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General Comment

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Attachments

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BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY
GRID DEPLOYMENT OFFICE

Notice of Early Public and Governmental Engagement for Potential Designation of Tribal Energy Access, Southwest Grid Connector, and Lake Erie-Canada National Interest Electric Transmission Corridors

DOE–HQ– 2024–0088-Potential Designation of the Tribal Energy Access National Interest Electric Transmission Corridor; DOE– HQ–2024–0089-Potential Designation of the Southwestern Grid Connector National Interest Electric Transmission Corridor; DOE–HQ–2024–0090-Potential Designation of the Lake Erie-Canada National Interest Electric Transmission Corridor

COMMENTS OF PUBLIC INTEREST ORGANIZATIONS

INTRODUCTION

Environmental Defense Fund ("EDF"),[1] Natural Resources Defense Council ("NRDC"),[2] and Sierra Club,[3] (together "Public Interest Organizations" or "PIOs") submit these comments in response to the December 16, 2024 Notice of Early Public and Governmental Engagement for Potential Designation of Tribal Energy Access, Southwest Grid Connector, and Lake Erie-

[1] Environmental Defense Fund is a membership organization whose mission is to build a vital Earth for everyone by stabilizing the climate, strengthening the ability of people and nature to thrive, and supporting people's health. EDF is a leading authority on the use of science, economics, and law to protect and restore the quality of our air and climate, transform energy systems, and ensure healthy and safe communities.

[2] The Natural Resources Defense Council (NRDC) is a nonprofit environmental advocacy organization with more than 3 million members and online activists. Founded in 1970, NRDC works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. NRDC engages in litigation, policy advocacy, and scientific research to protect public health and the environment, combat climate change, and advance clean energy solutions.

[3] Sierra Club is an environmental nonprofit whose mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club's interests include advocating for a clean energy transition that meets our members electricity needs without unduly contributing to climate disruption.

Canada National Interest Electric Transmission Corridors Potential Designations ("Phase 3 Notice") issued by the Department of Energy ("Department" or "DOE").[4]

PIOs appreciate the opportunity to provide input in response to the Phase 3 Notice, including detailed route selection data made available on the DOE's Grid Deployment Office National Interest Electric Transmission Corridor webpage.[5] The Phase 3 Notice of three potential National Interest Electric Transmission Corridors marks a crucial step forward in advancing transmission projects that are vital for addressing system congestion. These efforts will help reduce electric rates, enhance the reliability and resilience of the grid, and expand access to low-cost generation.

I. National Interest Electric Transmission Corridor Designations Will Help Support a More Secure and Reliable Grid with Increased Access to Affordable Electricity

A. Transmission Buildout has Not Kept Pace with Demand Growth

When Congress established the National Interest Electric Transmission Corridor program in 2005, the backbone of our electric grid—the transmission system—was already showing signs of age and strain. Most of the transmission network had been built in the mid-20th century, during a time when transmission lines were designed to serve only a single utility's service territory.[6] As a result, the system was not well-suited for modern demands, where electricity must be transmitted over long distances and across multiple utility jurisdictions. The

[4] Notice of Early Public and Governmental Engagement for Potential Designation of Tribal Energy Access, Southwestern Grid Connector, and Lake Erie-Canada National Interest Electric Transmission Corridors, 89 Fed. Reg. 101597 (Dec. 16, 2024).

[5] *See* DOE, National Interest Electric Transmission Corridor Designation Process, https://www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process (last accessed Feb. 14, 2025) ("DOE National Interest Electric Transmission Corridor Website"). *See also* Phase 3 Potential NIETC Designation GIS Layers, https://gem.anl.gov/tool/layers/potential_nietcs_phase3_241216/versions/1/download.zip.

[6] *See Energy Policy Act of 2005*, Pub. L. No. 109-58, § 1221, 119 Stat. 594, 941-42 (2005) (noting the historical focus of the transmission network on serving individual utility service territories).

deregulation of the transmission system in the late 1990s further expanded the role that transmission infrastructure played in maintaining system-wide reliability and affordability.[7] This deregulation created a more interconnected grid, which increased the need for efficient, reliable, and flexible transmission infrastructure to ensure that electricity could flow seamlessly across regions and that reliability could be maintained despite increasing demand. However, this expansion highlighted the urgent need to modernize and strengthen transmission capacity to avoid bottlenecks and grid failures.

The deployment of transmission projects, however, has consistently failed to keep pace with the rising demand for electricity. This was one of the key findings of a 2001 Presidential report under the George W. Bush administration,[8] and it remains a persistent issue today. Despite a temporary peak in high-voltage transmission investment in 2013, the number of new transmission lines has dropped precipitously in the years since.[9] This decline in investment is particularly concerning given the significant forecasted growth in energy demand driven by sectors such as high-capacity data centers, which require substantial and continuous electricity supply.[10] The increasing reliance on data storage, cloud computing, and other digital infrastructure further exacerbates the need for a more robust and modern transmission network to ensure reliability and meet future energy demands. The mismatch between growing electricity

[7] *Id.* (explaining how deregulation expanded the scope and interconnectedness of the transmission network).

[8] "Investment in new transmission capacity has failed to keep pace with growth in demand and with changes in the industry's structure. Since 1989, electricity sales to consumers have increased by 2.1 percent annually, yet transmission capacity has increased by only 0.8 percent annually." 1-5 https://www.nrc.gov/docs/ml0428/ml042800056.pdf. *See also* "The pace of transmission investment has lagged behind the rate of load growth and generating capacity additions." https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/LTRA2003.pdf.

[9] ACEG, *Fewer New Miles* (July 2024), https://cleanenergygrid.org/wp-content/uploads/2024/07/GS_ACEG-Fewer-New-Miles-Report-July-2024.pdf.

[10] LBNL, *2024 United States Data Center Energy Usage Report* (Dec. 2024), https://eta-publications.lbl.gov/sites/default/files/2024-12/lbnl-2024-united-states-data-center-energy-usage-report.pdf.

consumption and stagnant transmission infrastructure poses a critical challenge to grid reliability and efficiency, making it clear that strategic investments in transmission are urgently needed.

The absence of adequate electric transmission facilities has significantly constrained the movement of electricity within and between regions, actively undermining the effectiveness of regional energy markets and contributing to higher-priced, less reliable electricity. This issue has only intensified over time as electricity demand continues to rise. In its 2023 Long-Term Reliability Assessment, the North American Electric Reliability Corporation (NERC) reported that over the next decade, both electricity peak demand and energy growth forecasts are higher than at any point in the past two decades.[11] This projected increase in demand will be driven by several factors, including the rapid expansion of energy-intensive industries such as data centers, which support emerging technologies like artificial intelligence (AI) and cryptocurrency mining, as well as the broader electrification of the economy, including the transition to electric vehicles and renewable energy sources.[12] As a result, without significant investments in transmission infrastructure, these growing demands may further exacerbate grid congestion, reliability risks, and electricity costs.

Transmission is essential for maintaining the reliability of the grid, ensuring power flows efficiently, and keeping the lights on for Americans. A recent Interregional Transfer Capability Study by NERC highlighted the critical importance of transmission infrastructure, noting that "more than ever, a strong, flexible, and resilient transmission system is essential for grid reliability."[13] NERC further concluded that interregional transmission could help mitigate

[11] *See* North American Electric Reliability Corporation, *Long-Term Reliability Assessment* (2023).

[12] *Id.*

[13] Interregional Transfer Capability Study (ITCS) Strengthening Reliability Through the Energy Transformation Final Report, NERC at vii. (Nov. 2024), https://www.nerc.com/pa/RAPA/Documents/ITCS_Final_Report.pdf.

"certain extreme conditions by distributing resources more effectively," emphasizing transmission as a vital risk mitigation tool, provided there is sufficient available generation in neighboring systems during times of peak demand.[14] In light of these findings, NERC identified transmission limitations and the potential for energy inadequacy in all 12 weather years that it studied.[15] As a result, NERC recommended adding 35 GW of transfer capability across North America to bolster energy adequacy during extreme conditions.[16] Notably, this study focused solely on reliability benefits and did not account for the broader national security or economic advantages that additional transmission could provide, such as reducing the costs of electricity or enhancing energy resilience in the face of emerging threats.

The need to modernize and expand our transmission infrastructure has never been more urgent. As demand for electricity continues to rise, our outdated transmission network is increasingly inadequate to meet these demands. The growing reliance on new technologies further underscores the necessity of a resilient and adaptable grid. Without substantial investments in modernizing our transmission infrastructure, we risk undermining the stability of our energy system, delaying technological advancements, and driving up costs for consumers.

B. The National Interest Electric Transmission Corridor Program and Its Role in Addressing Transmission Challenges and Grid Reliability

At around 4 p.m. Eastern Daylight Time on August 14, 2003, roughly fifty million people were instantly disconnected from the power grid. This event, now referred to as the Northeast Blackout of 2003, remains the largest power outage in U.S. history, leaving vast areas of the Northeastern United States and Canada in darkness for several days. The widespread loss of

[14] *Id*. at xiii.

[15] *Id*.

[16] *Id*.

electricity resulted in nearly 100 fatalities[17] and caused economic damages ranging from $6.6 billion to $16.6 billion USD, adjusted for inflation.[18]

A joint U.S.-Canada task force investigating the grid failures identified that one of the primary causes of the blackout was the lack of large-capacity transmission lines in northern Ohio that could absorb the load from a tripped 345 kV line.[19] Without the necessary infrastructure to handle the surge in power, the excess electricity traveled across the grid, overwhelming other lines. This triggered a cascade of failures, tripping additional transmission lines and causing generators to shut down, affecting a broad swath of the grid from Ohio through Michigan and into New York.[20] This chain reaction of grid failures underscored the critical importance of robust transmission infrastructure capable of managing large surges in power and highlighted vulnerabilities in the transmission system that would need to be addressed to prevent future large-scale blackouts.

In response to the blackout, Congress moved swiftly to pass what would become the Energy Policy Act of 2005 (EPAct 2005), a comprehensive bill designed to address the growing demand for electricity and overcome critical bottlenecks in developing the transmission infrastructure necessary to support a more reliable grid.[21] A core component of the EPAct 2005 was Section 1221, now codified as Section 216 of the Federal Power Act, which directs DOE to

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[17] U.S.-Canada Power System Outage Task Force Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/BlackoutFinal-Web.pdf ("Task Force Final Report").

[18] *See id*. at 9.

[19] *See id*. at 77.

[20] Task Force at 134-35.

[21] *See* Pub. L. No. 109-58, 119 Stat. 594 (2005).

regularly study the national transmission system.[22] The study's purpose is to identify areas experiencing congestion or capacity constraints that negatively impact customers, particularly in regions with high electricity demand.[23] Based on the results of this study, DOE is empowered to issue a report designating geographic areas, known as National Interest Electric Transmission Corridors, where new transmission lines could be built to alleviate these constraints and improve grid reliability.[24] This provision reflected a growing recognition that resolving transmission bottlenecks was essential to ensuring the reliability and affordability of electricity, particularly as demand for power continues to increase.

A National Interest Electric Transmission Corridor designation under Section 216 of the FPA serves as a clear signal to transmission developers that the designated area is a critical, yet underdeveloped, part of the electric grid. These regions are often plagued by significant congestion and capacity constraints, which contribute to higher electricity costs for ratepayers and a less reliable overall grid. By designating these areas as National Interest Electric Transmission Corridors, the federal government identifies regions where new transmission lines are urgently needed to alleviate these systemic weaknesses. Such transmission infrastructure can provide substantial relief by reducing congestion, enhancing grid reliability, and ultimately lowering costs for consumers.[25] In essence, National Interest Electric Transmission Corridor designations prioritize investment in critical areas of the transmission network, ensuring that resources are allocated where they are most needed to strengthen the grid's performance and capacity.

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[22] 16 U.S.C. § 824p.

[23] *Id*.

[24] *Id*.; *see also* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1221, 119 Stat. at 941-42 ("EPAct 2005").

[25] *Id*.

Higher voltage transmission lines, particularly those that span multiple states, face significant delays in reaching the construction phase and experience much lower completion rates compared to other transmission projects.[26] This issue primarily stems from the complex and often inefficient siting and permitting process that transmission developers must navigate. The permitting process involves obtaining approvals from multiple regulatory bodies, each with its own set of requirements, timelines, and procedures. Specifically, a transmission developer must seek a permit from each individual permitting office that the proposed transmission line crosses, which may include several state-level offices with authority over siting and permitting. In some cases, local governments have been granted jurisdiction over siting and permitting decisions, meaning that developers must also secure approvals from each relevant local authority along the proposed route.[27] This multi-layered approval process significantly prolongs the timeline for transmission project development, creating inefficiencies that delay the construction of vital infrastructure needed to address grid congestion and reliability issues.

Further, permit application requirements and processes are not standardized across states, and they can even vary significantly between jurisdictions within a single state. This lack of uniformity adds complexity and delays to the siting and permitting process, as developers must navigate a patchwork of local, state, and federal requirements, often requiring multiple submissions and approvals from different agencies. Many of the offices responsible for transmission siting and permitting are under-resourced, with limited staff and funding, further contributing to delays. As a result, developers of interstate transmission projects often face

[26] *See California Wilderness Coalition v. United States DOE*, 631 F.3d 1072, 1100 (9th Cir. 2011) (noting the delays in transmission line development due to the complex and inefficient siting and permitting process across multiple states).

[27] *See New York State Department of Environmental Conservation v. FERC*, 884 F.3d 450, 453 (2d Cir. 2018) (explaining the role of local governments in siting decisions and how this can complicate and lengthen the permitting process for transmission projects).

prolonged and unpredictable review timelines, with some projects taking years, if not decades, to move from the permitting phase to actual construction.[28] These delays can significantly hinder the timely development of infrastructure critical to addressing grid congestion and reliability issues.

Congress developed the National Interest Electric Transmission Corridor program and the corresponding provisions of Section 216 of the Federal Power Act, fully aware of the potential for the transmission siting and permitting process to become increasingly convoluted and, in some cases, to verge on the Kafkaesque.[29] In response to these challenges, Section 216 includes a permitting safety valve designed to expedite the process: a limited opportunity for transmission projects located within a National Interest Electric Transmission Corridor that fail to receive a state construction permit within one year of the application being filed to seek a construction permit directly from the Federal Energy Regulatory Commission (FERC).[30] This provision was intentionally crafted to mitigate the risk of indefinite delays caused by protracted state-level permitting processes, ensuring that much-needed transmission infrastructure could still proceed even when local or state opposition stalls progress.

The bottlenecks in transmission siting and permitting that plague interstate transmission projects threaten not only the efficiency of the grid but also its reliability. These delays in building essential infrastructure exacerbate grid congestion, making it more difficult to respond

[28] *See California Wilderness Coalition v. United States DOE*, 631 F.3d 1072, 1100 (9th Cir. 2011) (highlighting the extensive delays in transmission line projects due to opposition from local and state governments and the complexity of navigating multiple regulatory frameworks).

[29] Statement of Mr. David Owens Executive Vice-President Edison Electric Institute, Implementation of the Provisions of the Energy Policy Act of 2005, Hearings Before the Committee on Energy and Natural Resources, 109 Cong. 17-20 (2006) https://www.congress.gov/109/chrg/CHRG-109shrg29644/CHRG-109shrg29644.pdf. *See also* The Energy Policy Act of 2005, Hearings Before the Subcommittee on Energy and Air Quality, 109 Cong. (2005) https://www.govinfo.gov/content/pkg/CHRG-109hhrg99906/pdf/CHRG-109hhrg99906.pdf.

[30] *See* 16 U.S.C. § 824p(e).

to increasing demand in a timely manner. Furthermore, such delays contribute to elevated costs for consumers and a grid that is increasingly ill-equipped to handle future energy needs. As the demand for electricity continues to rise, these infrastructure challenges will only intensify unless they are addressed. The National Interest Electric Transmission Corridor designation, coupled with the FERC permitting safety valve, provides a much-needed solution to expedite the construction of transmission lines in critical areas. By ensuring that necessary transmission infrastructure can be built more swiftly, this mechanism strengthens the overall grid, improves system stability, and enhances the grid's ability to deliver reliable power across the nation.

II. Scope of Environmental Review Under the National Environmental Policy Act

A. NEPA Applies to National Interest Electric Transmission Corridor Designations

Pursuant to the National Environmental Policy Act,[31] DOE, like any other federal agency, must include "in every recommendation or report on . . . *major Federal actions* significantly affecting the quality of the human environment, a detailed statement by the responsible official on—(I) the environmental impact of the proposed action," among other obligations.[32] As the Supreme Court explained in *Marsh v. Oregon Natural Resources Council*,[33] "NEPA promotes its sweeping commitment to prevent or eliminate damage to the environment and biosphere by focusing Government and public attention on the environmental effects of proposed agency

[31] 42 U.S.C. § 4332(2)(C).

[32] *Id*. (emphasis added).

[33] 490 U.S. 360 (1989).

action" so that the "agency will not act on incomplete information, only to regret its decision after it is too late to correct."[34]

Under NEPA, a major federal action that significantly affects the environment requires an Environmental Impact Statement (EIS), which includes a comprehensive analysis of the direct, indirect, and cumulative effects of the proposed action.[35] The EIS process is specifically designed to address not only the immediate impacts of a project but also the broader, long-term consequences, including how the project interacts with other activities and developments in the region.[36] NEPA "attempts to prevent [harm] in requiring an EIS," because "without one there may be little if any information about prospective environmental harms and potential mitigating measures."[37] The NEPA alternatives analysis can provide helpful insight into not only the environmental costs of transmission development in certain corridors, but also the environmental benefits of the preferred alternative.

Even though the current proposed National Interest Electric Transmission Corridors are far more narrowly tailored geographies than the 2007 proposed National Interest Electric Transmission Corridor designations, under the standard applied by the Ninth Circuit in *California Wilderness Coalition v. United States DOE*,[38] they would almost certainly be considered a major federal action. While National Interest Electric Transmission Corridors do not direct any specific ground-breaking activity, the corridors influence the areas in which electric

[34] *Id*. at 371 (internal quotation marks and citations omitted).

[35] *Id*. If the significance of the effects are unknown, the agency may proceed with an environmental assessment ("EA"), a less intensive review standard, in order to determine whether the impacts are in fact significant, or whether they are not. *See* 10 C.F.R. § 1021.320.

[36] *California Wilderness Coalition v. U.S. Dept. of Energy,* 631 F.3d 1072, 1101 (9th Cir. 2011).

[37] *Winter v. Natural Resources Defense Council, Inc*., 129 S. Ct. 365, 376 (2008).

[38] 631 F.3d 1072, 1101 (9th Cir. 2011).

transmission facilities will be located and "could have great historic and regional consequences that significantly affect the environment."[39] Policy choices affecting energy markets, such as these designations, can have significant environmental effects.[40]

While future development of transmission infrastructure will have significant economic, public health, and national security benefits, the fact that a National Interest Electric Transmission Corridor has the ability to alter the landscape of electric transmission development across a large geographic area necessitates the full consideration of potential cumulative impacts.[41] These include the effects of new transmission lines on local ecosystems, land use, and wildlife, as well as the social and economic consequences, such as displacement, changes in property values, and impacts on communities that depend on the land.[42]

This framework strongly suggests that a DOE National Interest Electric Transmission Corridor designation will have significant impacts to the human environment and requires the preparation of an EIS. As discussed above, the development of transmission also has significant benefits, however, the existence of these benefits and even the determination that they will outweigh the adverse impacts, does not relieve the agency of the duty of preparing an EIS if the project does have significant adverse impacts. Even if the extent to which the ultimate impacts are unknown, the risk of delay and expense of protracted litigation should nevertheless "lead agencies in doubtful cases (so-called 'grey' areas) to obtain impact statements."[43]

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[39] *See id*., 631 F.3d at 1101.

[40] *Forelaws on Bd. v. Johnson*, 743 F.2d 677, 682 (9th Cir. 1984).

[41] *See Hanly v. Kleindienst*, 471 F.2d 823, 830-31 (2d Cir. 1972).

[42] *See* 631 F.3d 1072, 1101; *Sierra Club v. U.S. Army Corps of Engineers*, 776 F.3d 383, 387 (5th Cir. 2015).

[43] 471 F.2d 823, 831-32.

B. An EIS Can Help Aid Informed Decision Making and Facilitate Low-conflict Future Development

Faster deployment of transmission is critical to achieving our energy affordability, accessibility, and reliability goals, but this will happen only with smart planning that steers transmission development to clearly delineated, low-conflict lands. PIOs advocate for a "smart from the start" approach to transmission corridor planning and development that (1) identifies previously disturbed lands with relatively few environmental, social, and cultural resource conflicts and directs transmission to those lands; (2) prohibits transmission development in sensitive areas, including but not limited to National Landscape Conservation System (NLCS) lands, important wildlife corridors and habitats, and places of cultural, historical, community, and spiritual significance; and (3) fully mitigates unavoidable adverse environmental and social impacts.

Any NEPA analysis should also include consideration of the lessons learned from and guiding principles core to the Section 368 settlement agreement.[44] Section 368 of the EPAct 2005 directed the Secretaries of the Interior, Agriculture, Commerce, Defense, and Energy to "(1) designate, under their respective authorities, corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land in the eleven western States . . . ." [45] To carry out this direction, BLM, DOE, and the USFS prepared a programmatic environmental impact statement ("PEIS") to support the designation of energy corridors across Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The final PEIS was made available in November 2008, and it

[44] Settlement Agreement at 4 (July 3, 2012), *Wilderness Soc'y v. U.S. Dep't of Interior*, No. 3:09-cv-03048- JW (N.D. Cal.) ("Energy Corridor Settlement Agreement").

[45] 42 U.S.C. § 15926.

resulted in approximately 5,000 miles of corridors being designated on public lands. The corridors were challenged in court, and a resulting settlement agreement produced a set of siting principles, maps of "corridors of concern," as well as the periodic review and updating of appropriate mitigation measures.[46]

In keeping with these Section 368 settlement agreement principles, one of the benefits of NEPA analysis is the opportunity to identify the National Interest Electric Transmission Corridors that, compared to other alternatives, identify areas experiencing or expected to experience electric energy transmission capacity constraints or congestion that adversely affects consumers as required by FPA Section 216,[47] best avoid environmentally and culturally sensitive areas to the maximum extent practicable, maximize existing rights-of-way[48] and avoid contributing to the proliferation of dispersed rights-of-way crossing the landscape, promote efficient use of the landscape for necessary development, and realize the long-term benefits of reliable and safe energy transmission development. While the Section 368 settlement agreement siting principles apply exclusively to federal lands, the same considerations are applicable to the National Interest Electric Transmission Corridors, which may include a mix of federal, state, and private land. Use of these siting principles, avoidance of already identified areas of high-conflict (e.g. "corridors of concern"), and updated mitigation will all increase the likelihood of success of the National Interest Electric Transmission Corridors, as well as any resulting project construction.

[46] Energy Corridor Settlement Agreement.

[47] *See* 16 U.S.C. § 824p(a)(2)(i)-(ii).

[48] *See id*. § 824p(a)(4)(G)(i).

C. DOE Should Coordinate its NEPA Reviews with Other Agencies, Particularly FERC, to the Extent Possible

Both DOE and FERC have critical responsibilities under Section 216 of the FPA; indeed, FPA Section 216(h)(9) mandates that DOE "consult regularly" with FERC..[49] In addition, DOE is required to coordinate environmental review efforts with other federal agencies, as well as with state, tribal, and regional entities. This interagency coordination is essential not only for compliance but also to promote an efficient and effective NEPA process, which can ultimately facilitate the successful development of transmission projects.[50]

DOE should consult with FERC regarding National Interest Electric Transmission Corridor designations, particularly seeking FERC's input on specific designations. DOE should especially solicit FERC's views on how to preserve FERC's authority and discretion over siting decisions. Additionally, it is crucial that the designation process does not predetermine the outcome of FERC's subsequent siting processes or limit FERC's ability to consider alternative siting options or require modifications to a project.

DOE should also request that FERC serve as a cooperating agency during the NEPA process for National Interest Electric Transmission Corridor designations. Given FERC's permitting role for projects within these corridors, it "[i]s involved in a group of actions directly related to each other because of their functional interdependence," making it an appropriate

[49] DOE may also want to consider how its action to designate National Interest Electric Transmission Corridors may relate to its authorities under the Coordinated Interagency Authorizations and Permits (CITAP) Program which establishes DOE as the lead agency to coordinate and accelerate federal environmental reviews and permitting processes for qualifying electric transmission facilities on Federal lands. *See* 16 U.S.C. § 824p(h). *See also* May 2023 Memorandum of Understanding (MOU) among DOE and eight other Federal agencies committing to expedite the siting, permitting, and construction of electricity transmission infrastructure through more effective implementation of section 216(h) of the FPA.

[50] *See* 16 U.S.C. § 824p(h)(9).

cooperating agency.[51] As a cooperating agency, FERC would actively participate in DOE's NEPA process, including scoping, and provide valuable information and expertise, particularly on issues where it has "specialized expertise."[52] This collaboration would enhance the NEPA process by ensuring that FERC's regulatory perspective is fully integrated, promoting a more comprehensive and effective review.

Including FERC as a cooperating agency in the NEPA process for National Interest Electric Transmission Corridor designations would enhance efficiency and reduce redundancy. This coordination would help both DOE and FERC identify which issues should be addressed during the designation process and which may be more appropriately reserved for the siting and permitting phase. Additionally, such collaboration could enable FERC to utilize tiering or incorporation by reference in subsequent NEPA processes, which can help "eliminate repetitive discussions" and "focus on the actual issues ripe for decision."[53] This would not only promote a more efficient review process but also facilitate a clearer path toward timely project development.

III. The Phase 3 National Interest Electric Transmission Corridors Can Better Maximize Existing Rights-of-Way

A. Collocating Electric Transmission with Existing Infrastructure Corridors has Significant Economic and Public Policy Benefits

Building long-distance linear infrastructure like transmission is a time consuming and disruptive process. A single transmission line can cross parts of hundreds of parcels, including both private and public land – state and federal. Putting aside the state permitting process, the time that

[51] 40 C.F.R. § 1501.7(a)(2).

[52] *I*d. § 1501.8(b).

[53] *See id*. 40 C.F.R. § 1501.11.

it takes to coordinate with the various state and federal agencies and negotiate and acquire the necessary lease agreements, can take several years.

One way to reduce that amount of time is to site a transmission project within land controlled by a smaller subset of owners. There are millions of miles of existing linear parcels including roads, highways, railways and utility corridors, that traverse the continental U.S., – east-to-west, north-to-south, and in-between (commonly, Rights-of-Ways ("ROWs")), that are typically controlled by a single owner for long stretches of the linear tract – be that a state, a federal agency, rail operator, or a utility company. Crucially, many of these tracts have the adequate acreage to collocate the necessary transmission infrastructure depending on whether the project is made up of overhead poles and wires, or an underground trench. They are also often clear of structures and vegetation, which not only reduces project timelines, but can also reduce total construction costs.[54]

Collocating a transmission line with existing linear infrastructure has other benefits. A transmission project sited within an existing ROW will not need to condemn land by eminent domain.[55] In many instances, adding a transmission facility to an existing ROW would also be the least burdensome option for a community. The longstanding nature of some of these infrastructure corridors mean that in many cases communities were either planned around and according to their routes or have since adapted to or mitigated their impacts. For example, consider rail corridors whose routes, at least initially, led to the development of certain towns or industries, mindful of the visual, auditory, and air quality impacts of the operations. The addition of a transmission line

[54] Nat'l Governors Ass'n, *Transmission Siting & Permitting: How Governors Can Play an Active Role*, 17 (Feb. 8 2023), https://www.nga.org/wp-content/uploads/2023/02/NGA-Brief-on-Transmission-Siting-and-Permiting_8Feb2023.pdf. ("Governors may choose to assist directly by offering to host transmission infrastructure along existing state land, such as highway rights of way or other available parcels. Since highway rights of way are already public property, the land acquisition process may be shortened or eliminated entirely.") ("Governors Transmission Report")

[55] Governors Transmission Report at 17.

within these corridors, be it above or underground, therefore may be less impactful than if it were built on undisturbed land.

Congress also expressly recognized the inherent value of co-locating a transmission line within an existing transportation or utility ROWs.[56] Under Section 216 of the Federal Power Act, when make the determination of whether to designate a National Interest Electric Transmission Corridor, DOE can consider whether the National Interest Electric Transmission Corridor "maximizes existing rights-of-way."[57] Congress also established a Joint Office between the DOE and the Department of Transportation, and specifically called for the "studying, planning, and funding for high-voltage distributed current infrastructure in the rights-of way of the Interstate System and for constructing high-voltage and or medium-voltage transmission pilots in the rights-of-way of the Interstate System," as well as the "development of a streamlined utility accommodations policy for high-voltage and medium-voltage transmission in the transportation right-of-way."[58]

The market is also proving that existing ROWs can be viable and valuable transmission locations. There is a growing list of projects that are already, or are intended to be, sited entirely or partially within existing ROWs. In the Midwest, the Badger Coulee transmission line, which has been in service since 2018, utilizes more than 100 miles of interstate highway ROW.[59] By using existing highway ROW, the planners avoided impacts for 300-400 private landowners.

[56] 16 U.S.C. § 824p(a).

[57] *Id*.

[58] Infrastructure Investment and Jobs Act, Public Law 117-58 (2021) ("IIJA").

[59] ATC, Badger Coulee Transmission Line Project, https://www.atc-projects.com/projects/badger-coulee/.

Planned projects include the SOO Green HVDC Link (sited *entirely* on rail ROWs),[60] the Champlain Hudson Power Express (terrestrial portion sited *entirely* along existing highway and rail ROWs),[61] the New England Clean Power Link (sited *entirely* along existing road and rail ROWs),[62] and the Southline Transmission Project.[63] Recently, the grid operator for the Midwest approved 18 regional transmission projects and stated that a key consideration in choosing those projects was the ability to use existing ROWs.[64]

Recognizing the benefits of siting transmission within existing ROWs, and the willingness of developers to incorporate ROWs into siting plans, some states are working to make it even easier to site transmission lines into existing ROWs,[65] while ensuring the safe operation of railroads and highway transportation, which is paramount when co-locating high voltage electric power lines.

While each category of ROW is unique and requires addressing particular challenges, every category of transportation or utility right-of-way can serve as a host for a transmission line and yield a similar set of benefits. The SOO Green HVDC Link transmission line is using existing railways ROWs to site an underground transmission line that is planned to be built

[60] SOO Green HVDC Link, *Response to the Illinois Power Agency Electricity and Capacity Procurement for Eligible Retail Customers Request for Stakeholder Comments*, https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/comments-page/soo-green.pdf.

[61] Champlain Hudson Power Express, Route Maps, https://chpexpress.com/project-overview/route-maps/.

[62] New England Clean Power Link, Project Development Portal, http://www.necplink.com/about.php.

[63] Southline Transmission Project, Fact Sheet, https://southlinetransmission.com/wp-content/uploads/2024/04/GU-Southline-Transmission-handout-GENERAL-3.25.24.pdf.

[64] Midwest Independent System Operator, MTEP21 REPORT ADDENDUM: LONG RANGE TRANSMISSION PLANNING TRANCHE 1 EXECUTIVE SUMMARY at 22, *available at* https://cdn.misoenergy.org/MTEP21%20Addendum-LRTP%20Tranche%201%20Report%20with%20Executive%20Summary625790.pdf

[65] *See* S.F. No. 4942, 93rd Legislature (Mn. 2024). *See also* Jeff St. John, *Minnesota Takes Rare Step to Allow Power Lines Alongside Highways*, (June 12, 2024), Canary Media, https://www.canarymedia.com/articles/transmission/minnesota-transmission-grid-power-lines-highway.

through Iowa, Wisconsin, and Illinois,[66] while the Champlain Hudson Power Express will use a combination of highway and rail ROWs along with underwater transmission.[67]

Existing utility ROWs (gas and electric) generally range between fifty[68] and three-hundred feet,[69] while existing transportation ROWs generally range between forty[70] and four-hundred feet.[71] While above ground lines can require up to two-hundred of total width,[72] underground transmission lines can be built with as little as fifteen feet[73] – a fraction of the width for all categories existing ROWs.[74] Further, the DOE's Advanced Research Projects

[66] SOO Green HVDC Link, *Response to the Illinois Power Agency Electricity and Capacity Procurement for Eligible Retail Customers Request for Stakeholder Comments*, https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/comments-page/soo-green.pdf.

[67] Champlain Hudson Power Express, Route Maps, https://chpexpress.com/project-overview/route-maps/.

[68] *See* Enbridge, Pipeline rights-of-way: What you need to know, https://www.enbridge.com/~/media/Enb/Documents/Factsheets/US-GTM-fact-sheets-fall-2019/20190927FSROWPrimerUSGTM.pdf?rev=77f03c34056a46789d9c35b8eba88ef9&hash=1C08D198A8E80F0ECD41D08D4C1FCD2C#:~:text=A%20permanent%20ROW%20is%20typically,pipeline%20is%20built%20or%20expanded ("A permanent ROW is typically 50 feet wide.").

[69] *See* Tennessee Valley Authority, *Anatomy of a Right of Way*, https://www.tva.com/energy/transmission/right-of-way-maintenance/anatomy-of-a-right-of-way; *see also* PJM, Transmission and Substation Subcommittee, *PJM Design & Application of Overhead Transmission Lines 69 kV & Above*, https://www.pjm.com/-/media/planning/design-engineering/maac-standards/20020520-va-general-criteria.ashx#:~:text=Clearance%20between%20the%20bottom%20transmission,for%20voltages%20above%20230%20kV.

[70] *See e.g.*, Steuben County Indiana, *Highway FAQs: Right Of Way, Trees, and Roadside Structures*, https://www.co.steuben.in.us/departments/highway/right-of-way_trees_and_roadside_structures.php.

[71] DOT, Roadway Design Manual: Section 5 Major Cross Section Elements, Report BDC12MR-02 (2013), https://www.nj.gov/transportation/eng/documents/BDC/pdf/RDMSec5-20150117.pdf.

[72] *See e.g.*, Golden Valley Electric Ass'n, Easement/Right of Way, https://www.gvea.com/services/programs-services/easement-right-of-way/ (typically recommending 100 foot width for 138 kV lines); Minnesota Commerce Department, Fact Sheet: Rights-of-Way and Easements for Energy Facility Construction and Operation, 1 (Jun. 24, 2022), https://apps.commerce.state.mn.us/eera/web/project-file/12227 (typically requiring 150 foot width for 345 kV line); Tennessee Valley Authority, Anatomy of a Right of Way, https://www.tva.com/energy/transmission/right-of-way-maintenance/anatomy-of-a-right-of-way (requiring up to 200 feet for lines carrying up to 500 kV).

[73] *See* Wisconsin Public Service Commission, *Underground Electric Transmission Lines*, https://psc.wi.gov/Documents/Brochures/Under%20Ground%20Transmission.pdf (requiring "5 to 8 feet for trench construction"). *See also* Inelfe, Electrical interconnection in between Baixas – Santa Llogaia, https://www.inelfe.eu/en/projects/baixas-santa-llogaia (using a trench that is approximately three meters (approximately 9.84 feet)).

[74] Buried HVDC well-suited for use in both highway and rail ROW. Not only can transmission cable be buried safely within relatively limited ROWs, HVDC cable can be co-located underground within short distances of

Agency-Energy (ARPA-E) is funding the development of projects that could potentially speed up the process, and lower the overall cost, of undergrounding high and medium voltage transmission lines.[75] Given that transmission development timelines can take many years, the innovations that may yet develop to capitalize on more narrow linear strips of disturbed ROWs are manifold.

B. A National Interest Electric Transmission Corridor Designation That Fails to Maximize Existing ROWs is Inapposite to the Purpose of Both the FPA and NEPA and Risks Undermining FERC's Permitting Authority

Whether producing an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) under NEPA, FERC is required to consider alternatives to the proposed action.[76] While the depth of discussion will differ, in both documents FERC must detail alternative actions that could be undertaken and discuss the impacts from these alternatives.[77] FERC regulations implementing NEPA, in alignment with the Commission's backstop siting authority, require a resource report on action alternatives that includes an analysis of the relative environmental benefits and impacts of each alternative. This analysis must also incorporate maps of sufficient scale to clearly illustrate the location of each alternative in relation to the proposed action and existing rights-of-way.[78] This makes sense, since the Commission's NEPA implementing

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railroad or highway operations due to its inherent efficiency and minimal impacts on proximately located communications and operations. DC transmission lines do not produce a time-varying electromagnetic field and new designs ensure that there are no appreciable leakage currents (i.e., voltage bleed) that could cause corrosion of adjacent metal pipes. NextGen Highways: NextGen Highways: *Introduction to Buried High-Voltage Direct Current Transmission for Departments of Transportation (2022).*

[75] DOE, ARPA-E, *Press Release: U.S. Department of Energy Announces $34 Million to Improve the Reliability, Resiliency, and Security of America's Power Grid*, https://arpa-e.energy.gov/news-and-media/press-releases/us-department-energy-announces-34-million-improve-reliability (funding the development of project construction tools specifically geared to streamline and derisk the process of undergrounding electric transmission lines) ("ARPA-E Press Release").

[76] 42 U.S.C. § 4321.

[77] 18 C.F.R. § 380.2(d), § 380.16(n).

[78] *Id*. § 380.16(n).

regulations requires FERC to consider "[t]he use, widening, or extension of existing rights-of-way . . . in locating" both electric transmission facilities.[79] This regulatory requirement is based not only on Section 216's strongly worded encouragement to make use of existing rights-of-way for long distance infrastructure projects in a National Interest Electric Transmission Corridor, it is also longstanding policy of the Commission, and applies broadly to pipeline projects as well.[80]

Under this framework, once a National Interest Electric Transmission Corridor has been designated, and FERC receives an application to site an interstate transmission line, FERC will evaluate the proposed route identified in the application as well as any existing ROWs that are nearby to the transmission route. FERC, however, has authority to site a transmission line only within the geographic bounds of a National Interest Electric Transmission Corridor. Yet, the Commission's NEPA implementing regulations impose no such limits on the scope of its review or its consideration of existing rights-of-way. Restricting the Commission to evaluating only alternative routes within a National Interest Electric Transmission Corridor would contradict the plain text of NEPA and weaken the environmental accountability principles at its core.

When a National Interest Electric Transmission Corridor fails to encompass a reasonable set of viable existing rights-of-way, the Commission faces a difficult choice—either adhere to the purpose and scope of NEPA by considering alternatives beyond the National Interest Electric Transmission Corridor boundary, potentially jeopardizing its ability to issue a permit, or preserve its authority by limiting the scope of its NEPA analysis to the designated corridor, thereby constraining its assessment of alternatives. To avoid this dilemma, it is essential for the DOE to

[79] *See id*. § 380.15 ("Siting and maintenance requirements").

[80] *Id*. § 380.16(n). *Cf.* Environmental Reports Under the Natural Gas Act, 18 C.F.R. § 380.12(l)(2)(ii) ("Identify major and minor route alternatives considered to avoid impact on sensitive environmental areas (e.g., wetlands, parks, or residences) and provide sufficient comparative data to justify the selection of the proposed route.").

designate corridors that maximize the inclusion of available and viable existing rights-of-way. A well-drawn National Interest Electric Transmission Corridor not only aligns with legal requirements but also ensures that FERC can issue permits in a manner consistent with NEPA while upholding its accountability framework.

C. Failure to Consider Highway ROWs in States That Do Not Have Existing State Collocation Policy is Shortsighted and Potentially Punitive

DOE has indicated, and the Phase 3 potential National Interest Electric Transmission Corridor designations demonstrate, that the Department only included the network of existing transmission and highway ROWs in states that currently allow for collocation of transmission lines along highways. While we understand the practical reason for narrowing consideration of existing ROWs to those that can be considered by the state, the decision to do so is shortsighted. There has been concerted, widespread, and rapid progress by the states to enable the siting of transmission alongside highways and other existing ROWs. Already, New Hampshire, Maine, Wisconsin and Minnesota have policies that allow for collocation with existing utility and highway ROWs,[81] while three other states currently have bills in their legislatures which would enable collocation[82] and another dozen where discussions of legislative action is taking place.

According to the Department, Phase 3 of the four-phase National Interest Electric Transmission Corridor designation process won't wrap up until 2026, and then DOE must still finalize the designations and NEPA review.[83] Only after that can construction permit applications be filed at FERC, and FERC must prepare a separate NEPA document on that proposed line.

[81] N.H. Rev. Stat. § 231:160 (N.H.); Statute 35-A MRS §3132 (Me.); Wis. Stat. § 1.12.6 (Wis.); MINN STAT. 161.45 § 4 (Minn.).

[82] *See* An Act concerning regulation, HB3779 pp. 627-632 (2025) https://www.ilga.gov/legislation/104/HB/PDF/10400HB3779lv.pdf.

[83] DOE National Interest Electric Transmission Corridor Website.

FERC's processes alone will take a year if not longer to fully resolve. This means that if a project sponsor was able to submit a project to FERC at the first opportunity to do so, we would not see construction of that transmission line start until late 2027 at the earliest – over two years away.

Given the momentum that we have seen at the state level, and the benefits that states see in collocating transmission alongside infrastructure, it is entirely possible that many more states will not only be able to consider but will prioritize highway and transmission collocation before any project begins construction. Failing to duly consider and include existing ROWs in states that don't yet have such policies is unnecessarily discriminatory, and potentially punitive, particularly to those states hoping to increase transmission development and actively moving towards state collocation policies.

D. DOE's Decision Not to Consider Railroad and Non-Transmission Utility ROWs is Arbitrary and Capricious

DOE has indicated that it did not include rail lines or non-transmission utility corridors in its potential designation. This is a mistake. As mentioned above, each category of ROW has unique challenges, but nevertheless every category of transportation or utility right-of-way can serve as a host for a transmission line and deliver benefits.

There are a myriad of transmission installation designs that allow for high voltage transmission to be built on narrower footprints or share infrastructure,[84] and rapid innovation in the construction and deployment of underground transmission lines will not only bring down the cost of undergrounding lines but will make installation less disruptive.[85]

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[84] *See e.g.*, FRA, *Philadelphia Zoo to Paoli Transmission Line Project - Engineering Drawings of New Catenary and Transmission* Poles, https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/14859/03%20Cross%20Section%20of%20Structure%201.pdf (Last updated July 2, 2015).

[85] ARPA-E Press Release.

Railways, like the interstate highway system, represent hundreds of thousands of miles of terrestrial linear tracts that move across the country connecting population centers. These lines, like the highway system, represent valuable collocation opportunities that could drive down the cost and time to site transmission lines, and avoid landowner impacts.

Since some rail operators own their lines outright, there is a very different dynamic at play between a transmission developer and rail line than between a developer and a state highway transportation office. Despite these differences, transmission developers have repeatedly been able to reach agreement with rail lines to site transmission projects. Some of these projects, described above, include the SOO Green HVDC Link transmission line,[86] and the Champlain Hudson Power Express.[87]

Absent a clear statement as to why DOE does not consider railroad ROWs to be viable for transmission collocation, its decision to not include them in the potential National Interest Electric Transmission Corridors is arbitrary and capricious. Filtering out entire categories of existing ROWs goes against the plain text of Section 216 of the FPA which clearly states that in making a decision as to whether to designate a National Interest Electric Transmission Corridor that the Department may consider whether the National Interest Electric Transmission Corridor designation "maximizes existing rights-of-way."[88] DOE cannot conceivably consider maximizing existing ROWs, if a whole swath of them, millions of miles worth, are excluded from consideration.

[86] SOO Green HVDC Link, *Response to the Illinois Power Agency Electricity and Capacity Procurement for Eligible Retail Customers Request for Stakeholder Comments*, https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/comments-page/soo-green.pdf.

[87] Champlain Hudson Power Express, Route Maps, https://chpexpress.com/project-overview/route-maps/.

[88] 16 U.S.C. § 824p.

Congress wants all transportation corridors to be studied as possible sites for transmission lines, not only highways. In the Bipartisan Infrastructure Law, Congress directed the Joint Office of the Department of Energy and the Department of Transportation ("Joint Office") to "study, plan, coordinate, and implement issues of joint concern between the two agencies" which includes the "development of a streamlined utility accommodations policy for high-voltage and medium-voltage transmission in the *transportation* right-of-way."[89] The Department should therefore expand its evaluation of existing ROWs to include railroad ROWs alongside utility and highway ROWs in the National Interest Electric Transmission Corridor designation process.

IV. Public Engagement Responsibilities and Recommendations

A. Value of Early and Consistent Engagement under NEPA

Adoption of a thoughtful, science-based, and inclusive approach to transmission corridor planning in the beginning can expedite the deployment of transmission needed to ensure a reliable and affordable grid by reducing land-use conflicts and enhancing community support. Public engagement is therefore a critical component of "smart from the start."

Despite the urgency of updates and upgrades to our country's energy transmission system, local opposition in some places has become a major impediment and source of delay in the approval process for projects. To address this, DOE should continue to hold early and meaningful engagement with local communities at public meetings and other venues that are in addition to any forthcoming programmatic (or, later, site-specific project-level) NEPA process.

Maximum engagement means DOE will involve communities in decision-making, address their concerns to the maximum extent possible, and share the benefits of designating

[89] IIJA.

transmission corridors. To ensure meaningful engagement, any information shared with communities should be accessible, in substance and in form. Information should be shared publicly through easy to search for and access, search engine optimization (SEO) compliant, online locations, as well as available at in person meetings or at other locations reasonably accessible to the community. Where the Department is disseminating highly technical information, it should also prepare summaries or guides for communities that is written in plain English.[90] The Department should be available to respond to questions and concerns from communities. At minimum, and as DOE has done throughout the development of the NIETC program, the department should continue to directly solicit and respond to feedback from stakeholders via the NIETC email address.[91] DOE should also coordinate with FERC on data accessibility and the formats of applications, or other information solicitations from transmission developers, to reduce the risk and the burden of unnecessarily repetitive or duplicative processes when they file at FERC. Harmonizing the content and form of this information will also make it easier for communities to follow and stay engaged in the entire Section 216 process, and ensure that communities with existing familiarity with the data accessibility and format in FERC proceeding will not have to learn a new regulatory language in order to follow the corridor designations.

This approach will minimize social conflicts and ultimately lead to a more efficient and equitable permitting process. Surfacing community concerns early in the timeline of a potential infrastructure project allows for more dialogue around potential modifications and/or mitigation

[90] *See* C40 Cities, *Inclusive Community Engagement Playbook*, 30 (2019), https://c40.my.salesforce.com/sfc/p/#36000001Enhz/a/1Q000000Mea7/3zH_zQzfhUmD_KNamcD1aPz5zvabD4XtoDO9yfEMgFM.

[91] NIETC@hq.doe.gov. *See* DOE National Interest Electric Transmission Corridor Website.

for impacts and can help to increase community acceptance of a project and reduce controversy.[92]

B. DOE's Trust Responsibility Towards Tribes Requires Meaningful Engagement to Best Understand Each Tribe's Unique Perspective

Indigenous peoples are the longest serving stewards of public lands. Since time immemorial, they have used these lands for cultural and spiritual purposes, including hunting, fishing, gathering, ceremonies, burials, and other uses. The belief systems of Tribes are often tied to lands and waters encompassing large areas rather than discrete sites, and in many cases, Tribes retain enforceable rights to continue accessing those lands to practice traditional activities or make use of resources. DOE must honor these traditional and present ties to the public lands and, consistent with the federal government's unique trust relationship with Tribes and related legal obligations, meaningfully consult on a government-to-government basis with Tribes during all phases of the National Interest Electric Transmission Corridor process.

At its best, consultation creates true collaboration whereby Tribes are treated as full partners in decision-making: Tribal consultation is a two-way, Nation-to-Nation exchange of information and dialogue between official representatives of the United States and of Tribal Nations regarding Federal policies that have Tribal implications. Consultation recognizes Tribal sovereignty and the Nation-to-Nation relationship between the United States and Tribal Nations, and acknowledges that the United States maintains certain treaty and trust responsibilities to Tribal Nations. Consultation requires that information obtained from Tribes be given meaningful consideration, and agencies should strive for consensus with Tribes or a mutually desired outcome. In conducting Tribal consultations, DOE must "respect Tribal self-government and

[92] *See* PNNL, *Principles for Equitable Transmission Planning* (Dec. 2023), https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-35256.pdf.

sovereignty; identify and consider tribal treaty rights, reserved rights, and other rights; respect and elevate Indigenous Knowledge, including cultural norms and practices relevant to such consultations; and meet the responsibilities that arise from the unique legal relationship between the Federal Government and tribal governments.".[93] These obligations require the DOE to engage in consistent and ongoing consultation with a Tribal Nation that is potentially impacted, or who have otherwise expressed a valid interest in the potential designation throughout both the designation process and during the NEPA review.

Tribes, as natural stewards of their land, understand how best to maximize the benefits of project development that takes place within their own geographic bounds, particularly for projects that that are being developed by the Tribe, as a result Tribal input on the routes of a NIETC is vital and must be given appropriate consideration. It is also important to understand how development on Tribal land may differ from that on state or federal land. For example, collocation of transmission with existing ROWs may not provide the same benefits that it would on non-Tribal land. This is because most of these infrastructure corridors are not controlled by the Tribe, nor do the Tribes have the regulatory authority to oversee their operations. Rather these corridors are owned, operated and maintained by non-Tribal private utility, state or rail companies. First of all, this means that all of the transmission collocation lease payments will flow to the private developer and not to the Tribe (unless a separate agreement with the Tribe is sought by the developer).

Second, many of the instruments or processes that established historic ROWs on Tribal land are actively contested by Tribes, and may have run afoul of treaty and consultation

[93] Uniform Standards for Tribal Consultation, 87 Fed. Reg. 74479 (2022).

obligations.[94] Commonly, land grants for ROWs through a Tribal reservation fail to provide the Tribe with adequate compensation for the lease. This has led to Tribal distrust with these non-Tribal operating entities, and deep discomfort with the prospect of non-Tribal entities constructing and operating additional projects on their land.

This dynamic may thwart many of the economic and land use benefits that collocation would otherwise have, and which is described above. This is only one of the reasons why it is imperative that DOE in finalizing the National Interest Electric Transmission Corridors regularly consults with Tribes so that they can more fully understand the individual needs and perspectives of the Tribe.

V. DOE Should Act Swiftly and Finalize the Three Potential National Interest Electric Transmission Corridors and Continue to Propose Future Designations While the Current Ones are Finalized

This designation process is essential for enhancing the reliability, capacity, and resilience of the United States' electrical transmission networks, particularly in mitigating existing transmission deficits. PIOs appreciate the Department's efforts thus far and encourage the Department to finalize these three National Interest Electric Transmission Corridors.

However, many other regions that are experiencing similar challenges have not been included in this list.[95] This underscores the necessity for a continual, iterative designation process that does not pause with the completion of the current round but proceeds seamlessly into subsequent evaluations and designations to address the evolving needs of the national grid. We therefore encourage the Department to start a parallel process for the next round of National

[94] Environmental Defense Fund and Clean Air Task Force, *Case Study of West of Devers Transmission Project* (*Forthcoming* 2025).

[95] *See* DOE, National Transmission Needs Study, 62-63 (Oct. 2023), https://www.energy.gov/sites/default/files/2023-12/National%20Transmission%20Needs%20Study%20-%20Final_2023.12.1.pdf.

Interest Electric Transmission Corridors soliciting feedback from developers, and other stakeholders for the next round of National Interest Electric Transmission Corridors.

Nothing in FPA Section 216 says that DOE can only designate one set of National Interest Electric Transmission Corridors per transmission study. Given the desperate need for additional transmission infrastructure to protect the reliability and affordability of electric power, DOE should move ahead with additional designations that will also enhance and accelerate development of the transmission grid. We acknowledge that the National Interest Electric Transmission Corridor process is only part of a much larger program to meet the projected demand for electricity and harden the grid against extreme events and threats. Nevertheless, National Interest Electric Transmission Corridor designations are a valuable tool as industry and government continue to work through changes in US energy demand and development. DOE is therefore urged to move immediately to start work on the next round of National Interest Electric Transmission Corridor designations to ensure that the policies that Section 216 embodies continue to be front and center.

CONCLUSION

These comments highlight practical and achievable opportunities for DOE to better ensure that the designation of National Interest Electric Transmission Corridors is consistent with the ultimate purpose of Section 216(a) – to expedite the least burdensome build out of a reliable, affordable, and secure electric transmission system.

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Respectfully Submitted,

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Field Code Changed