areas as "National Interest Electric Transmission Corridors," (National Corridors).
- The study provided analysis of generation and transmission capacity across the U.S. and identified critical areas that need attention due to transmission congestion and constraints problems.
- The most severely congested areas – "Critical Congestion Areas" – were the Southwest and Mid-Atlantic regions, which were identified as having critical congestion problems.

Draft National Corridor Process:

- On May 7th, 2007, the Department published the draft National Corridors to provide all interested parties with fair and ample opportunities to provide input and comments, including a 60-day public comment period, which ended July 6, 2007. During this time, DOE also consulted extensively with State officials and held seen public meetings spread across the draft National Corridor footprints.
- To view the public comments received, visit:
<http://www.nietc.anl.gov/involve/reviewcomment/index.cfm>.

Final Order Designating Two National Corridors:

- On October 5, 2007, the Secretary of Energy designated two National Corridors – the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor.
- The **Mid-Atlantic Area National Corridor** includes certain counties in Ohio, West Virginia, Pennsylvania, New York, Maryland, Virginia, and all of New Jersey, Delaware, and the District of Columbia.
- The **Southwest Area National Corridor** includes certain counties in California and Arizona.
- These National Corridors comprise geographic areas where consumers are adversely affected by transmission capacity constraints or congestion.
- The boundaries of the National Corridors extend beyond the immediate areas experiencing electric transmission congestion so as to include areas of the country with a wide range of potential sources of electricity generation.
- Designation remains in effect for twelve years from the date of designation.
- To view maps of the two National Corridors, visit:
<http://www.nietc.anl.gov/nationalcorridor/index.cfm>.
- To view a list of cities and counties included in the designated corridors, visit:
http://www.nietc.anl.gov/documents/docs/National_Corridors_Counties_List.pdf.

Why is solving transmission congestion important?:

- According to DOE's Energy Information Administration, electricity demand is projected to increase by nearly 30 percent from current levels by 2030.
- Our Nation's energy infrastructure is aging - much of our electricity infrastructure was built in the early half of the 20th century, and with the strain placed on it by today's population and with an economy of our size and scale, it has exceeded its intended use.

What are the intended goals of the National Corridors?

- Designation of the National Corridors focuses attention on the need for action to keep pace with the electricity needs of American consumers, and advances the President's goal to ensure a reliable supply of electric energy for all Americans.
- Designation of National Corridors indicates that the Federal government has concluded that a significant transmission constraint or congestion problem exists in the area that it adversely affects consumers, and that it is in the national interest that the problem be alleviated.
- In addition to this designation, DOE continues to pursue and encourage robust demand response programs and a number of solutions for meeting future electricity demand, including: implementing energy efficiency measures across the country; developing and encouraging the increased use of clean, renewable energy technologies; developing more local generation; and researching, developing and deploying technologies that optimize operation of the electricity grid.

How does designation of National Corridors affect transmission siting?:

- Designation does not constitute a finding that additional transmission capacity must be built in the affected area;
- Designation does not mean that additional transmission is the only, or the best solution to resolve the congestion; – rather, DOE encourages that local generation, demand response and energy conservation options also be considered;
- Designation does not propose, direct or permit anyone to build a transmission facility; and
- Designation does not equate to a determination of a route for a proposed transmission facility; or an endorsement of one or more transmission solutions to the congestion problem.

To view text of the order denying requests for rehearing and for additional information on National Corridors, visit: <http://www.oe.energy.gov/nietc.htm>.