equivalent items in the preceding fiscal year was $10,000 or more.

Contracting officers use the information to verify offeror/contractor compliance with solicitation and contract requirements regarding the use of recovered materials. Additionally, agencies use the information in the annual review and monitoring of the effectiveness of the affirmative procurement programs required by RCRA.

B. Annual Reporting Burden

Respondents: 64,350.
Responses Per Respondent: 1.
Annual Responses: 64,350.
Hours Per Response: .325.
Total Burden Hours: 20,914.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB control No. 9000–0134, Environmentally Sound Products, in all correspondence.

Dated: October 1, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. 07–4951 Filed 10–4–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the fall meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). The Board's charter was renewed on February 1, 2006 in compliance with the requirements set forth in Title 10 U.S.C. 2166.

Date: Friday, November 2, 2007.
Time: 8 a.m. to 3 p.m.
Location: WHINSEC, 35 Ridgeway Loop, Room 219, Fort Benning, GA
Proposed Agenda: The WHINSEC BoV will be briefed on activities at the Institute since the last Board meeting on June 14, 2007 as well as receive other information appropriate to its interests. The BoV will be visiting classes from 9:30 a.m. to 1 p.m.

FOR FURTHER INFORMATION CONTACT: WHINSEC Board of Visitors Secretariat at (703) 692–7852 or (703) 692–8221.

SUPPLEMENTARY INFORMATION: At the time specified, the meeting is open to the public. Pursuant to the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140(c), members of the public or interested groups may submit written statements to the advisory committee for consideration by the committee members. Written statements should be no longer than two type-written pages and sent via fax to (703) 614–8920 by 5 p.m. EST on Tuesday, October 30, 2007 for consideration at this meeting. In addition, public comments by individuals and organizations may be made from 1 p.m. to 1:30 p.m. during the meeting. Public comments will be limited to three minutes each. Anyone desiring to make an oral statement must register by sending a fax to (703) 614–8920 with their name, phone number, e-mail address, and the full text of their comments (no longer than two type-written pages) by 5 p.m. EST on Tuesday, October 30, 2007. The first ten requestors will be notified by 5 p.m. EST on Wednesday, October 31, 2007 of their time to address the Board during the public comment forum. All other comments will be retained for the record. Public seating is limited and will be available on a first come, first serve basis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–4947 Filed 10–4–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

[Docket No. 2007–OE–01, Mid-Atlantic Area National Interest Electric Transmission Corridor; Docket No. 2007–OE–02, Southwest Area National Interest Electric Transmission Corridor]

National Electric Transmission Congestion Report

AGENCY: Department of Energy.

ACTION: Order.

SUMMARY: The following is a report by the Department of Energy (Department or DOE) on its August 2006 National Electric Transmission Congestion Study under section 216 of the Federal Power Act (FPA). This report and order designates two national interest electric transmission corridors: The Mid-Atlantic Area National Interest Electric Transmission Corridor (Docket No. 2007–OE–01); and the Southwest Area National Interest Electric Transmission Corridor (Docket No. 2007–OE–02). A list of the acronyms used in this report and order, and maps of the two national interest electric transmission corridors are provided at the end of this order.

DATES: The designations are effective October 5, 2007 and will remain in effect until October 7, 2019 unless the Department rescinds or renews the designation after notice and opportunity for comment.

FOR FURTHER INFORMATION CONTACT: For technical information, David Meyer, DOE Office of Electricity Delivery and Energy Reliability, (202) 586–1411, *david.meyer@hq.doe.gov.* For legal information, Warren Belmar, DOE Office of Legal Counsel, (202) 586–6758, *warren.belmar@hq.doe.gov,* or Lot Cooke, DOE Office of the General Counsel, (202) 586–0503, *lot.cooke@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Framework

Section 1221(a) of the Energy Policy Act of 2005 (Pub. L. 109–58) (EPAct) added a new section 216 to the Federal Power Act (16 U.S.C. 824p) (FPA). New FPA section 216(a) requires the Secretary of Energy (Secretary) [1] to conduct a nationwide study of electric transmission congestion [2] within one year from the date of enactment of EPAct and every three years thereafter. FPA section 216(a)(2) provides ''interested parties'' with an opportunity to offer ''alternatives and recommendations.'' 16 U.S.C. 824p(a)(2). Following consideration of such alternatives and recommendations, the Secretary is required to issue a report on the study ''which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor.'' FPA section 216(a)(2), 16 U.S.C. 824p(a)(2). FPA section 216(a)(4) states that in determining whether to designate a national interest electric transmission corridor (National Corridor), the Secretary may consider whether:

(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

[1] This report uses the terms ''Secretary,'' ''Department,'' and ''DOE'' interchangeably.

[2] Electric transmission congestion (congestion) is the condition that occurs when transmission capacity is not sufficient to enable safe delivery of all scheduled or desired wholesale electricity transfers simultaneously. Congestion results from a transmission capacity constraint (constraint).

(B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and (ii) a diversification of supply is warranted;

(C) the energy independence of the United States would be served by the designation;

(D) the designation would be in the interest of national energy policy; and

(E) the designation would enhance national defense and homeland security.

16 U.S.C. 824p(a)(4).

FPA section 216 imposes several consultation requirements upon the Department. FPA section 216(a)(1) states that the Department shall conduct the congestion study in consultation with affected States. 16 U.S.C. 824p(a)(1). FPA section 216(a)(3) requires the Department to conduct the congestion study and issue the report in consultation with any appropriate Regional Entity. 16 U.S.C. 824p(a)(3).[3] In addition, FPA section 216(h)(9) states:

In exercising the responsibilities under this section, the Secretary shall consult regularly with—

(A) the Federal Energy Regulatory Commission;

(B) electric reliability organizations (including related regional entities); and

(C) Transmission Organizations approved by the Commission.

16 U.S.C. 824p(h)(9).[4]

The effect of a National Corridor designation is to delineate geographic areas within which, under certain circumstances, the Federal Energy Regulatory Commission (FERC) may authorize ''the construction or modification of electric transmission facilities.'' FPA section 216(b), 16 U.S.C. 824p(b). The statute imposes several conditions on the exercise of FERC's permitting authority within a National Corridor.

Under FPA section 216(b)(1), FERC jurisdiction is triggered only when either: the State does not have authority to site the project; the State lacks the authority to consider the interstate benefits of the project; the applicant does not qualify for a State permit because it does not serve end-use customers in the State; the State has withheld approval for more than one year; or the State has conditioned its approval in such a manner that the project will not significantly reduce congestion or is not economically feasible. 16 U.S.C. 824p(b)(1). FERC has issued regulations governing the process it will follow when reviewing any applications under FPA section 216(b), and those regulations incorporate the requirements of FPA section 216(b)(1).[5] Further, FPA section 216(g) states, ''Nothing in this section precludes any person from constructing or modifying any transmission facility in accordance with State law.'' 16 U.S.C. 824p(g).

Under FPA section 216(b)(2)–(6), FERC may issue a permit only if all of the following conditions are met: the facilities will be used for the transmission of electric energy in interstate commerce; the project is consistent with the public interest; the project will significantly reduce congestion in interstate commerce and protect or benefit consumers; the project is consistent with national energy policy and will enhance energy independence; and the project maximizes, to the extent reasonable and economical, the transmission capabilities of existing towers or structures. 16 U.S.C. 824p(b)(2)–(6).[6] With regard to the condition that a project must ''significantly reduce transmission congestion in interstate commerce and protects or benefits consumers,'' FERC has stated that it interprets this to mean that a project must significantly reduce the transmission congestion identified by DOE.[7]

In order to construct a transmission facility, a developer must obtain both a construction permit as well as a right-of-way across each piece of public or private property along the route. If FERC were to issue a permit under FPA section 216(b), it would constitute the construction permit; it would not, in and of itself, grant any rights-of-way. Thus, the holder of a FERC permit would still need to obtain rights-of-way. The first step in obtaining such rights-of-way would be for the developer to initiate negotiations with each affected property owner. If the permit holder could not acquire a necessary right-of-way through negotiation with a private property owner, then the FERC permit would entitle the permit holder to acquire the right-of-way by exercise of the right of eminent domain in either Federal or State court. FPA sec. 216(e)(1), 16 U.S.C. 824p(e)(1). The court would then determine the just compensation owed to the property owner by the permit holder, which would be the fair market value (including applicable severance damages) of the property taken on the date of the exercise of eminent domain authority. FPA sec. 216(f)(2), 16 U.S.C. 824p(f)(2).

The right of eminent domain would not apply to property owned by the United States or a State. *Id.* Thus, if FERC were to issue a permit for a transmission facility across Federal or State property, the permit holder would still need to reach agreement with the Federal or State agency responsible for managing that property in order to obtain a right-of-way across that property. In addition, FPA section 216(j)(1) provides that except as specifically provided, nothing in FPA section 216 affects any requirement of any Federal environmental law. 16 U.S.C. 824p(j)(1). Thus, a FERC permit does not absolve the permittee of compliance with other Federal law, including obtaining authorizations from other agencies implementing applicable Federal environmental laws.

The statute provides a specific mechanism by which States can insulate themselves from the FERC permitting provisions of FPA section 216(b). FPA section 216(i) provides special treatment where three or more contiguous States have entered into an interstate compact, subject to approval by Congress, establishing a regional transmission siting agency to carry out the electric transmission siting responsibilities of the member States. If such a compact were established, FERC would have no authority to issue a transmission permit within any of the member States unless those members were in disagreement and the Secretary, after notice and opportunity for a hearing, made a finding that the conditions of FPA section 216(b)(1)(C) were met. FPA section 216(i)(4); 16 U.S.C. 824p(i)(4).

FPA section 216(a) does not shift to the Department the roles of electric system planners or siting authorities in evaluating solutions to congestion and constraint problems. Transmission expansion is but one possible solution to a congestion or constraint problem. Other potential solutions include increased demand response; improved energy efficiency; deployment of

[3] Regional Entities are regional reliability organizations to which the North American Electric Reliability Corporation (NERC), as the designated Electric Reliability Organization under FPA section 215, has delegated authority to propose and enforce electric reliability standards.

[4] As defined in FPA section 215(a)(6), 16 U.S.C. 824o(a)(6), ''Transmission Organizations'' include Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). RTOs and ISOs are Federally regulated entities charged with operating a regional transmission system in a manner that is non-discriminatory and ensures safety and reliability. The existing RTOs and ISOs do not own any transmission or generation and are run by independent boards of directors.

[5] Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities, Order No. 689, 71 FR 69,440, 69,468 (Dec. 1, 2006), 117 FERC ¶ 61,202 at pp. 128–29 (2006) (to be codified at 18 CFR pts. 50 and 380) (FERC Order No. 689), *order on reh'g*, 119 FERC ¶ 61,154 (2007) (§ 50.6(e) requires applicants to demonstrate that the conditions of FPA sec. 216(b)(1) are met).

[6] *See also id.* (§ 50.6(f) requires applicants to demonstrate that the conditions of FPA sec. 216(b)(2)–(6) are met).

[7] *See id.*, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 41.

advanced technology; and siting of additional generation, including distributed generation, close to load centers. Nothing in FPA section 216 requires or suggests that the Department should engage in a comparison of the relative merits of these different solutions to easing congestion in a specific geographic area.

For example, the congestion study required by FPA section 216(a)(1) is described as ''a study of electric transmission congestion,'' rather than a study of either the solutions to congestion or the need for transmission. FPA section 216(a)(2) authorizes the Department to designate areas experiencing constraints or congestion that adversely affect consumers, rather than areas where more transmission is needed. None of the considerations identified in FPA section 216(a)(4) necessitate a comparison of transmission and non-transmission solutions. The first two considerations, which look at whether economic vitality is constrained by either lack of adequate or reasonably priced electricity or reliance on limited sources of energy, focus on the effects of congestion and constraints rather than the effects of any potential solutions to such congestion or constraints. The remaining considerations address whether a National Corridor designation, rather than the construction of additional transmission, would promote energy independence, national energy policy, or national defense and homeland security.

Thus, FPA section 216(a) assigns to the Department the role of identifying transmission congestion and constraint problems, and the geographic areas in which these problems exist. A National Corridor designation is not a determination that transmission must, or even should, be built. Whether a particular transmission project, some other transmission project, or a non-transmission project is an appropriate solution to a congestion or constraint problem identified by a National Corridor designation is a matter that market participants, applicable regional planning entities, State authorities, and potentially FERC will consider and decide before any project is built. A National Corridor designation itself does not preempt State authority or any State actions, including action to approve or order the implementation of non-transmission solutions to congestion and constraint problems. If FERC jurisdiction under FPA section 216(b) were triggered, the designation of a National Corridor by the Secretary would not control FERC's substantive decision on the merits as to whether to grant or deny the permit application. Moreover, FERC has committed to considering non-transmission alternatives, as appropriate, during its permit application review process.[8]

Not only would a National Corridor designation not prejudice State or Federal siting processes against non-transmission solutions, it also should not discourage market participants from pursuing such solutions. Implementation of one solution to a congestion or constraint problem can reduce, and in some cases eliminate, the need for, and thus the viability of, competing solutions. For example, if a transmission line enabling the delivery of low-cost power from generation sources outside of a load center were to be put into service, the economic incentive to build a new generator closer to load could be eliminated. Designation of a National Corridor, however, does not constitute, advocate, or guarantee approval of any particular transmission project. Also, FERC, as discussed above, may only issue a permit if the applicant has shown that its project ''will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers.'' If competing projects were to fully resolve the congestion or constraint problem before the issuance of a FERC permit, it would be difficult for the sponsor of a transmission project to make such a showing.[9] Further, developers who diligently pursue meritorious non-transmission solutions may be able to obtain approval for those solutions long before a FERC permit is issued. In many cases it has taken less time to plan, get approval for, and implement non-transmission projects than transmission projects.[10] In fact, FPA section 216, far from disadvantaging certain approaches to addressing congestion or constraint problems, is an attempt by Congress to put transmission projects on more of a level playing field with other congestion solutions.

Nor are the time frames established under FPA section 216 likely to provide any unfair head-start for transmission projects. A transmission developer must first devise a detailed plan for the project. Given the highly interconnected nature of the transmission grid, a developer considering any significant transmission project would need to work with the relevant RTO, ISO, or other regional or sub-regional transmission planning entities to explore the feasibility, likely costs, and likely system effects of alternative project designs. After having done substantial preparatory analyses and settled on a project design, the developer in most cases would file a permit application with a State agency and could not seek FERC review until the State had had one year to evaluate and act upon the application. FPA section 216(h) establishes a mechanism to ensure that requests for Federal authorizations to construct transmission facilities, whether within or outside a National Corridor, are acted upon within one year. 16 U.S.C. 824p(h).

However, a transmission developer must first complete a pre-filing process before filing an application at FERC that would trigger the one-year deadline under FPA section 216(h).[11] FERC has indicated that the pre-filing process for extensive projects may take a year to complete.[12] Thus, designation of a National Corridor should not reduce the incentive or time available to sponsors of non-transmission solutions to pursue such solutions.

A National Corridor designation is not the cause of proposals to construct transmission. A National Corridor designation is not a proposal to build a transmission facility and it does not direct anyone to make a proposal. A National Corridor designation does not create or discover the need to consider solutions to congestion or constraint problems. Developers of electricity projects, be they transmission or non-transmission, react to the state of the grid. It is the presence of congestion and constraints, already well known to most market participants, that causes developers to undertake projects.

Just as a National Corridor designation is not a decision about the

[8] *See id.; see also* 119 FERC ¶ 61,154 at P 61 (''During the pre-filing and application processes, Commission staff will work with the applicant and stakeholders to define issues in each proceeding, including the development of appropriate alternatives * * *. The public will have the opportunity to participate and file comments—which can include suggested alternatives of any kind—throughout this review.'').

[9] If non-transmission projects had not fully resolved the congestion problem, it would seem appropriate to consider the need for new transmission to supplement those non-transmission projects, and non-transmission project sponsors would have no legitimate expectation to the contrary.

[10] *See, e.g.*, S.P. Vajjhala and Paul S. Fischbeck, *Quantifying Siting Difficulty, A Case Study of U.S. Transmission Line Siting*, Resources For the Future Discussion Paper 06–03, at 3 (Feb. 2006) (''Transmission line siting is one of the most extreme examples of siting difficulty today * * *. Siting problems are not unique to the electricity industry; however, siting difficulties associated with transmission lines are especially complex.'').

[11] FERC Order No. 689, 71 FR 69,440, 69,466–67, 117 FERC ¶ 61,202 at pp. 122–27 (§ 50.5 establishes mandatory pre-filing procedures).

[12] *Id.*, 71 FR 69,440, 69,453, 117 FERC ¶ 61,202 at P 112.

best solution to a congestion or constraint problem, it also is not a siting decision. FPA section 216(a) does not shift to the Department the role of designing routes for transmission facilities, and a National Corridor designation does not dictate or endorse the route of any transmission project. If a transmission project is proposed in a National Corridor, it will be the State or local siting authorities, and potentially FERC if certain conditions are met, that will determine the specific route of that project. The designation of a National Corridor by the Secretary does not control FERC's substantive decision on the merits as to where any facilities covered by a permit should be located, or what conditions should be placed on that permit. If FERC jurisdiction were triggered by a proposed transmission project, FERC would conduct an evaluation of the reasonably foreseeable effects of transmission construction, including an analysis of alternative routes and mitigation options. Based on that analysis, FERC has the authority to approve the application, deny the application, or approve the application with modifications.[13]

In sum, by adding section 216 to the FPA, Congress directed that the National Corridor designation process establish a Federal safety net to provide, in a defined set of circumstances, an opportunity for analysis of the need for transmission from a national, rather than a State or local, perspective.

B. Congestion Study

In accordance with the mandate of FPA section 216(a)(1), the Department issued its initial congestion study (the Congestion Study) for comment on August 8, 2006. The Congestion Study gathered historical congestion data obtained from existing studies prepared by the regional reliability councils, RTOs and ISOs, and regional planning groups. The Congestion Study also modeled future congestion: The years 2008 and 2011 for the Eastern Interconnection; and the years 2008 and 2015 for the Western Interconnection. The modeling focused on five metrics: Binding hours (the number of hours per year that a path is loaded to its safe limit and, thus, unable to accommodate all desired power transactions), U90 (the number of hours per year that a path is loaded above 90 percent of its limit), all-hours shadow price (the marginal cost of generation redispatch required to accommodate a given constraint averaged across all hours in the year), binding hours shadow price (average shadow price over only those hours during which the constraint is binding), and congestion rent (shadow price multiplied by flow, summed over all hours the constraint is binding).

Based on the historical data and the modeling results, the Congestion Study identified and classified the most significant congestion areas in the country. Two ''Critical Congestion Areas'' (*i.e.* areas where the current and/or projected effects of congestion are especially broad and severe) were identified: The Atlantic coastal area from metropolitan New York through northern Virginia (the Mid-Atlantic Critical Congestion Area); and southern California (the Southern California Critical Congestion Area). Four ''Congestion Areas of Concern'' (*i.e.* areas where a large-scale congestion problem exists or may be emerging but more information and analysis appear to be needed to determine the magnitude of the problem) were identified: New England; the Phoenix-Tucson area; the San Francisco Bay area; and the Seattle-Portland area. Also, a number of ''Conditional Congestion Areas'' (*i.e.* areas where future congestion would result if large amounts of new generation were to be developed without simultaneous development of associated transmission capacity) were identified, such as: Montana-Wyoming; Dakotas-Minnesota; Kansas-Oklahoma; Illinois, Indiana and upper Appalachia; and the Southeast.

C. May 7 Notice

On May 7, 2007, the Department published a notice in the **Federal Register** that summarized and responded to the comments relevant to National Corridor designation received in response to the Congestion Study. 72 FR 25,838 (May 7, 2007) (May 7 notice). The May 7 notice also issued and solicited comment on draft National Corridor designations for the two Critical Congestion Areas identified in the Congestion Study: The draft Mid-Atlantic Area National Corridor; and the draft Southwest Area National Corridor.

In the May 7 notice, the Department noted that the term ''constraints or congestion that adversely affects consumers'' as used in FPA section 216(a)(2) is ambiguous and stated that while it was not attempting to define the complete scope of the term, the term does include congestion that is persistent. Thus, the Department stated that FPA section 216(a) gives the Secretary the discretion to designate a National Corridor upon a showing of the existence of persistent congestion, as persistent congestion has adverse effects on consumers. The Department also stated that the Secretary would decide whether to exercise the discretion to make National Corridor designations based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate. Further, the Department concluded that it would use a source-and-sink approach[14] to delineate the boundaries of the draft Mid-Atlantic Area National Corridor and the draft Southwest Area National Corridor.

With regard to the Mid-Atlantic Critical Congestion Area, the Department noted that the Congestion Study had identified this area based on evidence of historical, persistent congestion caused by numerous well-known constraints that are projected to continue and worsen unless addressed through remedial measures. The Department provided data documenting how frequently these constraints have been binding, and noted that the modeling for the Congestion Study projected that some of these constraints will continue to be problems in 2008, along with other additional constraints. The Department also documented the existence of persistent congestion through regional differences in generation capacity factors within the footprints of the PJM Interconnection, LLC, (PJM)[15] and the New York Independent System Operator (NYISO).[16] Based on this information, the Department found under FPA section 216(a)(2) that consumers in the Mid-Atlantic Critical Congestion Area are being adversely affected by congestion.

Having concluded that the Department may designate a National Corridor for the Mid-Atlantic Critical Congestion Area, the Department then examined whether it is appropriate to

[13] *See, e.g., id.* 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at PP 41–42 (''The Commission will conduct an independent environmental analysis of the project and determine if there is no significant impact as required by [the National Environmental Policy Act]. It will look at alternatives * * *. It will review the alternatives for their respective impacts on the environment and will determine mitigation measures to lessen the adverse impacts * * *. The Commission will also consider the adverse effects the proposed facilities will have on land owners and local communities.''); and 71 FR 69,440, 69,470, 117 FERC ¶ 61,202 at p. 142–43 (§§ 380.5(b)(14) and 380.6(a)(5) require either an environmental assessment or an environmental impact statement for projects seeking permits under sec. 216(b)).

[14] ''Source'' refers to an area of existing or potential future generation, and ''sink'' refers to the area of consumer demand or ''load.''

[15] PJM is the RTO serving parts or all of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

[16] NYISO is the ISO serving New York State.

exercise that discretion. Using historical data on locational marginal prices (LMPs) and capacity prices, the Department documented that congestion results in electricity consumers in the eastern portion of PJM's footprint consistently paying higher electricity prices than consumers in the western portion, and in consumers in southeast New York consistently paying higher electricity prices than consumers in the rest of the State. The Department documented that if action is not taken to address congestion, consumers in the Baltimore-Washington-Northern Virginia area, the northern New Jersey area, and southeast New York face threats to the reliability of their electricity supply. The Department also documented that congestion exacerbates the degree to which consumers in the eastern portion of PJM and in southeast New York rely on generation fueled by natural gas and oil. Finally, the Department described the importance of the Mid-Atlantic Critical Congestion Area to the security and economic health of the Nation as a whole. Thus, the Department stated its belief that economic development, reliability, supply diversity and energy independence, and national defense and homeland security considerations warrant exercise of the Secretary's discretion to designate a National Corridor for the Mid-Atlantic Critical Congestion Area.

With regard to the Southern California Critical Congestion Area, the Department noted that the Congestion Study had identified this area based on evidence of historical, persistent congestion caused by numerous well-known constraints that are projected to continue and worsen unless addressed through remedial measures. The Department provided data documenting how frequently these constraints have been binding, and noted that the modeling for the Congestion Study projected that some of these constraints will continue to be problems in 2008. The Department also documented the existence of persistent congestion using flow data, data on congestion and redispatch costs, and data on transmission service denials. Based on this information, the Department found under FPA section 216(a)(2) that consumers in the Southern California Critical Congestion Area are being adversely affected by congestion.

Having concluded that the discretion exists to designate a National Corridor for the Southern California Critical Congestion Area, the Department then examined whether it is appropriate to exercise that discretion. The Department documented that if action is not taken to address congestion, consumers in the Southern California Critical Congestion Area face threats to the reliability of their electricity supply. The Department also documented that congestion exacerbates the reliance of consumers in Southern California Critical Congestion Area on generation fueled by natural gas. Finally, the Department described the importance of the Southern California Critical Congestion Area to the security and economic health of the Nation as a whole. Thus, the Department stated its belief that reliability, supply diversity, and national defense and homeland security considerations warrant exercise of the Secretary's discretion to designate a National Corridor for the Southern California Critical Congestion Area.

To delineate the boundaries of both the draft Mid-Atlantic Area National Corridor and the draft Southwest Area National Corridor, the Department identified source areas that would enable a range of generation options and then identified the counties linking the identified source areas with the respective sink areas, *i.e.*, the Mid-Atlantic Critical Congestion Area and the Southern California Critical Congestion Area.

The Department stated that it intended to set a 12-year term for both the draft Mid-Atlantic Area National Corridor and the draft Southwest Area National Corridor. The Department further stated that FPA section 216(a)(1) did not require it to conduct an analysis of non-transmission solutions to congestion before designating either the draft Mid-Atlantic Area National Corridor or the draft Southwest Area National Corridor, and that the National Environmental Policy Act of 1969 (NEPA) did not apply to either designation.

On June 7, 2007, the Department published a notice of correction indicating that the May 7 notice had inadvertently omitted six counties from the narrative list of counties comprising the draft Mid-Atlantic Area National Corridor; the six counties had been correctly included, however, in the map of the draft Mid-Atlantic Area National Corridor. 72 FR 31571 (June 7, 2007) (June 7 errata).

The comment period on the May 7 notice closed on July 6, 2007. The Department also held a series of public meetings on the May 7 notice.[17] All timely filed comments, as well as written comments submitted at the public meetings and transcripts of those public meetings were posted on the Department's Web site in order to facilitate public review. In addition, the Department consulted with each of the States within the two draft National Corridors,[18] as well as with the Regional Entities that have authority within the draft National Corridors.[19]

D. Focus of This Report

1. Overview of Report

Section II of this report summarizes and responds to the comments received on the draft Mid-Atlantic Area National Corridor. Section III of this report summarizes and responds to the comments received on the draft

[17] Arlington, VA, May 15, 2007; San Diego, CA, May 17, 2007; New York City, NY, May 23, 2007; Rochester, NY, June 12, 2007; Pittsburgh, PA, June 13, 2007; Las Vegas, NV, June 20, 2007; and Phoenix, AZ, June 21, 2007.

[18] The Department sent a letter to the Governor of each of the States within the draft National Corridors and the Mayor of the District of Columbia on April 26, 2007, requesting an opportunity to consult with them on the draft designations. The Department then held consultation meetings described below with the representatives of the Governors and the Mayor. Delaware: The Department met with Delaware on May 3, 2007, in the Governor's Washington, DC office. By phone, a staff person from the Delaware Public Service Commission and the Department of Natural Resources and Environmental Control participated in the meeting. District of Columbia: The Department met with the District of Columbia on June 27, 2007. This meeting included staff from the DC Department of Environment and the Office of the City Administrator. Maryland: On May 11, 2007, the Department met with staff from the Governor's Washington, DC Office. New Jersey: The Department met with New Jersey on May 9, 2007, in the Governor's Washington, DC office. An aide from the Governor's staff in New Jersey participated by phone. New York: The Department conducted a conference call with staff from the Governor's Office in Albany, NY on May 9, 2007. In addition, DOE met with staff from the Governor's Washington, DC office on May 11, 2007. Ohio: The Department met with Ohio on May 3, 2007, in the Governor's Washington, DC office. By phone, this meeting included the Governor's staff in Ohio and staff from the Public Utilities Commission of Ohio. Pennsylvania: The Department met with staff from the Governor's Office at DOE Headquarters on May 10, 2007. This meeting included staff from the Pennsylvania Department of Environmental Protection. Virginia: The Department conducted a conference call with staff from the Governor's office on May 30, 2007. West Virginia: The Department conducted a conference call with staff from the Governor's office on May 24, 2007. Arizona: The Department met with staff from the Governor's Washington, DC office on May 9, 2007. California: The Department conducted a conference call with staff from the Governor's office on April 26, 2007. In addition, the Department met with staff in the Governor's Washington, DC office on May 3, 2007. Nevada: The Department met with staff in the Governor's Washington, DC office on May 3, 2007.

[19] On May 21, 2007, the Department sent letters to the affected Regional Entities inviting consultation on the draft designations. Northeast Power Coordinating Council, Inc. (NPCC) responded and the Department conducted a conference call on July 6, 2007. ReliabilityFirst Corporation responded and the Department conducted a conference call on July 3, 2007. SERC Reliability Corporation and Western Electricity Coordinating Council (WECC) did not respond, although WECC filed timely written comments in this proceeding.

Southwest Area National Corridor. Section IV summarizes and responds to the comments received on the applicability of NEPA, the National Historic Preservation Act (NHPA), and the Endangered Species Act (ESA) to National Corridor designations. Section V of this report orders the designation of the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor.

This report focuses on the two geographic areas of the Nation experiencing the most acute and urgent electric transmission congestion problems; the report takes no action with regard to the other geographic areas discussed in the Congestion Study. The Department recognizes that it has received many comments and suggestions concerning the issues of: (1) National Corridor designation for areas other than the two Critical Congestion Areas, (2) technical aspects of the Congestion Study that relate to areas outside the two Critical Congestion Areas, and (3) the conduct of future congestion studies. The Department appreciates these comments and will consider these issues at a later date.

2. Other Issues

Numerous commenters addressed issues that the Department considers to be beyond the scope of this report. These issues are described below.

a. Opposition to FPA Section 216

Summary of Comments

Many commenters opposed the very concept of a National Corridor and urged the Department to refrain from designating any National Corridors. Some of these commenters argued that the eminent domain and Federal preemption provisions of FPA section 216 violate the Fifth and Tenth Amendments to the U.S. Constitution [20] and are undemocratic.[21] These commenters argued that a for-profit company should never be granted eminent domain,[22] and expressed skepticism that the Federal government could appropriately balance competing interests when reviewing applications to construct transmission.[23] Some commenters objected to the provision in FPA section 216(b)(1)(C)(i) granting FERC jurisdiction within a National Corridor where a State commission has withheld approval of a transmission application for more than a year. These commenters argued that this one-year deadline will not provide adequate time to assess meaningfully the environmental impacts of a proposed transmission line project.[24]

Other commenters urged the Department to refrain from designating any National Corridors in light of various alleged generic adverse effects of transmission, including: The effects of electromagnetic fields on human health and the health of livestock and wildlife; [25] the effect of herbicides used to maintain transmission rights of way; [26] disruption of farming; [27] reduction of property values; [28] effect on viewsheds; [29] fragmentation of wildlife habitat; [30] and encroachment on open space.[31]

Many commenters argued that instead of implementing FPA section 216(a), the Department should focus on developing and promoting a national energy plan based on conservation, energy efficiency, and distributed generation.[32] These commenters argued that National Corridor designations would encourage utilities to pursue outdated, environmentally destructive transmission solutions and discourage the development of more innovative, sustainable solutions. Michael Arrington, for example, stated, ''[National Corridors] will only give utilities another reason not to innovate or conserve.'' [33]

Numerous individuals suggested specific steps the Department should take in lieu of designating National Corridors, including banning the use of incandescent lights[34] and mandating higher efficiency standards in building codes.[35]

DOE Response

These comments are essentially suggestions that Congress should not have enacted FPA section 216, and requests that the Department ignore FPA section 216(a) based on concerns about the very statutory framework. The Department has an obligation to act consistent with the terms of FPA section 216(a) as written and enacted into law. Objections to the terms of this provision simply do not provide a basis for declining to implement the statute.

The Department has no basis to conclude that the provision is unconstitutional. The Fifth Amendment to the U.S. Constitution bars the taking of private property for a public purpose without just compensation, but as discussed in Section I.A above, FPA section 216(f)(2) explicitly provides for payment of just compensation in the event that a FERC permit holder were to exercise the right of eminent domain. While the Tenth Amendment reserves to States those powers not delegated to the Federal government by the Constitution, the Interstate Commerce Clause of Article I explicitly authorizes the Federal government ''to regulate commerce with foreign nations, and among the several states, and with Indian tribes.'' [36] As discussed in Section I.A above, FERC's permit authority is limited to facilities that will be used for the transmission of electric energy in interstate commerce. FPA section 216(b)(2), 16 U.S.C. 824p(b)(2).[37]

[20] *See, e.g.*, comments of Tommy and Kathy Hildebrand, Cindy Carter, and Gary Manoni.

[21] *See, e.g.*, comments of Faith Bjalobok and statement of Christopher Zimmerman at May 15, 2007, Arlington, VA public meeting.

[22] *See, e.g.*, comments of Joseph Zappulla and New York Public Interest Research Group (NYPIRG). *See also* comments of the Pennsylvania Senate.

[23] *See, e.g.*, comments of Howard Armfield (''The State Corporation Commission of Virginia is in a better position than at the Federal level to know the historical importance of areas under consideration for a utility line.''), Donald Law (''The federal government should not interfere with this process.''), Julie Keller (''A state has better knowledge of the impact of transmission lines etc. and bases it's decisions on the best interest of its local citizens rather than private companies or federal agencies.''), Jackie Grant (''I feel the public, local municipalities, and the states should be able to address their energy needs locally. Local and state efforts to resolve energy demands should not be undermined by the federal government.''), and Chenango County Farm Bureau.

[24] See, *e.g.*, comments of the New Jersey Department of Environmental Protection (NJDEP) and the Pennsylvania Department of Environmental Protection (PaDEP).

[25] *See, e.g.*, comments of Lew McDaniel, David Katch, Alison Hanham, and William Hopkins.

[26] *See, e.g.*, comments of Travis Turnley and Lee Scherer.

[27] *See, e.g.*, comments of Pennsylvania Farm Bureau.

[28] *See, e.g.*, comments of Sean Dobich, Jane Eickhoff, and Henry Woolman III.

[29] *See, e.g.*, comments of Louise Peterson and Thomas Hoffman, Jr.

[30] *See, e.g.*, comments of Murray Lantner and Ross Cooper.

[31] *See, e.g.*, comments of Michael McPoland and Aurore Giguet.

[32] *See, e.g.*, comments of Upen Patel, John Sprieser, Raman Jassal, Robert Hanham, Nora Palmatier, and Karen Kampfer, and statement of Paul Miller at June 12, 2007, Rochester, NY public meeting.

[33] *See also* comments of Russell McKelway (''I believe that cessation of land condemnation for power lines would force the kind of conservation of energy that our country desperately needs to reduce dependence on foreign sources of energy and to reduce global warming.''), Nora Marsh (''Yes, we have energy issues but the solution is not with old technology.''), and Sheila Paige (''Conservation and anti-congestion planning are vitally important—not to be swept under the rug by temporary and ill-researched band-aids. These 'corridors'—actually vast regions—represent nothing but permission for power companies to continue doing what they do badly.'').

[34] *See, e.g.*, comments of Joel Silverthorn and Karee Miller.

[35] *See, e.g.*, comments of Ben Pisarcik and A. Pellechia.

[36] U.S. CONST. art. I, § 8, cl. 3.

[37] *See also Pub. Util. Comm'n of R.I.* v. *Attleboro Steam & Elec. Co.,* 273 U.S. 83, 86 (1927)

Continued

Further, there is nothing novel about either the concept of granting eminent domain authority to for-profit utilities providing services deemed to be in the public interest, or the concept of Federal preemption with regard to the siting of interstate energy facilities. In most States, for-profit utilities that obtain permits to construct transmission facilities are granted the right of eminent domain.[38] Also, FERC and its predecessor, the Federal Power Commission, have been issuing permits for the construction of non-Federal hydropower facilities and associated primary transmission lines since 1920 and for the construction of interstate natural gas pipelines since 1938, all of which permits granted the right of eminent domain. *See* FPA sec. 4(e) and 21, 16 U.S.C. 797(e) and 814; and Natural Gas Act, sec. 7(a) and (h), 15 U.S.C. 717f(a) and (h). In fact, given the inherently interstate nature of transmission, Congress could have completely preempted State siting of interstate transmission facilities, as it did almost 70 years ago with regard to siting of interstate natural gas pipelines.[39]

As for those comments suggesting that a National Corridor designation is never appropriate because of the risks posed by transmission facilities, we note that all forms of energy infrastructure pose risks and benefits. The nature and magnitude of the risks and benefits posed by a particular infrastructure project (be it transmission or non-transmission), the feasibility and cost of mitigating those risks, and the comparison of the relative risks and benefits of competing projects are all issues with which electric system planners and siting authorities must grapple. However, as discussed in Section I.A above, FPA section 216(a) does not shift to the Department the roles of electric system planners or siting authorities in evaluating solutions to congestion and constraint problems. Moreover, the Department has no basis to conclude that the effects of transmission are so adverse that National Corridor designations are never warranted or are warranted only as a last resort. In fact, FPA section 216 evinces Congress' concern that transmission was not always being approved where and when needed.

With regard to comments that the Department should abandon designation of National Corridors and pursue other energy policies, the Department notes that it is already actively engaged in efforts to promote conservation, energy efficiency, and distributed generation. For example, the Department funds a broad range of research and development in technologies that can be used as alternatives and supplements to transmission lines, including: Advanced methods of central generation such as nuclear energy, central solar, clean coal and sequestration of its carbon emissions, wind, geothermal, hydroelectric, and gas-fired combustion turbines; distributed generation such as solar photovoltaics; energy efficiency; demand response; better transmission conductors, such as those using high temperature superconductivity, that greatly reduce transmission losses; electricity storage; and ''smart grid'' technologies and related methods. In addition, the Department provides best-practice-based expert technical assistance to States that wish to enact electricity-related laws, policies, or programs to encourage, allow, or otherwise enable their electric utilities to make greater use of alternatives to transmission lines. Upon the request of State utility regulators, the Department also has facilitated efforts to build regional consensus on means to improve energy efficiency, demand response, and distributed generation in retail and wholesale electricity markets, such as through the Mid-Atlantic Distributed Resources Initiative, the Midwest Distributed Resources Initiative, the Pacific Northwest Distributed Resources Project, the New England Demand Response Initiative, and the 2006 National Action Plan for Energy Efficiency.

Regardless, FPA section 216(a) requires the Department to conduct a congestion study every three years, and upon completion of such a study, to issue a report or reports in which it determines whether or not to designate one or more National Corridors. FPA section 216(a) does not grant the Department any other authorities or options. Therefore, requests that the Department initiate other regulatory activities are beyond the scope of these proceedings.

Further, the Department disagrees that designation of a National Corridor limits or discourages non-transmission solutions (including conservation, energy efficiency, and distributed generation) to congestion or constraint problems. As discussed in Section I.A above, the Department sees no reason to conclude that a National Corridor designation would either prejudice State or Federal decision processes against non-transmission solutions or discourage market participants from pursuing such solutions.

The only ''benefit'' that a National Corridor designation confers upon sponsors of proposed transmission projects is the provision of a potential Federal forum for review. The existence of this procedural option could well result in outcomes that differ from those that would result in its absence. Thus, the end result could be the additional or earlier construction of transmission. However, the fact that one process may produce a different result than another is not proof that the process is skewed in favor of a particular substantive result. For example, allowing applicants to appeal agency decisions in court can produce different outcomes than a system without a judicial right of appeal, but the existence of such a right does not constitute a bias. The Department has no reason to believe that designation of National Corridors will result in transmission projects supplanting superior non-transmission solutions.

As many commenters have noted, FPA section 216(a) does not mandate the designation of any National Corridors; the statute states that the Department ''may'' designate a National Corridor. As explained further in Sections II and III below, the Department has concluded that in the case of the Mid-Atlantic Critical Congestion Area, the reliability of the supply of electricity to the political capital and to a key financial center of this Nation is at some risk; in the case of the Southern California Critical Congestion Area, a large and populous portion of one State faces threats to reliability while an adjacent State says that its generation resources should be reserved for the benefit of its residents. While the statute does grant the Department discretion, the Department believes that withholding the opportunity for a Federal safety net in the circumstances presented would be inconsistent with the intent of FPA section 216(a).

(*Attleboro*) (transmission of electricity from one State to another is interstate commerce); and *Fed. Power Comm'n* v. *Florida Power & Light,* 404 U.S. 453, 462 (1972) (*FPL*) (transmission of electricity within one State held to be interstate commerce because the electricity commingled with electricity that was being transmitted out of State).

[38] *See, e.g.,* ARIZ. REV. STAT. ANN. § 12–1111 (2007); VA. CODE ANN. § 1–219.1 (2007); N.Y. TRANSP. CORP. LAW § 11 (2006); W. VA. CODE ANN. § 54–1–2 (2006); 66 PA. CONS. STAT. ANN. § 1104 (1978); CAL. PUB. UTIL. CODE § 612 (1975). Moreover, while FPA section 216(e)(1) provides holders of FERC permits with the option of going to either Federal or State court to exercise eminent domain, the statute also specifies that ''[t]he practice and procedure'' in any Federal eminent domain proceeding ''shall conform as nearly as practicable to the practice and procedure in a similar action or proceeding in the courts of the State in which the property is located.'' FPA sec. 216(e)(3), 16 U.S.C. 824p(e)(3).

[39] *See, e.g., Attleboro,* 273 U.S. at 86.

b. Comments on the Merits of Specific Transmission Projects

Summary of Comments

Most of the written comments as well as most of the oral statements made at the Department's public meetings came from individuals who indicated that they live or own property near the routes of particular proposed transmission projects that would be within the draft National Corridors. Many of these individuals commented on the adverse effects that approval of these particular transmission projects would have on them.[40] Some of these individuals acknowledged that designation of a National Corridor is not the same as approving a specific transmission project. Nonetheless, they argued that designation of the draft National Corridors would increase the chances that these particular transmission projects would be approved, and, thus, consideration of the merits of those particular lines in this proceeding is warranted. For example, Cynthia Ridout commented:

My home is directly in the path of a proposed 500 kV transmission line in Southwest PA. I speak today to defend that home. The PA PUC is currently examining the proposal for the line, and may yet deny permission for it to be built. This careful investigation is the protection offered me as a citizen of PA. The looming danger for me, though, is the threat of NIETC designation. My fear is that private for-profit companies view the NIETC as a carte blanche to quickly gain approval for and build transmission lines to reap enormous profits.[41]

Numerous elected officials, environmental organizations, and other groups raised similar objections to specific proposed transmission projects.[42]

A number of other commenters described the alleged benefits of specific proposed transmission projects that would be within the draft National Corridors.[43]

DOE response

As the Department stated in the May 7 Notice and as explained further in Section I.A above, designation of a National Corridor is not a siting decision, nor does such designation constitute approval or disapproval, or endorsement or rejection of any transmission project. The Department neither supports nor opposes any of the particular transmission projects that have been proposed within the draft National Corridors; indeed, the Department has not evaluated the merits of the design or route of any specific proposed transmission project, including whether any specific transmission project would meet the FPA section 216(b)(2)–(6) criteria for issuance of a FERC permit. The boundaries of the National Corridors being designated today are not based on any proposed transmission projects.

The existence of a National Corridor designation does not mean that any transmission project within that National Corridor will ultimately be approved, let alone approved exactly as proposed by the project sponsor. As discussed in Section I.A above, if FERC jurisdiction were triggered, FERC could issue a permit only if all of the following conditions are met: The facilities will be used for the transmission of electric energy in interstate commerce; the project is consistent with the public interest; the project will significantly reduce congestion in interstate commerce and protect or benefit consumers; the project is consistent with national energy policy and will enhance energy independence; and the project maximizes, to the extent reasonable and economical, the transmission capabilities of existing towers or structures. FPA sec. 216(b)(2)–(6); 16 U.S.C. 824p(b)(2)–(6). FERC has issued regulations governing the process it will follow under FPA section 216(b). These regulations provide that if FERC jurisdiction under FPA section 216(b) were triggered, FERC would conduct an evaluation of the reasonably foreseeable effects of transmission construction, including an analysis of alternative routes and mitigation options. Based on that analysis, FERC has the authority to approve the application, deny the application, or approve the application with modifications.[44]

Determination of whether and where to site transmission facilities raises important and difficult issues, the resolution of which is of especially critical importance to the people who live and work near those facilities. However, the pros and cons of any particular proposed transmission project are not germane to the Department's determination under FPA section 216(a) of whether consumers are being adversely affected by constraints or congestion such that National Corridor designation is appropriate.

c. Designation in the Absence of Current Congestion

Summary of Comments

A few commenters, including the Organization of MISO States (OMS), the National Association of Regulatory Utility Commissioners (NARUC), the Ohio Power Siting Board (OH Siting Board), the Michigan Public Service Commission (MiPSC), and Communities Against Regional Interconnect (CARI), expressed concern about the Department's statement in the May 7 notice that the Secretary has discretion to designate a National Corridor in the case of a constraint that is hindering the development of generation that would be beneficial to consumers without demonstrating present congestion.

[40] *See, e.g.*, comments of Kathleen Yasas (''I live along the route that has been proposed by New York Regional Interconnect, Inc. (NYRI) for a 400,000-volt direct current power line. This foreign-owned project would bisect numerous communities, undermine our already fragile economy, wreak havoc on our environment and raise electric rates while delivering no benefits.''), Charles Elmes (''If this [NYRI] line were to go through my property, it would take a line through my farm about 6,000 feet long right through the middle of my polo fields, essentially putting me out of business and rendering the rest of my farm practically useless.''), Fred and Debra Burnside (''I protest Allegheny Energy's Trans-Allegheny Interstate Line. The line would run through my property and we only own 1 acre. I fear it would reduce the value of my property. * * *''), Janie Ricciuti (''We live within 600 ft of the proposed APTrail. My husband served his country in Vietnam, he has CTCL from Agent Orange Exposure. These towers are a death sentence for him.''), Vanessa Mueller (''I would like to go on record as saying I am opposed to Dominion's proposal to place power lines through this area.''), Linda Rose (''We are opposed to Dominion VA Power's attempted desecration of our local countryside. * * *''), Teresa Barker (''I would like to express my opposition to the Sunrise Powerlink * * *. The visual impacts will create a scar on our landscape that will endure for generations.''), and Alison Law-Mathisen (''The City of Los Angeles, under the guise of the 'Green Path Project,' is targeting many communities with blight * * *''); *see also* statement of Jay Biba at June 12, 2007, Rochester, NY public meeting, and statement of Terry Simmons at June 13, 2007, Pittsburgh, PA public meeting.

[41] *See also* comments of Eugene and Kristin Gulland, (''By granting the designation, DOE would make a de facto endorsement of the [Dominion's/Allegheny's] preferred pathway * * *'') and Kate Severinsen (''Corridor designation allows NYRI to complete the state Public Service Commission's review process knowing the federal government can and will say 'yes' even if the State of New York says 'no' to it.'').

[42] *See, e.g.*, comments of U.S. Rep. Hall, Chenango County Farm Bureau, City of Paris, New York, and Communities United for Sensible Power.

[43] *See, e.g.*, comments of San Diego Gas and Electric (SDG&E), New York Regional Interconnect Inc. (NYRI), Allegheny Energy, Inc. (Allegheny), American Electric Power (AEP), and the California Chamber of Commerce.

[44] FERC's experience in siting interstate natural gas pipelines demonstrates the latitude that FERC possesses to modify applications for energy infrastructure construction. FERC has processed many applications to construct natural gas pipelines and, where such applications have been approved, the final route has almost always been different from that proposed by the project sponsor. *See, e.g., Millenium Pipeline Co., L.P.,* 97 FERC ¶ 61,292 (2001) (ordering developer to negotiate with elected officials and interested parties and citizens to work toward an agreement on an alternate route through Mount Vernon, NY); and *Greenbrier Pipeline Co., LLC*, 103 FERC ¶ 61,024 (2003) (authorizing construction subject to 47 different environmental conditions, including a major route alternative and four route variations).

These commenters argued that the Department's position appears inconsistent with the plain language and legislative intent of FPA section 216(a)(2). NARUC asked that the Department clarify how constraints or congestion that adversely affects consumers can be ''experienced,'' as required by the statute, if there is not yet generation that constrains or congests the system. OMS requests that the DOE reconsider its position or refrain from making these and similar findings in its final order on the two draft National Corridors. OH Siting Board states that DOE should reserve the issue regarding its authority to designate National Corridors for Conditional Congestion Areas for a future time.

DOE Response

The May 7 notice addressed the question of designating a National Corridor in the absence of current congestion in response to conflicting comments we received on the Congestion Study. Some commenters on the Congestion Study asked the Department to clarify that it was not foreclosing the possibility of designating National Corridors for Conditional Congestion Areas before the expected generation was developed; others argued that no such designations were permissible because the statute requires a showing that an area is currently experiencing congestion adversely affecting consumers. In the May 7 notice, we observed that there is no generally accepted understanding of what constitutes a ''geographic area experiencing electric energy transmission constraints or congestion that adversely affects consumers,'' and the phrase, as used in the statute, is ambiguous. We noted that one way in which constraints can adversely affect consumers is by causing congestion that in turn adversely affects consumers. However, we also noted that if Congress had intended to limit the Secretary's designation authority over constraints to cases where constraints are currently causing congestion, then there would have been no need for the statutory language to refer to congestion or constraints. Further, we agreed with those commenters who argued that the total absence of a line connecting two nodes can be just as, if not more, limiting to consumers than the presence of a line that is operating at capacity and, therefore, that ''constraint'' includes the absence of transmission facilities between two or more nodes. Thus, we stated that the statute does not appear to foreclose the possibility of National Corridor designation in the absence of current congestion, so long as a constraint, including the absence of a transmission line, is demonstrably hindering the development of desirable generation. We noted that this interpretation would not only give meaning to all terms in the statutory phrase ''constraints or congestion that adversely affects consumers,'' it would also be consistent with the statutory reference to ''experiencing'' a constraint. Under this interpretation, any National Corridor designation would necessitate a showing that a current lack of capacity exists and that such lack of capacity is having a current, tangible effect—generation that would be of benefit to the general public including consumers, is actually being hindered by the lack of capacity to bring it to market. Finally, we noted that we were leaving open the question of the type of information that would be required to demonstrate that a constraint actually is hindering the development or delivery of a generation source and that development or delivery of such generation source would be beneficial to consumers.

The Department is not relying on this interpretation of its statutory authority for either of the two designations being made in this report. Despite the characterizations of some commenters, in the case of both the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor, the Department's assertion of authority is based on the conclusion that congestion adversely affecting consumers is currently being experienced. Neither of these two designations relies on any interpretation of the scope of the Department's authority in the absence of current congestion. If and when the Department considers making a National Corridor designation in the absence of current congestion, it intends to provide such designation in draft form for public comment and to consult with all affected States prior to making any final decision. At that time, interested parties will have a full opportunity to raise any concerns they have about the adequacy of the Department's demonstration of authority. Further clarification is beyond the scope of these proceedings.

d. FERC's Process

Summary of Comments

Some commenters raise objections to FERC's process for reviewing permit applications under FPA section 216(b). These commenters dispute FERC's interpretation of FPA section 216(b)(1)(C)(i) allowing it to exercise jurisdiction where a State has denied, as opposed to simply delayed action on, an application.[45] NJDEP expresses concern about how FERC will interpret the one-year timeframe for State action under FPA section 216(b)(1)(C)(i). PaDEP expresses concern that FERC's review will be narrowly restricted to the merits of a proposed line rather than examining whether generation or demand resources can better satisfy the underlying needs. PaDEP also expressed concern that approval by one State of a portion of a multi-state project may prejudice FERC's review.

On the other hand, National Grid USA (National Grid) states that FERC's siting rules include a substantial measure of deference to existing regional, State, and local planning and siting processes.

DOE Response

Congress specifically granted to FERC, rather than to DOE, the responsibility of reviewing any permit applications under FPA section 216(b). As required by FPA section 216(c)(2), FERC has issued regulations governing the process it will follow when reviewing any such applications. These regulations are being challenged in court.[46] Any allegations of inadequacy or inconsistency with statutory intent must be addressed there and are beyond the scope of these proceedings.

II. Mid-Atlantic Area National Corridor (Docket No. 2007–OE–01)

A. Procedural Matters

1. Parties to This Proceeding

The May 7 notice provided instructions on how to provide comments and how to become a party to the proceeding in this docket. Consistent with those instructions, the Department is granting party status in this docket to all persons who either: (1) Filed comments electronically at *http://nietc.anl.gov* on or before July 6, 2007; (2) mailed written comments marked ''Attn: Docket No. 2007–OE–01'' to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, that were received on or before July 6, 2007; or (3) hand-delivered written comments marked ''Attn: Docket No. 2007–OE–01'' at one of the public meetings.

[45] *See, e.g.*, comments of the Delaware Department of Natural Resources and Environmental Control (DeDNR) and the Public Utilities Commission of Nevada and the Nevada State Office of Energy (Nevada Agencies).

[46] *See Piedmont Environmental Council, et al.* v. *FERC,* 4th Cir., Nos. 07–1651, *et al.*

2. Fairness of the Designation Process

Summary of Comments

Many commenters, including numerous individuals, argued that the Department had failed to provide adequate opportunity for the public to review and comment on the draft National Corridors. For example, John Balasko argued that the Department should have done more to inform and involve the general public because, ''If this corridor is adopted, no longer will landowners within the corridor be free to make sound land management decisions because the hammer of the Federal Energy Regulatory Commission and perhaps federal eminent domain is looming in the background.'' CARI contends that designation of the draft Mid-Atlantic Area National Corridor would be a ''rule'' subject to the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (APA). Many commenters argued that more public meetings should have been held and that they should have been held along the routes of various proposed transmission projects within the draft National Corridors.[47] Numerous commenters requested an extension of the comment period. In particular, commenters argued that the June 7 errata published by the Department warranted an extension of the comment period. Numerous individuals and organizations asserted that the Department had failed to reveal the data underlying the draft designations.[48]

Many commenters, including a number of individuals, alleged that the draft National Corridor designations were the result of improper influence by transmission companies.[49] Some commenters complained that instead of conducting an independent study of congestion, the Department improperly relied on data and analyses from utilities or others with a vested interest in transmission expansion.[50]

DOE Response

The Department concludes that its process has been fair, open, and transparent, and that it has provided ample opportunity for public comment. DOE does not agree that the designation of National Corridors is subject to the APA's informal rulemaking provisions. FPA section 216(a) does not expressly require rulemaking, and, in DOE's view, the designation of National Corridors constitutes informal adjudication under the APA. Absent a statutory or other legal requirement providing otherwise, the choice whether to use rulemaking or adjudication in a particular matter is the administrative agency's to make. The APA defines ''adjudication'' as ''an agency process for the formulation of an order.'' 5 U.S.C. 551(7). An order is ''the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing.'' 5 U.S.C. 551(6). A report designating a National Corridor is the final disposition in declaratory form of how DOE chooses to address the results of the study it must conduct under FPA section 216(a), and, therefore, is an informal adjudication for APA purposes.

Regardless of the label one applies to the designation of National Corridors, DOE has employed procedures that satisfy all applicable procedural requirements. DOE complied with FPA section 216(a)(2) by soliciting comments on the Congestion Study through a notice of availability and request for comments published on August 8, 2006 (71 FR 45047). DOE allowed 60 days for submission of public comments on the Congestion Study. After considering the comments received pursuant to that solicitation, DOE published the May 7 notice and provided a 60-day public comment opportunity on draft National Corridor designations. The May 7 notice stated that public comments would be considered prior to DOE issuing a report as required by FPA section 216(a)(2). DOE provided this comment opportunity even though FPA section 216(a) does not require DOE to solicit comments on either the report or on any proposed or draft National Corridor designations. FPA section 216(a) only requires that DOE solicit comments on the study, upon which the report and any designation of National Corridors are based.

In addition, the Department held a series of public meetings on the draft National Corridors. Although the Department was not required to hold any public meetings, it announced in the May 7 notice that it would hold three public meetings. In response to numerous requests for additional meetings, the Department held four more meetings. With regard to complaints about the Department's failure to schedule meetings along the routes of various proposed transmission projects, the Department notes that, as discussed in Section I.A above, designation of a National Corridor is not a siting decision, nor does such designation constitute approval or endorsement of any transmission project.

While some commenters argue that the June 7 errata warranted extension of the comment period, the Department notes that the counties inadvertently omitted from the narrative list were included in the previously available map of the draft Mid-Atlantic Area National Corridor. Further, given that the designations were issued in draft and the Department was soliciting comment on those drafts, including comment on its delineation of the boundaries of the draft National Corridors, persons concerned about counties in the general vicinity of the draft National Corridors were on notice on May 7, 2007, of the need to provide comments by July 6, 2007.

The Department believes it has provided adequate disclosure of information. The May 7 notice identified the specific data the Department relied on to: Establish the existence of congestion adversely affecting consumers, determine whether the Secretary should exercise his discretion to designate a National Corridor, and delineate the specific boundaries of the draft National Corridors. Those data included memoranda that the Department has made available on its Web site. In addition, as noted in the May 7 notice, the non-proprietary data relied on in the Congestion Study has been available on the Department's Web site since September 27, 2006.

The Department did not rely solely on data and information from any single source or category of sources. While conducting the Congestion Study, the Department contacted a wide range of stakeholders for publicly available and current data, and then, through the notice of inquiry and technical conference, opened the call for data to all entities. The Department then performed its own review of the information provided. All interested persons had an opportunity to comment on the May 7 notice, and the Department has considered all timely filed comments.

3. Adequacy of State Consultation

Summary of Comments

Some commenters asserted that the Department has failed to adequately consult with affected States. For example, Virginia Governor Kaine states

[47] *See, e.g.*, comments of Karen Smolar, Rand Carter, Dale Roberts, U.S. Sen. Clinton, and NY Rep. Destito.

[48] *See, e.g.*, comments of Greene County, Rick Layton, and Barbara Kessinger.

[49] *See, e.g.*, comments of Diane Eisenberg (''The proposals smack of cronyism, a lack of transparency, and improper attempts by secretive private interests to influence national energy policy not for the public benefit but for their own profit.'').

[50] *See, e.g.*, comments of Toll Brothers, Inc. (Toll Bros.) and Jeffrey Brown.

that the Congestion Study was performed without consultation with Virginia, contrary to FPA section 216(a)(1). Pennsylvania Senator Casey asserts that States were not adequately consulted. The Pennsylvania Land Trust Association argued that various expressions of opposition to the draft Mid-Atlantic Area National Corridor from elected officials from Pennsylvania prove that the Department has failed to consult.[51] CARI states that DOE has failed to consult adequately with New York.

DOE Response

The Department is cognizant of its responsibility to consult with affected States and believes that it has fulfilled this responsibility. As described in the May 7 notice, there are practical difficulties in conducting the level of consultation that some may prefer in the context of a study with the magnitude of the Congestion Study within the statutorily mandated deadlines. However, the Department believes that its consultation with States, as documented in the May 7 notice, satisfied the requirements of FPA section 216(a)(1). Moreover, in recognition of the importance of National Corridor designation to States, upon issuance of the May 7 notice, the Department engaged in additional consultation with each of the States within the draft National Corridors and the District of Columbia, as documented in Section I.C above.

The Department recognizes the value and importance of State consultation. The Department has sought to ensure that it understands the concerns of the States within the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor; that it has accommodated those concerns where possible consistent with its obligations under FPA section 216(a); and that it has fully explained its position where it concludes it cannot accommodate those concerns.

B. Overall Comments on the Draft Mid-Atlantic Area National Corridor

The Department received comments from numerous State officials and agencies generally opposed to the Department's designation of a Mid-Atlantic Area National Corridor. Governor Kaine opposes designation of a National Corridor that includes the Commonwealth of Virginia.[52] The PaDEP, filing comments on behalf of Governor Rendell, opposes designation of the draft Mid-Atlantic Area National Corridor as premature; the Pennsylvania Public Utilities Commission (PaPUC) also filed comments opposing designation.[53] Maryland Governor O'Malley states that the Department should set aside the draft Mid-Atlantic Area National Corridor and focus on other ways to address the region's energy problems. DeDNR, filing comments on behalf of Governor Miner, opposed designation of the draft Mid-Atlantic Area National Corridor. In addition, the Department received comments opposing designation from: The New York Public Service Commission (NYPSC) and the New York Department of Environmental Conservation (NYDEC); the New Jersey Board of Public Utilities, NJDEP, and the New Jersey Department of the Public Advocate (NJ Public Advocate); and OH Siting Board.

Numerous counties and cities within the draft Mid-Atlantic Area National Corridor filed comments opposing designation. The Department also received comments opposing designation from hundreds of individuals residing within the draft Mid-Atlantic Area National Corridor but outside of the Mid-Atlantic Critical Congestion Area. Numerous non-profit organizations also filed comments opposing designation.[54]

The New York City Economic Development Corporation, filing comments on behalf of the City of New York (City of New York), supports designation of a National Corridor for New York City. PJM supports designation of the portion of the draft Mid-Atlantic Area National Corridor within the PJM footprint. NYISO supports designation of the draft Mid-Atlantic Area National Corridor based on the Department's clarifications in the May 7 notice that the designation does not represent either an endorsement of any individual project, a determination that new transmission construction is necessarily required, or a repudiation of regional planning mechanisms. Numerous utilities also filed comments supporting designation of a Mid-Atlantic Area National Corridor.[55]

NERC filed comments stating that the ultimate designation of National Corridors will further bolster the reliability of the grid. NPCC expressed concern about designation of an overly narrow National Corridor.

DOE Response

These comments in general opposition to the designation of a Mid-Atlantic Area National Corridor are essentially opposition to the regimen established by FPA section 216(a). As stated in Section I.D.2(a) above, the Department has an obligation to act consistent with the terms of FPA section 216(a) as written and enacted into law. Objections to the terms of this provision simply do not provide a basis for declining to implement the statute.

C. Adequacy of Showing of Congestion That Adversely Affects Consumers

Summary of Comments

Numerous commenters argued that the Department had failed to make the showing of congestion adversely affecting consumers required in order to designate a Mid-Atlantic Area National Corridor. Some of these commenters took issue with the Department's position that it has the discretion to designate the Mid-Atlantic Area National Corridor upon a showing of the existence of persistent congestion, without further demonstration of adverse effects on consumers. For example, NYPSC states that DOE's interpretation is contrary to the express language of the statute, which recognizes that transmission congestion and constraints do not, *per se*, adversely affect consumers. NYPSC states that DOE's approach renders the statutory phrase ''that adversely affects consumers'' entirely superfluous, contrary to a fundamental canon of statutory construction. PaPUC states that DOE has misread the statute to give itself unlimited power to designate National Corridors almost anywhere in the United States, since every transmission pathway may become congested at some point in time. PaPUC states that it is not enough for the DOE to identify the existence of chronic congestion. OMS states that although it may be relatively easy to demonstrate that persistent congestion is adversely affecting consumers, OMS believes that DOE still needs to explicitly demonstrate such adverse effects before it can designate any National Corridor.[56]

NYPSC argues that in regions such as New York State where competitive markets have been established, higher prices for transmission do not always

[51] *See also* comments of Energy Conservation Council of Pennsylvania (ECCP) and statement of Robert Lazaro at May 15, 2007, Arlington, VA public meeting.

[52] *See also* comments of Virginia Department of Historic Resources.

[53] *See also* comments of the Pennsylvania House of Representatives and the Pennsylvania Senate.

[54] *See, e.g.*, comments of Piedmont Environmental Council, CARI, NYPIRG, and Sierra Club (National).

[55] *See, e.g.*, comments of AEP, National Grid, Allegheny, NYRI, and Old Dominion Electric Cooperative (ODEC); *see also* comments of Edison Electric Institute (EEI).

[56] *See also* comments of MiPSC, ECCP, Consolidated Edison Company of New York, Inc. (Con Ed), CARI, Toll Bros., and City of Paris, NY.

adversely affect consumers. NYPSC further states where the costs of relieving congestion exceed the costs of the congestion itself, consumers are not adversely affected by such congestion because such congestion reflects the most economically efficient operation of the grid.[57] Erica Wiley states that areas of congestion or higher pricing are a result of natural market forces, thus, one would expect New York City's cost of energy to be higher than that in the Ohio River Valley, much like real estate prices. Higher prices, this commenter argued, do not adversely affect consumers, but rather have led to innovation and conservation.

Some commenters argued that the Department's analysis relies on inflated estimates of future congestion. A few commenters argued that the Department had failed to consider that greenhouse gas regulation will increase the price of coal-fired generation, and thereby reduce congestion between areas of coal generation and load centers.[58] Con Ed argues that the Department should model new generation capacity in the eastern portion of the PJM footprint resulting from the new Reliability Pricing Model capacity market or other generation now expected to be in service after 2011. Con Ed states that using average losses instead of marginal losses also can serve to artificially inflate projections of congestion. Con Ed further states that the three cost curves for Upstate East, Upstate West, and Downstate New York used in the Congestion Study modeling should have been combined into one curve and the resulting energy prices compared to energy prices with constraints. PaPUC states that rather than relying solely upon a static direct current flow analysis, DOE should have performed dynamic analysis of alternating current flows, as is used in actual transmission grid planning models. CARI argues that the Department has not adequately considered data from NYISO's most recent Reliability Needs Assessment that suggests that future constraints and congestion will not be as severe as the Congestion Study modeling predicts. Some commenters argue that the Department failed to adequately consider the effects of ongoing demand reduction efforts on congestion, including New York Governor Spitzer's recent plan to decrease energy demand in the State by 15 percent below forecasted load by 2015.[59]

Other commenters supported the Department's showing of congestion adversely affecting consumers in the Mid-Atlantic Critical Congestion Area. For example, PJM states that persistent and growing transmission congestion such as that experienced in the Mid-Atlantic Critical Congestion Area is a precursor to threats to reliability of service in the near- and mid-term future.[60] NYISO states that as a general rule, the Department correctly identified those areas of New York State lying along its major transmission pathways that historically have experienced significant congestion.[61]

DOE Response

The Department concludes that it has sufficiently demonstrated and found the existence of congestion that adversely affects consumers in the Mid-Atlantic Critical Congestion Area. FPA section 216(a)(2) does not define the term ''congestion that adversely affects consumers,'' nor is there any dictionary definition or common usage of that phrase within the realm of electric system operations to clarify its meaning. The considerations listed in FPA section 216(a)(4), which authorize the Department to consider factors such as diversification of supply and energy independence when determining whether to designate a National Corridor, indicate that Congress intended the Department to consider adverse effects on consumers beyond increases in the delivered price of power. However, the statute provides no further clarification of the type or magnitude of adverse effect intended. The statute also does not dictate any particular method of determining the existence of congestion adversely affecting consumers, except that such determination is to be based on the study conducted pursuant to FPA section 216(a)(1). In sum, the statute is ambiguous, and leaves to agency discretion, as to when congestion can be said to adversely affect consumers.

Nothing in the statute requires that the Department conduct a separate explicit empirical analysis of the specific adverse effects of an instance of congestion before designating a National Corridor. FPA section 216(a)(1) describes the congestion study on which any designation of a National Corridor must be based only as a ''study of electric transmission congestion.'' Similarly the term ''congestion that adversely affects consumers'' in FPA section 216(a)(2) does not dictate a two-step analysis—first to determine the level of congestion and second to determine the specific resulting adverse effects—before a National Corridor designation may be made.

In the Congestion Study, the Department defined ''congestion'' as the condition that occurs when transmission capacity is not sufficient to enable safe delivery of all scheduled or desired wholesale electricity transfers simultaneously. This definition was based on common usage within electric system operations[62] and spurred little dissent among commenters on the Congestion Study. Under this definition, determining and documenting the specific adverse effects caused by specific instances of congestion could necessitate identification of all the scheduled or desired power transactions that were denied transmission service, all the alternative power transactions that occurred as a result of the congestion, all the parties to both sets of transactions, all the terms of both sets of transactions, and all the sources of power for both sets of transactions. Obtaining and analyzing such information for each area under evaluation for potential National Corridor designation, assuming all such information were accessible, would be a daunting task, particularly in the context of a triennial study that must already identify and analyze the existence of congestion itself throughout 47 States and the District of Columbia. Thus, given the practical complications of conducting in each case a specific analysis of the specific adverse effects caused by the specific instances of congestion, the Department considered whether it was possible to identify a class of congestion that necessarily adversely affects consumers.

Given the definition of ''congestion,'' any congestion prevents some users of the transmission grid from completing their preferred power transactions. These users include wholesale industrial consumers of power as well as load-serving entities buying power on behalf of retail consumers, all of whom are prevented by congestion from obtaining delivery of desired quantities of electricity from desired sources.

[57] *See also* comments of Con Ed.

[58] *See, e.g.*, comments of Sierra Club (National) and Con Ed.

[59] *See, e.g.*, comments of CARI, NYPRIG, and American Council for an Energy-Efficient Economy.

[60] *See also* comments of WIRES.

[61] *See also* comments of National Grid.

[62] *See, e.g.*, California Independent System Operator, Conformed Simplified and Reorganized Tariff, App. A, Master Definitions Supplement (April 6, 2007) (''Congestion—A condition that occurs when there is insufficient Available Transfer Capacity to implement all Preferred Schedules simultaneously or, in real time, to serve all Generation and Demand.''); and Southwest Power Pool, Glossary and Acronyms, *http://www.spp.org/glossary.asp?letter=C* (''Congestion is a condition that occurs when insufficient transfer capacity is available to implement all of the preferred schedules for electricity transmission simultaneously.'').

Thus, any congestion on a line necessarily interferes with the choices of those who wish to use that line on their own or their customers' behalf. Whenever there is congestion on a transmission path, there simply is not enough transmission capacity to accommodate all the desired power transactions, and some sort of rationing of available capacity is needed. In areas with organized electricity markets, this rationing generally occurs through a pre-established economic mechanism, such as an LMP-based system designed to allocate the limited capacity to the users who value it the most. In areas of the country without organized markets, the rationing may involve the transmission provider denying requests for transmission service, adjusting schedules, or in some cases making pro rata curtailments in real time. Regardless of how the rationing is resolved, however, one thing remains true: Congestion results in some users of the transmission system being denied the benefit of their preferred transactions.

Interference with customers' preferred power transactions poses numerous potential adverse effects on consumers. One reason for choosing a particular power seller is commodity price. Electricity buyers frequently seek power from sellers who offer the lowest power price. When congestion prevents those transactions from being consummated, more expensive power must be purchased, which adversely affects consumers. However, congestion can result in the loss of benefits to consumers other than just low commodity prices. A seller may offer contract terms other than lower commodity price that benefit consumers, including better credit terms, greater long-term pricing certainty, or greater flexibility in terminating contracts. A seller may offer consumer benefits in terms of fuel source. For example, a seller may offer power from a fuel source that would increase diversity or energy independence, both of which protect consumers from unforeseen events and market volatility related to fuel availability. Or a seller may offer consumers the ability to buy renewable power, which offers environmental benefits to consumers. A seller may offer consumer benefits simply by being unaffiliated with a load-serving entity's primary electricity supplier, which protects consumers from being completely dependent on a single supplier. While analysis of why the transactions thwarted by a particular instance of congestion were in fact preferred by customers would reveal which of these specific consumer benefits had been forgone, no such analysis is needed to conclude that congestion thwarts customer choice resulting in the loss of one or more of these benefits. Finally, congestion results in parts of the transmission system being so heavily loaded that grid operators have fewer options for dealing with adverse circumstances or unanticipated events. Therefore, as congestion increases consumers are exposed to increased risk of blackouts, forced interruptions of service, or other grid-related disruptions.

Some commenters suggest that congestion only adversely affects consumers if the costs of relieving the congestion are less than the costs of the congestion itself. As discussed above, we conclude that Congress intended the Department to consider adverse effects on consumers beyond increases in the delivered price of power, some of which effects may not be easily monetized. Further, designation of a National Corridor does not dictate how or even whether to address a particular instance of congestion. Therefore, the Department believes that restricting the term ''congestion that adversely affects consumers'' to congestion that can be cost-effectively relieved is an overly narrow reading of the statute. Some commenters suggest that congestion can actually benefit consumers by spurring energy efficiency or the adoption of innovative technologies. The Department believes, however, that their comments speak not to any true benefits of congestion itself, but rather to the benefits of congestion management systems that put a price on congestion, thus making it easier for market participants to evaluate how best to address that congestion.

While the Department concludes that, in theory, any congestion adversely affects at least some consumers, it is not adopting that interpretation of the term ''congestion that adversely affects consumers.'' Instead, the Department recognizes that isolated instances of congestion can arise on any transmission path, and such events are more in the nature of occasional inconveniences than a significant adverse effect on consumers. However, as congestion becomes more frequent on a particular path, the occasional inconveniences start to accumulate until, at the point where congestion becomes persistent, customers find that they must recurrently resort to less desirable power sources. In fact, as customers lose the ability to access preferred suppliers on a firm basis, they may need to make permanent arrangements with less desirable suppliers, all to the detriment of consumers.

Further, the Department recognizes that congestion remedies are not free. As discussed above, the identification of congestion adversely affecting consumers is not a determination of whether or how a particular instance of congestion should be addressed. It is, however, the first step in the process of determining whether to provide a potential Federal forum that would examine whether addressing congestion through transmission expansion is in the public interest. Just as isolated or infrequent instances of congestion do not usually cause significant adverse effects to consumers, they also do not usually warrant consideration of structural changes, such as transmission expansion, increased demand response, or siting of additional generation. The ''solution'' to such transient instances of congestion is short-term, temporary adjustments, such as redispatch. Thus, when electric system planners consider whether structural changes are needed in the system, they typically start by looking for recurrent patterns of congestion and calculating the number of hours per year that a given transmission line or path is congested.

The Department emphasizes that while a finding of congestion that adversely affects consumers provides the Department with the discretion to designate a National Corridor, it does not mean that the Department will choose to exercise that discretion in all instances. Before making any designation of a National Corridor, the Department will consider whether such designation is in the national interest, based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate.

The Department concludes, based on its technical expertise and policy judgment, that it is reasonable to interpret the phrase ''congestion that adversely affects consumers'' to include congestion that is persistent. Thus, the Department believes that FPA section 216(a) gives the Secretary sufficient authority and discretion to designate the Mid-Atlantic Area National Corridor upon a showing of the existence of persistent congestion.

The Department further concludes that persistent congestion exists into and within the Mid-Atlantic Critical Congestion Area. Some commenters question assumptions made in the modeling performed in the Congestion Study, and others suggest that the modeling be performed again to

incorporate additional analysis or more recent data. All of these comments concern the accuracy of projections of future levels of congestion; however, the analysis in the Congestion Study and the May 7 notice was not limited to estimating future levels of congestion. The Mid-Atlantic Area National Corridor is based on well-documented existing constraints causing patterns of congestion that have persisted over a number of years.

For example, Tables VIII–4 and VIII–5 in the May 7 notice identified 25 different transmission elements in the PJM and NYISO footprints that have been constrained more than five percent of the time from 2004 through 2006.[63] Some of these elements were constrained much more than five percent of the time: Bedington-Black Oak was constrained 52 percent and 45 percent of the time in the Day-Ahead market in 2005 and 2006 respectively; the Kammer 765/500 transformer was constrained 39 percent and 23 percent of the time in the Day-Ahead market in 2005 and 2006 respectively; Rainey to Vernon 345 kV was constrained 36 percent and 32 percent of the time in the Day-Ahead market in 2005 and 2006 respectively; and Dun-Shore Road was constrained 71 percent and 89 percent of the time in the Day-Ahead market in 2005 and 2006 respectively. While some commenters question how much and how quickly congestion in the Mid-Atlantic Critical Congestion Area will increase or decrease, and how much and how quickly various efforts will reduce the congestion, no one seriously questions that this congestion exists now and that it will continue for some period of time.[64]

Moreover, while the Department concludes that the statute authorizes the designation of the Mid-Atlantic Area National Corridor upon the Department's finding of the existence of persistent congestion, the Department nevertheless has provided additional documentation. In the context of explaining the considerations that led to the draft designation of the Mid-Atlantic Area National Corridor, the Department documented that congestion is causing consumers in the Mid-Atlantic Critical Congestion Area to face consistently higher electricity prices; that congestion poses threats to the reliability of electricity supply to consumers in the Mid-Atlantic Critical Congestion Area; and that congestion limits supply diversity and energy independence for Mid-Atlantic Critical Congestion Area consumers.[65] For example, the May 7 notice explained that PJM has determined that unless constraints into the Baltimore-Washington-Northern Virginia area are mitigated, existing 500 kV transmission facilities serving that area will become overloaded by 2011 in violation of NERC and PJM reliability and planning criteria, and unless constraints into northern New Jersey are mitigated, that area faces violations of NERC and PJM reliability and planning criteria by 2014. The May 7 notice further explained that NYISO has determined that constraints limiting delivery of electricity to southeast New York pose a threat to reliability by 2011.

Far from simply assuming the presence of congestion that adversely affects consumers, as some commenters allege, the Department has made a reasoned determination that the statutory conditions triggering discretion to designate a National Corridor for the Mid-Atlantic Critical Congestion Area have been met.

D. Boundaries of the Mid-Atlantic Area National Corridor

Summary of Comments

Numerous commenters argued that the draft Mid-Atlantic Area National Corridor is impermissibly broad. For example, ECCP states that designation of an area spanning much of the Mid-Atlantic region exceeds the Secretary's authority and the Department's expansive definition of ''corridor'' does not comport with Congress'' definition of ''corridor'' or Congress' intent in enacting FPA section 216. Upper Delaware Preservation Coalition states that DOE exceeded its statutory authority by disregarding the common usage of the word ''corridor'' under EPAct and drawing the boundaries of the draft Mid-Atlantic Area National Corridor arbitrarily.[66] Southern Environmental Law Center (SELC) states that the definition employed by DOE in establishing corridors under EPAct section 368 should also apply to National Corridors designated under FPA section 216(a). Appalachian Trail Conservancy states that the draft Mid-Atlantic Area National Corridor is so broad as to be virtually meaningless.

ODEC states that a National Corridor designation that would provide Federal backstop siting authority for any project in eastern portion of the PJM footprint likely would be counter-productive to getting transmission built in that region. PaPUC states that the draft Mid-Atlantic Area National Corridor is both overly broad and overly narrow. The draft Mid-Atlantic Area National Corridor is overly broad, according to PaPUC, because it includes many areas that for a variety of economic, environmental, or technical engineering reasons would be excluded from any major transmission infrastructure project study; it is overly narrow because the simplistic ''box'' methodology ignores the actual topology of the existing transmission grid and excludes regions outside the ''box'' that might be equally suitable or superior for siting National Interest transmission infrastructure. PaPUC also objects to the use of political boundaries that have no clear relevance to electric infrastructure as a physical system. PaPUC suggests defining one or more smaller National Corridors in the Mid-Atlantic region, each with an entry point at the source, an exit point at the load, and a congestion interface in the middle.

Numerous commenters argued that the statute requires any Mid-Atlantic Area National Corridor to be limited to

[63] Given the large daily and seasonal swings in the level of demand and the associated changes in the patterns of generation dispatch, congestion on a line is significant even if the line is not congested most of the hours in the year. For example, although Path 15 in California was congested in only 11.9 percent of the total hours in the Day-Ahead market and 4.7 percent in the Hour-Ahead market in 2004 (*see* CAISO, 2004 Annual Report on Market Issues and Performance, table 5.2 (April 2005)), upgrades implemented in December 2004 are estimated to save consumers hundreds of millions of dollars (*see* CAISO, Potential Economic Benefits to California Load from Expanding Path 15-Year 2005 Prospect (Sept. 24, 2001)). Congestion does not occur until a line is already loaded to its safety limit; this means that in general congestion tends to occur when demand is relatively strong, which happens only during a portion of the day or year.

[64] Further, as discussed in Section I.A above, FERC may only issue a permit if the applicant has shown that its project will significantly reduce congestion, and FERC has interpreted this to mean that an applicant must make a showing that its project will significantly reduce the congestion identified by DOE. Thus, if congestion into or within the Mid-Atlantic Critical Congestion Area were to be resolved before the issuance of a FERC permit, it would be difficult for the sponsor of a transmission project to make such a showing.

[65] *See* May 7 notice, Section VIII.C.1–3. NJ Public Advocate argues that the congestion rents calculated in the Congestion Study exaggerate the adverse economic impacts on consumers because they ignore the availability of transmission cost hedging instruments. However, as explained in the May 7 notice, the Department believes that while congestion rents are a useful indicator of the persistence and pervasiveness of congestion, the Department is not suggesting that such rents represent the actual monetary cost that consumers pay specifically as a result of congestion. The May 7 notice's discussion of increased costs to consumers focused on differences in actual power and capacity prices paid as a result of the documented congestion, rather than projections of congestion rents.

[66] *See also* comments of U.S. Sen. Casey, Pennsylvania Farm Bureau, Piedmont Environmental Council, and numerous individuals.

the confines of the urban areas experiencing the congestion.[67] CARI states that if any area is to be designated in New York State, it should be those limited portions of the existing New York transmission system actually functioning as a transmission constraint or causing persistent congestion that adversely affects consumers. CARI also argues that a broad reading of the term ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers'' violates the principle of statutory construction known as the ''presumption against preemption.''

Some commenters suggested redrawing the Mid-Atlantic Area National Corridor boundaries so as to follow existing transmission lines or highways.[68]

Other commenters supported the Department's approach. For example, PJM and NYISO support the Department's source-and-sink approach. Pepco Holdings, Inc. (PHI) states that the draft Mid-Atlantic Area National Corridor is appropriately broad so as to encompass all necessary RTO-approved system enhancements associated with major new transmission solutions and to complement existing and foreseeable transmission plans. National Grid states that the Department's approach to establishing boundaries for the draft Mid-Atlantic Area National Corridor is precisely the approach that accords deference to existing regional, State, and local planning and siting authorities by preserving the flexibility those authorities need to consider multiple alternative solutions. EEI states that DOE has properly delineated the draft Mid-Atlantic Area National Corridor as a general, inclusive geographic area, and adds that if utility, State, or regional agency staff indicate that the margins of the draft Mid-Atlantic Area National Corridor need to be modified to encompass potential solutions, DOE should make such modifications so that a full array of solutions can be considered.

NPCC expressed concern that the Department's source-and-sink approach may lead to the designation of overly narrow National Corridors. NPCC cautions against making transmission improvements in narrow corridors without giving sufficient attention to the possible need for coordinated improvements in distant but related parts of the Eastern Interconnection. NPCC points out, for example, that increasing the west-to-east electricity flows in PJM without regard to broader effects could exacerbate loop flows around Lake Erie. Accordingly, NPCC recommends that DOE maintain an Interconnection-wide perspective in making National Corridor designations and emphasize to all stakeholders that adding more transmission capacity within a National Corridor could exacerbate reliability problems outside the Corridor unless appropriate and coordinated countermeasures are implemented.

DOE Response

The Department concludes that its approach to defining the boundaries of the draft Mid-Atlantic Area National Corridor is consistent with the statute. FPA section 216 does not explicitly define the term ''national interest electric transmission corridor.'' FPA section 216(a)(2) does, however, authorize the Department to designate ''any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers'' as a National Corridor. 16 U.S.C. 824p(a)(2). ''Any geographic area'' connotes no particular shape, proportion, or size. Thus, the language of FPA section 216(a) does not appear to limit the shape, proportion, or size for a National Corridor.

A few commenters point to the approach being used by DOE and the Federal land managing agencies to delineate energy right-of-way corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities under EPAct section 368 as evidence that the draft Mid-Atlantic Area National Corridor is too broad to be consistent with the statute. We believe, to the contrary, that the differences in the language and intent of FPA section 216(a) and EPAct section 368 underscore the appropriateness of the Department's overall approach to establishing the boundaries of the draft Mid-Atlantic Area National Corridor.

In contrast to FPA section 216(a)(2)'s reference to ''any geographic area,'' EPAct section 368(e) explicitly requires that ''[a] corridor designated under this section shall, at a minimum, specify the centerline, width, and compatible uses of the corridor.'' Congress could have included similar language in FPA section 216(a) had it intended the Department to use the same approach to delineating National Corridors, but it did not. The plain language of EPAct section 368(e) limits its applicability to corridors ''designated under this section.'' Further, despite the assertions of some commenters, the Department sees no reason to conclude that the language of EPAct section 368(e) implicitly governs FPA section 216(a)(2). Nothing in EPAct section 368 suggests that the language of EPAct section 368(e) was intended to establish a general definition of ''corridor'' for all EPAct purposes. In fact, the heading of EPAct section 368(e) characterizes that subsection not as a definition, but rather as ''Specifications of Corridor.'' Further, while FPA section 216 was added to the FPA by EPAct section 1221(a), it was part of a stand-alone title called the ''Electricity Modernization Act of 2005.''[69]

Moreover, National Corridors designated under FPA section 216(a) serve a fundamentally different purpose than energy right-of-way corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities, designated under EPAct section 368; therefore, use of different approaches to delineating the respective corridors is not only appropriate, it is necessary. The corridors called for by EPAct section 368 are specifically characterized as ''right-of-way corridors.'' Congress required that the Federal land-managing agencies designate these right-of-way corridors through amendments to their land use resource management plans or equivalent land use plans. Thus, designation of right-of-way corridors under EPAct section 368 is in the nature of land use planning.

In contrast, when the Department designates National Corridors under FPA section 216(a) it is not engaging in land use planning. FPA section 216(a) established a profoundly different task for the Department, a task that is novel in the realm of electric system planning and development. As discussed in Section I.A above, the Department's role under FPA section 216(a) is limited to the identification of congestion and constraint problems and the geographic areas in which these problems exist, and does not extend to the functions performed by siting authorities in evaluating routes for transmission facilities. None of the considerations listed in FPA section 216(a)(4) speak to land use issues. Thus, unlike an EPAct section 368 energy right-of-way corridor, an FPA section 216(a) National Corridor is not intended to identify a potential transmission siting route. As the Supreme Court recently held, ''A given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different implementation strategies.''[70]

[67] *See, e.g.*, comments of Karl Cehonski, Susan Morgan, and City of Paris, New York.

[68] *See, e.g.*, comments of Karen Gonzales and Laura Krauza.

[69] *See* EPAct sec. 1201.

[70] *Environmental Def.* v. *Duke Energy Corp.*, 127 S. Ct. 1423, 1432 (2007).

Numerous commenters argue that the draft Mid-Atlantic Area National Corridor is inconsistent with common meanings of the term ''corridor.'' Given the statutory reference to ''any geographic area'' as well as the novel nature of FPA section 216(a), it is not clear that common meanings or past uses of the term ''corridor'' have much relevance for the delineation of National Corridor boundaries. Nonetheless, the Department does not believe that the draft Mid-Atlantic Area National Corridor is inconsistent with such commonly accepted meanings. There was broad consensus among the commenters on the Congestion Study that if a project-based approach were not used to set National Corridor boundaries, then a source-and-sink approach should be. The Department used a source-and-sink approach to develop the boundaries of the draft Mid-Atlantic Area National Corridor. Such an approach comports with the common usage of ''corridor'' as an area linking two other areas. This approach is also consistent with the physical properties of the electric grid, because a transmission line into a congested or constrained load area will not benefit that load unless the line connects with a source of power that could help to serve the load.

In addition to dictionary definitions of ''corridor,'' commenters offer examples of usage of the term to argue that the draft Mid-Atlantic Area National Corridor is overly broad. Again, the Department questions the relevance of such examples, even the examples of electricity industry usage, given the novel nature of a National Corridor under FPA section 216(a). However, the Department notes that there are examples of the term ''corridor'' being used in other contexts to refer to geographic areas not dissimilar in size and shape to the draft Mid-Atlantic Area National Corridor.[71]

The Department does not think it is reasonable, as some commenters have suggested, to interpret the term ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers'' as restricting a National Corridor designation to the specific confines of the load being adversely affected by congestion or the constrained transmission lines causing such congestion. FPA section 216(a)(4)(A) and (B) both refer to the Department considering economic factors in ''the corridor, or the end markets served by the corridor.'' Since the end markets served by a National Corridor are the load centers where consumers are being adversely affected by congestion, this language indicates that Congress envisioned designation of National Corridors that extend beyond the location of the adversely affected consumers. FPA section 216(b)(6) requires that before FERC issues a permit for a project in a National Corridor, it must make a finding that the project ''will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.'' Thus, FERC is authorized to issue a permit for projects that do not use existing towers, provided that it concludes that use of existing towers is not reasonable or economical. Since FERC can only issue permits within the bounds of a National Corridor, this language indicates that Congress envisioned designation of National Corridors that extend beyond existing constrained transmission lines.

The term ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers'' envisions an area that encompasses the load being adversely affected by congestion and the constrained transmission lines causing such congestion, but the statute is ambiguous with regard to the precise scope of the area. The Department believes its source-and-sink approach to delineating the boundaries of the draft Mid-Atlantic Area National Corridor represents a reasonable interpretation of this ambiguous statutory term.

As discussed in Section I.A above, FPA section 216(a) does not shift to the Department the roles of electric system planners or siting authorities in evaluating or selecting solutions to congestion and constraint problems. Thus, in implementing its source-and-sink approach, the Department has attempted to identify source areas that would enable a range of generation options. Theoretically, a sink area could be served by generation sources from across the entire interconnection. Also, given the long lead time involved in planning, obtaining regulatory approvals for, and constructing transmission projects, areas without a current surplus of generation could well develop additional power sources by the time a transmission project is completed. Therefore, not only could areas with existing surplus generation function as source areas, but also areas with projected surplus generation, or areas with available fuel supply for additional generation. The Department was faced, therefore, with a considerable range of potential source areas from which to choose when delineating the draft Mid-Atlantic Area National Corridor.

In exercising its judgment as to which source areas to use for purposes of delineating the boundaries of the draft Mid-Atlantic Area National Corridor, the Department was guided by several factors. The Department has tried to balance the objective of accommodating a range of options against the practical limitations on delivery of power over increasingly longer distances.[72] The Department has also taken into consideration State concerns about the size of any Mid-Atlantic Area National Corridor, as well as the fact that Congress opted for a limited approach to Federal preemption of transmission siting. The Department has been further guided by the considerations identified in FPA section 216(a)(4). Finally, consistent with the language of FPA section 216(a)(2) referring to designation of a geographic area experiencing constraints or congestion that adversely affects consumers, the Department has restricted its selection of source areas to those separated from the identified sink area, *i.e.* the Mid-Atlantic Critical Congestion Area, by one or more of the constraints identified in Section VIII.B of the May 7 notice as causing congestion adversely affecting consumers.

The result of this analysis was the identification of two categories of source areas: (1) The closest locations with substantial amounts of existing, under-used economic generation capacity separated from the identified sink area by one or more of the constraints identified as causing congestion adversely affecting consumers; and (2) the closest locations with the potential for substantial development of wind generation capacity separated from the identified sink area by one or more of the constraints identified as causing congestion adversely affecting consumers. Identification of the first category is consistent with FPA section

[71] For example, in the trade context, ''corridors'' are often very broad. The North American Free Trade Agreement led to the establishment of various trade corridors in North America. Not unlike National Corridors, these trade corridors are areas where there is a need to develop transportation and communications infrastructure to facilitate trade. These trade corridors include the ''Pacific Corridor,'' which ''includes the entire geographic band formed by the Rocky Mountain range and the Pacific Coast.'' See North American Forum on Integration Web site at *http://www.fina-nafi.org/eng/integ/corridors.asp?langue=eng&menu=integ.*

[72] The Department recognizes, as some commenters have pointed out, that the longer the transmission line, the greater the associated line losses, and that generation that is remote from a load center is less effective in providing some of the ancillary services required to maintain reliability than generation that is closer to the load center.

216(a)(4)(A), which emphasizes the importance of ensuring adequate supplies of reasonably priced power. Identification of the second category is consistent with FPA section 216(a)(4)(B), which emphasizes diversification of supply, and FPA section 216(a)(4)(C), which emphasizes promotion of energy independence. Much of the generation in the first category happens to be coal-fired, thus identification of that category is also consistent with FPA section 216(a)(4)(B) and (C).[73]

The Department then delineated the draft Mid-Atlantic Area National Corridor by identifying the counties linking the identified source areas with the Mid-Atlantic Critical Congestion Area. While the Department recognizes that political boundaries have nothing to do with the characteristics of the electric system, we continue to believe that it is important to establish precise, easily identified boundaries for the Mid-Atlantic Area National Corridor. We conclude that use of county boundaries is a reasonable means of providing such certainty.

Thus, the Department delineated the draft Mid-Atlantic Area National Corridor by connecting the sink area containing consumers adversely affected by congestion with a range of source areas separated from the identified sink area by the constraints causing such congestion.[74] While many commenters complain that the identified source areas are too far from the sink area or that the draft Mid-Atlantic Area National Corridor is too broad, we note that these commenters have not identified specific alternative source areas or specific alternative Corridors.[75] Further, we acknowledge NPCC's concerns that the draft Mid-Atlantic Area National Corridor may be too narrow; the grid is highly interconnected and modifications to one portion of the transmission system can have significant effects on power flows over other distant portions. However, the desire to ensure that all potentially required reliability upgrades are encompassed must be balanced against other statutory considerations. Thus, given the overall framework of FPA section 216 and the physical properties of the electric grid, the Department concludes that its approach to delineating the draft Mid-Atlantic Area National Corridor is consistent with the statutory call for the designation of a ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers.'' [76]

Some commenters complain that the draft Mid-Atlantic Area National Corridor fails to provide adequate guidance on appropriate transmission solutions and, thus, the Department should go back to the drawing board to determine specific routes linking specific sources and sinks. However, the Department is deliberately not attempting to identify preferred transmission solutions. As discussed in Section I.A above, the Department has concluded that FPA section 216(a) was not intended to shift to the Department the roles of electric system planners or siting authorities. [77]

The Department recognizes that some States are concerned about unintended expansion of Federal siting authority to include proposed transmission projects that happen to be located within the Mid-Atlantic Area National Corridor but are unrelated to the problem that prompted its designation. The Department recognizes that while Congress could have completely preempted State siting of interstate transmission facilities, it instead chose a more limited approach. However, the Department does not believe that designation of the Mid-Atlantic Area National Corridor will result in the exercise of Federal permitting authority beyond that envisioned by Congress. FPA section 216(b)(4) specifies that FERC jurisdiction is limited to projects that will ''significantly reduce transmission congestion in interstate commerce and protects or benefits consumers.'' As discussed in Section I.A above, FERC has stated that it interprets this to mean that a project must significantly reduce the transmission congestion identified by DOE. Therefore, only those transmission projects within the Mid-Atlantic Area National Corridor that would significantly reduce congestion into or within the Mid-Atlantic Critical Congestion Area would be eligible for a FERC permit.

In the May 7 notice, the Department stated that determining the exact boundaries of a National Corridor under a source-and-sink approach is more an art than a science, and there will rarely be a dispositive reason to draw a boundary in one place as opposed to some number of miles to the left or right. This statement was not, as some commenters allege, an admission that the boundaries of the draft Mid-Atlantic Area National Corridor are arbitrary and capricious. Rather, the statement was a recognition that no single boundary line can be determined based solely upon analysis of the data and, thus, the drawing of the boundary necessarily involves the exercise of judgment. The Department believes that it has exercised that judgment in a reasonable manner.

Finally, numerous commenters have requested that particular counties be added or removed from the Mid-Atlantic Area National Corridor. [78] The Department has carefully considered these requests. However, it concludes that its approach to delineating the draft Mid-Atlantic Area National Corridor, as described above, does not warrant further adjustment.

[73] As discussed in Section VIII.C.3 of the May 7 notice, much of the existing generation fleet in the eastern portion of PJM's footprint and in the downstate portion of New York is fueled by oil or natural gas. While NJBPU argues that increasing access to coal-fired generation would reduce fuel diversity within the PJM footprint as a whole, the Department notes that this does not alter the desirability of reducing where possible the reliance on oil and natural gas. Further, given this source area's consistency with the other considerations in FPA section 216(a)(4), we conclude that its use in setting an outer bound for the draft Mid-Atlantic Area National Corridor was appropriate.

[74] The Department notes that in this instance the sink area is large and diverse, and there are many possible sources, meaning that DOE could have drawn a large number of narrower but crossing or overlapping source-and-sink corridors. The result, however, would have been confusing, and could have given the impression that DOE was prescribing or advocating which source should be linked with which sub-part of the sink area. Designating one National Corridor encompassing the sink area and the source areas is a more practical approach that is consistent with the source-and-sink concept while preserving the latitude of others to make their decisions on the basis of more specific analyses.

[75] While commenters have failed to identify specific alternative source areas, some commenters have offered examples of significant potentials for increased efficiency and distributed generation. As discussed in Section I.A above, designation of the draft Mid-Atlantic Area National Corridor will neither prejudice State or Federal siting processes against such non-transmission solutions, nor discourage market participants from pursuing such solutions. Thus the existence of such non-transmission alternatives does not provide a basis for adjusting the boundaries of the draft Mid-Atlantic Area National Corridor or declining to designate the Corridor.

[76] With regard to comments about the ''presumption against preemption,'' this doctrine arises when there is a controversy whether a given State authority conflicts with, and thus has been displaced by, the existence of a Federal authority. *New York* v. *FERC*, 535 U.S. 1, 17–18 (2002). We are not concerned here with the validity of any State law or regulation, nor are we invalidating any such law or regulation. Thus, the doctrine is not applicable.

[77] With regard to PaPUC's comment that the draft Mid-Atlantic Area National Corridor includes areas that for a variety of economic, environmental, or technical engineering reasons would be excluded from any major transmission infrastructure project study, the Department notes that if PaPUC's assessment is correct, then no transmission project will be proposed in such areas. Thus, the objection is more academic than of real consequence.

[78] *See, e.g.*, comments of Fauquier County, VA, Philip Morin, Jayne Baran, AEP, ODEC, Allegheny, and FirstEnergy Service Company.

E. Inclusion of Environmentally, Historically, or Culturally Significant Lands

Summary of Comments

Many commenters, including numerous individuals, argued that the Department should exclude National Parks, State parks, and other environmentally, historically, or culturally significant lands from any Mid-Atlantic Area National Corridor. For example, National Parks Conservation Association (NPCA) opposes inclusion of any units of the National Park System in the Mid-Atlantic Area National Corridor. NPCA states that the draft Mid-Atlantic Area National Corridor conflicts with the National Park Service Organic Act and the provisions of the Land and Water Conservation Fund program. Many commenters objected to the inclusion of the Upper Delaware River Valley in the draft Mid-Atlantic Area National Corridor. For example, the Upper Delaware Preservation Coalition noted that the Upper Delaware River is a Federally designated Wild and Scenic River, whose management plan declares ''major electric lines'' as incompatible uses. Other commenters urged exclusion of various historic sites in the Piedmont and Shenandoah Valley regions of Virginia. The Pennsylvania Land Trust Association states that public lands, including lands subject to conservation easements, having been protected through public and private resources, must be exempted from conversion to the private use of the energy industry. [79]

DOE Response

The Department concludes that exclusion of environmentally, historically, or culturally sensitive lands from the Mid-Atlantic Area National Corridor is neither required nor necessary. First, with regard to public lands such as parks and wildlife refuges, nothing in the statute suggests that the Department should exclude such lands from a national interest electric transmission corridor. In fact, FPA section 216(f)(2), as discussed in Section I.A above, expressly excludes property owned by the United States or a State from a FERC permit holder's exercise of eminent domain authority. Given that FERC can only issue permits that cover geographic areas within a National Corridor, the presence of explicit statutory language clarifying that a FERC permit does not provide the right of eminent domain over Federal or State property indicates that Congress envisioned that such property could be included within National Corridors. [80]

The Department sees no need to exclude Federal or State property from the Mid-Atlantic Area National Corridor. As discussed in Section I.A above, if FERC were to issue a permit for a transmission facility slated to cross any Federal or State property, the permit holder would still need to obtain a right-of-way across that property. Inclusion of Federal or State property in a National Corridor does nothing to change the process for obtaining such a right-of-way. In the absence of a National Corridor designation, a developer seeking to build a transmission facility on Federal or State property would need to obtain the permission of the Federal or State agency responsible for managing that property. If Federal or State property were included in a National Corridor, a developer seeking to build a transmission facility on such property would still need to obtain the permission of the Federal or State agency responsible for managing that property. Further, neither a National Corridor designation nor the issuance of a FERC permit controls a Federal or State land management agency's decision whether to grant or deny a right-of-way. Thus, contrary to the assertions of various commenters, inclusion of Federal and State property within the Mid-Atlantic Area National Corridor creates no additional risk that such property might become the site of a transmission facility.

Exclusion of Federal or State property from the Mid-Atlantic Area National Corridor is not only unnecessary, it could also unduly restrict existing flexibility in siting transmission facilities. In the absence of a National Corridor designation, a transmission project could be built on Federal or State property if the developer obtained a construction permit from a State siting agency and a right-of-way from the Federal or State land managing agency. FERC's authority to issue a permit is limited to the geographic extent of the designated National Corridor. If Federal and State property were excluded from the Mid-Atlantic Area National Corridor, then FERC would not be able to issue a permit for any portion of a transmission project that crossed such property, even if the Federal or State agency responsible for managing that property were willing to grant a right-of-way. There is no reason to believe that Congress intended such a result.

Some commenters recommended that the Mid-Atlantic Area National Corridor exclude certain environmentally, historically, or culturally significant lands not owned by the United States or a State. Nothing in the statute suggests that the Department should exclude such lands from the Mid-Atlantic Area National Corridor. None of the considerations listed in FPA section 216(a)(4) address any specific environmental, historical, or cultural factors or even land use issues in general. While FPA section 216(a)(4) is not an exclusive list of the factors that the Department may consider when designating a National Corridor, the Department does not believe that analysis of the effect of transmission construction on environmentally, historically, or culturally significant lands is warranted at the National Corridor designation stage. If FERC jurisdiction were triggered under FPA section 216(b), FERC would conduct an evaluation of the reasonably foreseeable effects of transmission construction on any environmentally, historically, or culturally significant lands, including an analysis of alternative routes and mitigation options.[81] Based on that analysis, FERC has the authority to approve the application, deny the application, or approve the application with modifications. The Department has delineated the Mid-Atlantic Area National Corridor broadly enough to enable FERC to consider a wide range of alternative routes. Thus, the Department sees no need to exclude environmentally, historically, or culturally significant lands from the Mid-Atlantic Area National Corridor. Further, as with Federal and State property, exclusion of such lands could unduly restrict existing flexibility in siting transmission facilities, and there is nothing in FPA section 216 that indicates Congress intended such a result.

Some commenters have argued that certain Federal laws bar the construction of transmission facilities in certain areas, and thus the Department should exclude those areas from the Mid-Atlantic Area National Corridor. To the extent that any Federal laws do limit or prohibit construction of transmission facilities in certain areas, FERC as well as the States and other siting authorities

[79] *See also* statement of Arthur Gray Coyner at May 15, 2007, Arlington, VA public meeting.

[80] The significance of the absence of any express exclusion of Federal or State property from the reach of FPA section 216(a) is further underscored by Congress' explicit exemption of National Parks and certain other Federal lands from the Presidential appeal process established by FPA section 216(h)(6). *See* FPA section 216(j)(2), 16 U.S.C. 824p(j)(2).

[81] *See* FERC Order No. 689, 71 FR 69,440, 69,459, 117 FERC ¶ 61,202 at P 177 (avoidance of special land use areas will be explored through the course of the NEPA review).

already are bound by those limitations or prohibitions.[82] Therefore, no exclusion of such areas from the Mid-Atlantic Area National Corridor is needed.

F. Consideration of Alternatives Under FPA Section 216(a)(2)

Summary of Comments

Several commenters, including Governor O'Malley and Governor Kaine, argue that the Department should evaluate non-transmission solutions to congestion before designating the Mid-Atlantic Area National Corridor. Many of these commenters argued that FPA section 216(a)(2) requires such an evaluation. SELC states that designation of a Mid-Atlantic Area National Corridor would put in place a process that allows for fast-tracking the approval of high-voltage transmission lines, whereas the designation would do nothing to fast-track investments in energy efficiency, conservation, or other alternative solutions to congestion. NYPSC states that efficient price signals allow market participants to make informed choices when determining whether investment in new or improved transmission is economically justified. Therefore, NYPSC states, the Mid-Atlantic Area National Corridor should only be designated if a cost/benefit analysis shows a transmission solution will clearly yield a net positive benefit to the system. Otherwise, NYPSC asserts, project developers may abandon already planned facilities, such as additional generation facilities downstream of constrained or congested transmission facilities, and States' ability to pursue non-transmission solutions will be compromised.

OMS states that while the Department asserted in the May 7 notice that it was not making findings on the optimal remedy for congestion, the May 7 notice nonetheless contains statements that suggest the contrary, for example, statements that efforts to increase demand response in PJM do not appear capable of forestalling the need for additional transmission.

Other commenters, such as the National Rural Electric Cooperative Association and the American Public Power Association, stated that DOE's proposed designations do not and should not be interpreted to prejudge any particular solution. NYISO argues that the Department should not take on the function of comparing the merits of alternative solutions to congestion. Duke Energy Corporation argues that developers will make project proposals and decisions based upon business-case economic analyses and the availability of appropriate cost-recovery mechanisms, and designation of a Mid-Atlantic Area National Corridor does not bias this process in favor of any particular solution.[83]

DOE Response

The Department concludes that consideration of non-transmission solutions to the congestion problems facing the Mid-Atlantic Critical Congestion Area is neither required nor necessary as a precondition to designating the Mid-Atlantic Area National Corridor. FPA section 216(a)(2) calls for the Secretary to consider ''alternatives and recommendations from interested parties'' before making a National Corridor designation. The statute, however, does not specify what the term ''alternatives'' refers to. Numerous commenters would have us interpret the phrase to mean alternative solutions to congestion or constraint problems, which would then necessitate a comparison of non-transmission solutions against transmission solutions. Nothing in the language of FPA section 216 requires or suggests such an interpretation.

As discussed in Section I.A above, the very structure of FPA section 216 indicates that the Department's role is limited to the identification of congestion and constraint problems and the geographic areas in which these problems exist, and does not extend to the functions of electric system planners or siting authorities in evaluating solutions to congestion and constraint problems. Even the statutory requirement to consider alternatives is not couched in terms of an independent analysis of a reasonable range of alternatives, as one would expect if Congress had intended the Department to analyze and select a solution, but rather refers merely to the Department considering those alternatives and recommendations offered by interested parties. The Department believes that expanding its role to include analyzing and making findings on competing remedies for congestion could supplant, duplicate, or conflict with the traditional roles of States and other entities.

Not only does the statute not require the Department to analyze non-transmission alternatives, such analysis is also not warranted as a matter of discretion. The primary concern of those arguing for analysis of non-transmission solutions to congestion or constraints is that National Corridor designation disadvantages those solutions, and thus, according to these comments, the Department should only make such a designation where it has determined that transmission is the best solution. As discussed in Section I.A above, the Department sees no basis to conclude that designation of the Mid-Atlantic Area National Corridor would either prejudice State or Federal siting processes against non-transmission solutions or discourage market participants from pursuing such solutions.

The Department concludes that the phrase ''alternatives and recommendations from interested parties'' as used in FPA section 216(a)(2) is ambiguous. For the reasons given above, the Department declines to interpret the phrase to mean non-transmission solutions to congestion or constraint problems. The Department believes it is more appropriate to interpret this phrase in a manner that recognizes the statutory limits on DOE's authority. Upon completion of a congestion study, the statute gives the Department two options: Designate one or more National Corridors or do not designate any National Corridors. In light of this statutory framework, the Department concludes that the term ''alternatives and recommendations from interested parties'' was intended to refer to comments suggesting National Corridor designations for different congestion or constraint problems, comments suggesting alternative boundaries for specific National Corridors, and comments suggesting that the Department refrain from designating a National Corridor.

With regard to OMS' concerns about certain statements in the May 7 notice, the Department reiterates that its designation of the Mid-Atlantic Area National Corridor is an identification of congestion problems and the geographic areas in which these problems exist. The designation does not constitute a determination of the best solution to those problems. The Department is expressing no opinion about how the identified congestion problems should or will be addressed. To the extent that any statements in the May 7 notice suggested the contrary, that was not the Department's intent.

G. Whether DOE Should Exercise Its Discretion To Designate the Draft Mid-Atlantic Area National Corridor

Summary of Comments

Several commenters agreed with the May 7 notice's analysis that economic

[82] *See* FPA sec. 216(j), 16 U.S.C. 824p(j) (except as specifically provided, nothing in FPA section 216 affects any requirement of any Federal environmental law).

[83] *See also* comments of PHI.

development, reliability, supply diversity, energy independence, and national defense and homeland security considerations warrant the exercise of the Secretary's discretion to designate the draft Mid-Atlantic Area National Corridor. For example, PJM argued that all of the considerations identified by the Department demonstrate the critical importance of designating at least the portion of the draft Mid-Atlantic Area National Corridor within the PJM footprint. PJM further notes that its most recent 2007 Regional Transmission Expansion Plan reveals additional looming violations of NERC's and PJM's own reliability criteria beyond those already identified in the May 7 notice. The City of New York argues that designation of a National Corridor would increase reliability; heighten national security; allow for increased economic transfers from the PJM and upstate New York markets into the New York City load pocket; reduce reliance on antiquated and inefficient generating plants that raise air quality issues in the densely populated New York City urban environment; and increase diversity of fuel sources for New York City, which is overly reliant on an increasingly constrained natural gas supply system.

Other commenters argued that the considerations identified by the Department do not support designation of the draft Mid-Atlantic Area National Corridor. Numerous commenters argued that economic development considerations do not warrant designation of the draft Mid-Atlantic Area National Corridor. A few commenters argued that improving access to coal-fired generation in the Midwest would not in fact result in lower power prices for consumers in the sink area. For example, OH Siting Board states that the generation fleet in the Midwest is old, due for several retirements, and uncontrolled in emissions. Therefore, OH Siting Board states, the additional environmental and operational costs associated with increased generation from these plants, in conjunction with bidding into a different wholesale market, may eliminate the expected economic benefit of improving the sink area's access to such plants. NJBPU argues that with the likely advent of greenhouse gas regulation, the cost of power from these plants will increase, making their output less competitive in eastern load centers.[84]

Many commenters argued that even if economic development in the sink area would benefit from designation of the draft Mid-Atlantic Area National Corridor, such benefit must be weighed against the negative economic effect that construction of transmission would have on other areas within the Mid-Atlantic Area National Corridor. For example, New York Farm Bureau (NYFB) states that construction of transmission lines within the upstate New York portions of the draft Mid-Atlantic Area National Corridor would increase upstate wholesale electric costs, thus reducing the ability of the region to recruit new upstate employment opportunities and negatively affecting farm businesses. Pike County, Pennsylvania states that its recreation and tourism industries will suffer if the draft Mid-Atlantic Area National Corridor is designated.

Many commenters argued that some areas within the draft Mid-Atlantic Area National Corridor away from the sink area are already in a worse economic position than the sink area that the draft Corridor is designed to serve. Chenango County Farm Bureau states that upstate New York, as a region, has had one of the lowest job growth rates in the Nation over the past ten years. Pennsylvania House of Representatives Majority Leader DeWeese states that if the draft Mid-Atlantic Area National Corridor were designated, Pennsylvania would become an energy hub for the urban centers of the Mid-Atlantic region, while residents of western Pennsylvania would face increased electric rates and receive no economic or quality-of-life benefit from the resulting transmission lines.[85]

Many individuals residing within the draft Mid-Atlantic Area National Corridor but away from the sink area argued that designation would require them to bear an unfair burden. For example, Jameson O'Donnell stated:

> I believe this is really an effort to take away local control of our region to our detriment and for the benefit of other areas which have not planned accordingly * * *. Especially in today's electronic world, the tremendous economic development occurring in MD and VA could occur in other places (e.g. southwestern PA) however, that opportunity is being taken away from us as those states try to make us the armpit of the region by dumping all of their trash here, using all the coal without adequate compensation for the damage caused, and now through the destruction of our land and economic development potential by scarring us with generation plants and transmission lines they don't want in their own states.[86]

With regard to reliability considerations, Con Ed states that the Department has failed to account for the adverse reliability impacts of favoring long-haul transmission.

Numerous commenters argued that instead of promoting national defense and homeland security, the draft Mid-Atlantic Area National Corridor would actually create security problems by promoting the construction of long above-ground transmission lines that would become prime targets for terrorist attacks.[87] NYFB states that before designating a Mid-Atlantic Area National Corridor, the Department should examine all areas surrounding New York City and Long Island from which power could be supplied.

Environmental Defense states that although it is not categorically opposed to construction of new interstate transmission facilities, the draft Mid-Atlantic Area National Corridor demonstrates a bias toward large interstate transmission projects serving coal and nuclear generating stations to the detriment of demand response programs, energy efficiency, and distributed generation, all of which would do more to enhance national defense, homeland security, and energy independence, and to provide an adequate and reasonably priced supply of electricity.

Other commenters argued that additional considerations beyond those identified in the May 7 notice warrant the Department exercising its discretion not to designate the draft Mid-Atlantic Area National Corridor. Many commenters argued that the Department should have factored in environmental considerations, and that had it done so, it would have concluded that designation is not justified. Some of these commenters raised concerns about the effects of long transmission lines on viewsheds and wildlife habitat. Numerous commenters, including many individuals, argued that the draft Mid-Atlantic Area National Corridor would worsen greenhouse gas emissions and air quality, because, they claim, the PJM portion of the Corridor is designed to increase coal-based generation.[88] For example, NJDEP is concerned that the designation would undermine any reductions in greenhouse gas emissions

[84] *See also* comments of Sierra Club (National).

[85] *See also* comments of OH Siting Board, Pennsylvania Farm Bureau, and Fauquier County, VA.

[86] *See also* comments of Debra Bohunicky (''[I]t is unconscionable that these intentions to increase power availability should only serve the interests of a few in a specifically overusing region (such as NY city) to the grave disadvantage of those displaced by or put under the deleterious effects of the entire line.''), and William Loftus (''This idea of source/sink areas is repugnant, and will cause rural properties to be impacted so that urban dwellers may continue to have access to cheaper power.'').

[87] *See, e.g.*, comments of York County, PA Planning Commission, Frances Cooley, and Ralph Neal.

[88] *See, e.g.*, comments of NPCA, Wickliffe Walker, Mitzi Price, and Kevin Brogley.

New Jersey may achieve through its legislative and regulatory programs, including the State's recently enacted Global Warming Response Act. Other commenters stated that some of the coal-based plants in the source areas identified in the May 7 notice are already among the most polluting in the country and construction of additional transmission capacity to enable these plants to operate at higher levels will result in additional risk to human health and the environment.

Other commenters argued that the Department should accord more deference to existing State and regional planning and siting processes and hold off on any designation of a Mid-Atlantic Area National Corridor until and unless it is clear that a Federal siting forum is needed. These commenters offered descriptions of existing State siting and PJM and NYISO planning processes. For example, PaDEP states that designation of the draft Mid-Atlantic Area National Corridor would be a premature usurpation of State authority given that there is no evidence that the PaPUC has either refused to site proposed transmission projects, obstructed the siting of such projects, or modified such projects in a way that renders them uneconomic. Governor Kaine states that Virginia enacted an energy plan in 2006 that expressly recognizes the importance of regional considerations, as well as new energy efficiency and conservation measures. NYPSC states that because the transmission siting process in New York works well, there has been no demonstrated need to designate any National Corridor within New York State.[89]

Those commenters who suggested that the Department defer designation of any Mid-Atlantic Area National Corridor argued that such deferral would be consistent with FPA section 216's recognition that States retain primary authority over transmission siting. These commenters also argue that designation of a Mid-Atlantic Area National Corridor would have an extremely disruptive effect on energy planning efforts currently ongoing in the States. For example, Governor Kaine states that designation of a Mid-Atlantic Area National Corridor along with ensuing FERC siting proceedings could have the effect of delaying construction of transmission in Virginia, contrary to the purpose of FPA section 216. Governor O'Malley states that designation would significantly reduce incentives for utilities to continue to work cooperatively with Maryland agencies.

On the other hand, some commenters urged the Department not to defer designation of a Mid-Atlantic Area National Corridor. For example, AEP argued that Federal backstop authority would provide the impetus needed to bring parties together and resolve any impasse in a timely fashion. AEP states that the obstacles and excessive delays it encountered during the 15-year process of siting and building its Jacksons Ferry—Wyoming line demonstrate the dire need for National Corridors to be designated. National Grid argues that as a practical matter, no prudent transmission developer would rely on a National Corridor designation to circumvent regional, State, or local planning and siting rules and processes, because the developer will need the support of key stakeholders such as customers, States, and local authorities for other reasons.[90]

DOE Response

The Department recognizes that FPA section 216 adopted a novel approach to addressing congestion problems, and that many commenters have grave concerns about the effects of this new approach. However, after careful consideration of these concerns, the Department concludes that designation of the draft Mid-Atlantic Area National Corridor is consistent with the intent of FPA section 216(a).

As an initial matter, the Department notes that a number of the comments seem premised on the assumption that designation of the draft Mid-Atlantic Area National Corridor would create a bias in favor of long transmission lines running the full length of the Corridor, and in particular long transmission lines connecting to coal-fired generation. The Department regards such an assumption as unfounded. As discussed in Section I.A above, a National Corridor designation does not constitute a finding that transmission must or even should be built; it does not prejudice State or Federal siting processes against non-transmission solutions; and it should not discourage market participants from pursuing such solutions. Further, even within the realm of potential transmission solutions, designation of the draft Mid-Atlantic Area National Corridor would not favor any particular transmission project within the Corridor. While the Department did identify regions with coal-fired generation as source areas when it delineated the draft Mid-Atlantic Area National Corridor, such delineation was not a determination that transmission lines connecting those particular source areas to the sink area must or should be built, or that such projects are preferable to other transmission projects. The Department's identification of source areas was a means of setting an outer bound on the geographic range of potential transmission projects that could become subject to FERC jurisdiction. Designation of the draft Mid-Atlantic Area National Corridor no more dictates or endorses the construction of transmission lines to access coal-fired generation than it does the construction of transmission lines to access the wind-rich identified source areas. If a transmission project were proposed within the draft Mid-Atlantic Area National Corridor to deliver generation to the Mid-Atlantic Critical Congestion Area from somewhere other than the identified source areas, the developer of the project would be eligible to seek a FERC permit, provided it met the standards of FPA section 216(b). The Department sees no reason to conclude that designation of the draft Mid-Atlantic Area National Corridor would discourage any such projects.[91]

Given that designation of the draft Mid-Atlantic Area National Corridor does not determine whether or which transmission projects will be built, concerns about the reliability, national security, and environmental effects of long transmission lines and transmission lines accessing coal-fired generation are not germane at this stage. If FERC jurisdiction under FPA section 216(b) were triggered, FERC would analyze and take into consideration the reasonably foreseeable effects of that project, including the reliability impacts of the project,[92] implications for

[89] *See also* comments of NJ Public Advocate, CARI, and ODEC.

[90] *See also* comments of WIRES and statement of Bill May at May 23, 2007, New York, NY public meeting.

[91] For example, when explaining its rationale for the eastern boundary of the draft Mid-Atlantic Area National Corridor in the May 7 notice, the Department explicitly recognized that if additional generating capacity were developed at the Calvert Cliffs nuclear plant, additional transmission capacity would likely be needed to enable the electricity output to be moved from the Calvert Cliffs substation to the load centers in the sink area. Since the issuance of the May 7 notice, UniStar Nuclear has filed a partial application with the Nuclear Regulatory Commission to construct an additional unit at Calvert Cliffs. *See* UniStar Nuclear, NRC Project No. 746, Submittal of a Partial Combined License Application, Acc. No. ML071980292 (filed July 13, 2007).

[92] *See* FERC Order No. 689, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 41 (''[The Commission] will investigate and determine the impact the proposed facility will have on the existing transmission grid and the reliability of the system.'').

national security,[93] and air quality and greenhouse gas impacts, as required by NEPA and other environmental laws.[94]

Commenters have disputed the Department's reliance on economic growth considerations. Some have argued that improving access to coal-fired generation in the Midwest will not reduce power prices in the Mid-Atlantic Critical Congestion Area because of likely increases in the cost of generation from such sources. The Department has documented that consumers in the Mid-Atlantic Critical Congestion Area are currently paying higher power prices because of persistent congestion that thwarts access to cheaper power sources.[95] As discussed above, designation of the Mid-Atlantic Area National Corridor is not a determination that transmission must, or even should, be built, let alone that transmission to a particular generation source must be built. If potential future events, such as the adoption of greenhouse gas regulation, were to occur and increase the operating costs of generation sources that are currently relatively cheap, such developments would be taken into consideration by market participants evaluating their economic incentives to build a transmission project to those sources. Such developments would likely also be relevant in any FERC permit proceeding, given FPA section 216(b)(4)'s requirement that any project authorized by FERC must benefit or protect consumers. Moreover, we note that our designation of the draft Mid-Atlantic Area National Corridor is not motivated solely by a concern over price differentials. Consumers in the Mid-Atlantic Critical Congestion Area are facing near-term threats to the adequacy of their electricity supply.[96] Even if coal-fired power from some of the identified source areas becomes more expensive, it may still be needed in substantial amounts to serve demand in the Mid-Atlantic Critical Congestion Area.

With regard to the other comments concerning economic development considerations, the Department recognizes that it is critically important to consider the relative effect that proposed transmission facilities will have on the economic development of the communities through which they are routed versus the communities those facilities will serve. However, how a transmission line actually affects a community through which it is routed is chiefly a function of how the line is sited and how its costs are allocated, neither of which is determined by a National Corridor designation.[97] Further, FPA section 216(a)(4)(A) provides for consideration of the effect that congestion and constraints are having on economic development; it does not speak to the economic impacts of adding transmission capacity to address such congestion and constraints. While FPA section 216(a)(4) is not an exclusive list of the factors that the Department may consider when deciding whether to designate a National Corridor, the Department does not believe that consideration of the effect of adding transmission capacity on economic development is warranted at the National Corridor designation stage. If FERC jurisdiction under FPA section 216(b) were triggered, FERC would consider the reasonably foreseeable economic effects of the proposed project on the communities through which it is proposed to be routed.[98]

Some commenters urge us to defer any designation of a Mid-Atlantic Area National Corridor until States and regional planning efforts have had more time to address the congestion problems. These commenters provide details on the effectiveness of various State and RTO or ISO planning processes. As the Department stated in the May 7 notice, we do not believe that Congress envisioned the adoption of a wait-and-see approach to National Corridor designation. Nothing in the comments we have received on the May 7 notice has changed our view of this subject.

Congress could have instructed the Department to study the adequacy of State siting processes and consider that information when making National Corridor designations, but Congress did not do so. Nothing in FPA section 216(a) even mentions the issue of the State siting processes. Instead, Congress itself, in FPA section 216(b)(1), specified the conditions related to State siting processes that would trigger potential Federal siting authority after designation of a National Corridor.[99] Thus, the Department believes that evidence of the adequacy of State siting processes is not relevant to the Department's decision-making under FPA section 216(a).

Some commenters appear to regard National Corridor designation as tantamount to punishing the States within the Corridor and, thus, suggest that States who have ''good'' energy policies should be spared such punishment. However, National Corridor designation is not an indictment of State siting processes. The Department strongly supports State and regional efforts to collectively address the congestion problems confronting the region, whether those efforts are focused on transmission solutions, non-transmission solutions, or a combination of both. Despite the assertions of some commenters, the Department does not believe that designation of the draft Mid-Atlantic Area National Corridor necessarily will disrupt ongoing State or regional planning processes. As discussed in Section I.A above, a National Corridor designation itself does not preempt State authority or any State actions. Thus, States retain the authority to work together to address aggressively the congestion problems confronting the region. Further, we expect utilities within the Mid-Atlantic Area National Corridor to continue to work cooperatively with State and local authorities and to participate in the regional planning processes of PJM and NYISO. We note that FERC has indicated that it will consider any allegations that an applicant has acted in bad faith in State proceedings when it reviews permit applications under FPA section 216(b)(1)(C)(i).[100]

[93] *See id.*, 71 FR 69,440, 69,459, 117 FERC ¶ 61,202 at P 180 (''Homeland security related issues will be addressed on a case-by-case basis.'').

[94] *See id.*, 71 FR 69,440, 69,456, 117 FERC ¶ 61,202 at P 141.

[95] *See* May 7 notice, Sections VIII.B and VIII.C.1.

[96] *See id.*, Section VIII.C.2; *see also* comments of PJM.

[97] As discussed in the May 7 notice, cost allocation for transmission facilities is a long-standing FERC function.

[98] *See, e.g.*, FERC Order No. 689, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 42 (''The Commission will also consider the adverse effects the proposed facilities will have on land owners and local communities.''); *see also id.*, 71 FR 69,440, 69,456–57, 117 FERC ¶ 61,202 at P 150 (applicant required to provide information concerning the impact of the proposed project on the towns and counties in the vicinity of the project).

[99] Specifically, as discussed in Section I.A above, FERC jurisdiction is triggered only when either: The State does not have authority to site the project; the State lacks the authority to consider the interstate benefits of the project; the applicant does not qualify for a State permit because it does not serve end-use customers in the State; the State has withheld approval for more than one year; or the State has conditioned its approval in such a manner that the project will not significantly reduce congestion or is not economically feasible. 16 U.S.C. 824p(b)(1).

[100] *See* FERC Order No. 689, 71 FR 69,440, 69,443–44, 117 FERC 61,202 at P22 (''The Commission expects all potential applicants under FPA section 216 to act in good faith as it relates to State jurisdiction. Although the Commission may exercise jurisdiction in all instances where a State has withheld approval for more than one year, the Commission, in determining whether to do so, will weigh heavily clear evidence that an applicant has abused the State process.''); *see also* 119 FERC ¶ 61,154 at P 35 (* * * if questions arise during pre-filing concerning the adequacy of the applicant's efforts to site the facility at the state level and Commission staff determines that more

Continued

State and regional efforts may well resolve the congestion problems afflicting the Mid-Atlantic Critical Congestion Area without any invocation of FERC authority. However, as the May 7 notice documented, economic development, reliability, supply diversity, energy independence, and national defense and homeland security considerations all warrant designation of the draft Mid-Atlantic Area National Corridor.[101] Given the increasingly interconnected nature of the transmission grid and wholesale power markets, siting of electricity infrastructure poses increasingly complex questions about how to balance equitably all competing interests. Tensions can exist between what is perceived to be best for a region as a whole versus what is perceived to be best for an individual State or a portion of one State.[102] National Corridor designation provides, in a defined set of circumstances, a potential mechanism for analyzing the need for transmission from a national, rather than State or local, perspective. The comments the Department has received on the draft Mid-Atlantic Area National Corridor reveal the presence of the kinds of tensions that prompted Congress to create such a mechanism. The Department acknowledges that designation of the draft Mid-Atlantic Area National Corridor introduces a significant new possibility into the process of siting transmission, and that the existence of this possibility may pose challenges for States and may ultimately prove unnecessary. However, given the totality of circumstances, including the expanse of the congestion problem, the presence of looming reliability violations, and the significance of the Mid-Atlantic Critical Congestion Area to the security and economic health of the Nation as a whole, the Department concludes that it would be inconsistent with the intent of FPA section 216(a) to withhold the Federal safety net of National Corridor designation.[103]

In sum, having found the presence of congestion that adversely affects consumers in the Mid-Atlantic Critical Congestion Area, the Secretary has the discretion to designate a National Corridor. The Secretary concludes, based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate, that exercise of his discretion to designate the draft Mid-Atlantic Area National Corridor is warranted.

H. Duration of the Mid-Atlantic Area National Corridor Designation

Summary of Comments

Several commenters objected to setting a twelve-year term for the Mid-Atlantic Area National Corridor. For example, NARUC opposes the use of a twelve-year term as inconsistent with the statute. NARUC argues that the requirement that the Department conduct a congestion study every three years indicates that the factual basis for National Corridors must be reexamined and updated every three years, and, thus, only a three-year term, subject to three-year extensions, is permissible. NARUC states that use of a twelve-year term could easily result in a designation remaining in place long after congestion issues have been resolved.[104] NYFB advocates a nine-year term rather than a twelve-year term.

Other commenters, including National Grid and PJM, support a twelve-year term for the Mid-Atlantic Area National Corridor designation as consistent with planning needs.

RDOE Response

FPA section 216(a) does not itself impose any time limit on a National Corridor designation, nor does the statute require the Department to impose any such limit. While the statute requires the Department to conduct a congestion study every three years, nothing in the statute suggests that a National Corridor designation based on one congestion study should sunset unless re-justified in the next congestion study.

Some commenters express concern about FERC retaining jurisdiction to issue permits within a National Corridor after the congestion problem that motivated the Corridor has been resolved. However, as discussed in Section I.A above, FERC has clarified that only those transmission projects within a designated National Corridor that would significantly reduce the congestion identified by DOE would be eligible for a FERC permit. Therefore, even without an expiration date, a National Corridor designation would not result in any exercise of Federal permitting authority beyond that envisioned by Congress.

Nevertheless, in recognition of State concerns about open-ended National Corridor designations, the Secretary has decided to condition the Mid-Atlantic Area National Corridor designation by imposing a time limit on it. Any such time limit, however, must balance State concerns against the disruptive effect that regulatory uncertainty can have on transmission investment. Given the time frames involved in planning and developing a transmission project, the Secretary concludes that it is appropriate to set a twelve-year term for the Mid-Atlantic Area National Corridor designation, subject to the Department's right to rescind, renew or extend the designation after notice and opportunity for comment. Further, the Department does not intend to allow the termination of the Mid-Atlantic Area National Corridor designation as it may apply to an accepted permit application pending at FERC, or, once FERC has granted a permit, during the period in which the approved facilities are being constructed.

III. Southwest Area National Corridor (Docket No. 2007-OE–02)

A. Procedural Matters

The May 7 notice provided instructions on how to provide comments and how to become a party to the proceeding in this docket. Consistent with those instructions, the Department is granting party status in this docket to all persons who either: (1) Filed comments electronically at *http://nietc.anl.gov* on or before July 6, 2007; (2) mailed written comments marked ''Attn: Docket No. 2007–OE–02'' to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, that were received on or before July 6, 2007; or (3) hand-delivered written comments marked ''Attn: Docket No. 2007–OE–02'' at one of the public meetings.

processing at the state level is appropriate, it will not hesitate to suspend the pre-filing process while the state process continues'').

[101] *See* May 7 notice, Section VIII.C.

[102] While some commenters have questioned the Department's authority to designate a National Corridor in reaction to the presence of congestion problems within a single State, courts have long recognized the inherently interstate nature of transmission, even transmission within one State. *See FPL*, 404 U.S. at 462. Congestion problems within one State may well raise issues of national concern. Nothing in FPA section 216(a) suggests that the Department is limited to addressing congestion that crosses State lines, provided that the Department determines that constraints or congestion are adversely affecting consumers and that designation is warranted, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate.

[103] Further, whereas Congress could have completely preempted State siting of interstate transmission facilities, allowing for the potential exercise of limited Federal preemption in accordance with FPA section 216(a) does not intrude on any State rights or prerogatives.

[104] *See also* comments of OH Sitting Board and The Wilderness Society.

B. Overall Comments on the Draft Southwest Area National Corridor

The Department received comments from State agencies and officials expressing a range of views about the draft Southwest Area National Corridor. Arizona Governor Napolitano and the Arizona Corporation Commission (ACC) both filed comments opposing designation of the draft Southwest Area National Corridor. Nevada Agencies, filing comments on behalf of the State of Nevada, oppose inclusion of Clark County in the draft Southwest Area National Corridor.

The California Energy Commission (CEC) supported designation of the draft Southwest Area National Corridor but recommended that the Department develop a process to identify and protect environmentally sensitive areas that are unsuitable for transmission. The California Public Utilities Commission (CPUC) opposes designation of a Southwest Area National Corridor that would include all of southern California. However, CPUC notes that since the issuance of the May 7 notice, ACC has rejected an application by Southern California Edison Company (SCE) to construct the Devers-Palo Verde 2 project (DPV2),[105] which, according to CPUC, would increase transfer capability between the desert Southwest and southern California and had already been approved by the CPUC, the California Independent System Operator (CAISO),[106] and the Arizona Power Plant and Transmission Line Siting Committee. Thus, CPUC supports designation of a National Corridor that is more narrowly targeted than the draft Southwest Area National Corridor, such as a National Corridor along the Arizona section of the proposed DPV2 route.

The Wyoming Infrastructure Authority (WIA) supports designation of the draft Southwest Area National Corridor.

The Department received dozens of comments from individuals opposing designation of the draft Southwest Area National Corridor. Numerous non-profit organizations also filed comments opposing designation.[107] The Imperial Irrigation District (IID) opposed designation of the draft Southwest Area National Corridor.

The California Chamber of Commerce supported designation of the draft Southwest Area National Corridor. A number of utilities also filed comments supporting designation of the draft Southwest Area National Corridor.[108]

NERC filed comments stating that the ultimate designation of National Corridors will further bolster the reliability of the grid. The Transmission Expansion Policy Planning Committee of the Western Electricity Coordinating Council (TEPPC) filed comments raising a number of questions, but stated that it was not advocating for or against the draft Southwest Area National Corridor.

C. Adequacy of Showing of Congestion That Adversely Affects Consumers

Summary of Comments

Numerous commenters argued that the Department had failed to make the showing of congestion adversely affecting consumers required in order to designate a Southwest Area National Corridor. Some of these commenters took issue with the Department's position that it has the discretion to designate the draft Southwest Area National Corridor upon a showing of the existence of persistent congestion, without a further demonstration of adverse effects on consumers. For example, ACC states that DOE has not demonstrated adverse effects on consumers as required by FPA section 216(a)(2). ACC argues that DOE has inappropriately assumed that all persistent congestion harms the public interest and that no evidence or analysis supports this broad, unfounded conclusion. CPUC states that congestion and constraints do not, in and of themselves, adversely affect consumers, and DOE must develop valid criteria for measuring congestion and transmission constraints and show how they impact consumers.[109] TEPPC notes that the Congestion Study did not provide an analysis of the economic benefits of relieving this congestion. CPUC states that congestion costs over major transmission inter-ties between southern California and Arizona/Nevada amounted to about $30 million per year in 2006, a small fraction of the annualized cost of a major transmission project.

TEPPC questions whether the Western Area Power Administration (WAPA) data on denial of transmission service requests cited in the May 7 notice reveal an actual lack of physical capacity as contrasted to a contractual issue.

Some commenters argue that the Department has exaggerated the significance of congestion into and within southern California. CPUC states that the Congestion Study itself indicates that the major transmission paths into southern California have recently been less fully loaded than other Western transmission paths. TEPPC states that the data in the Congestion Study do not support an unequivocal finding of congestion on paths within the draft Southwest Area National Corridor as compared to other paths within the Western Interconnection and that CAISO data do not appear to show a clear pattern of congestion over a number of years.

Other commenters supported the Department's showing of congestion adversely affecting consumers in the Southern California Critical Congestion Area. For example, SDG&E states that persistent congestion adversely affects consumers because buyers must rely on power from less-preferred generating sources, a smaller range of generators is available, and the grid operators have fewer options for dealing with unanticipated events.

DOE Response

The Department concludes that it has sufficiently demonstrated and found the existence of congestion that adversely affects consumers in the Southern California Critical Congestion Area. As discussed in Section II.C above with regard to the Mid-Atlantic Area National Corridor, congestion prevents users of the transmission grid from completing their preferred power transactions, which in turn can deny those users the benefit of lower prices, diversity of supply, and increased grid operator flexibility, all to the detriment of consumers. Loss of these benefits increases as congestion on a particular path becomes more frequent. Thus, the Department believes that FPA section 216(a) gives the Secretary the discretion to designate a Southwest Area National Corridor upon a showing of the existence of persistent congestion.

Some commenters suggest that congestion into and within the Southern California Critical Congestion Area does not adversely affect consumers unless the costs of relieving the congestion are less than the costs of the congestion itself. As discussed in Section II.C above, the Department concludes that Congress intended the Department to consider adverse effects on consumers beyond increases in the delivered price of power, some of which effects may not be easily monetized. Further, designation of a National Corridor does not dictate how or even whether to address a particular instance of congestion. Therefore, the Department

[105] *See* Order Denying a Certificate of Environmental Compatibility, ACC Dec. No. 69638 (June 6, 2007).

[106] CAISO is the ISO serving most of California.

[107] *See, e.g.,* comments of San Diego Renewable Energy Society (SDRES) and the Sierra Club (Grand Canyon Chapter).

[108] *See, e.g.,* comments of SCE, SDG&E, and Coral Power, LLC (Coral); *see also* comments of EEI.

[109] *See also* comments of Colorado Public Utilities Commission and OMS.

believes that restricting the term ''congestion that adversely affects consumers'' to congestion that can be cost-effectively relieved is an overly narrow reading of the statute.

The Department further concludes that it has adequately demonstrated the existence of persistent congestion into and within the Southern California Critical Congestion Area. The May 7 notice identified data establishing the presence of existing constraints causing patterns of congestion that have persisted over a number of years. The data included line flow data revealing the presence of congestion from 1999 through 2005 on a number of lines into and within southern California, as well as CAISO data from 2004 through 2006 showing binding hours on paths into and within southern California. The Department also noted that the modeling performed for the Congestion Study projected that several historical constraints into and within southern California would continue to cause congestion in 2008.

The WAPA data questioned by TEPCC are but one category of data used in the May 7 notice to establish the presence of persistent congestion. Further, for the same reasons that the Department does not see a need to analyze the potential solutions to congestion at the National Corridor designation stage, the Department does not believe it is necessary at the National Corridor designation stage to analyze the causes of persistent congestion. Regardless of whether congestion is the function of power flows reaching operational limits or of capacity being contractually committed yet unused, users of the transmission system are denied the benefit of their preferred transactions. If FERC jurisdiction under FPA section 216(b) were triggered, parties to the FERC proceeding could raise any concerns they had about the contractual nature of the congestion and whether market operation alternatives would be preferable to the construction of additional capacity.

Moreover, while the Department concludes that the statute authorizes the designation of a Southwest Area National Corridor upon a finding of the existence of persistent congestion, the Department nevertheless has provided additional documentation. In the context of explaining the considerations that led to the draft designation of the Southwest Area National Corridor, the Department documented that congestion poses threats to the reliability of electricity supply to consumers in the Southern California Critical Congestion Area, and that congestion limits supply diversity for Southern California Critical Congestion Area consumers. For example, the May 7 notice explained that CAISO has determined that the San Diego area is projected to be deficient in overall generation capacity by the year 2010 due to severe import limits, and that there are looming reliability problems on the South of Lugo path, a major CAISO internal path that serves the Los Angeles Basin.

Some commenters complain that pathways into and within southern California are less congested than other paths in Western Interconnection and that the Department has failed to develop specific criteria and metrics for evaluating the significance of congestion. However, the relative level of congestion into and within southern California as compared to other paths in the Western Interconnection is not dispositive of whether consumers are adversely affected by congestion. FPA section 216(a) does not require the Department to rank different levels of congestion, nor does it restrict the Department to considering National Corridor designation only in those areas experiencing the highest levels of congestion. FPA section 216(a)(2) authorizes the Department to designate as a National Corridor ''any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers.'' While some of the metrics used in the Congestion Study do suggest that the level of congestion on paths into and within southern California is lower than on other paths in the Western Interconnection, congestion into and within southern California is a precursor of a serious reliability problem. This serious threat to the reliability of electricity supply to the Southern California Critical Congestion Area constitutes an adverse effect on consumers that, in conjunction with other factors discussed here, warrants consideration of a National Corridor designation.

In conclusion, far from simply assuming the presence of congestion that adversely affects consumers, as some commenters allege, the Department has made a reasoned determination that the statutory conditions triggering discretion to designate a National Corridor for the Southern California Critical Congestion Area have been met.

D. Boundaries of the Draft Southwest Area National Corridor

Summary of Comments

Numerous commenters argued that the draft Southwest Area National Corridor is impermissibly broad. ACC argues that DOE's source-and-sink approach to delineating the draft Southwest Area National Corridor is insufficient under the statute. Governor Napolitano states that DOE should revisit its broad-brush approach and consider adopting a more targeted method for defining a National Corridor. CPUC states that designation of a National Corridor as broad as the draft Southwest Area National Corridor would provide a basis for second-guessing, forum-shopping, and re-litigation of decisions regarding complex issues. CPUC also states that while the focus of FPA section 216(a) is on interstate transmission, more than 48,000 square miles of the draft Southwest Area National Corridor falls within California alone. CPUC states that the prospect of Federal transmission siting over this in-State area effectively trumps California's ability to establish and pursue its own energy goals. CPUC states that any National Corridor to address congestion in the Southern California Critical Congestion Area should be more narrowly focused on connecting specific sink nodes with specific supply nodes, such as along the proposed DPV2 route.

IID states that DOE cannot reasonably assert that designation of an area as large as the draft Southwest Area National Corridor complies with FPA section 216(a), which limits designation of National Corridors to constrained areas. IID states that DOE should tailor its designation to locations where congestion problems truly exist, such as along Path 42 between IID's system and SCE's system. Citizens Campaign for the Environment supports limiting the Southwest Area National Corridor to only those lines and substations that are critically congested and constrained.

The Colorado Public Utilities Commission suggests DOE reclassify the draft Southwest Area National Corridor as a ''Zone'' and then designate narrower paths of specific widths and lengths within this Zone as National Corridors.

Some commenters suggested redrawing National Corridor boundaries so as to follow existing transmission lines or highways.[110]

Nevada Agencies believes that the Department has failed to adequately support the inclusion of Clark County, Nevada in the draft Southwest Area National Corridor. Nevada Agencies states that the Congestion Study did not identify any portion of Clark County as part of either a Critical Congestion Area or a Congestion Area of Concern, and the May 7 notice identified Arizona, not

[110] *See, e.g.*, comments of William Haven.

Nevada, as a source area. Nevada Agencies argues that the Department's only rationale for including Clark County is the statement that it would be useful to think of the transmission facilities around Mead as closely related to those around Palo Verde; however, according to Nevada Agencies, Palo Verde and Mead are considered two separate and distinct trading hubs. Thus, Nevada Agencies argues that the Department has bootstrapped Clark County into the draft Southwest Area National Corridor in violation of the statute.

Some commenters objected to the Department's use of county boundaries to delineate the outer bounds of the draft Southwest Area National Corridor. For example, Governor Napolitano states that Arizona counties are some of the largest in the country.[111]

Other commenters supported the Department's approach to delineating the boundaries of the draft Southwest Area National Corridor. For example, EEI states that DOE has properly delineated the draft Southwest Area National Corridor as a general, inclusive geographic area, and adds that if utility, State, or regional agency staff indicate that the margins of the draft Southwest Area National Corridor need to be modified to encompass potential solutions, DOE should make such modifications so that a full array of solutions is considered.

DOE Response

The Department concludes that its general approach to defining the boundaries of the draft Southwest Area National Corridor is consistent with the statute. As discussed in Section II.D above, the language of FPA section 216(a), which refers to designation of a ''geographic area,'' does not dictate any particular shape, proportion, or size for a National Corridor, and the Department's approach to delineating right-of-way corridors under EPAct section 368 does not inform the delineation of National Corridors under FPA section 216(a). Further, to the extent that common meanings and usage of the term ''corridor'' are relevant to the determination of a National Corridor under FPA section 216(a), the overall size and shape of the draft Southwest Area National Corridor are not inconsistent with such meanings and usage.

Some commenters have suggested that the statute should be interpreted as restricting any National Corridor designation to the specific confines of the load being adversely affected by congestion or the constrained transmission lines causing such congestion. For the reasons detailed in Section II.D above, the Department disagrees with this interpretation. The term ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers'' envisions an area that encompasses the load being adversely affected by congestion and the constrained transmission lines causing such congestion, but the statute is ambiguous with regard to the precise scope of the area. The Department believes its source-and-sink approach to delineating the boundaries of the draft Southwest Area National Corridor represents a reasonable interpretation of this ambiguous statutory term.

As with the Mid-Atlantic Area National Corridor, in implementing its source-and-sink approach to delineating the draft Southwest Area National Corridor, the Department has attempted to identify source areas that would enable a range of generation options. In exercising its judgment as to which source areas to use for purposes of delineating the draft Southwest Area National Corridor, the Department was guided by several factors. The Department has tried to balance the objective of accommodating a range of options against the practical limitations on delivery of power over increasingly longer distances. The Department has also taken into consideration State concerns about the size of any Southwest Area National Corridor as well as the fact that Congress opted for a limited approach to Federal preemption of transmission siting. The Department has been further guided by the considerations identified in FPA section 216(a)(4). Finally, consistent with the language of FPA section 216(a)(2) referring to designation of a geographic area experiencing constraints or congestion that adversely affects consumers, the Department has restricted its selection of source areas to those separated from the identified sink area, *i.e.* the Southern California Critical Congestion Area, by one or more of the constraints identified in Section IX.B of the May 7 notice as causing congestion adversely affecting consumers.

The result of this analysis was the identification of two categories of source areas: (1) The closest locations with substantial amounts of existing, under-used generation capacity separated from the identified sink area by one or more of the constraints identified as causing congestion adversely affecting consumers; and (2) the closest locations with the potential for substantial development of wind, geothermal, or solar generation capacity separated from the identified sink area by one or more of the constraints identified as causing congestion adversely affecting consumers. Identification of the first category is consistent with FPA section 216(a)(4)(A), which emphasizes the importance of ensuring adequate supplies of power. Identification of the second category is consistent with FPA section 216(a)(4)(B), which emphasizes diversification of supply, and FPA section 216(a)(4)(C), which emphasizes promotion of energy independence.

Having identified source areas, the Department then delineated the draft Southwest Area National Corridor by identifying the counties linking the identified source areas with the sink area.[112] While the Department recognizes that counties are generally larger in the West than in the East, we continue to believe in the importance of establishing precise, easily identified boundaries for the Southwest Area National Corridor. Thus, we conclude that use of county boundaries is a reasonable means of providing such certainty.

The Department's approach to delineating the draft Southwest Area National Corridor was designed to connect the sink area containing consumers adversely affected by congestion with a range of source areas separated from the identified sink area by the constraints causing such congestion. Given the overall framework of FPA section 216 and the physical properties of the electric grid, the Department concludes that this approach is consistent with the statutory call for the designation of a ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers.'' However, upon further consideration, the Department concludes that inclusion of Clark County, Nevada in the Southwest Area National Corridor is not consistent with this approach. Nevada Agencies correctly note that the May 7 notice did not identify Clark County as either a sink area, a source area, or an area containing a constraint separating an

[111] *See also* comments of Nevada Agencies.

[112] ACC and CPUC note that certain plants identified as potential sources in Table IX–4 of the May 7 notice were not actually included within the draft Southwest Area National Corridor. In recognition of concerns about the size of National Corridors, DOE chose not to include each entire identified source area in the draft Southwest Area National Corridor. Instead, for source areas located where the transmission grid is already relatively strong, the Department extended the draft Southwest Area National Corridor only so far into those source areas as needed to encompass one or more possible strong points on the transmission network that serves those areas.

identified sink area from an identified source area. Rather, the May 7 notice stated that the Hoover Dam area southeast of Las Vegas, Nevada and the area around Palo Verde, Arizona are the two principal portals for transferring bulk power from the east into southern California, and that from a transmission planning and operational perspective, it is useful to think of these two pathways as closely related. As Nevada Agencies point out, the area around Las Vegas is experiencing tremendous growth. This growth could result in congestion that may at some future date warrant expansion of the Southwest Area National Corridor or designation of additional National Corridors in the Southwest. For now, though, the Department has decided to exclude Clark County, Nevada from today's Southwest Area National Corridor designation.

Some commenters complain that the draft Southwest Area National Corridor fails to provide adequate specificity on appropriate transmission solutions and suggest that the Department should go back to the drawing board to determine narrower routes linking specific sources and sinks. However, the Department is deliberately not attempting to identify preferred transmission solutions. As discussed in Section I.A above, FPA section 216(a) was not intended to shift to the Department the roles of electric system planners or siting authorities.

The Department recognizes the concerns about unintended expansion of Federal siting authority to include proposed transmission projects that happen to be located within the Southwest Area National Corridor but are unrelated to the problem that prompted the National Corridor designation. However, as discussed in Section II.D above, only those transmission projects within the Southwest Area National Corridor that would significantly reduce congestion into the Southern California Critical Congestion Area would be eligible for a FERC permit. Therefore, the Department does not believe that designation of the draft Southwest Area National Corridor, modified to exclude Clark County, Nevada, will result in the exercise of Federal permitting authority beyond that envisioned by Congress. Finally, while CPUC questions the Department's authority to designate a National Corridor when a large portion of that Corridor lies within a single State, the Department notes that courts have long recognized the inherently interstate nature of transmission, even transmission within one State.[113]

[113] *See FPL*, 404 U.S. at 462.

E. Inclusion of Environmentally, Historically, and Culturally Significant Lands

Summary of Comments

Many commenters argued that the Department should exclude National Parks, State parks, and other environmentally, historically, or culturally significant lands from any Southwest Area National Corridor. For example, CEC argues that certain ''no-touch zones'' should be established so that environmental impacts and controversies can be avoided. Governor Napolitano expresses concern about the sensitive wildlife areas included in the draft Southwest Area National Corridor. NPCA opposes inclusion of any unit of the National Park System in the Southwest Area National Corridor. Numerous commenters urged the removal of Death Valley National Park, Joshua Tree National Park, and Anza Borrego State Park from the draft Southwest Area National Corridor.[114]

DOE Response

For the reasons detailed in Section II.E above, the Department concludes that exclusion of environmentally, historically, or culturally sensitive lands from the Southwest Area National Corridor is neither required nor necessary. Nothing in the statute suggests that the Department must or should exclude such lands. With regard to Federal- and State-owned land, inclusion of such lands within the Southwest Area National Corridor does nothing to change the process for obtaining a right-of-way across such property. With regard to environmentally, historically, or culturally sensitive lands that are not owned by the U.S. or a State, the Department notes that designation of the Southwest Area National Corridor is not a determination that transmission will or should be built; it does not constitute, advocate, or guarantee approval of any transmission project; and it is not a determination of the route of any transmission project. If FERC jurisdiction under FPA section 216(b) were triggered, FERC would conduct an evaluation of the reasonably foreseeable effects of transmission construction on any environmentally, historically, or culturally significant lands, including an analysis of alternative routes and mitigation options. To the extent that any Federal laws do limit or prohibit construction of transmission facilities in certain areas, FERC is bound by those limitations or prohibitions. Further, exclusion of environmentally, historically, or culturally sensitive lands, whether public or private, could unduly restrict existing flexibility in siting transmission facilities, and the Department sees no reason to conclude that Congress intended such a result.

[114] *See, e.g.*, comments of Polly Pistker, Steven Ellsworth, Claudia Sall, and Vivian Hopkins, and statement of Peter Frigeri at June 20, 2007, Las Vegas, NV public meeting.

F. Consideration of Alternatives Under FPA Section 216(a)(2)

Summary of Comments

Several commenters argue that the Department should evaluate non-transmission solutions to congestion before designating the Southwest Area National Corridor. Many of these commenters argued that FPA section 216(a)(2) requires such an evaluation. For example, ACC states that designation of a Southwest Area National Corridor would tip the market toward transmission solutions by dampening or extinguishing market signals for other solutions, such as constructing generation close to load centers, that may better serve the public interest.

DOE Response

For the reasons set forth in Section II.F above, the Department concludes that no analysis of alternative solutions to congestion is required or warranted under FPA section 216(a) before designation of the Southwest Area National Corridor. While FPA section 216(a)(2) calls for the Secretary to consider ''alternatives and recommendations from interested parties'' before making a National Corridor designation, the Department concludes that, given the overall statutory framework, this term was intended to refer to comments suggesting National Corridor designations for different congestion or constraint problems, comments suggesting alternative boundaries for specific National Corridors, and comments suggesting that the Department refrain from designating a National Corridor. Moreover, as discussed in Section I.A above, designation of the Southwest Area National Corridor does not prejudice State or Federal siting processes against non-transmission solutions or discourage market participants from pursuing such solutions.

G. Whether DOE Should Exercise Its Discretion To Designate the Draft Southwest Area National Corridor

Summary of Comments

Several commenters agreed with the May 7 notice's analysis that reliability,

supply diversity, and national defense and homeland security considerations warrant the exercise of the Secretary's discretion to designate a Southwest Area National Corridor. For example, CEC supports the Department's conclusion that one of the consequences of congestion in southern California is heightened dependence on natural gas for the generation of electricity. The California Chamber of Commerce argued that designation of the draft Southwest Area National Corridor would help ensure reliability, noting that power failures that occur in California may affect neighboring States. SDG&E states that southern California has been subject to severe reliability impacts in recent years, and these impacts are likely to continue if congestion is not addressed. SDG&E adds that reliable power supplies for the Navy and Marine Corps bases in San Diego County are critical from a national security standpoint, and that the need for increased transmission access to meet California's portfolio diversity targets is self-evident. SCE states that resolving congestion into and within the Southern California Critical Congestion Area is not only vital for California and its residents, it is important for the region and the Nation as a whole. WIA urges the Department to consider broader National Corridor designations in the Western Interconnection, but supports designation of the draft Southwest Area National Corridor as a first step, given that it addresses a relatively discrete area that, according to WIA, is beyond any reasonable doubt experiencing congestion adversely affecting consumers.

Other commenters argued that designation of the draft Southwest Area National Corridor is not warranted. ACC argues that reliability considerations do not necessarily warrant designation of the draft Southwest Area National Corridor, because adding generation close to load centers can be preferable from a reliability perspective to adding new transmission accessing remote generation. ACC further states that differences in LMPs between California and Arizona may not reflect an ''apples to apples'' comparison of costs, in light of the different market structures in place in those two States. Therefore, according to ACC, the presence of higher LMPs in California than in Arizona does not necessarily indicate that California consumers are being harmed, and efforts to reduce such price differences could result in subsidies to California consumers at the expense of Arizona consumers.

Some commenters raised equity concerns. Governor Napolitano states that the draft Southwest Area National Corridor improperly focuses solely on the energy needs of California. ACC states that Arizona's economy is as important to the Nation as that of California, and that designation of the draft Southwest Area National Corridor would unfairly require Arizona to provide resource adequacy for California. ACC states that Arizona has no resource advantages for siting gas-fired generation compared to California, yet California has failed to site sufficient generation to meet its needs. ACC argues that California should not be allowed to rely on Arizona generation when the cost of externalities would be borne by Arizona consumers. ACC notes that Arizona's population has grown 20.2 percent since 2000, with Maricopa County being the fastest growing county in the Nation. As a result, ACC argues, any current excess generation in Arizona will actually be needed within the State by 2010.

IID states that designation of the draft Southwest Area National Corridor could have a significant adverse impact upon Imperial County's agricultural businesses and desert ecosystem. Individuals residing within the draft Southwest Area National Corridor but away from the sink area argued that designation of the draft Southwest Area National Corridor would require them to bear an unfair burden.[115]

Some commenters argued that the Department should accord more deference to existing State and regional planning and siting processes and hold off on any designation of a Southwest Area National Corridor until and unless it is clear that a Federal siting forum is needed. ACC argues that Federal intervention is unnecessary unless State and regional processes are not addressing the problem in a timely manner. ACC states that if State siting processes are efficient, transparent, and responsive to the market, as ACC asserts its process is, the Secretary should not designate a National Corridor. Governor Napolitano states that Arizona agencies and utilities have a strong record of line siting and infrastructure planning, in contrast to California, and that designation of the draft Southwest Area National Corridor would create great uncertainty in State and local efforts to plan for growth, infrastructure, and protection of natural resources.[116]

On the other hand, some commenters urged the Department against deferring designation of the draft Southwest Area National Corridor. For example, Coral states that provision of a Federal backstop is necessary to solve the congestion problems into and within the Southern California Critical Congestion Area and to assist California in meeting demand within the State. Coral argues that the mere possibility that FERC could step in and approve or reject siting proposals in the draft Southwest Area National Corridor may itself provide the necessary incentive for the States to find a common solution. But, according to Coral, if the States fail to do so, FERC, removed from local pressures, will be able to make the hard decisions that the States have been unable to make. SCE states that designation of the draft Southwest Area National Corridor will focus both State and local efforts on the resolution of key congestion issues.

DOE Response

The Department recognizes that FPA section 216 adopted a novel approach to addressing congestion problems, and that some commenters have grave concerns about the effects of this new approach. However, after careful consideration of these concerns, the Department concludes that designation of the draft Southwest Area National Corridor, modified to exclude Clark County, Nevada, is consistent with the intent of FPA section 216(a).

A number of the comments seem premised on the assumption that designation of a Southwest Area National Corridor would create a bias in favor of long transmission lines running the full length of the Corridor, and in particular long transmission lines connecting to generation located in Arizona. The Department regards such an assumption as unfounded. As discussed in Section I.A above, a National Corridor designation does not constitute a finding that transmission must or even should be built; it does not prejudice State or Federal siting processes against non-transmission solutions; and it should not discourage market participants from pursuing such solutions. Further, even within the realm of potential transmission solutions, designation of a Southwest Area National Corridor would not favor any particular transmission project within the Corridor. While the Department did identify source areas in Arizona when it delineated the draft

[115] *See, e.g.*, comments of Albert Coonrod, Jr. (''[P]ush CA to solve their own needs in their own state and stay out of AZ.'') and John Batka (''Perhaps California should start building power plants again. Don't string a lifeline electric grid from the Palo Verde Nuclear Generating Station to support their growing population.''); *see also* statement of Tom Wray at June 21, 2007, Phoenix, AZ public meeting.

[116] *See also* comments of IID and SDRES.

Southwest Area National Corridor, such delineation was not a determination that transmission lines connecting those particular source areas to the sink area must or should be built, or that such projects are preferable to other transmission projects. The Department's identification of source areas was a means of setting an outer bound on the geographic range of potential transmission projects that could become subject to FERC jurisdiction. Designation of a Southwest Area National Corridor no more dictates or endorses the construction of transmission lines to access generation in the identified source areas in Arizona than it does the construction of transmission lines to access the identified source areas in California. If a transmission project were proposed within the Southwest Area National Corridor to deliver generation to the Southern California Critical Congestion Area from somewhere other than the identified source areas, the developer of the project would be eligible to seek a FERC permit, provided it met the standards of FPA section 216(b). The Department sees no reason to conclude that designation of a Southwest Area National Corridor would discourage any such projects.

Given that designation of a Southwest Area National Corridor does not determine whether or which transmission projects will be built, ACC's concerns about the reliability effects of constructing transmission accessing remote generation are not germane at this stage. If FERC jurisdiction under FPA section 216(b) were triggered, FERC would analyze and take into consideration the reasonably foreseeable effects of a proposed project, including the reliability impacts.[117]

With regard to comments about the equities of building transmission to access generation in one area to serve the needs of another area, the Department recognizes that consideration of the relative effects that a proposed project will have on the areas where the facilities are located versus the areas served by those facilities is critically important. However, how a transmission line actually affects a community through which it is routed is a function of how the line is sited and how the costs of the transmission line are allocated, neither of which is determined by a National Corridor designation.[118] If FERC jurisdiction under FPA section 216(b) were triggered, FERC would consider the reasonably foreseeable effects of the proposed project on the communities through which it is proposed to be routed.[119]

Although ACC argues that efforts to reduce power price differences between California and Arizona could result in subsidies to California consumers at the expense of Arizona consumers, the Department's designation of a Southwest Area National Corridor is not motivated by price differentials between California and Arizona. In the May 7 notice, the Department specifically identified the considerations that it believed warranted designation of the draft Southwest Area National Corridor. The Department documented that if action is not taken to address congestion, consumers in the Southern California Critical Congestion Area face threats to the reliability of their electricity supply. The Department also documented that congestion exacerbates the reliance of consumers in the Southern California Critical Congestion Area on generation fueled by natural gas. Finally, the Department described the importance of the Southern California Critical Congestion Area to the security and economic health of the Nation as a whole. Thus, the Department stated its belief that reliability, supply diversity, and national defense and homeland security considerations warrant designation of a National Corridor for the Southern California Critical Congestion Area; the Department did not identify higher prices in southern California as a consideration justifying designation of a Southwest Area National Corridor.[120]

ACC also argues that the rate of load growth in Arizona warrants elimination of Arizona from the draft Southwest Area National Corridor. However, as discussed above, designation of a Southwest Area National Corridor does not dictate or guarantee that transmission lines will be built to export power from Arizona to California. The Department included three counties in Arizona within the draft Southwest Area National Corridor because those counties have access to currently available excess generation capacity.[121] If load growth in Arizona were to result in all existing generation capacity in the State, as well as all additional capacity coming on line in Arizona, being unavailable for export to California, that development would be taken into consideration by market participants evaluating their economic incentives to build a transmission project to facilitate such exports. Such a development would likely also be relevant in any FERC permit proceeding, given FPA section 216(b)(4)'s requirement that any project authorized by FERC must benefit or protect consumers. The Department recognizes the growing needs of Arizona consumers, and, in fact, identified the Tucson-Phoenix area as a Congestion Area of Concern in the Congestion Study. The growing demand in Arizona and the resulting growing congestion may at some future date warrant expansion of the Southwest Area National Corridor or designation of additional National Corridors in the Southwest. However, given the urgency of addressing the reliability threats facing consumers in the Southern California Critical Congestion Area and State concerns over the designation of broad National Corridors, the Department believes that designation of the draft Southwest Area National Corridor, modified to exclude Clark

[117] *See* FERC Order No. 689, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 41 (''[The Commission] will investigate and determine the impact the proposed facility will have on the existing transmission grid and the reliability of the system.'').

[118] As discussed in the May 7 notice, cost allocation for transmission facilities is a long-standing FERC function.

[119] *See, e.g.*, FERC Order No. 689, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 42 (''The Commission will also consider the adverse effects the proposed facilities will have on land owners and local communities.''); *see also id.*, 71 FR 69,440, 69,456–57, 117 FERC ¶ 61,202 at P 150 (applicant required to provide information concerning the impact of the proposed project on the towns and counties in the vicinity of the project).

[120] Similarly, the Department's showing of the existence of congestion adversely affecting consumers in the Southern California Critical Congestion Area does not rely on the presence of price differentials between southern California and Arizona. The May 7 notice detailed the data on which the Department is relying to establish the presence of congestion that adversely affects consumers. Those data included line flow data revealing the presence of congestion from 1999 through 2005 on a number of lines into and within southern California, as well as CAISO data from 2004 through 2006 showing binding hours on paths into and within southern California. The Department did note that the modeling performed for the Congestion Study projected that several historical constraints into and within southern California would continue to cause congestion in 2008, and the Congestion Study modeling did quantify projected congestion rents derived from estimated LMP differences. However, congestion rents were only one of the metrics used in the Congestion Study modeling; in the May 7 notice, the Department emphasized the modeling's projection of U75 and U90 for pathways into and within southern California.

[121] We further note that as market participants consider development of new coal/wind generation and transmission capacity in Wyoming and other areas beyond Arizona, the Phoenix area has the potential to become even more important than it is now as a trans-shipment point for electricity headed for urban centers in southern California. *See, e.g.*, ''High Plains Express Transmission Study Joined by the Wyoming and New Mexico Transmission Authorities,'' Denver Business News, Aug. 15, 2007, at *http://denver.dbusinessnews.com/shownews.php?newsid=129768&type&__news=latest*.

County, Nevada, is an appropriate first step.

Some commenters urge us to defer any designation of a Southwest Area National Corridor until State and regional planning efforts have had more time to address the congestion problems. These commenters provide details on the purported effectiveness of State and regional planning processes. As discussed in Section II.G above, we do not believe that Congress envisioned the adoption of a wait-and-see approach to National Corridor designation.

The Department strongly supports State and regional efforts to collectively address the congestion problems confronting the region, whether those efforts are focused on transmission solutions, non-transmission solutions, or a combination of both. Despite the assertions of some commenters, the Department does not believe that designation of the Southwest Area National Corridor necessarily will disrupt ongoing State or regional planning processes. As discussed in Section I.A above, a National Corridor designation itself does not preempt State authority or any State actions. Thus, States retain the authority to work together to address aggressively the congestion problems confronting the region. Further, we expect utilities within the Southwest Area National Corridor to continue to work cooperatively with State and local authorities. We note that FERC has indicated that it will consider any allegations that an applicant has acted in bad faith in State proceedings when it reviews permit applications under FPA section 216(b)(1)(C)(i).

State and regional efforts may well resolve the congestion problems afflicting the Southern California Critical Congestion Area without any invocation of Federal review. However, as the May 7 notice documented, reliability, supply diversity, and national defense and homeland security considerations all warrant designation of a Southwest Area National Corridor.[122] Given the increasingly interconnected nature of the transmission grid and wholesale power markets, siting of electricity infrastructure poses increasingly complex questions about how to balance equitably all competing interests. Tensions can exist between what is perceived to be best for a region as a whole versus what is perceived to be best for an individual State or an individual portion of one State. National Corridor designation provides, in a defined set of circumstances, a potential mechanism for analyzing the need for transmission from a national, rather than State or local, perspective. The comments the Department has received on the draft Southwest Area National Corridor reveal the presence of the kind of tensions that prompted Congress to create such a mechanism. The Department acknowledges that designation of a Southwest Area National Corridor introduces a significant new possibility into the process of siting transmission, and that the existence of this possibility may pose challenges for States and may ultimately prove unnecessary. However, given the totality of the circumstances, including the presence of looming reliability violations and the significance of the Southern California Critical Congestion Area to the security and economic health of the Nation as a whole, the Department concludes that it would be inconsistent with the intent of FPA section 216(a) to withhold the Federal safety net of National Corridor designation.[123]

In sum, having found the presence of congestion that adversely affects consumers in the Southern California Critical Congestion Area, the Secretary has the discretion to designate a National Corridor. The Secretary concludes, based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate, that exercise of his discretion to designate the draft Southwest Area National Corridor, modified to exclude Clark County, Nevada, is warranted.

H. Duration of the Southwest Area National Corridor Designation

Summary of Comments

Several commenters, including CPUC and Nevada Agencies, objected to setting a twelve-year term for the Southwest Area National Corridor. For example, NARUC opposes the use of a twelve-year term as inconsistent with the statute. NARUC argues that the requirement that the Department conduct a congestion study every three years indicates that the factual basis for National Corridors must be reexamined and updated every three years, and, thus, only a three-year term, subject to three-year extensions, is permissible. NARUC states that use of a twelve-year term could easily result in a designation remaining in place long after congestion issues have been resolved.[124]

DOE Response

For the reasons discussed in Section II.H above, the Department concludes that imposition of a time limit on the Southwest Area National Corridor designation is not required by law. Nevertheless, in recognition of State concerns about open-ended National Corridor designations, as balanced against the disruptive effect that regulatory uncertainty can have on transmission investment, the Department has decided to set a twelve-year term for the Southwest Area National Corridor designation, subject to the Department's right to rescind, renew or extend the designation after notice and opportunity for comment. Further, the Department does not intend to allow the termination of the Southwest Area National Corridor designation as it may apply to an accepted permit application pending at FERC, or, once FERC has granted a permit, during the period in which the approved facilities are being constructed.

IV. NEPA, NHPA, and ESA

A. Overview of Comments on NEPA

Summary of Comments

Several commenters, including PHI, PJM, WIRES, EEI and National Grid, asserted that the Department is not required to prepare an Environmental Impact Statement (EIS) or conduct other NEPA review for the designation of National Corridors. Many other commenters asserted that the Department should conduct a Programmatic EIS (PEIS) before designating any National Corridors because designation itself requires NEPA review.[125]

DOE response

Section 102(2)(C) of NEPA requires that all Federal agencies include an EIS for ''every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.'' 42 U.S.C. 4332(2)(C). NEPA section 102(2)(C) ensures that Federal agencies provide full and fair discussion of significant environmental impacts and

[122] *See* May 7 notice, Section IX.C.

[123] Further, whereas Congress could have completely preempted State siting of interstate transmission facilities, allowing for the potential exercise of limited Federal preemption in accordance with FPA section 216(a) does not intrude on any State rights or prerogatives.

[124] *See also* comments of Citizens Campaign for the Environment and The Wilderness Society.

[125] *See, e.g.*, comments of ECCP, Environmental Defense, National Trust for Historic Preservation, Columbia Environmental Law Clinic, SELC, Sierra Club (Pennsylvania Chapter), Western Pennsylvania Conservancy, Toll Bros., CARI, Appalachian Trail Conservancy, NCPA, Wilderness Society, NYDEC, and Piedmont Environmental Council; *see also* statement of Tom Darin at May 17, 2007, San Diego, CA public meeting.

informs decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. NEPA review is designed to examine the foreseeable, measurable, and predictable consequences of a proposed Federal action; it is not intended to forecast hypothetical or unknowable proposals or results. National Corridor designations have no environmental impact. They are only designations of geographic areas in which DOE has identified electric congestion or constraint problems.

B. Federal Plan/Program

Summary of Comments

Several commenters asserted that NEPA review is required because the designation of National Corridors is part of a continuing agency action constituting a new Federal scheme, program, or policy to site transmission projects. They argue that the Council on Environmental Quality regulations implementing NEPA require that EISs be prepared for broad Federal actions such as the adoption of new agency programs or for a group of concerted actions to implement a specific policy or plan. They also suggest that DOE and FERC are acting jointly to effect the single goal of establishing transmission projects.

DOE Response

The designation of the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor is not part of a group of concerted agency actions to implement a Federal scheme or program of siting transmission projects. These two National Corridors, and any potential future National Corridors, have been designated for reasons unrelated to each other. Not only is each of the National Corridors being designated today manifestly separate and distinct in size and location, but also different considerations led to the designation of each of them. For example, economic development and energy independence considerations played a role in the Department's decision to designate the Mid-Atlantic Area National Corridor but were not factors in the decision to designate the Southwestern Area National Corridor.

These National Corridor designations are not part of a unitary agency action taken jointly by DOE and FERC. As specified by statute, and described in Section I.A., the factors that FERC will consider when reviewing any application to construct transmission facilities are different from the factors that DOE has considered in designating National Corridors. Although DOE's designations allow FERC to assert jurisdiction in specified circumstances to permit transmission projects, DOE and FERC have separate and distinct statutory obligations and objectives. Congress expressly authorized DOE to identify congestion, and authorized FERC to review permit applications under FPA section 216(b).

C. Authorization for Future Action

Summary of Comments

Several commenters stated that NEPA review is required whenever an agency makes a decision that permits some other party, whether private or governmental, to take action affecting the environment. Commenters claimed that NEPA review is required here because DOE's decision to designate National Corridors provides FERC with jurisdiction to site transmission projects and gives applicants who receive construction permits for transmission projects the authority to exercise the right of eminent domain, without DOE approval, within the National Corridors.

DOE Response

The designation of National Corridors is not a precondition to siting transmission projects. In particular, designation is not a prerequisite for anyone taking actions with environmental consequences within National Corridors. Designation gives no permission nor establishes any entitlement to construct a transmission project. States can still permit transmission facilities, just as they have always done. As described in Section I.A., FPA section 216(g) contemplates continued State action: ''Nothing in this section precludes any person from constructing or modifying any transmission facility in accordance with State law.'' Although FPA section 216(b) establishes a new and additional potential procedural forum for transmission applicants, designation of National Corridors does not in itself authorize development of transmission projects that could not otherwise be built.

D. Ability To Preclude Surface-Disturbing Activity

Summary of Comments

Commenters asserted that an agency cannot delay NEPA review unless the agency reserves the ability to prevent surface-disturbing activities at a later stage. These commenters claimed that after designation of a National Corridor, DOE loses the ability to preclude surface-disturbing activity because permitting authority is in the exclusive control of FERC after designation.

DOE Response

As provided in the Ordering Paragraphs in Section V below, the Department is explicitly reserving the right to rescind, renew or extend the designations or modify the scope of the designations, should circumstances so require.[126]

E. Bias in Favor of Transmission Solutions

Summary of Comments

Certain commenters, including the Sierra Club (National), Sierra Club (Grand Canyon Chapter), and West Virginia Environmental Council stated that the May 7 notice understated the likelihood that National Corridor designation will lead to widespread FERC permitting of transmission projects and growth in associated generation, specifically coal-fired power plants. They commented that National Corridor designation favors a transmission-based solution to congestion and is tantamount to permitting transmission projects.

DOE Response

The Department's designation of National Corridors itself has no environmental impact: It neither permits nor precludes the construction of any transmission projects or any other ground-disturbing activity. One of the primary themes voiced by commenters is that DOE's designation of National Corridors will somehow inexorably lead to the construction of transmission projects and that DOE should, in an EIS, predict their range, extent, and impact on the environment. However, DOE has no authority to site transmission. Moreover, FERC's discretion to approve transmission projects located within National Corridors is circumscribed. As discussed in Section I.A above, FERC may only issue a permit if the applicant has shown that its project will significantly reduce congestion. If competing projects, including non-transmission projects, were to resolve the congestion or constraint problem before the issuance of a FERC permit, the sponsor of a transmission project would be hard pressed to make such a showing. FERC, at the siting stage, will determine whether a transmission-based solution to particular instances of congestion is warranted.

[126] Any such change in a National Corridor designation would be made only after notice and opportunity for public comment.

Any commitment to groundbreaking activities with environmental impacts is made only after FERC authorizes construction. Before that point, FERC will have conducted a full NEPA review of the proposed project.

F. Pending Transmission Proposals

Summary of Comments

Several commenters, including the National Trust for Historic Preservation, NPCA, the Wilderness Society, and the Sierra Club (Grand Canyon chapter), have argued that DOE should prepare a PEIS now based upon transmission projects that are currently under review by State permitting agencies or are currently being planned within the Mid-Atlantic Area National Corridor or the Southwest Area National Corridor.

DOE Response

The Department concludes that conducting a PEIS based on currently pending transmission proposals would be premature and speculative. The Department does not know if these specific proposed projects will be permitted, or if they are permitted, the ultimate location of the transmission facilities. Considering the impacts of pending transmission proposals would inappropriately presume the outcome of permitting actions, first by the States and then by FERC. If the proposed transmission projects are permitted by the States, FERC would never become involved and there would be no Federal action other than DOE's designation. If the transmission projects were not permitted by the States, sponsors of the proposals may or may not seek construction permits from FERC. If FERC were to receive an application, FERC would conduct a full NEPA review. FERC, as a result of its own NEPA review, could very well decide to pick alternative transmission routes that would reduce the environmental impact of currently proposed routes. As described in Sections II.D and III.D, the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor are sufficiently broad to account for numerous alternative transmission routes and sources of generation including renewables and nuclear.[127] Thus, any PEIS performed by DOE now would be entirely speculative and could improperly second-guess both the States and FERC.

G. Cumulative Impacts

Summary of Comments

Certain commenters asserted that DOE should anticipate the impacts from current pending applications for transmission projects and analyze the cumulative impact of such projects in a PEIS. They argue that only DOE, and not FERC, has the ability to assess the overall impact to an area of multiple new transmission facilities and potential associated generation, such as coal-fired power plants.

DOE Response

The Department cannot determine the number, size, or location of new transmission facilities that might be permitted within the National Corridors. The Department also does not know whether any new electricity generation, or what type of generation, will develop in the future. While commenters assert that designation of the Mid-Atlantic Area National Corridor will spur additional coal-fired generation, the Department concludes, as discussed in Section II.G above, that such designation neither favors transmission solutions to congestion over non-transmission solutions nor favors transmission projects accessing one type of generation over transmission projects accessing any other type of generation. Thus, it may be just as likely that renewable or nuclear generation would increase. Cumulative impacts are speculative at this stage; through this designation DOE is not setting criteria for particular transmission facilities, the number of transmission facilities, or type of generation that may be developed within the National Corridors. The Department has no control over how and when any such development might occur and therefore cannot predict or estimate its impacts. It is apparent from a reading of the FPA section 216 that Congress anticipated that the States would be the first to determine whether to site projects within their borders; Congress then gave FERC, in certain specified circumstances, the authority to site projects. If any parties are capable of analyzing or affecting cumulative impacts it would be FERC and the States, and then only after they had actual projects to consider.

H. Planning for Conservation Areas

Summary of Comments

Some commenters, including Sierra Club (National), the ECCP, and the Piedmont Environmental Council, argued that designation of National Corridors will have an immediate impact on conservation easements and State decisions about allocating land as parks and green space. Commenters assert that because existing conservation districts in designated National Corridors are not exempt from potential Federal siting, such areas will lose their State protection. Additionally, commenters claim that because property owners and State planners will anticipate that land within designated National Corridors will be the site of future eminent domain proceedings and transmission construction, property owners will not place property into new conservation easements and States will not designate new protected lands within any designated National Corridors.[128]

DOE Response

The possibility that State land planners and property owners will make land use decisions based on the assumption that there will be future development through environmentally sensitive areas within the Mid-Atlantic Area National Corridor or the Southwest Area National Corridor is too attenuated an impact to require a NEPA review. Analyzing such decisions would require DOE to speculate about actions that are at best weakly linked to the designation of National Corridors, namely how State and property land owners might react to their subjective, perceived risk of FERC granting construction permits for projects that will affect the physical environment in particular sections of the National Corridors.

Even if FERC were to authorize the construction of transmission facilities in the future, FERC would address avoidance of special land use areas in its NEPA review.[129] To the extent that

[127] Arnold & Porter, filing comments on behalf of several Virginia landowners, commented that the Department has issued draft National Corridor designations that are wide to the point of rendering meaningless any environmental review of the National Corridors. *See also* statement of Milton Wagner at June 21, 2007, Phoenix, AZ public meeting. However, the geographic breadth of the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor ensure that FERC has flexibility to choose alternative siting locations if its jurisdiction under FPA section 216(b) is triggered.

[128] Similarly, several commenters argue that designation of National Corridors will lead private sector parties and States to make other decisions based on the assumption that construction of transmission lines is inevitable within the National Corridors. For example, some commenters have said that designation will lead to a decline in the value of real estate in areas within the National Corridors such that residents will move elsewhere. The Department's response to comments on protected lands in this subsection applies with equal force to these comments about other types of planning decisions and commitments made in anticipation of future development within the National Corridors.

[129] *See* FERC Order No. 689, 71 FR 69,440, 69,459, 117 FERC ¶ 61,202 at P 177.

the National Corridors may have any impact on land use planning decisions, those impacts are too speculative and uncertain at this point to meaningfully analyze.

In addition, as described in Section I.A, transmission developers will need rights-of-way in addition to a construction permit when developing State property. The right of eminent domain under FPA section 216 does not apply to State property. Thus, any current State lands will not lose existing conservation protection unless authorized by the appropriate State authorities. In addition, State authorities will not lose any incentive to create new parks or State conservation areas.

I. State Environmental Protection Statutes

Summary of Comments

Certain commenters, including the ECCP, Environmental Defense, the National Trust for Historic Preservation, SELC, the Sierra Club (Pennsylvania Chapter), NJ Highlands Water Protection and Planning, NYDEC, and the Piedmont Environmental Council, raised concerns that designation of National Corridors will have an immediate impact on the environment because it undercuts the ability of States, who are more intimately familiar with local environmental issues and historic artifacts, to implement their own procedural and substantive environmental statutes during the siting process. According to these commenters, State environmental review statutes may, in some instances, be more stringent than NEPA, and such State reviews will be shortchanged in order to meet the one-year timeframe for State action under FPA section 216(b)(1)(C)(i).

DOE Response

The effect of designation of National Corridors on prospective State environmental and cultural reviews would have no physical impact on the environment and is also too remote, indirect, and speculative to require NEPA review. The Department recognizes that designation of National Corridors could theoretically prompt States with lengthy environmental review processes to speed up their environmental and cultural analyses in order to meet the one-year deadline for review established by Congress. However, at the National Corridor designation stage, the environmental effects from such a potential procedural impact are entirely speculative. National Corridor designation may lead to no change in the degree of environmental review or in the role of State expertise in the permitting decision; the States will have an opportunity to share their analysis and expertise during FERC's NEPA comment period. In such instances, even though NEPA may limit the applicability of State environmental review statutes, the substance of a State's environmental review actually becomes an important piece of the NEPA review. Even where State environmental review statutes may be more stringent, FERC's NEPA review will provide a second hard look at environmental impacts. Thus, National Corridor designation may ultimately lead to FERC environmental reviews that are more thorough and/or protective of the environment than State reviews.

J. EPAct Section 368

Summary of Comments

Several commenters, including Environmental Defense, Sierra Club (Grand Canyon Chapter), SELC, and the Advisory Council on Historic Preservation, stated that DOE should be preparing a PEIS because DOE and several other agencies are preparing a PEIS for the designation of corridors on Federal lands in eleven western States under EPAct section 368. For example, Environmental Defense asserts that DOE in both EPAct section 368 and FPA section 216(a) will set the stage for potential site-specific activity and establish energy policy, and that both decisions therefore require a PEIS.

DOE Response

While both EPAct section 368 and FPA section 216(a) call for designation of ''corridors,'' as discussed in Section II.D above the purposes and effects of the two provisions are quite different.

Pursuant to EPAct section 368, the Departments of the Interior, Agriculture, Energy, Defense, and Commerce are required to designate right-of-way corridors on Federal lands in eleven western States for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities. Congress required very different corridors under EPAct section 368 than it authorized under FPA section 216(a)—EPAct section 368 corridors must have a defined centerline, width, and compatible uses. Congress required that the Federal land management agencies designate these right-of-way corridors through amendments to their land use resource management plans or equivalent land use plans. Finally, EPAct section 368 requires the Federal land management agencies to institute procedures to expedite applications to construct energy transport systems within the corridors. As such, EPAct section 368 influences Federal land use planning decisions. EPAct section 368 is ultimately a land use provision, one which arises in a subtitle on ''Access to Federal Lands.'' [130]

In contrast, the Department, in implementing FPA section 216(a), is not establishing right-of-way corridors or making any other land use planning decision that is even remotely connected to ground-breaking activity that might affect the physical environment. In fact, in implementing FPA section 216(a), the Department is designating National Corridors that are sufficiently broad for FERC to select from a wide array of geographic routes for any transmission facilities that it may permit. As such, FERC, not the Department, will make land use choices; the Department here makes no decisions about the suitability of particular geographical routes for future development of transmission facilities.

In sum, EPAct section 368 and FPA section 216(a) are fundamentally different. Because EPAct section 368 necessarily alters how Federal land management agencies manage their lands, the designation of EPAct section 368 right-of-way corridors is an action less removed from ground-breaking impacts than the designation of National Corridors under FPA section 216(a), which does not itself influence land management decisions.

K. NHPA and ESA

Summary of Comments

Several commenters, including the ECCP, Sierra Club (National), National Trust for Historic Preservation, SELC, Sierra Club (Pennsylvania Chapter), Advisory Council on Historic Preservation, NPCA, Wilderness Society, Arnold & Porter (filing comments on behalf of several landowners in Virginia), Virginia State Historic Preservation Office, and Piedmont Environmental Council, express concern about the lack of DOE review pursuant to NHPA section 106 and ESA section 7. The Advisory Council on Historic Preservation requested clarification of the Department's position on whether NHPA section 106 consultation is required for the designation of National Corridors.

DOE Response

As stated above, the Department does not believe that the designation of National Corridors, in itself, is a major

[130] EPAct, Title III, Subtitle F.

Federal action significantly affecting the quality of the human environment, requiring NEPA review. Similarly, and for the same reasons, the designation of National Corridors, in itself, is not an undertaking that has the potential to cause effects on historic properties, requiring NHPA review, nor is the designation of National Corridors a Federal action that is likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species. If FERC jurisdiction were triggered under FPA section 216(b), FERC would conduct all appropriate NHPA and ESA reviews.[131]

V. Ordering Paragraphs

For the reasons set forth in the May 7 notice as clarified in this report above, it is hereby ordered that:

A. In Docket No. 2007–OE–01, the Department designates the Mid-Atlantic Area National Interest Electric Transmission Corridor as a national interest electric transmission corridor pursuant to FPA section 216(a)(2) encompassing the following counties and cities: Kent County, DE, New Castle County, DE, and Sussex County, DE; Washington, DC; Allegany County, MD, Anne Arundel County, MD, Baltimore County, MD, Calvert County, MD, Caroline County, MD, Carroll County, MD, Cecil County, MD, Charles County, MD, Dorchester County, MD, Frederick County, MD, Garrett County, MD, Harford County, MD, Howard County, MD, Kent County, MD, Montgomery County, MD, Prince George's County, MD, Queen Anne's County, MD, St. Mary's County, MD, Talbot County, MD, Washington County, MD, Wicomico County, MD, Worcester County, MD, and City of Baltimore, MD; Atlantic County, NJ, Bergen County, NJ, Burlington County, NJ, Camden County, NJ, Cape May County, NJ, Cumberland County, NJ, Essex County, NJ, Gloucester County, NJ, Hudson County, NJ, Hunterdon County, NJ, Mercer County, NJ, Middlesex County, NJ, Monmouth County, NJ, Morris County, NJ, Ocean County, NJ, Passaic County, NJ, Salem County, NJ, Somerset County, NJ, Sussex County, NJ, Union County, NJ, and Warren County, NJ; Albany County, NY, Bronx County, NY, Broome County, NY, Cayuga County, NY, Chenango County, NY, Clinton County, NY, Columbia County, NY, Delaware County, NY, Dutchess County, NY, Erie County, NY, Franklin County, NY, Fulton County, NY, Genesee County, NY, Greene County, NY, Herkimer County, NY, Jefferson County, NY, Kings County, NY, Lewis County, NY, Livingston County, NY, Madison County, NY, Monroe County, NY, Montgomery County, NY, Nassau County, NY, New York County, NY, Niagara County, NY, Oneida County, NY, Onondaga County, NY, Ontario County, NY, Orange County, NY, Orleans County, NY, Otsego County, NY, Putnam County, NY, Queens County, NY, Renssalaer County, NY, Richmond County, NY, Rockland County, NY, St. Lawrence County, NY, Saratoga County, NY, Schenectady County, NY, Schoharie County, NY, Seneca County, NY, Suffolk County, NY, Sullivan County, NY, Ulster County, NY, Wayne County, NY, Westchester County, NY, and Wyoming County, NY; Belmont County, OH, Carroll County, OH, Columbiana County, OH, Harrison County, OH, Jefferson County, OH, Monroe County, OH, and Stark County, OH; Adams County, PA, Allegheny County, PA, Armstrong County, PA, Beaver County, PA, Bedford County, PA, Berks County, PA, Blair County, PA, Bradford County, PA, Bucks County, PA, Butler County, PA, Cambria County, PA, Carbon County, PA, Centre County, PA, Chester County, PA, Clearfield County, PA, Clinton County, PA, Columbia County, PA, Cumberland County, PA, Dauphin County, PA, Delaware County, PA, Fayette County, PA, Franklin County, PA, Fulton County, PA, Greene County, PA, Huntingdon County, PA, Indiana County, PA, Jefferson County, PA, Juniata County, PA, Lackawanna County, PA, Lancaster County, PA, Lebanon County, PA, Lehigh County, PA, Luzerne County, PA, Mifflin County, PA, Monroe County, PA, Montgomery County, PA, Montour County, PA, Northampton County, PA, Northumberland County, PA, Perry County, PA, Philadelphia County, PA, Pike County, PA, Schuylkill County, PA, Snyder County, PA, Somerset County, PA, Susquehanna County, PA, Union County, PA, Wayne County, PA, Washington County, PA, Westmoreland County, PA, Wyoming County, PA, and York County, PA; Arlington County, VA, Clarke County, VA, Culpeper County, VA, Fairfax County, VA, Fauquier County, VA, Frederick County, VA, Loudon County, VA, Madison County, VA, Page County, VA, Prince William County, VA, Rappahannock County, VA, Rockingham County, VA, Shenandoah County, VA, Stafford County, VA, Warren County, VA, City of Alexandria, VA, City of Harrisonburg, VA, City of Fairfax, VA, City of Falls Church, VA, City of Manassas, VA, City of Manassas Park, VA, and City of Winchester, VA; and Barbour County, WV, Berkeley County, WV, Boone County, WV,[132] Braxton County, WV, Brooke County, WV, Calhoun County, WV, Clay County, WV, Doddridge County, WV, Gilmer County, WV, Grant County, WV, Hampshire County, WV, Hancock County, WV, Hardy County, WV, Harrison County, WV, Jackson County, WV, Jefferson County, WV, Kanawha County, WV, Lewis County, WV, Marion County, WV, Marshall County, WV, Mason County, WV, Mineral County, WV, Monongalia County, WV, Morgan County, WV, Nicholas County, WV, Ohio County, WV, Pendleton County, WV, Pleasants County, WV, Pocahontas County, WV, Preston County, WV, Putnam County, WV, Randolph County, WV, Ritchie County, WV, Roane County, WV, Taylor County, WV, Tucker County, WV, Tyler County, WV, Upshur County, WV, Webster County, WV, Wetzel County, WV, Wirt County, WV, and Wood County, WV. This designation is effective on October 5, 2007 and will remain in effect until October 7, 2019. The Department reserves the right to rescind, renew or extend this designation or modify the scope of this designation after notice and opportunity for comment.

B. In Docket No. 2007–OE–02, the Department designates the Southwest Area National Interest Electric Transmission Corridor as a national interest electric transmission corridor pursuant to FPA section 216(a)(2) encompassing the following counties: Imperial County, CA, Kern County, CA, Los Angeles County, CA, Orange County, CA, Riverside County, CA, San Bernardino County, CA, and San Diego County, CA; and La Paz County, AZ, Maricopa County, AZ, and Yuma County, AZ. This designation is effective on October 5, 2007 and will remain in effect until October 7, 2019. The Department reserves the right to rescind, renew or extend this

[131] *See, e.g.,* FERC Order No. 689, 71 FR 69,440, 69,457, 117 FERC ¶ 61,202 at P148 (''The Commission will not authorize construction, however, until the permittee has complied with all the requirements of NHPA and all other relevant environmental laws.''). The Wilderness Society asserts that DOE must engage in consultation and carry out conservation programs for listed species pursuant to ESA section 7(a)(1). Section 7(a)(1) is not triggered by specific Federal actions and, in particular, not by ones that are not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.

[132] Boone County, WV, was inadvertently omitted from the narrative description of the draft Mid-Atlantic Area National Corridor in the May 7, 2007, notice at 72 FR 25909. It was correctly included in the May 7, 2007 map of the draft National Corridor.

designation or modify the scope of this designation after notice and opportunity for comment.

C. The Department grants party status in Docket No. 2007–OE–01 to all persons who either: (1) Filed comments marked ''Attn: Docket No. 2007–OE–01'' electronically at *http://nietc.anl.gov* on or before July 6, 2007; (2) mailed written comments marked ''Attn: Docket No. 2007–OE–01'' to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, that were received on or before July 6, 2007; or (3) hand-delivered written comments marked ''Attn: Docket No. 2007–OE–01'' at one of the public meetings. Only those persons who are parties to the proceeding in Docket No. 2007–OE–01 and who are aggrieved by the Department's order in that docket may apply for rehearing pursuant to FPA section 313.

D. The Department grants party status in Docket No. 2007–OE–02 to all persons who either: (1) Filed comments marked ''Attn: Docket No. 2007–OE–02'' electronically at *http://nietc.anl.gov* on or before July 6, 2007; (2) mailed written comments marked ''Attn: Docket No. 2007–OE–02'' to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, that were received on or before July 6, 2007; or (3) hand-delivered written comments marked ''Attn: Docket No. 2007–OE–02'' at one of the public meetings. Only those persons who are parties to the proceeding in Docket No. 2007–OE–02 and who are aggrieved by the Department's order in that docket may apply for rehearing pursuant to FPA section 313.

E. Any application for rehearing must be either: (1) Mailed or hand-delivered to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or (2) faxed to 202–586–8008. Applications for rehearing of the order in Docket No. 2007–OE–01 must be marked ''Attn: Docket No. 2007–OE–01.'' Applications for rehearing of the order in Docket No. 2007–OE–02 must be marked ''Attn: Docket No. 2007–OE–02.'' Applications for rehearing must be received by 5 p.m., Eastern time November 5, 2007. The Department will not accept responses to requests for rehearing.

Note: Delivery of U.S. Postal Service mail to DOE continues to be delayed by several weeks due to security screening; therefore, applicants who choose to mail their rehearing applications are encouraged to use express mail.

The Secretary of Energy has approved the publication of this notice.

Issued in Washington, DC on October 2, 2007.

Kevin M. Kolevar,

Assistant Secretary, Electricity Delivery and Energy Reliability.

Acronyms

ACC Arizona Corporation Commission
AEP American Electric Power
APA Administrative Procedure Act
CAISO California Independent System Operator
CARI Communities Against Regional Interconnect
CEC California Energy Commission
CPUC California Public Utilities Commission
DeDNR Delaware Department of Natural Resources and Environmental Control
DOE U.S. Department of Energy
DPV2 Devers-Palo Verde 2 project
ECCP Energy Conservation Council of Pennsylvania
EEI Edison Electric Institute
EIS Environmental Impact Statement
EPAct Energy Policy Act of 2005
ESA Endangered Species Act
FERC Federal Energy Regulatory Commission
FPA Federal Power Act
IID Imperial Irrigation District
ISO Independent System Operator
LMP Locational Marginal Price
MiPSC Michigan Public Service Commission
MISO Midwest Independent System Operator
NARUC National Association of Regulatory Commissioners
NEPA National Environmental Policy Act
NERC North American Electric Reliability Council
NHPA National Historic Preservation Act
NJBPU New Jersey Board of Public Utilities
NJDEP New Jersey Department of Environmental Conservation
NPCA National Parks Conservation Association
NPCC Northeast Power Coordinating Council
NYDEC New York Department of Environmental Conservation
NYFB New York Farm Bureau
NYISO New York Independent System Operator
NYPSC New York Public Service Commission
ODEC Old Dominion Electric Cooperative
OMS Organization of MISO States
PaDEP Pennsylvania Department of Environmental Conservation
PaPUC Pennsylvania Public Utilities Commission
PEIS Programmatic EIS
PHI Pepco Holdings, Inc.
PJM PJM Interconnection
RTO Regional Transmission Operator
SCE Southern California Edison Company
SDG&E San Diego Gas and Electric
SELC Southern Environmental Law Center
TEPPC Transmission Expansion Policy Planning Committee of the Western Electricity Coordinating Council
WAPA Western Area Power Administration
WIA Wyoming Infrastructure Authority
WIRES Working Group for Investment in Reliable and Economic Electric Systems

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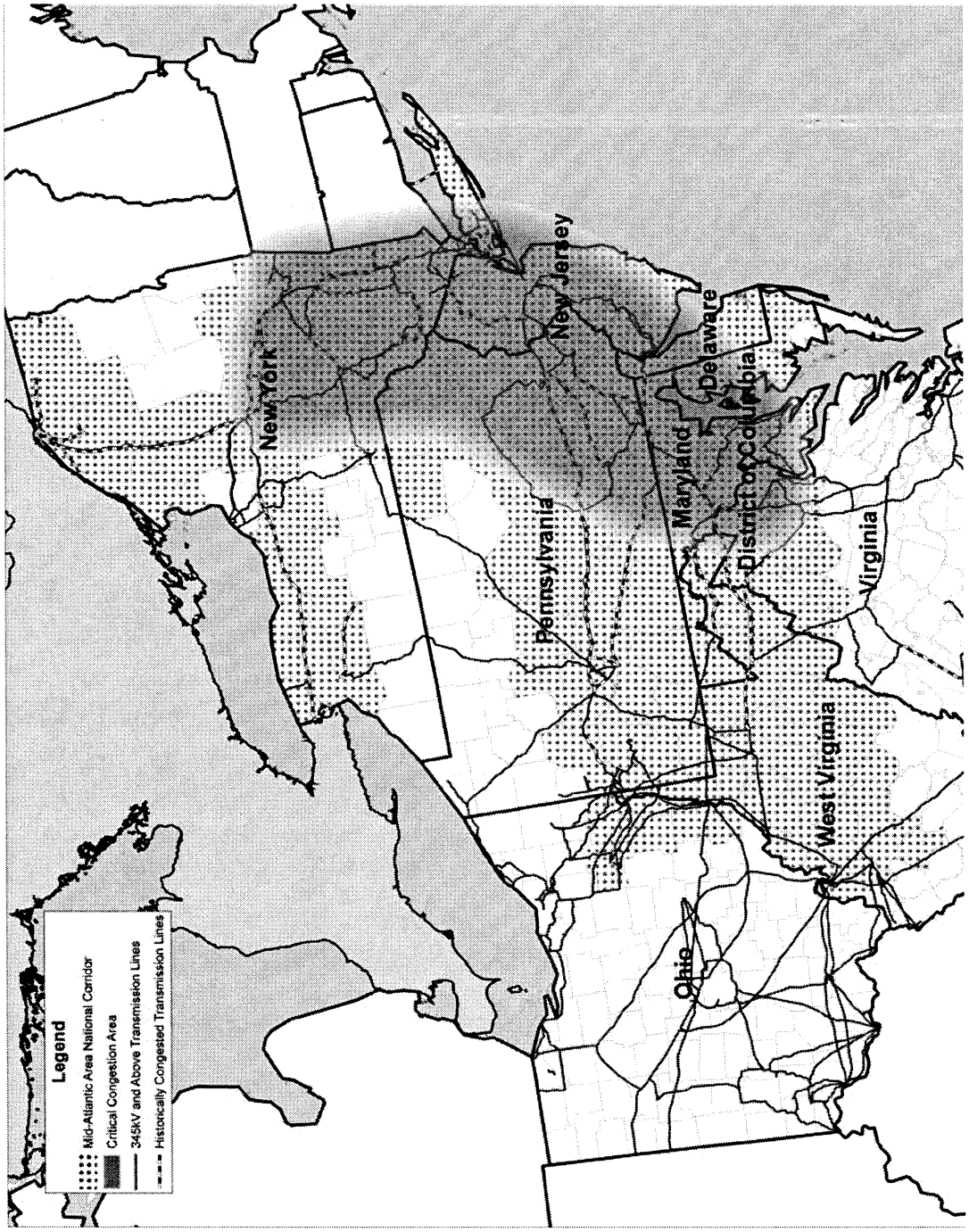
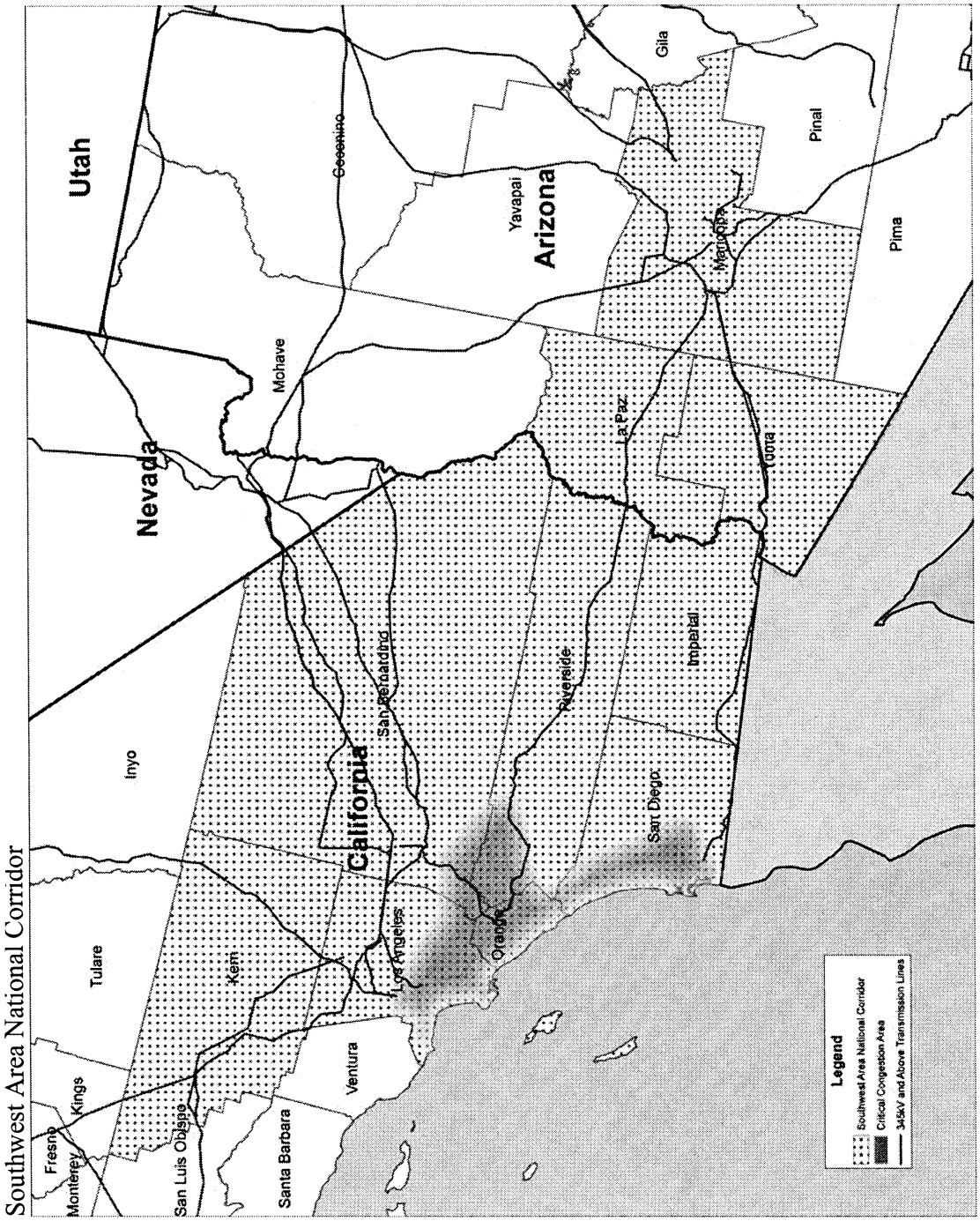
Mid-Atlantic Area National Corridor





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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Hydrogen Storage Engineering Center of Excellence Pre-Solicitation Meeting

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of pre-solicitation meeting on October 15, 2007 in San Antonio, Texas.

SUMMARY: The Department of Energy (DOE) Hydrogen, Fuel Cells and Infrastructure Technologies Program is holding a pre-solicitation meeting on a planned Hydrogen Storage Engineering Center of Excellence on October 15, 2007 in San Antonio, Texas at the Henry B. Gonzalez Convention Center at 3:30 p.m. CDT. A Web cast will also be available for anyone unable to attend the meeting in person. Detailed information regarding the meeting location, Web cast, and the solicitation materials for comment will be updated on the DOE Web site, *http://www.hydrogen.energy.gov/news_storage_center.html*.

At the meeting, DOE seeks questions and comments from the public on the draft solicitation materials that will be posted on this Web site. This information will be used in determining the scope of work of this new center of excellence and the associated solicitation, otherwise known as a