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June 29, 2010

Sent via E-mail (congestion09.@anl.gov)

Mr. David Meyer
U.S. Department of Energy
Office of Electricity Delivery and Energy Reliability
1000 Independence Avenue, SW
Washington, DC 20585.

Re: Comments of the New York State Public Service Commission on the U.S.D.O.E.
2009 National Electric Transmission Study, December 2009.

Dear Mr. Meyer,

I am writing in response to the Notice of Availability of 2009 National Electric Transmission Congestion Study and Request For Comments, 83 *Federal Register* 22770 (April 30, 2010).

Enclosed please find the comments of the Public Service Commission of the State of New York.

Very truly yours,

Sean Mullany
Assistant Counsel

Attachment

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

Notice of Availability of 2009 National Electric Transmission Congestion
Study and Request for Comments

**COMMENTS OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK**

BACKGROUND

Pursuant to the Energy Policy Act of 2005, the Secretary of Energy (Secretary) is required to conduct a nationwide study of electric transmission congestion, and issue a report based on the study in which the Secretary may designate “any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers” as a National Interest Electric Transmission Corridor (NIETC).¹ If the Secretary designates an area as a NIETC, the Federal Energy Regulatory Commission (FERC or Commission) is authorized to issue permits for the construction and modification of electric transmission facilities within the NIETC, provided certain findings are made.²

On April 30, 2010, the United States Department of Energy (DOE) issued a notice in the Federal Register of the issuance of its 2009 National Electric Transmission Congestion Study (the “2009 Congestion Study”). DOE has requested comments on the 2009 Congestion Study, on future steps for identifying and addressing electric transmission congestion, and on the possible designation of NIETCs.

¹ 16 U.S.C. §824p(a)(2).

² *Id.* FERC must find, *inter alia*, that a state with authority to approve the siting of transmission facilities has withheld approval for more than a year after the filing of an application, or conditioned approval so that the proposed project will not significantly reduce transmission congestion or is not economically feasible.

The New York State Public Service Commission (NYPSC) hereby submits its comments.

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EXECUTIVE SUMMARY

The Federal Power Act does not require the designation of a NIETC. Rather, it provides that the Secretary may designate a NIETC but only in geographic areas “experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers.” 16 U.S.C. §824p(a)(2). The 2009 Congestion Study fails to accomplish the important task of identifying areas where transmission constraints and congestion adversely affect consumers to such an extent that the designation of a NIETC, and the creation of Federal “backstop” transmission siting authority, is justified.

DISCUSSION

A. DOE Must Consider the Consumer Costs of Addressing the Congestion It Identified

The 2009 Congestion Study acknowledges that congestion is not necessarily harmful because the costs of relieving it may exceed the costs of the congestion itself. 2009 Congestion Study, at 8. This, of course, is a fundamental principle of transmission planning which Congress explicitly recognized. The statute directs DOE not to just identify congestion, but to identify

congestion that “adversely affects consumers.” 16 U.S.C. §824p(a)(2). Congress also explicitly directed DOE to consider the economics of congestion. *See* 16 U.S.C. §824p(a)(4)(A) & (B).

Therefore, to identify congestion that “adversely affects consumers,” DOE must, at some level, perform a cost-benefit analysis to determine whether any action is needed. Such an analysis should also consider the costs and benefits of the various alternatives, which include not only new or upgraded transmission, but also new generation and/or demand reduction within constrained areas. These different approaches may have widely varying costs, but NIETC designations materially promote transmission solutions. This is because transmission projects proposed within NIETCs enjoy clear procedural advantages, including “backstop,” and abbreviated, Federal permitting, as well as expedited environmental review. Moreover, transmission projects proposed within NIETCs may be eligible for incentive rates. Such projects will ultimately be funded by consumers, and Congress intended to both protect consumers against unnecessary costs and preserve the primary state role in transmission siting. That is why the statute only allows NIETC designations in areas where consumers are “adversely affected,” and only allows FERC “backstop” siting authority when states cannot, or do not, reach a decision on a completed permit application within a year.

For these reasons, DOE cannot designate a corridor unless it demonstrates, based on its study, that action is needed to relieve congestion within the NIETC. To do this, DOE must perform an economic analysis, and cannot justify a NIETC designation without (1) quantifying the consumer costs of the congestion it has identified; (2) quantifying the costs of relieving such congestion; and (3) weighing the costs of congestion against the costs and benefits of relieving it. Absent a showing that the benefits of relieving the congestion will exceed the costs of doing so, a

NIETC designation is not legally authorized. DOE cannot conclude congestion “adversely affects consumers” without a showing that action of some kind is justified.

The 2009 Congestion Study itself recognizes the central role of economics in identifying whether congestion is harmful enough to authorize a NIETC designation. It notes, for example, that “the cost of building new facilities to remedy congestion over all affected lines may exceed the cost of the congestion itself, and, therefore, remedying the congestion would not be economic.” 2009 Congestion Study, at p. viii. It observes that “although there are numerous locations where transmission constraints cause economic congestion and occasional operational reliability problems, at present there are no other large areas that would justify formal identification as a congestion area.” 2009 Congestion Study, at p. xi.

Despite this, the 2009 Congestion Study claims that “congestion that creates ... increases in economic costs to consumers should be addressed.” 2009 Congestion Study, at p. 40 (emphasis added). This claim is fundamentally flawed because, as the above-quoted statements by DOE recognize, “congestion that increases economic costs to consumers” does not necessarily need to be addressed. Absent a significant demonstrated reliability need, if the “solution” is more expensive than the “problem,” the congestion does not need to be addressed, and a NIETC designation is not warranted. DOE’s Study essentially ignores this fundamental principle of transmission system planning because the study does not identify, at any level of generality, the potential costs of relieving the congestion DOE identified. As a result, the 2009 Congestion Study is fatally flawed and does not support any finding that consumers are “adversely affected” by the congestion DOE identified in New York State.

DOE’s failure is not only contrary to basic principles of transmission system planning, it is also contrary to Section 216 of the Federal Power Act. Congress explicitly recognized that

congestion is not harmful *per se*, and directed DOE to identify areas where action is needed, because congestion relief is warranted, for economic or other valid reasons. *See* 16 U.S.C. §824p(a)(2). Like the earlier study, however, the 2009 Congestion Study does not accomplish this, because it does not identify areas where constraints and congestion must be addressed. Instead of identifying where problems require action, the 2009 Congestion Study purports to identify “problems” where more study is needed to determine if action is required. 2009 Congestion Study, at p. viii (stating that “a finding that a transmission path or flowgate is frequently congested should lead to further study ...”) (emphasis added); 2009 Congestion Study, at p. 8 (claiming “[t]he purpose of this study is to identify congestion, not make determinations on whether ... it should be mitigated”) (emphasis added).

This is simply insufficient. Congress directed DOE to periodically perform detailed studies and, based on those studies, identify where consumers are adversely affected. Congress directed DOE to do this so that FERC can issue permits for transmission facilities when states cannot act, or fail to act within one year. DOE cannot designate transmission corridors based on a finding that more study is needed, that there “might” be a need to take action, or that consumers “may” benefit from congestion relief. To designate a corridor, DOE must show a need to take action, not merely a need for more study. Moreover, to demonstrate a need for action, DOE must examine the benefits and costs of congestion relief. In the realm of transmission system planning, and congestion analysis, identifying a “problem” requires considering whether congestion relief will improve matters, or instead impose unwarranted costs. Any suggestion that DOE can identify “problems” without identifying whether any “solutions”

are needed is at odds with the statute, and with how transmission system planning, and transmission congestion analysis, has been performed for decades.³

DOE's 2009 Congestion Study should also reflect the learning of the Federal Energy Regulatory Commission ("FERC") which has long recognized such basic principles. In Order 890,⁴ FERC required transmission providers to perform economic planning studies examining "significant and recurring" congestion, in order to determine whether "transmission upgrades or other investments can reduce the overall costs of serving native load." *72 Federal Register*, at 12333, ¶524. FERC's Order 890 recognized the importance of identifying, at the systems level rather than on a project-specific basis, whether there are available economic upgrades to transmission systems. *72 Federal Register*, at 12333-34, ¶543.⁵

Examining the economics of transmission congestion does not require the "daunting task" of reviewing every single instance of congestion. *See* USDOE, Docket Nos. 2007-OE-01, 2007-OE-02, National Electric Transmission Congestion Report, *72 Federal Register* 56992, 57003 (October 5, 2007). To the contrary, the NYISO succinctly explained the process in its 2009 Congestion Assessment and Resource Integration Study.⁶ According to the NYISO,

³ For an illustration of how such planning is performed, *see* NYISO, 2009 Comprehensive Reliability Plan, Comprehensive System Planning Process, Final Report, at p. i (May 19, 2009) (referring to the NYISO's economic planning process, called the Congestion Assessment and Resource Integration Study (CARIS), which was scheduled to commence in the summer of 2009)

⁴ FERC Docket Nos. RM05-17-000 and RM05-25-000; Order No. 890, Preventing Undue Discrimination and Preference in Transmission Service, *72 Federal Register* 12266 (March 15, 2007).

⁵ In addition, FERC's findings in Order 890 contrasted sharply with DOE's. In its prior NIETC designation orders, DOE relied on a single, novel and undefined, metric (*i.e.*, "persistent") for determining whether congestion "adversely affects consumers." DOE found that all "persistent" congestion necessarily "adversely affects consumers," based on a finding that "persistent" congestion typically warrants further study. In Order 890, FERC reached the opposite conclusion, saying "we do not believe that any single metric, or group of metrics, is adequate" to determine whether economic study is warranted. *72 Federal Register*, at 12333, & ¶546.

⁶ The NYISO also clearly described why the "problem" cannot be divorced from assessing the need for a "solution," because the inquiry necessarily involves the balancing of costs: "[W]hen the price difference between nearby, more expensive generation and more distant, cheaper power resources is sufficiently high for enough time, it may be economically feasible to relieve that congestion by building or upgrading transmission

Phase 1 of its study begins “with an assessment of historic and future congestion on the New York State bulk power transmission system and provides an analysis of the potential costs and benefits of relieving that congestion.” NYISO, 2009 Congestion Assessment and Resource Integration Study, CARIS Phase 1, p. “i” (January 12, 2010).

In response to FERC’s Order 890, the NYISO has established an economic planning process to evaluate proposed investments in generation, transmission, and demand response on a consistent basis. This process is known as the Congestion Assessment and Resource Integration Study (“CARIS”). CARIS evaluates transmission projects based on comparing their costs to expected economic benefits, measured as system-wide production cost savings. Projects showing net benefits are eligible for cost recovery under the NYISO tariff, subject to a vote by the beneficiaries (*i.e.*, Load-Serving Entities expected to see price reductions) to demonstrate support for the projects. DOE should, in like manner, develop a consistent approach to identifying and evaluating (1) the costs of the congestion it identifies; and (2) the costs and benefits of potentially relieving such congestion.

B. DOE’s Findings Regarding New York Are Flawed

DOE’s conclusions about congestion in and around southern New York are based on outdated information and unsupported commentary, and ignore facts presented in current studies. The 2009 Congestion Study states that, “[a]s long as New York’s electric reliability and economics depend to a significant degree on electricity imports through New Jersey, Pennsylvania and neighboring states, tensions will remain over how to balance the needs and costs across the region.” 2009 Congestion Study, at p. “x”.

systems, building a less expensive power source in closer proximity to the load, or by reducing the demand for power.” 2009 Congestion Assessment and Resource Integration Study, CARIS Phase 1, p. “i” (January 12, 2010) (emphasis added). The NYISO’s phrase “sufficiently high” also demonstrates the need to study both the magnitude and duration of congestion. DOE’s prior reliance on the concept of “persistent” congestion was erroneous, in part, because it ignored the magnitude of congestion.

If DOE is referring to the circumstance where New York State “wheels” approximately 1000 MW from New York State through New Jersey, and thence into New York City, this situation has existed since the 1970’s. Ratepayers in New York State paid for the transmission facilities that support this transfer of power, and this is an example of efficient use of transmission facilities to meet loads across control area boundaries. As such, it is consistent with accepted principles of transmission system planning and operation, and does not, in any reasonable manner, support a finding of constraints or congestion that “adversely affects” consumers, either in New York State or elsewhere.

DOE’s reference to “tensions” over how to balance the needs of New York, New Jersey, Pennsylvania and neighboring states, 2009 Congestion Study, at p. “x”, refers to circumstances of long standing, that do not, without more analysis and consultation, justify a corridor designation.⁷ DOE’s suggestion, that “price differentials” across the region create such tensions,

⁷ It should be noted that the 2009 Study purports to “not make recommendations concerning existing or new National Corridor designations.” 2009 Congestion Study, at p. vii. This is contrary to what Congress intended. Congress directed DOE to conduct its study “in consultation with affected States,” and to “issue a report, based on the study, which may designate” a NIETC. 16 U.S.C. §824p(a)(2). DOE itself has previously recognized that the statutory phrase “affected States” refers to States affected by NIETC designations. *See* 72 *Federal Register* 25838, 25850 (May 7, 2007) (DOE attempting to justify its failure to consult with affected States during the Study by claiming “[i]t is difficult to know which States are ‘affected’ until the conclusions of the congestion study are known”). *See, also*, 72 *Federal Register* 56992, 57000 (October 5, 2006) (DOE stating that, “[i]f 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”).

Because any designation must be “based on” the study, and DOE must consult during the study with States affected by a corridor designation, the draft study must actually speak to whether a corridor designation is warranted. Congress wanted the States’ input before DOE makes up its mind, for example, on whether consumers are “adversely affected” such that a corridor designation is warranted. DOE’s refusal to proffer corridor designations recommendations in the study, and effectively separate the study from DOE’s corridor designation decision-making process, is contrary to the statute. This artificial separation is inconsistent with Congress’s requirement that DOE “consult with” affected States. Congress, recognizing the States’ strong interests, expertise, and long experience, preserved the States’ primary jurisdiction over transmission siting. To protect the States’ important role, DOE is required to listen to, and carefully consider, the States’ views before reaching conclusions on corridor designation(s). DOE cannot, in effect, “hide” its thinking on corridor designations until after the Study is completed. Thus, the failure of the Study to offer recommendations regarding NIETC designations renders the States “consultation” right to little more than a nullity. It is for this reason, primarily, that these comments repeatedly speak to the deficiencies of the 2009 Congestion Study relative to the minimum statutory requirements for a corridor designation.

and that a failure to ease present levels of congestion “could compromise continued reliability,” are speculative and unsubstantiated. Price differentials, generally speaking, provide needed signals for appropriate responses by market participants. DOE has made no showing that identified price differentials fail to achieve this purpose.

As for reliability concerns, the most recent study performed by the NYISO, which employed a ten-year planning horizon and evaluated the future reliability of the New York bulk power system, “did not identify any reliability needs[,]” and concluded “no solutions are necessary over the ten-year planning horizon 2009 - 2018.” NYISO, 2009 Comprehensive Reliability Plan, Comprehensive System Planning Process, Final Report, at p. “i” (May 19, 2009). In addition, a recent joint study between ISO New England, NYISO and PJM found no reliability issues in the New Jersey/New York City area. The 2009 Northeast Coordinated System Plan found “[n]o significant reliability issues were uncovered” during testing of the PJM/NYISO interface located between Southeast NY (SENY) and Northern Public Service, New Jersey, “under standard PJM reliability testing procedures” ISO New England, New York ISO, and PJM, 2009 Northeast Coordinated System Plan, at p. 18 (2009).

Given the findings of these recent studies, DOE’s highly abstracted conclusion that, “as long as New York’s electric reliability and economics depend to a significant degree on electricity imports through New Jersey, Pennsylvania and neighboring states, tensions will remain over how to balance the needs and costs across the region[,]” 2009 Congestion Study, at p. “x”, offers little of value, and provides no basis for a corridor designation.

Elsewhere, DOE indicates that the overall needs of southeastern New York are at the center of its Mid-Atlantic NIETC designation. According to DOE, “[t]he single greatest challenge in the Mid-Atlantic region is how southeastern New York will meet its electricity

needs in the years ahead—with what combination of in-state resource development and efficiency, imports from New England and Canada to the north and east, and imports from the Midwest and south carried on cables through New Jersey and Pennsylvania. This issue lies at the heart of the Mid-Atlantic’s future.” 2009 Congestion Study, at p. 40. However, this challenge is not unique to southeastern New York. In fact, many urban areas are load pockets that require some relatively expensive local generation to serve load reliably. While other regions support such local generation with Reliability-Must Run (RMR) contracts, recovered through out-of-market uplift, New York chooses to rely primarily on transparent market prices.

DOE concludes “[t]he tension between New York and its neighbors, combined with the closely related question of how all the eastern states will meet their renewable portfolio standard requirements, highlights the growing importance of interregional, interconnection-wide scenario analysis and system planning across the East.” 2009 Congestion Study, at p. 41. Congress did not merely require DOE to observe that the grid is important, and DOE does not explain how such concerns support the legally-mandated identification of congestion and constraints that “adversely affects consumers.” Nor did Congress allow DOE to designate corridors based merely on a finding that the grid is interconnected, and the states’ interests, therefore, are interrelated.

DOE’s suggestion that the needs of New York alone warrant a corridor designation also appears to ignore that transfer capacity between New Jersey and New York City/Long Island has been increased since the 2006 Congestion Study. The new lines are examples of transmission construction in response to market signals. The upgrades were economic, and were not required for reliability. Indeed, except for the 1000 MW of New York power “wheeled” through a portion of New Jersey and into New York City, energy imports into New York are economic,

and there is no demonstrated need for additional imports into New York for reliability reasons. This conclusion is supported by the NYISO's 2009 Comprehensive Reliability Plan, which did not identify any reliability needs over a ten-year planning horizon, thereby demonstrating the New York Control Area is self-supporting for reliability. NYISO, 2009 Comprehensive Reliability Plan, Comprehensive System Planning Process, Final Report, at p. i (May 19, 2009). The 2009 Congestion Study acknowledges this, but then notes that "[t]he ISO cautions, however, that the New York system could need resources as soon as 2010 if it experiences both high load growth and extreme hot weather." 2009 Congestion Study, at pp. 41-42 & nn. 83 & 84. Apparently, DOE is relying on this to support a claim that there is a problem, not because the NYISO's CARIS Study identified a problem or need, but because the CARIS Study acknowledged that a problem may arise from uncontrollable circumstances. The statute, however, requires a study and a showing by DOE that there is a problem, to support any corridor designation. DOE cannot justify a NIETC designation merely because the latest studies, and the best current thinking, cannot provide certainty or protection against all risks.

As for concerns expressed by PJM about upgrades that benefit New York rather than New Jersey, 2009 Congestion Study, at 40-41, the upgrades in question were undertaken to meet PJM's needs, not New York's. The studies underlying those upgrades were performed without input from New York, and the projects were not designed to accommodate needs that might exist in New York. That New York might see some benefit from the PJM upgrades does not suggest New York is somehow unfairly profiting from upgrades within PJM. If future projects make energy from PJM available to New York, then FERC, under its established practices, will require such projects to pay any costs that are properly related to their use of PJM's system.

Elsewhere, the 2009 Congestion Study states that “MISO and PJM experienced greater congestion than did either NYISO or ISO-NE in 2007. MISO and PJM experienced the greatest amount of economic congestion in 2007. Both regions had a significant number of transmission constraints with shadow prices exceeding \$500/MWh.⁸ In contrast, shadow prices within NYISO rarely exceeded \$200/MWh. The general pattern of congestion within and across MISO and PJM was one of increasing intensity from west to east.” 2009 Congestion Study, at p.37.

Thus, according to DOE’s own statements, the shadow prices for congestion in New York State are relatively low. Notably, this is a high-cost area for constructing new transmission. For these reasons, New York studies show these levels of congestion are economic. *See NYISO, 2009 Congestion Assessment and Resource Integration Study, CARIS Phase 1*, (January 12, 2010).⁹ The 2009 Congestion Study recites factors previously considered, in the 2006 Congestion Study, regarding the Mid-Atlantic “Critical Congestion Area.” These factors included (1) “[t]he high electricity consumption and load growth of metropolitan New York City and Long Island, both of which are generation-short and face high electricity prices[;]” (2) “[t]he need for voltage support in southeastern New York[;]” (3) “[t]he region’s high dependence upon costly (and price-volatile) oil- and gas-fired generation[;]” and (3) “[t]ransmission constraints, reliability violations, and limited local generation in New Jersey,

⁸ The 2009 Congestion Study, at p. 31 & n. 62, says “[t]he shadow price of a constraint measures the incremental change in operating costs that would result from an incremental 1-MW change in the constraint limit.”

⁹ Note that, in the NYISO’s CARIS, Phase 1 study, the only projects having a benefit/cost ratio of 1 are (a) demand-side management/energy efficiency projects - if the solution can be accomplished with low-cost projects, and an upgrade to the Leeds-Pleasant Valley – again, if it can be accomplished at the low end of cost projections. It is highly unlikely that such projects would be sponsored, given such narrow margins.

If DOE disagrees with this statement, its proper recourse is to consult with the State of New York, before completing its 2009 Study, and, in doing so, to allow New York State to meaningfully contribute to DOE’s review on this critically important question of identifying “uneconomic” congestion. The CARIS Study is properly the subject of consultation between DOE and New York State’s experts.

which may nonetheless be pressed to serve as a pathway for new transmission and additional electricity flows to serve New York City[.]” 2009 Congestion Study, at p.38-40.

However, as the NYISO’s CRP demonstrates, the New York Control Area is not generation-short, the voltage support issue has been resolved, and there are no reliability violations. NYISO, 2009 Comprehensive Reliability Plan Comprehensive System Planning Process Final Report, (May 19, 2009). The NYISO’s 2009 Reliability Needs Assessment Comprehensive System Planning Process, Final Report, at p. 3-12, Table 3-7 (January 13, 2009) shows that, based on current and future resources, the resource/load ratios in New York State, including Zones J and K (*i.e.*, New York City and Long Island, respectively) meet applicable reserve requirements. The reserve requirements for 2009 were 116.5% (Statewide), 80% (Zone J), and 99% (Zone K) respectively.¹⁰ NYISO concluded “[t]he load forecast, ... coupled with the increase in unit additions and SCRs, produced the 2009 RNA findings of no reliability needs for the Study Period 2009-2018.” Not included in the 2009 RNA study were two additional generation projects to serve Zone J (NYC): Astoria Phase II (550 MW) and Bayonne (512 MW). These are currently under construction and scheduled to enter service in 2011. *See* NYISO, 2010 “Gold Book,” Table IV-1. These projects are expected to increase Zone J (NYC) generation well above the 80% in-city reserve requirement post 2011. Their combined 1063 MW would add approximately 9% to the Zone J resource/load ratio. The bottom line is that the New York Control Area is fully capable of providing for its own reliability needs, without depending on assistance from its neighboring states, and any imports of energy

¹⁰ While Zone J (NYC) dips below the 80% level in the out years, Table 4-4 in the NYISO’s RNA demonstrates that Zone J stays within reliability criteria of 1-in-10 (= 0.1) throughout the study period. NYISO, 2009 Reliability Needs Assessment, Comprehensive System Planning Process, Final Report, at p. 4-3, Table 4-4 (January 13, 2009)

into New York State, or contracts for capacity to be imported into New York State, are purely economic.

It should also be noted that, during the 2003 blackout, northern New Jersey separated from PJM and was supported by, and under operational control of, the NYISO.¹¹ This is further evidence that upgrades within PJM were undertaken to meet PJM's needs, not the needs of New York. Moreover, new interties between New Jersey and New York City/Long Island paid, and continue to pay, for upgrades to the New Jersey system to effectuate these interconnections. The new interties between New Jersey and New York City/Long Island address the very concerns DOE claims to have. Even if one assumes the prior corridor designations were justified, which New York State is (at present) contesting in court, the transmission interties between New Jersey and New York City/Long Island, that were put into service after the 2006 Congestion Study, indicate designations are less warranted now.

Among what DOE describes as “conclusions pertinent to past and future transmission congestion within the Mid-Atlantic region[,]” 2009 Congestion Study, at p. 50, DOE states that “[u]ntil New York has better load and resource balance from sources within and close to NYC, LI and Westchester county, there will continue to be tension between New York's needs and PJM's and significant price differentials across the region.” 2009 Congestion Study, at p. 51. DOE also concludes that “[s]low development of new generation and new backbone transmission facilities could compromise continued reliability in the Washington, Baltimore,

¹¹ When a system breaks apart during an outage, it breaks apart at the weakest points. The fact that northern New Jersey separated from southern New Jersey, and stayed connected to New York, demonstrates that the PSEG system has/had very weak integration of its system with much stronger reliability ties to New York than to itself. Had New York known this, it would have either (a) planned to have sufficient capacity to carry this portion of New Jersey's load during an “islanding” situation; or (b) insisted that New Jersey plan for its own load.

New Jersey and NYC areas.” 2009 Congestion Study, at p. 51. These conclusions appear to discount a number of key facts.

The most current studies performed by the ISO show no identified reliability need in the New York City area. Indeed, DOE’s claim that there “could” be a reliability problem implicitly recognizes, and the most recent studies show, that at present, there are no actual or projected reliability problems. DOE cannot designate a NIETC based on speculation that there “could” be a problem. Moreover, DOE’s Study appears to discount that, since 2000, the New York Control Area has added 7,823 MW of new generation, 1,290 MW of new transfer capacity, and 2,383 MW of demand response. See NYISO, Power Trends 2010, at p. 3 & Fig. 1.¹² The forecasted peak load for 2010 is 33,025 MW. See NYISO, Power Trends 2010, By the Numbers.¹³ NYISO studies demonstrate New York State has sufficient resources to meet this forecasted need. New York State is also projected to serve 30% of its load with renewable resources, and reduce its load by 15% with energy efficiency, by 2015. DOE’s Study, then, provides no basis for finding consumers are harmed by constraints or congestion, since there are no forecasted reliability issues well beyond the 10 year planning horizon, and where economic studies within the New York State have not identified “economic” congestion (*i.e.* congestion that would be economically beneficial to relieve).

To the extent DOE asserts development of new generation to meet New York’s Renewable Portfolio Standards will rely on new resources in other states, there is no indication that new wind resources will create constraints or congestion problems. The NYISO Wind

¹² Available at http://www.nyiso.com/public/webdocs/newsroom/power_trends/power_trends2010_FINAL_04012010.pdf

¹³ Available at http://www.nyiso.com/public/webdocs/newsroom/power_trends/PTrends_2010_-_By_The_Numbers_FINAL.pdf.

Study found that less than 7% of the energy from an assumed 8000 MW of wind generation would be constrained with the existing transmission system, and, thus far, New York State is only seeking development of less than half that amount (*i.e.*, about 3000 MW) of wind power to meet current RPS targets. Thus, New York will not be dependent upon its neighbors to meet its RPS goals, and new wind generation will not create future constraints or congestion problems.

C. Consistent Criteria Are Needed

The 2009 Congestion Study fails to employ consistent and generally-applicable methodologies and criteria for identifying and quantifying congestion throughout the Nation. Instead, for example, the 2009 Congestion Study uses different thresholds, in different areas of the country, to identify economic impacts of congestion. DOE's consulting firm¹⁴ used a \$500/MWh shadow price threshold for the Midwest Independent System Operator ("MISO") and the PJM Regional Transmission Organization ("PJM"), but used a \$200/MWh shadow price threshold for the New York Independent System Operator ("NYISO"). 2009 Congestion Study, at 37.

This use of inconsistent criteria raises basic questions about the validity of DOE's conclusions, and DOE has offered no coherent explanation for its having done so. For example, the 2009 Congestion Study appears to dismiss congestion found within MISO's footprint based on (a) using \$500/MWh threshold, and (b) the fact that 20 of the 29 most congested flowgates (in terms of binding hours) in the MISO's footprint are being addressed by reliability upgrades.¹⁵ Yet, if DOE used a similar \$500/MWh threshold in New York, there are practically no congested

¹⁴ Open Access Tech. Int'l (OATI), Assessment of Historical Transmission Congestion in the Eastern Interconnection, (2009) available at <http://www.congestion09.anl.gov/>.

¹⁵ See 2009 Congestion Study, at p. 58: "MISO's 2008 Transmission Expansion Plan found that congestion charges within the region are relatively low. Examination of the 29 most congested flowgates (in terms of number of binding hours) within the MISO footprint against MISO's expansion plans revealed that approved expansion projects to relieve reliability problems will resolve congestion at 20 of these flowgates".

paths. Alternatively, if DOE used the \$200/MWh threshold it employed in New York to assess congestion in the MISO, presumably it would have identified much more congestion in the MISO. The 2009 Congestion Study, however, dismisses the existence of any significant congestion in the MISO because, “[w]hile transmission constraints and congestion exist elsewhere in the interconnection, they occur over smaller geographic areas affecting fewer customers with lower costs.” 2009 Congestion Study, at p. 66. Would this conclusion still be supported if DOE had employed the \$200/MWh threshold that it applied in New York? Additionally, why did DOE use MISO’s studies to evaluate congestion in the MISO, but seemingly ignore the findings of recent studies in New York State (and instead recite findings from its 2006 Congestion Study) when commenting on congestion in the Northeast? Why, given the high costs of the congestion identified within MISO, was resolving two-thirds of the most congested flowgates enough to obviate any need for a corridor designation? To what extent are DOE’s statements about significant congestion within the MISO footprint consistent with the MISO’s 2008 plan? Finally, if the congestion identified in MISO is much higher-cost than the congestion DOE identified in New York, why did DOE reach opposite conclusions about the need for a corridor designation?

DOE reasoning regarding the New England congestion “area of concern,” 2009 Congestion Study, at pp. 57-58, also appears inconsistent with its approach regarding New York State. DOE said New England is no longer a congestion “area of concern” because (1) “The region has shown that it can permit, site, finance, cost-allocate and build new generation and transmission, while encouraging new demand-side resources as well[;]” and (2) “while some transmission congestion remains in New England, most of the significant transmission constraints have been eliminated by the region’s multi-faceted approach” which involves

“taking a broad, balanced approach to this reliability challenge by making a reasoned assessment of the risks and costs of new generation and transmission construction relative to loadshedding, and has concluded that concerns about the costs and feasibility of new generation and transmission over the short-term outweigh their benefits.” How is this different than the circumstances in New York?

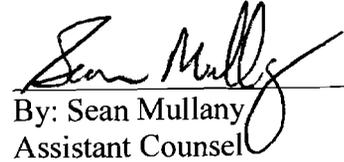
It appears that DOE has relied primarily on population disparities, but it has not explained how, and why, this is dispositive on the question of whether identified congestion “adversely affects consumers.”

Use of consistent criteria is important not only for DOE’s immediate purposes. This Study will also be used by others to make policy decisions, and as input and guidance in other studies. For example, it is expected that DOE’s study results will influence the Eastern Interconnection Planning Collaborative studies and will likely be cited in negotiations regarding cost allocation for resulting inter-regional transmission projects. To get a valid picture of congestion across the country requires that the area results and conclusions be comparable. This can only be achieved if the same criteria are used consistently by DOE, in identifying and evaluating congestion.

CONCLUSION

For the reasons stated above, DOE’s 2009 Congestion Study has fundamental flaws that must be addressed before DOE can rely upon it to designate any NIETC’s, or re-affirm its prior flawed NIETC designations.

Respectfully submitted,
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A handwritten signature in black ink, appearing to read "Sean Mullany", is written over a horizontal line.

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