

COMMENTS OF THE BRANDYWINE CONSERVANCY IN RESPONSE TO THE DEPARTMENT OF ENERGY'S REQUEST FOR COMMENT ON THE POSSIBLE DELEGATION OF CONGESTION STUDIES AND TRANSMISSION CORRIDOR DESIGNATION TO THE FEDERAL ENERGY REGULATORY COMMISSION

The Brandywine Conservancy ("the Conservancy") appreciates the opportunity to offer preliminary comments on the proposed delegation of powers to conduct congestion studies and designate National Interest Electric Transmission Corridors ("NIETCs") from the Department of Energy ("DOE" or the "Department") to the Federal Energy Regulatory Commission ("FERC" or the "Commission"), and offers the following comments.

The Brandywine Conservancy is a regional land trust in operation since 1967 and has permanently preserved approximately 40,000 acres of land in southeastern Pennsylvania and northern Delaware. We hold almost 500 conservation easements and own several preserves.

The Conservancy agrees that an efficient, reliable electric grid is critical to the economy and security of the United States. We understand the Department's desire to help facilitate a low-carbon future and update an aging transmission system. We are concerned that the proposed DOE delegation to FERC of the power to conduct congestion studies, designate transmission corridors on a line-by-line basis, and supersede comprehensive state transmission approval processes, however, does not effectively meet those goals, and would have consequences detrimental to the environment.

A fundamental underlying issue is whether the proposed delegation from DOE to FERC is needed. The Commission staff has explained in background information that in its view, the backstop authority granted to FERC in the Environmental Policy Act of 2005, section 1221, has not been effective because it has been little used. However, traditional transmission planning and siting has continued since 2005, and states have approved new lines. Electricity demand in the United States has decreased over the past few years, due in part to the economy, but also due to increased use of more efficient technologies. The Conservancy supports DOE's effort to solicit public comment on which analysis of the proposed delegation can be based. We encourage the Department to keep an open mind regarding the need for the proposed delegation and alternative approaches as it reviews submissions.

Initially, the proposed corridor and transmission line approval procedure appears problematic to us in several ways. For one, we are concerned that allowing a project developer to apply to FERC and states simultaneously will place pressure on the states to approve the line, within one year, even if the state's process more thorough process would take longer or if the line would not meet the state's valid conditions for approval. We are also concerned that requiring an applicant to begin the FERC pre-filing process when it submits a corridor designation request will place pressure on FERC to approve the corridor as it moves forward with the pre-filing process. Overall, the proposed

process to get transmission lines and NIETCs approved as expeditiously as possible should not sacrifice thorough consideration of need, alternatives and environmental impacts.

Secondly, the Conservancy is troubled by the use of the FERC gas pipeline approval process as a model. The scoping process for pipelines is not consistently transparent, inclusive of or responsive to affected stakeholders, including landowners. It varies depending upon the applicant. The determination of a project's need is based on the applicant's market analysis rather than on a comprehensive, current independent analysis by DOE or FERC. A true analysis of alternatives and needs does not occur. It is also of concern that the environmental review is done by the applicant's consultant, rather than by an independent entity with environmental expertise under the authority of FERC or another independent agency. Once an application is filed with FERC, experience has shown that the project will be granted an approval certificate regardless of comments received on its environmental impact. Moreover, stakeholders, including landowners, are provided very little property-specific information.

Ultimately, a pipeline project may receive a construction permit without having obtained any of the numerous required federal and state agency permits. However, the NEPA analysis cannot truly take place without the completion of the underlying studies required for permits and the permitting agency's evaluation of those studies. Thus, the required balancing of the project's adverse impacts against its benefits is lacking. Further, FERC's practice of granting pipeline certificates conditioned upon the applicant later obtaining numerous permits allows a company to prematurely proceed with right-of-way condemnation. And, of course, rights-of way for transmission lines are multiple times wider and involve greater environmental impacts (including scenic impacts that do not exist for gas pipelines).

Thirdly, Congress delegated to the DOE the authority to conduct congestion studies and to FERC backstop siting authority, consistent with the Department's and the Commission's respective expertise. We are concerned that consolidating authority at FERC was not intended by Congress and is not consistent with FERC's traditional rate and consumer-based focus.

Whichever agency ultimately has the authority to designate NIETCs should fully consider alternatives to building new lines in addressing congestion. The use of existing right-of ways and replacement of aging towers and lines, rather than condemning more land to build new facilities, should be given priority consideration. Similarly, in evaluating each application for a new line, FERC should consider need and alternatives such as demand response, energy efficiency measures, encouragement of local renewable sources, and maximizing the efficiency of transmission along existing rights of way through new transmission technologies.

Finally, the Conservancy concurs with the Land Trust Alliance that a major impediment to the construction of new transmission is the failure of the existing FERC and some state regulatory agency processes to consider land use impacts in advance of permitting projects. If DOE's and FERC's goal is to facilitate development of new transmission where urgently needed, such impacts should be accorded equal

consideration with engineering and incentive decisions. The Conservancy is concerned that FERC does not have a proven track record in this area.

Again, the Conservancy appreciates the opportunity to provide initial comments on the proposed delegation to FERC by DOE.

Respectfully,

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