September 9, 2011

via e-mail to congestion09@anl.gov
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The Honorable Steven Chu
Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

The Honorable Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: the delegation of Authority to Conduct Studies of Electric Transmission Congestion and to Designate National Interest Electric Transmission Corridors Under Section 1221 of the Energy Policy Act of 2005

Dear Secretary Chu and Chairman Wellinghoff,

National Audubon Society is submitting these comments in response to the proposal to delegate the authority of the Department of Energy (DOE) to conduct congestion studies and to designate National Interest Electric Transmission Corridors (NIETCs) to the Federal Energy Regulatory Commission (FERC).

Audubon supports the planning and development of an electric grid that meets our nation's reliability needs and clean energy policy objectives while upholding robust implementation of our environmental laws and safeguarding our natural resources. We also strongly support the important provisions in FERC orders 890 and 1000 which provide for transparent, open regional planning processes with broad stakeholder input. Consequently, we support this new proposal where it is consistent with these principles and with strong environmental review. More specifically, Audubon supports a number of the goals and parameters expressed in the FERC documents including the following:

- NEPA review for every interstate transmission project submitted to FERC for permitting
- future NIETC decisions that will focus on the designation of more circumscribed corridors rather than the geographically expansive types of corridors previously designated under Section 1221
- analytic and decisionmaking processes that provide for stakeholder input including, but not limited to, consultation with the states and environmental groups with respect to congestion studies and corridor designations

- increased and early interagency coordination among federal agencies with respect to NEPA-related and other planning and permitting responsibilities
- integration of future congestion studies with the regional planning provisions of Orders 890 and 1000 which account for public policy mandates, non-wires solutions, and open processes that provide meaningful consideration of stakeholder input
- consistency of FERC-permitted projects with regional planning done under the guidelines of Orders 890 and 1000.

We emphasize that our support for these goals and principles would apply equally irrespective of the lead agency conducting the congestion studies or designating NIETCs, and as such these affirmations are not a judgment on the merits of a delegation of authority across federal agencies.

We also emphasize that for those regions and states where there is little federal land involved in the proposed corridors or project routes (all states in the eastern interconnection, for example), strong environmental review will fundamentally depend upon strong state agency roles. It is essential that the quest for permitting efficiency enhance, not shortchange, environmental reviews, otherwise the proposed processes may engender increased litigation, delays and costs once again. We believe it is in the interest of the lead federal agency, whether it be FERC, DOE, or other, to ensure strong interagency coordination with non-federal as well as federal decisionmaking bodies during environmental reviews of energy infrastructure.

While supportive of the previously-mentioned elements in the FERC proposal, Audubon has substantive concerns and questions with respect to:

- the adequacy of NEPA and other environmental review processes under the proposed expedited approval processes
- the degree of openness and transparency in future congestion analyses
- capitalizing on present and future regional and interconnection-level transmission planning analyses in both federal congestion studies and corridor designations
- safeguards against abuse of the NIETC process
- required consideration of alternatives via both regional transmission planning and NEPA review processes
- whether enhanced federal interagency coordination (and other objectives) can be accomplished absent the proposed delegation of authority.

We provide some top-level discussion of these concerns here and request that DOE and FERC give consideration to these issues while deciding how to proceed. Audubon also asks for the opportunity to provide fuller comments on a less rushed timeline should the delegation proposal move forward.

Environmental review

The proposed concurrence of the federal pre-filing process with state-level project reviews is potentially problematic for affected stakeholders and state agencies. Even though implementation experience under the prior NIETCs was limited, there were indications that the statutorily mandated 12 month pre-backstop review interval was challenging to affected parties. It is important that this already challenging, already accelerated process not be additionally burdened such that needed environmental reviews are shortchanged. If comments from state agencies and other affected stakeholders suggest that process concurrence would exacerbate these issues, then we believe it is imperative to maintain a sequential state-federal review process. In fact, it has come to our attention that some state agencies are

concerned that federal NIETC action concurrent with state proceedings would preclude that agency from participating in the NIETC docket. Such an unintended consequence would be extremely unfortunate, would weaken the credibility of the corridor review process, and would impede the desired efficiencies highlighted in this proposal. Audubon asks that DOE and FERC give focused attention to comments from the states in this regard.

We also note the findings of Earthjustice that FERC NEPA processes are more constraining of stakeholder participation than those of other federal agencies including those of DOE itself. To the extent that a delegation of authority would make stakeholder participation more difficult, we oppose such a change. If the delegation proceeds, we encourage FERC to examine and reform the Commission's NEPA process, increasing stakeholder input opportunities much as FERC has advanced meaningful stakeholder input in the regional transmission planning processes.

Congestion analyses and corridor designation

The proposal indicates that FERC congestion analyses should serve as inputs to the regional planning processes. In our view, it is essential that new congestion study approaches build from, not displace, the important work of the interconnection-level planning processes. Today, interconnection-level planning is highly transparent and open and, as a result, the assumptions are well vetted before the analyses are completed. It is essential that federal congestion analyses not reduce this transparency by injecting analyses and inputs that are less transparent than the remainder of the transmission planning process. Audubon requests clarification of the standard of transparency that will apply to future congestion studies as well as clarification of how the congestion analyses will be integrated and coordinated with regional transmission planning processes. Under any lead agency, it is paramount that the approach provides for congestion analyses that are, in fact, equally transparent and open to stakeholders as present interconnection planning processes.

Similarly, the corridor designation process must be open to public/stakeholder input. Future plans for this process and how it will differ from past designation processes need to be detailed. Especially clear conditions to preclude applicant gaming of the system will be necessary once both corridor designation, in fact project-specific designations, and backstop authority will be housed in a single agency. Without clear safeguards, it will be feasible for applicants to pervert their participation in regional and state processes in the hopes of proceeding to a potentially more favorable federal venue. The ramifications for short circuiting regional transmission planning and environmental reviews are significant and troubling. Clear requirements that will preclude such abuses must be delineated as a condition of moving ahead with consolidation of authorities in a single federal agency.

Alternatives assessments

Thorough consideration of non-wires alternatives which cost-effectively meet reliability and policy requirements must, without exception, be a prerequisite to project approvals and to corridor designation. One of the lessons learned from the eastern interconnection planning process is that very substantive methodological improvements are needed in this area, yet nothing about a delegated responsibility for congestion analyses inherently suggests a superior outcome will result. It is crucial that strong advances be made in the short run in approaches that can properly co-optimize concentrated generation, distributed generation, transmission, smart grid technologies, and demand-side resources. Any proposed changes in congestion study methodology must clearly address how these issues will be more thoroughly and appropriately handled. The importance of this subject is magnified in the case of merchant projects if these have not been evaluated to the same standard as projects which have their genesis in the regional planning process. There cannot be a bifurcated process which allows for a lesser

standard of alternatives analysis for merchant projects compared to other proposed projects. Such an outcome would be fundamentally inconsistent with Order 1000, at cross purposes with the reform efforts now emerging at the RTO level, and of serious concern to numerous stakeholders now participating in the interconnection planning processes.

Interagency coordination

Part of the rationale for the delegation proposal is couched in terms of increasing interagency coordination at the federal level. While Audubon certainly supports the objective of greater interagency coordination, we question the necessity of the authority delegation as the vehicle for this, as we view FERC, DOE, or other agencies as equally capable of taking a lead role in that regard. It is Audubon's hope that the federal agencies will make comparable progress on needed coordination regardless of the determination on the lead agency for congestion studies and corridor designations.

In closing, we wish to reiterate Audubon's strong support for many of the objectives of the FERC proposal in so far as they can be accomplished while retaining the openness of Order 890 and 1000 reforms, are informed by, build from, and actively support current interconnection-level planning work, and do not sacrifice robust implementation of environmental law in the name of permitting efficiency or regional planning approvals. We appreciate the opportunity to provide these comments and ask for full consideration of the issues raised here.

Sincerely,

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