

**This paper developed by FERC staff lays out a theoretical framework for the implementation of EPCRA 2005 authority potentially delegated to FERC by DOE. There is no current FERC proceeding on this matter, and any such proceeding would be opened only if DOE decides to make the above-noted delegation. It is understood that the theoretical framework would be subject to revision based on interagency discussion, input from states and other stakeholders, and rulemaking proceedings and other policy determinations.**

### Narrative Outline

An efficient, reliable electric transmission grid is critical to the economy and security of the United States. In the Energy Policy Act of 2005 (EPA 2005), Congress recognized the national interest in a strong grid, and, accordingly, gave the Department of Energy (DOE) the authority to conduct studies of electric transmission congestion, and then designate as national interest electric transmission corridors (NIETCs) areas experiencing electric energy transmission constraints or congestion that adversely affected consumers. The Federal Energy Regulatory Commission (FERC) was given authority to issue permits within NIETCs for the construction of electric transmission facilities as a backstop to state siting activities under certain circumstances.

To date, no construction permits for projects in NIETCs have been issued. Only one applicant proposing to site a project within a NIETC began the pre-filing process at FERC, and the applicant subsequently withdrew from the process. Clearly, the backstop transmission procedure established by Congress has not yet been effective.

To address this ineffectiveness, it has been suggested that DOE issue a delegation to FERC, in conjunction with its existing permitting authority, to conduct the required congestion studies and to designate NIETCs. It has also been suggested that FERC issue narrower, project-specific NIETC designations where appropriate.

This approach would consolidate National Environmental Policy Act (NEPA) review at FERC, instead of requiring redundant, sequential NEPA review by DOE and then FERC. This approach would also comply fully with the Ninth Circuit's rulings in *California Wilderness Coalition v. DOE* on State consultation and NEPA analysis.

Unifying federal authority with respect to siting interstate transmission projects would allow a more efficient, directed process. The proposal envisions a three-step process: first, delegation by DOE to FERC authorizing FERC to conduct triennial congestion studies; second, delegation by DOE to FERC authorizing FERC to designate NIETCs; and, third, consideration by FERC of applications for both project-specific NIETC designation and permits for construction of interstate transmission projects within project-specific NIETCs.

This delegation would not expand federal authority, which was established and limited by EPA 2005, but rather would simplify and consolidate in a single forum federal actions mandated by Congress.

**I. Conducting Congestion Studies**

- A. FERC staff posts proposed study methodology. FERC staff conducts regional meetings to obtain input from affected stakeholders – such as states, environmental groups, renewable energy developers, utilities, and independent generators -- regarding the study approach.
- B. FERC staff posts the proposed results, issues notice to solicit public comment, and conducts further outreach to affected stakeholders.
- C. Commission issues order adopting congestion study and providing guidance necessary to establish a NIETC.
- D. Final results of the congestion study would be an input into the regional planning process pursuant to Order Nos. 890 and 1000.

**II. Establishing a Corridor Designation Process**

- A. FERC issues notice of proposed rulemaking to solicit public input on the procedures for establishing a corridor designation.
  - a. Issues include whether to issue a preliminary suitability determination for project-specific corridor application on non-environmental factors.
  - b. Examples of the non-environmental factors that may be considered:
    - i. whether the proposed project line was included in a regional plan;
    - ii. impacts of present and projected congestion on reliability and how the project/corridor designation addresses them including: national and regional reliability criteria and standards; consideration of changing resource mixes such as renewable energy sources; and varying load profiles due to economic and technological changes.
    - iii. the extent to which 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, or may be jeopardized by reliance on limited sources of energy; and whether a diversification of supply is warranted;
    - iv. whether the energy independence of the US would be served by the designation;
    - v. whether the designation would be in the interest of national energy policy; and
    - vi. whether the designation would enhance national defense and homeland security.
- B. FERC staff conducts regional meetings to consult with affected stakeholders -- states, environmental groups, renewable developers, utilities, and others.
- C. Commission issues order establishing a corridor designation process.

### **III. Requests for NEITC Designation**

These suggested procedures are subject to the rulemaking that would be initiated under II., above. Thus, they will be subject to comment and potential modification.

- A. Applicants must request a corridor designation for a specific project and, in a separate proceeding, begin the pre-filing process for that project concurrently.
- B. Applicants may request a corridor designation and begin the pre-filing process concurrently with filing a state siting application.
- C. A preliminary corridor suitability determination would be issued by the Commission.

### **IV. The Pre-Filing Process for Construction Permit**

- A. During pre-filing, FERC staff, jointly with affected agencies), identifies interested entities (state and federal agencies, landowners, Tribes, environmental organizations, local groups, and individuals), highlights issues, reaches consensus as to study needs, attends site visits, issues scoping notice, arranges scoping meetings, and examines alternatives.
- B. During pre-filing, FERC staff begins to establish a schedule and coordinates federal agency reviews of the proposed project, consistent with inter-agency MOU.
- C. Preparation of a NEPA document will commence during the pre-filing process.
- D. During this time, in a separate but concurrent proceeding, the Commission would make a preliminary NIETC suitability determination for the proposed project.

### **V. The Application Process for Construction Permit**

- A. Once pre-filing process complete, applicants file construction permit application.
- B. FERC staff (jointly with cooperating agencies) issues data requests, finalizes a draft environmental document and reliability analyses, engages with the public and encourages them to file comments, and issues a final environmental document and reliability analysis, selecting a recommended alternative, addressing comments, and recommending mitigation measures.
- C. All federal and state agencies would retain the right to issue permits within their statutory authority -- construction will not begin until authorizations are issued.
- D. FERC staff would, in coordination with affected agencies, establish a schedule for the completion of actions under federal law related to the proposed project.
- E. By statute, an order must be issued within one year of the submission of the application.

**VI. Standard for FERC Permit Issuance**

- A. FERC may issue a construction permit if a project:
- a. is in interstate commerce,
  - b. is consistent with the public interest,
  - c. would significantly alleviate transmission congestion and protect or benefit consumers,
  - d. would be consistent with sound national energy policy and enhance energy independence, and
  - e. would maximize use of existing infrastructure.