

COMMENTS OF THE LAND TRUST ALLIANCE IN REPOSE TO THE
DEPARTMENT OF ENERGY'S REQUEST FOR COMMENT ON THE POSSIBLE
DELEGATION OF TRANSMISSION SITING AUTHORITY TO THE FEDERAL
ENERGY REGULATORY COMMISSION

The Land Trust Alliance (the Alliance) appreciates the opportunity to submit comments in response to the Department of Energy's (DOE) request for comment on the potential delegation to the Federal Energy Regulatory Commission (FERC) of its authority to conduct congestion studies and designate National Interest Electric Transmission Corridors (NIETC's). The Alliance is concerned about the impact of the proposed delegation on land conservation, and recommends that certain conditions be attached should the delegation be made.

The Alliance is concerned that over the last few years, large swaths of farms, forests and wildlands permanently protected for the benefit of the public have been targeted for the siting of energy infrastructure projects, including new high-voltage electric transmission lines. These include not only park lands owned by public agencies, but also privately-owned lands protected with conversation easements either donated with the help of federal and state tax benefits, or purchased with local, state and/or federal conservation dollars. While the Alliance recognizes that new transmission facilities may be necessary in some instances to facilitate the use of clean energy sources and maintain the reliability of the grid, we also believe conservation lands should be recognized and avoided in the siting of new lines. Years of work and public and private investment in conservation should not be unintentionally and unnecessarily undermined by a one dimensional regulatory policy. A reliable and cost-effective electric transmission system is very important – but insuring real consideration of alternative routes and alternative means to meet reliability needs is absolutely essential to the successful and timely provision of such a system.

As noted in DOE's request for comment, section 1221 of the Energy Policy Act of 2005 added a new section 216 to the Federal Power Act, titled "Siting of Interstate Electric Transmission Facilities." This provision directed the Department to publish a study of electric transmission congestion for public comment every three years, and authorizes DOE to designate any geographic area "experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers" as a NIETC. Such a designation, in turn, serves as a trigger to FERC's authority to issue permits for the construction or modification of electric transmission facilities in the NIETC, subject to specific findings by the Commission.

The Alliance is concerned that without further policy direction, this delegation, could lead to the construction of transmission lines that are not necessary, and undermine important land conservation values when other alternatives are equally effective.

The Alliance notes that FERC has granted very high “incentive” rates for new transmission under section 1241 of the Energy Policy Act of 2005 on a routine basis, but has not provided clarity on incentives to encourage deployment of technology to increase the capacity and efficiency of existing transmission facilities. Should DOE delegate its section 1221 authority to FERC, the Alliance is concerned with how FERC may implement that authority. Transferring DOE’s authority under section 1221 to FERC’s portfolio, and the statements of the Chairman to the effect that these powers would be used for specific project applications (rather than simply identifying an area where there is a system congestion problem), seems to add to this imbalance, rather than ameliorate it.

The Alliance commends the FERC for issuing a Notice of Inquiry regarding implementation of section 1241, and will submit comments in response. However, this proceeding is still pending at FERC, and until the Commission takes steps to ensure that incentive rates do not result in overbuilding of new transmission lines, the Alliance believes the Department should take the time necessary to understand the full potential impact of the proposed delegation, especially with respect to the protection of conserved lands.

The most fundamental question concerning the proposed delegation is whether or not the existing system is flawed and in need of change by means of executive branch action. The Alliance supports DOE’s effort to develop a public record on which an analysis of the merits of the proposed delegation can be based, and we urge the Department to keep an open mind as it reviews submissions. The Alliance has several additional concerns about this proposal and recommendations should the Department decide to delegate its authority to FERC.

First, the Alliance notes that section 1221 has been the subject of considerable controversy as the provision has been implemented, and believes that the present split of responsibilities between DOE and FERC was intended to avoid the concentration of authority in either entity. It is unlikely that Congress intended or foresaw the proposed delegation to FERC, because determinations on NIETC designations involve findings on questions that are more suitable for the Department than FERC (such as diversification of energy supply, energy independence, and national energy policy). By contrast, FERC’s expertise lies more specifically in the area of determining rates and charges for electricity delivery.

Second, the Alliance believes the use of the FERC pipeline approval process as a model is problematic. In practice, the scoping process for gas pipelines is not consistently transparent and inclusive of and responsive to affected stakeholders. These factors vary depending upon the applicant. Under FERC’s NEPA process, it is concerning that the environmental review is done by the applicant’s consultant, rather than by an independent party with environmental expertise under the authority of FERC or another independent agency. Detailed maps and property-specific information regarding the proposed route and impacts are not provided to stakeholders, including affected landowners. It appears from experience that, once

a company files an application, the project will receive a construction permit, regardless of comments received regarding the project's environmental impact. Additionally, a true analysis of alternatives and needs does not occur. Thus, the required balancing of the project's adverse impacts against its benefits is lacking.

Third, the Alliance hopes that whichever agency ultimately has the authority to designate NIETC's will fully consider alternatives to building new lines. These include approaches 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. In some instances, it may be less expensive to "wreck and rebuild" existing lines on existing rights of way or upgrade existing infrastructure utilizing new technologies than to expend time and expense on land acquisition.

Finally, the largest impediment to the construction of new transmission has been the failure of the existing FERC and State regulatory agency processes to give adequate consideration to land use impacts in advance of permitting projects. If DOE and FERC want to facilitate development of new transmission where urgently needed, such impacts should be accorded equal consideration with engineering and incentive decisions.

Again, the Alliance appreciates the opportunity to provide comments on the proposed delegation.

Sincerely,

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