From: Nick Lawton <nlawton@earthjustice.org>
Sent: Friday, February 14, 2025 3:16 PM
To: NIETC
Subject: [EXTERNAL] DOE–HQ–2024–0088-Potential Designation of the Tribal Energy Access National Interest Transmission Corridor
Attachments: Comments in support of Tribal Energy Access Corridor.pdf

Hello,

Please find attached comments in support of the designation of the Tribal Energy Access National Interest Electric Transmission Corridor on behalf of Earthjustice, the Environmental Defense Fund, Natural Resources Defense Council and Sustainable FERC Project.

Thank you,

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UNITED STATES DEPARTMENT OF ENERGY
GRID DEPLOYMENT OFFICE

COMMENTS OF EARTHJUSTICE, ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES DEFENSE COUNCIL, AND SUSTAINABLE FERC PROJECT IN SUPPORT OF THE TRIBAL ENERGY ACCESS CORRIDOR

In response to the Department of Energy's ("DOE") December 16, 2024, request for comment,[1] Earthjustice, Environmental Defense Fund, Natural Resources Defense Council, and Sustainable FERC Project submit these comments to express support for the designation of the Tribal Energy Access Corridor ("TEAC") and to urge DOE to collaborate to the maximum degree possible with the Tribes that this Corridor would affect. The Tribal Energy Access Corridor presents a unique and important opportunity to enable some of the poorest Native American Tribes in the nation to pursue their energy and economic development goals, while also providing broad regional and interregional benefits. For these reasons, the statutory factors listed in the Federal Power Act's ("FPA") provisions authorizing DOE to designate National Interest Electric Transmission Corridors ("NIETC") strongly support designation of this Corridor. Additionally, because the Tribal Energy Access Corridor is well-configured to avoid and minimize adverse environmental impacts, the environmental analysis for this Corridor should be straightforward. In short, the Tribal Energy Access Corridor presents an exceptional opportunity for DOE to facilitate the development of badly needed transmission infrastructure that will benefit Tribes, rural communities, and the national power grid overall.

[1] DOE, 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. 101,597 (Dec. 16, 2024).

INTRODUCTION

DOE's designation of NIETCs is an important step toward developing transmission projects that are essential to meeting the nation's energy development goals, reducing congestion, increasing reliability and resilience, and protecting consumers, communities, and the environment. We commend DOE both for its commitment to public input during its NIETC designation process and for advancing the Tribal Energy Access Corridor to the next phase in the process. These comments strongly encourage DOE to continue its commitment to public engagement—and especially to collaborate closely with the Tribes that this NIETC would affect—and to prioritize the designation of this Corridor.

Critically, the Tribal Energy Access Corridor would promote energy and economic development for Tribes that the United States has historically failed to serve, and in doing so would provide significant benefits for a region with significant untapped potential for utility-scale energy development. Due to a lack of investment in Tribal and rural communities, these areas often experience less reliable electric service, disproportionate energy and environmental burdens, and significant obstacles to projects that would improve electric service, yield economic benefits, and improve local environments. The NIETC designation process generally—and the Tribal Energy Access Corridor specifically—can help remedy these historic harms by empowering communities to pursue their energy and economic development goals.

Situated in North Dakota and South Dakota, the Tribal Energy Access Corridor would traverse the reservations and ancestral lands of at least seven Indian Tribes: the Cheyenne River Sioux Tribe, the Crow Creek Sioux Tribe, the Flandreau Santee Sioux Tribe, the Oglala Sioux Tribe, the Rosebud Sioux Tribe, the Standing Rock Sioux Tribe, and the Yankton Sioux Tribe

(collectively "OSPA Member Tribes"). Historically, the United States has waged war on Sioux Tribes, stolen land, violated treaties, and attempted to coerce Tribal members to abandon traditional cultures.[2] Today, these Tribes' reservations represent only a small fraction of their ancestral lands.[3] In part because the United States has failed to invest in infrastructure to serve these areas,[4] these Tribes face extreme poverty and tremendous obstacles to energy and broader economic development. For example, in 2019, the President of the Oglala Sioux Tribe testified to Congress about how the lack of essential infrastructure "impedes economic development, job creation, and a good quality of life" on the Pine Ridge Indian Reservation.[5] As that testimony noted, Oglala Lakota County, which is entirely within the Reservation, "is among the poorest counties in United States with over 51.9% below the poverty line, per capita income around $8,768, unemployment in the 80% range, and a high school dropout rate of over 60%."[6] The testimony further noted that "modernized infrastructure would significantly improve these conditions, help revitalize [the Oglala Tribe's] economy and expand opportunities for [the Oglala Tribe's] people, and improve the quality of life on [the Oglala Tribe's] reservation."[7] DOE

[2] *See*, *e.g.*, *United States v. Sioux Nation of Indians*, 448 U.S. 371, 422–24 (1980) (describing a history "in many respects tragic" in which after establishing treaties to end wars with Sioux Tribes, "the United States unlawfully abrogated" treaty obligations, and in which the acts of the United States enforced a "lifestyle Congress had chosen" for Sioux Tribes that "depriv[ed] them of their chosen way of life," and concluding that the United States had "effected a taking of tribal property" without compensation).
[3] *See*, *e.g.*, *id.* at 422–23 (describing how the actions of the United States repeatedly and unlawfully removed lands from Reservations promised to Sioux Tribes).
[4] Racheal M. White Hawk, "Community-scale Solar: Watt's in it for Indian Country?" 40 ENVIRONS 1 (2016) at 8, https://environs.law.ucdavis.edu/sites/g/files/dgvnsk15356/files/media/documents/ENV-40-1-articles-Hawk.pdf ("tribes are often left out of significant discussions among federal, state, and regional organizations when planning transmission line corridors, resulting in Indian land being excluded from transmission routing altogether"). *See also* Tracy LeBeau, "The Green Road Ahead: Renewable Energy Takes a Stumble But Is on the Right Path, Possibly Right Through Indian Country," The Federal Lawyer Magazine (2009) at 43, https://www.fedbar.org/wp-content/uploads/2009/03/coverstorymarapr2009-pdf-1.pdf.
[5] Written Testimony of Julian Bear Runner, President of the Oglala Sioux Tribe, to the Subcommittee for Indigenous Peoples of the United States, House Natural Resources Committee at 1 (July 11, 2019), available at https://www.congress.gov/116/meeting/house/109756/documents/HHRG-116-II24-20190711-SD004.pdf.
[6] *Id.*
[7] *Id.*

should prioritize working directly with Tribes to facilitate development of the infrastructure the Tribes have been calling for.

The Tribal Energy Access Corridor presents an opportunity for DOE to work with Sioux Tribes to facilitate the modernization of electric infrastructure and Tribal economic development. In 2015, these seven Sioux Tribes established the Oceti Sakowin Power Authority ("OSPA"), a non-profit organization wholly owned and directed by the Tribes, which aims to facilitate the Tribes' goals of developing utility-scale and community-scale clean power projects on Tribal lands for the benefit of the Tribes.[8] The Tribes have some of the strongest on-land wind resources in the United States.[9] OSPA's preliminary work on two wind energy projects—the Ta'teh Topah wind farm on the Cheyenne River Reservation and the Pass Creek wind farm on the Oglala Pine Ridge Reservation—demonstrates a net capacity factor of 50%, which is very high for wind energy projects.[10] However, these projects faced extreme obstacles when seeking interconnection to the power grid in the Southwest Power Pool ("SPP"). The badly clogged state of SPP's interconnection queue meant that these projects languished for roughly five years before SPP informed OSPA that the projects would have to pay roughly $230 million to connect to the grid—including a security deposit of $48 million that would be due in an extremely short period.[11] These interconnection costs were so high due to a lack of transmission capacity; the region that includes the Tribes' reservations is served principally by transmission lines at or

[8] OSPA, *About Us*, https://www.ospower.org/about-us/; *see also* Oceti Sakowin Power Authority, *Member Tribes*, https://www.ospower.org/member-tribes/.
[9] OSPA, *Member Tribes*, https://www.ospower.org/member-tribes/ (depicting the wind resources on the lands of OSPA's member Tribes).
[10] OSPA, *Comments of the Oceti Sakowin Power Authority in Response to U.S. Department of Interior's Request for Information: Designation of National Interest Electric Transmission Corridors* ("OSPA RFI Comments") at 3 (July 31, 2023), https://www.ospower.org/wp-content/uploads/2023/10/OSPA-NIETC-COMMENTS-7.31.23.pdf; *see also* DOE, Office of Energy Efficiency & Renewable Energy, *Land-Based Wind Market Report: 2021 Edition* at ix (noting that the average capacity factor for wind projects built between 2014 and 2019 was 41.4%).
[11] OSPA RFI Comments, *supra* note 10, at 4.

below 230 kilovolt (kV) capacity.[12] In comparison, areas where interconnection costs are lower, and where energy development is cheaper, quicker, and more successful, generally have access to transmission lines at or above 345 kV capacity.[13] The lack of transmission capacity in the region stymies energy development; prohibitive interconnection costs forced OSPA's two utility-scale wind projects, as well as a utility-scale solar project, to withdraw from SPP's interconnection queue.[14]

The Tribal Energy Access Corridor would help remedy the lack of transmission that currently prevents OSPA's member Tribes from achieving their energy and economic development goals. By facilitating the financing and permitting of transmission infrastructure, the vast majority of which will be sited within existing rights-of-way, this NIETC would help develop a backbone of high-capacity transmission that can allow swifter and lower-cost interconnection of Tribes' energy projects. The designation of this NIETC would thus reflect a form of federal support for modernizing infrastructure that can empower Tribes to pursue their own energy and economic development goals. And the impacts could be profound: as co-developers and co-owners of large-scale clean energy projects, the Tribes would stand to earn substantial sums directly from the sales of power. Additionally, Tribal governments could reap millions of dollars in tax revenue, while Tribal members who own land where the projects are located could earn steady income from rent. Development of these energy projects would likely also generate thousands of jobs during construction, as well as a more limited number of long-term operation and maintenance positions.[15]

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[12] *Id.*
[13] *See*, *e.g. infra* (including a map that depicts how wind energy in the Southwest Power Pool has clustered around high-capacity transmission).
[14] OSPA RFI comments, *supra* note 10, at 4.
[15] *See id.* at 15–16 (describing how "Indian Energy projects are uniquely beneficial to their host communities" and listing such benefits).

Moreover, in addition to empowering Tribes to pursue energy and economic development, the transmission facilitated by designation of the Tribal Energy Access Corridor would also have regional benefits for other rural communities that experience significant energy burdens. Providing a transmission backbone for the region could reduce energy costs and enable development of energy resources that could provide sources of income for these communities.

For these reasons, the Tribal Energy Access Corridor is uniquely well-suited to promote Tribal energy and economic development. We encourage DOE to continue close and direct engagement with affected communities, which, in the case of this NIETC, will require direct, proactive engagement with the affected Sioux Tribes and the Power Authority these Tribes have established to achieve their development goals. We make our recommendations based on our assessment of materials produced by Tribes, but we do not represent a tribal perspective, let alone the diverse views of the many Indian Tribes and Indigenous peoples DOE must consider. Hence, we strongly encourage DOE to continue its proactive outreach to affected communities in as consistent and thorough a manner as possible. Below, we explain our view that the Tribal Energy Access Corridor meets the relevant requirements and discretionary factors in the Federal Power Act, and why its designation would be a prudent and fruitful use of DOE's resources.

DISCUSSION

I. The mandatory and discretionary factors in the FPA support designation of the Tribal Energy Access Corridor.

DOE correctly found that the region that the Tribal Energy Access Corridor would serve faces "significant need for new transmission, especially extra high-voltage transmission, to relieve system congestion, lower consumer costs, meet future generation and demand growth,

increase clean energy integration, and improve energy justice among Tribal communities."[16] Because this area is currently experiencing, and will continue to experience, transmission constraints or congestion that adversely affects consumers, this NIETC easily meets the threshold criteria in FPA section 216(a)(2).[17] Additionally, this NIETC would promote both resilience and reliability.

A. Upgrading SPP's grid in the Tribal Energy Access Corridor would increase resilience to extreme winter weather by incorporating diverse wind resources and laying the groundwork for future transmission ties to the west.

One of transmission's great benefits is its ability to integrate diverse generating resources that can perform well in different types of weather, thus increasing resilience[18] within DOE's definition as the ability to "withstand and/or recover from system disruptions or unanticipated failure of system elements, particularly extreme weather events."[19] Resilience of this nature was demonstrated in the Northern Plains during Winter Storm Uri, when MISO was able to import energy from the east, as well as deliver some energy to SPP and even the West.[20] And yet, significant untapped potential for transmission to firm up the grid during extreme cold events remains. Analysis shows that additional transmission in MISO and SPP could have saved

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[16] DOE, *Initiation of Phase 2 of National Interest Electric Transmission Corridor (NIETC) Designation Process: Preliminary List of Potential NIETCs Issued Pursuant to Section 216(a) of the Federal Power Act*, at 23 (May 8, 2024), https://www.energy.gov/sites/default/files/2024-05/PreliminaryListPotentialNIETCsPublicRelease.pdf ("Preliminary NIETC List").
[17] 16 U.S.C. § 824p(a)(2).
[18] The Brattle Group and Grid Strategies, *Transmission Planning for the 21st Century: Proven Practices that Increase Value and Reduce Cost* ("Transmission Planning for the 21st Century"), at 41 (Oct. 2021), https://acore.org/resources/transmission-planning-for-the-21st-century/.
[19] DOE Grid Deployment Office, *The Department of Energy's Preliminary List of Potential National Interest Electric Transmission Corridors + Transmission Facility Financing* at 17 (May 16, 2024), available at https://www.energy.gov/sites/default/files/2024-05/2024-05-16%20NIETC%20Designation%20Phase%202%20Webinar%20Presentation%20Slides%20508C.pdf ("DOE NIETC Phase 2 Webinar").
[20] Brattle, Transmission Planning for the 21st Century, *supra* note 18, at 42.

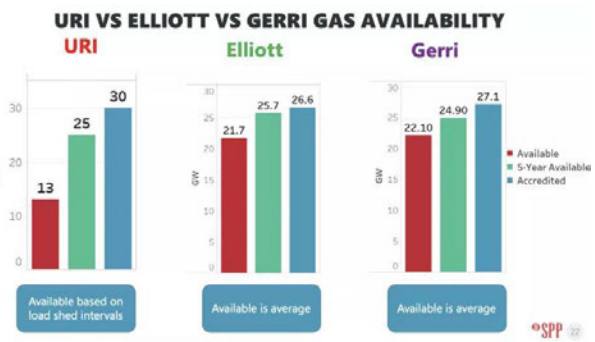
customers in both footprints millions of dollars by expanding access to low-cost wind.[21] With existing resources, the benefit of 1 GW of transmission expansion between Western SPP and SPP South during just a few days during Winter Storm Elliot would have been $6 million.[22]

The Tribal Energy Access Corridor could greatly expand extreme weather resilience and associated savings by facilitating the interconnection of untapped, diverse energy resources. For example, wind generation in SPP outperforms its erroneously low accreditation values, particularly in extreme cold weather events; during the Winter Storms Uri, Elliot, and Gerry, wind resource availability significantly *exceeded* SPP's accreditation values while coal and gas availability both demonstrated significant shortfalls compared to their accredited values, as shown below.[23]

[21] Michael Goggins and Zach Zimmerman, *The Value of Transmission During Winter Storm Elliot*, at 3 (Feb. 2023) https://acore.org/wp-content/uploads/2023/02/The-Value-of-Transmission-During-Winter-Storm-Elliott-ACORE.pdf

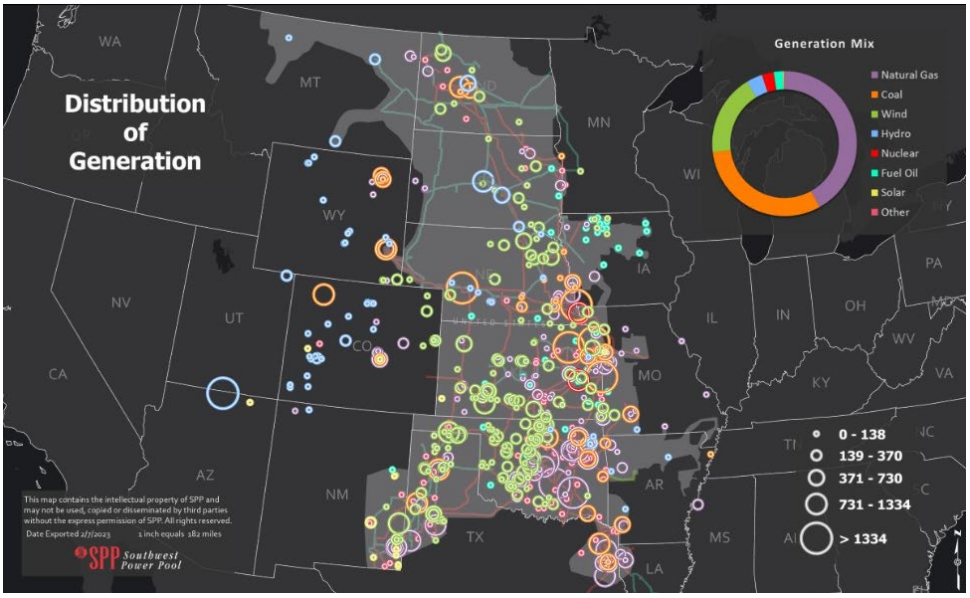
[22] *Id.* at 7.

[23] Garrett Crowson, System Operations, January 2024 Winter Storm Gerri, Operating Reliability Working Group presentation (Feb. 8, 2024), available in meeting materials folder dated Feb. 8, 2024 at https://www.spp.org/spp-documents-filings/?id=19845.



The Tribal Energy Access Corridor would be especially valuable in promoting regional resilience because it would add significant geographic diversity to the wind portfolio within SPP. As illustrated in the map below, the majority of interconnected wind resources in SPP are currently in the southern portion of the grid operator's footprint, and the wind resources in the northern portion of the footprint are skewed to the eastern part of the Plains due to the lack of transmission capacity in the area that would be served by the Tribal Energy Access Corridor.[24] Developing transmission within this NIETC would thus offer significant diversity benefit among wind resources and increase reliability during extreme weather.

[24] Southwest Power Pool 2022 Annual Report, "2022 By the Numbers." https://storymaps.arcgis.com/stories/18725105e46943b5bfe7c77202a4737d .



Finally, a forward-looking perspective reveals additional significant resilience benefits. As the plague of high interconnection costs for resources in transmission-sparse areas demonstrates, infrastructure development can either beget or hinder future infrastructure development. Although the proposed NIETC would not directly connect SPP with western markets, its path along the westernmost edge of the Eastern Interconnect would enable the more cost-effective development of such transmission ties in the future, as discussed in greater detail below. This expanded connectivity would further promote reliability in extreme winter events by allowing SPP to wheel power from both east and west, much as MISO did during Winter Storm Uri.

B. The Tribal Energy Access Corridor would enhance reliability and resiliency on Tribal Lands.

Electric reliability and resilience to extreme weather is a persistent, serious issue in much of Indian Country, and specifically for OSPA's member Tribes. In polling conducted for DOE's 2023 Tribal Electricity Access and Reliability Report ("DOE Tribal Electricity Report"), the Office of Indian Energy Policy and Programs found that one third of Tribal participants reported

at least monthly power outages.[25] Although the causes of these outages ranges, almost a quarter of these respondents reported not having access to the central grid, only localized infrastructure.[26] In addition to experiencing power outages at higher rates, the negative impacts of these outages can be felt more strongly in Native communities. Native Americans are nearly five times more likely than the average American to live in inadequate housing.[27] And in rural areas like those of the OSPA member Tribes' reservations, road clearing during winter storms may take significantly longer and impede the flow of supplies and emergency responders.[28] The overlap of infrastructure outages and inadequate housing can be—and in the Winter Storm Elliot *was*—tragically fatal.[29]

As OSPA has previously made clear, energy sovereignty promises a number of key benefits to Tribes. These benefits include improving the electric reliability issues that persist on many Indian reservations and addressing the associated system resiliency issues during extreme weather events. The lack of transmission on and near Tribal Lands is a barrier to this sort of energy sovereignty. Indeed, the DOE Tribal Electricity Report identifies transmission infrastructure—and the lack thereof—as a critical barrier to energy development on Tribal

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[25] DOE, *Tribal Electricity Access and Reliability* ("DOE Tribal Electricity Report") at 53 (Aug. 2018), https://www.energy.gov/sites/default/files/2024-01/EXEC-2023-000952%20-%20Tribal%20Electricity%20Access%20Reliability%20Report%20to%20Congress%20%28Final%20Draft%20-%20Clean%29-signed%20by%20S1.pdf.

[26] DOE, *National Transmission Needs Study* at 84 (October 2023), https://www.energy.gov/sites/default/files/2023-12/National%20Transmission%20Needs%20Study%20-%20Final_2023.12.1.pdf.

[27] *See* U.S. Dept. of Housing and Urban Development, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, at xvii–xxii (2017) (describing significant disparities in housing conditions between Tribal areas and the rest of the United States).

[28] *See, e.g.,* Amanda Su, ABC News, *South Dakota tribes fight to recover from massive winter storm with some members still stranded*, (Dec. 27, 2022), https://abcnews.go.com/US/south-dakota-tribes-fight-recover-massive-winter-storm/story?id=95833857.

[29] *See* Associated Press, MPR News, *South Dakota Tribe: Storm deaths 'could have been prevented*, (Jan. 23, 2023), https://www.mprnews.org/story/2023/01/23/south-dakota-tribe-storm-deaths-could-have-been-prevented (describing six deaths in the Rosebud Sioux Tribe, one of which included a person who froze to death inside their home, and all of which the Tribe stated could have been prevented had it not been for "systemic" failures).

Lands, second to only financing.[30] Moreover, these problems are mutually reinforcing, since distance to existing infrastructure is a key factor driving up the cost of new energy development. The lack of transmission in the Tribal Energy Access Corridor area is a prime example of this barrier. As the DOE Tribal Electricity Report concludes, federal programs must account for barriers and costs that are unique to Tribes, including "those required to build necessary infrastructure, those associated with geographic remoteness, and those required for training and technical assistance."[31] Designation of the Tribal Energy Access Corridor would help address the challenges described in DOE's Tribal Electricity Report.

Additionally, the Tribal Energy Access Corridor will bolster reliability in the sense that it will promote the ability to "operate transmission system elements within equipment and electric system thermal, voltage, and stability limits."[32] When considering this aspect of reliability, DOE must consider current and expected reliability issues.[33] High interconnection costs are an indicator of expected reliability problems. The high costs reflect the cost of upgrading the transmission network, which is necessary because the addition of new generation can cause reliability violations in the absence of upgrades. Developing new transmission within the Tribal Energy Access Corridor would reduce the likelihood that the interconnection of new generation would cause reliability violations, such as violations of system thermal, voltage, and stability limits. Hence, the Tribal Energy Access Corridor would promote reliability in this sense as well.

[30] DOE Tribal Electricity Report, *supra* note 5, at 68 (citing Jones, T.E. & Necefer, L.E., Sandia National Laboratories, *Identifying Barriers and Pathways for Success for Renewable Energy Development on American Indian Lands* (2016)).
[31] *Id.* at 75 (quoting U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (2018)).
[32] DOE NIETC Phase 2 Webinar, at 17.
[33] *See* 16 U.S.C. § 824(a)(2) (noting that NIETCs include geographic areas that are expected to experience transmission constraints and congestion).

C. Discretionary factors in FPA section 216 support designation of the Tribal Energy Access Corridor.

Under section 216 of the FPA, DOE "may consider" eight discretionary factors when determining whether to designate a NIETC,[34] which strongly indicate that the Tribal Energy Access Corridor would promote the public interest.

1. Economic vitality and development in the Tribal Energy Access Corridor area is constrained by a lack of adequate or reasonably priced electricity.

When considering a potential NIETC designation, the FPA authorizes DOE to consider whether "economic growth in the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity."[35] As noted above, the area served by the Tribal Energy Access Corridor includes Sioux Tribes that experience extreme poverty due, in significant part, to underinvestment in essential infrastructure by the United States, as well as numerous rural communities that also experience relatively high energy costs, which are particularly unaffordable because these same communities often face lower incomes than many other parts of the country. For example, some of the areas served by this NIETC experience both extremely high energy costs and have high concentrations of low-income households. Because the Tribal Energy Access Corridor would serve areas where economic vitality and development is more constrained by a lack of reasonably priced electricity than almost any other location in the United States, this factor strongly supports the designation of this NIETC.

[34] 16 U.S.C. § 824p(a)(4).
[35] 16 U.S.C. § 824p(a)(4)(A).

2. Economic growth in the Tribal Energy Access Corridor area may be jeopardized by reliance on limited sources of energy.

The FPA authorizes DOE to consider whether "(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and (ii) a diversification of supply is warranted."[36] As described above, the Tribal Energy Access Corridor would facilitate development of high-capacity transmission in an area that is currently served only by low-capacity transmission lines. The existing low-capacity transmission lines were built principally to deliver electricity from existing power plants rather than to enable the development of new electricity generation that would facilitate local economic development.[37] OSPA's experience of having to withdraw otherwise viable, utility-scale energy projects from the SPP interconnection queue due to prohibitively high network upgrade costs illustrates how the current transmission system—built to accommodate limited, existing sources of energy—is currently stifling economic development in this area, and will likely continue to do so absent DOE's intervention to facilitate transmission upgrades.[38] Hence, economic growth in this region is presently constrained by reliance on limited sources of energy. Moreover, a diversification of supply is warranted because facilitating development of diverse energy resources would have benefits for the communities in and around the NIETC, as well as for regional and interregional reliability and resilience (as discussed above). Hence, this factor also supports designation of the Tribal Energy Access Corridor.

[36] 16 U.S.C. § 824p(a)(4)(B).
[37] *See* Western Area Power Administration, *Serving the West: Western Area Power Administration's First 25 Years as a Power Marketing Agency*, at 29–35 (2002), available at https://www.wapa.gov/wp-content/uploads/2023/04/25yr-history_2.pdf (describing the early development of transmission in the region).
[38] *See supra* at Introduction.

3. *The Tribal Energy Access Corridor would support the energy independence of the United States and enhance national defense and homeland security.*

The Tribal Energy Access Corridor would also serve "the energy independence [and] energy security of the United States."[39] As described above, the NIETC would facilitate development of some of the strongest on-land wind resources in the United States, including projects with demonstrated net capacity factors of 50%. These projects would advance energy independence and security by efficiently producing affordable, domestic energy with effectively no fuel costs. Critically, wind projects do not rely on fuel inputs that—even if produced domestically—are vulnerable to volatile prices based on global events. By contrast, recent years have seen dramatic swings in natural gas prices stemming from Russia's invasion of Ukraine, as well as global economic trends.[40]

In addition to these energy independence and security advantages, the Tribal Energy Access Corridor would confer particular benefits by expanding the geographic diversity of available resources within the region. Greater geographic diversity allows grid operators to take advantage of varying weather conditions across a wider footprint to maintain a reliable and resilient grid, including in instances of extreme weather, while reducing dependence on imported fuels or fuels with volatile prices.[41] As shown above, this NIETC would promote energy development in a sizable area in which available resources are significantly underdeveloped, particularly given the strength of the wind potential there.[42] Developing strong resources in this

[39] 16 U.S.C. § 824*p*(a)(4)(C).
[40] *See* Erik Van Nostrand & Arik Levinson, *The Inflation Reduction Act: Pro-Growth Climate Policy* (Nov. 13, 2023), https://home.treasury.gov/news/featured-stories/the-inflation-reduction-act-pro-growth-climate-policy#_edn29.
[41] *See* Nat'l Renewable Energy Lab'y, *Explained: Maintaining a Reliable Future Grid with More Wind and Solar* at 4 (Jan. 2024), https://www.nrel.gov/docs/fy24osti/87298.pdf (explaining how transmission development can create "reliability benefits . . . provided largely by geographic and resource diversity").
[42] *See supra* § I(A) (including a depiction of existing wind energy development in the region).

area, paired with much-needed transmission capacity, can make an important contribution to energy security within the region and for the United States.

DOE may also consider whether a NIETC "would enhance national defense and homeland security."[43] This factor supports designation of the Tribal Energy Access Corridor, which would facilitate development of large-scale energy resources in an area that currently faces significant obstacles to the production of a domestic energy supply. The development of an abundant supply of domestic clean energy is a critical step to mitigating national security threats associated with fossil fuel price volatility, as well as from climate change. By unlocking energy development in an area of the United States with some of the greatest on-land wind resources, the Tribal Energy Access Corridor can thus contribute to national security.

4. The Tribal Energy Access Corridor would enhance interconnection of energy supply.

When considering a NIETC designation, the FPA authorizes DOE to consider whether "the designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid."[44] There is significant potential for energy development in the area around the Tribal Energy Access Corridor, but astronomic interconnection costs and backlogs in SPP hamper the achievement of this potential.[45] Indeed, over the past nearly two decades, SPP's interconnection queue has had only a 14 percent capacity-rated completion rate,[46] with wind projects tending to take the longest time to get through the study queue.[47] While FERC's landmark interconnection Order No. 2023 promises to

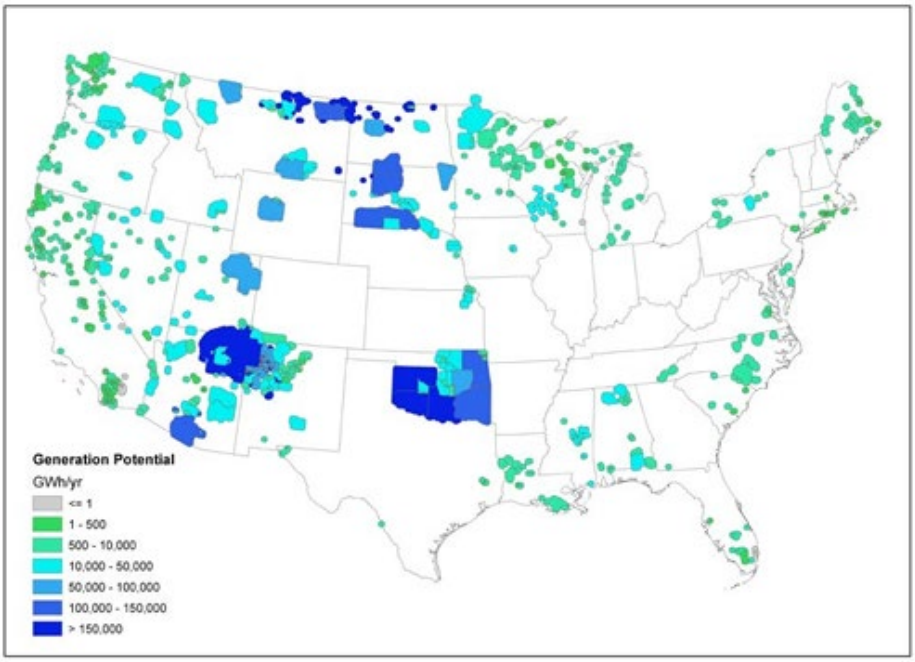
[43] 16 U.S.C. § 824p(a)(4)(E).
[44] 16 U.S.C. § 824p(a)(4)(F).
[45] *See, e.g.,* Rand et al, LBNL, "Queued Up: 2024 Edition," at 9 (reporting 145 GW of active projects in the SPP interconnection queue), https://emp.lbl.gov/sites/default/files/2024-04/Queued%20Up%202024%20Edition_R2.pdf.
[46] *Id*. at 29.
[47] *Id.* at 37.

help alleviate this problem, designating this NIETC would address concrete cost barriers from the lack of transmission capacity that Order No. 2023's process reforms will not solve.

The Pass Creek and Ta'teh Topah projects—which were ultimately forced to withdraw from the SPP queue after years of waiting due to cost barriers—are two concrete examples of the energy supply that a Tribal Energy Access Corridor designation would enable. Indeed, the vast majority of prohibitively high fees assessed to these projects were for developing transmission.[48] And these projects are just the beginning; there is significant potential to develop more Tribally owned energy projects if the transmission capacity barrier to interconnection is solved. Based on NREL analysis of technical potential for renewable energy development on tribal lands, the Cheyenne River, Oglala, and Standing Rock Sioux Tribes have some of the highest potential for wind (ranging from 85 – 100 million MWh)[49] and solar development (exceeding 300 million MWh each), as depicted below.[50]

[48] OSPA RFI Comments, *supra* note 10, at 4–5.
[49] Milbrandt, Heimiller, and Schwabe, NREL, *Techno-Economic Renewable Energy Potential on Tribal Lands*, at 7 Tbl. 3 (July 2018), https://www.nrel.gov/docs/fy18osti/70807.pdf. The Pine River Indian Reservation is home to the Oglala Sioux Tribe.
[50] *Id*. at 11 Tbl. 6.

Figure 2. Wind generation potential by reservation



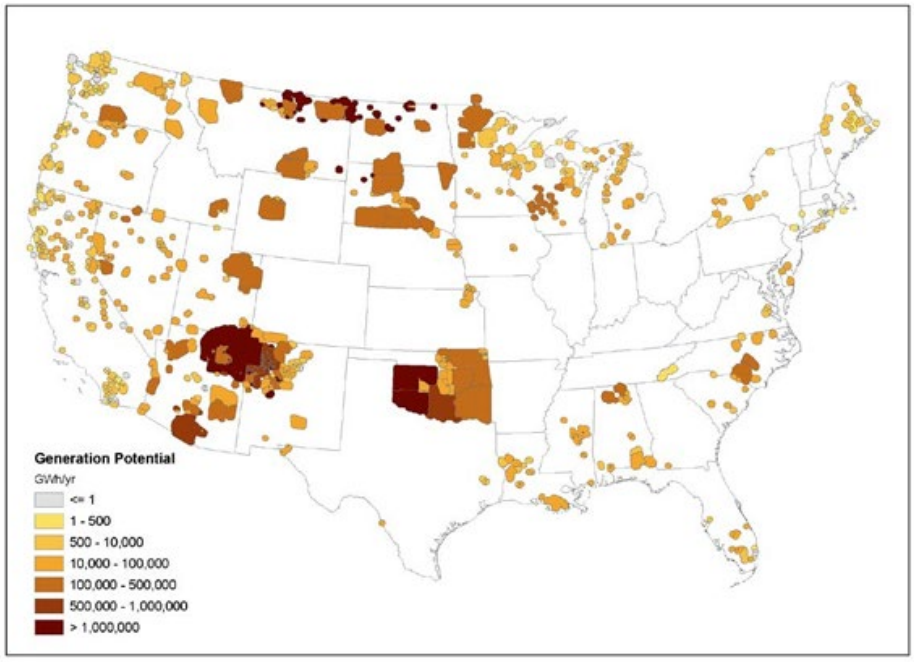


Figure 5. Photovoltaic generation potential by reservation (including extended areas of 10 miles adjacent to the tribal land boundaries)

The Tribal Energy Access Corridor designation would also pair well with the interconnection-related provisions of FERC's Order No. 1920 to support interconnection of

supply. Specifically, Order No. 1920 requires transmission providers to evaluate transmission facilities that would address needs that have been repeatedly identified in the interconnection process, but never completed due to the disproportionately high cost that interconnection would impose on individual interconnection customers.[51] Pass Creek and Ta'teh Topah are prime examples of the withdrawal problem that Order No. 1920 aims to solve. With these changes forthcoming in SPP's compliance with this rule, DOE's efforts to designate a Tribal Energy Access Corridor would be supported by and complementary to the SPP planning process.

5. The Tribal Energy Access Corridor maximizes the use of existing rights of way and avoids and offsets impacts to environmentally sensitive areas and cultural heritage sites to the extent practicable.

The FPA authorizes DOE to consider whether a potential NIETC "(i) maximizes existing rights of way; and (ii) avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites."[52] The Tribal Energy Access Corridor is well-designed to meet these discretionary criteria. First, the NIETC's route largely follows existing transmission rights of way.[53] Although collaboration with Tribes may lead to siting changes, the Tribes are among the most knowledgeable stewards of environmental and cultural resources in the region. Thus, even if collaboration with the Tribes leads to changes to the Corridor's route, the changes will still be likely to meet this factor by avoiding and offsetting impacts to environmentally sensitive areas and cultural heritage sites.

Second, the Tribal Energy Access Corridor is well-designed to avoid sensitive environmental areas. As DOE has noted, the NIETC "avoid[s] large areas where transmission is

[51] Building for the Future Through Electric Regional Transmission Planning and Cost Allocation ("Order No. 1920"), 187 FERC ¶ 61,068 at PP 1106 – 1108 (2024).
[52] 16 U.S.C. § 824p(a)(4)(G).
[53] DOE, Preliminary NIETC List at 23.

less likely to be built,"[54] including broad swaths of lands where transmission development might have more adverse impacts. For example, the NIETC avoids the Badlands National Park and large concentrations of National Wildlife Refuges in North Dakota.[55]

The Tribal Energy Access Corridor does traverse areas with significant cultural resources, including Tribal cultural resources. However, it may be impracticable for the NIETC to achieve the goal of empowering Tribes to achieve their own energy development goals while avoiding Tribal cultural resources altogether. For this reason, we encourage DOE to engage directly with Tribes to determine the best means to assess, minimize, and offset adverse impacts to Tribal cultural resources. For example, where the NIETC crosses areas with significant Tribal cultural resources, the designation of the NIETC and the development of transmission upgrades would provide opportunities to collaborate with Tribes on cultural resource studies that may not have been completed when existing transmission infrastructure was built. Similarly, to the extent that collaboration with Tribes yields changes to the Corridor's route, that same collaboration can provide opportunities to identify Tribally supported means of avoiding or mitigating any adverse impacts. Finally, to the extent that the NIETC designation, and subsequent transmission upgrades, empower Tribes to pursue their own clean energy and economic development goals, the NIETC designation may enable Tribes to determine how best to offset adverse impacts. As discussed below, the potential impacts to important cultural resources also reinforce the need for robust, government-to-government consultation with Tribes.

[54] *Id.*.
[55] *See* U.S. Fish & Wildlife Service, *Map of the National Wildlife Refuge System*, https://www.fws.gov/media/map-national-wildlife-refuge-system. While the resolution of this map and of the available maps of the potential NIETCs makes them difficult to compare, the NIETC's shape appears to avoid the largest concentrations of Refuges in North Dakota and Nebraska.

6. The Tribal Energy Access Corridor would reduce consumers' energy costs.

The FPA authorizes DOE to consider whether a NIETC "designation would result in a reduction in the cost to purchase electric energy for consumers."[56] The Tribal Energy Access Corridor would do so in two ways. First, as DOE has noted, the area served by the NIETC experiences "low wholesale electricity prices in the northern region and high prices to the south," and "high congestion values [that] have been increasing year after year since 2015."[57] Indeed, SPP has the highest load-weighted congestion costs of all the multi-state ISOs.[58] These facts support DOE's initial finding that "additional transmission between the areas would reduce system congestion and constraints *and reduce costs to consumers*."[59] Second, the Tribal Energy Access Corridor, and the transmission upgrades it would facilitate, would very likely lead to the development of new, low-cost wind energy generation, such as OSPA's utility-scale projects. The development of low-cost energy sources would also contribute to a reduction in consumer energy costs. Hence, this factor strongly supports designating the Tribal Energy Access Corridor.

II. DOE should collaborate with Tribes to determine the best route for the TEAC and should defer to Tribes about how the TEAC can best promote Tribal interests.

The Tribal Energy Access Corridor's inclusion of Tribal land offers unique benefits and increased project certainty given the OSPA Member Tribes' support for a NIETC designation and authority over the included Tribal lands; however, DOE must effectively collaborate with Tribes in order to realize these benefits. Indeed, because the Tribes are members and owners of OSPA, a key proponent of the Corridor, *and* the sovereign governments representing potentially affected communities along the route of any potential projects in the TEAC, close collaboration

[56] 16 U.S.C. § 824p(a)(4)(H).
[57] DOE, Preliminary NIETC List at 23–24.
[58] DOE, *National Transmission Needs Study*, *supra* note 36, at 65.
[59] DOE, Preliminary NIETC List at 24 (emphasis added).

with the Tribes is essential to the TEAC's success. The OSPA Member Tribes are also landowners and stewards of cultural and environmental resources within the Corridor, which are subject to study requirements under NEPA and the National Historic Preservation Act ("NHPA"). Thus, DOE can maximize the efficiency and efficacy of its NIETC designation efforts—and ensure that the Tribal Energy Access Corridor lives up to its name—by working closely with the Tribes.

Engaging with affected communities early and often makes projects more likely to be successful, from planning to permitting to operation.[60] Establishing dialogue and considering community input early on—such as to make route or technology changes—renders future stages of the project less likely to draw opposition or be forced to go back to the drawing board. Indeed, a quantitative survey conducted by the Lawrence Berkeley National Laboratory found that approximately three quarters of developers report that their investments in community engagement pay for themselves in terms of reduced delays and cancellations.[61] The study also found that trusted third parties are particularly helpful in communicating about economic potential of projects and for negotiating on behalf of community needs.[62] In this instance, the OSPA Member Tribes are well-suited to fill this role not only as the sponsors of the most likely transmission projects and energy development projects within the Corridor, but also protectors of the environmental and cultural resources nearby who are democratically responsive to affected communities. DOE's coordination with the OSPA Member Tribes in this role will also help DOE

[60] Lawrence Susskind et al., Sources of opposition to renewable energy projects in the United States, 165 Energy Policy, at 13 (June 2022), https://www.sciencedirect.com/science/article/pii/S0301421522001471# (finding that including community members and relevant stakeholders in location, design, finance, mitigation, and other decisions" will help "resolve many of the conflicts that tend to arise" regarding energy projects).
[61] Robi Nilson et al., Halfway up the ladder: Developer practices and perspectives on community engagement for utility-scale renewable energy in the United States, 117 Energy Research & Social Science, at 10 (Aug. 2024), https://www.sciencedirect.com/science/article/pii/S2214629624002974#s0085.
[62] Nilson et al at 10.

maximize the TEAC's fulfillment of the discretionary factors for NIETCs under section 216(a)(4) discussed above, such as the economic vitality and development of the corridor, maximizing the use of existing right of way, and minimizing and mitigating impacts to sensitive cultural or environmental areas.

In addition to these pragmatic reasons to engage with and defer to tribes, DOE must consult with the OSPA Member Tribes in order to comply with NEPA and the National Historic Preservation Act, as well to fulfill its trust obligations. Tribes are in the best position to advise and conduct study of their cultural resources, both on and off their reservations. Indeed, 2019 guidance from the Advisory Council on Historic Preservation, the agency charged with promoting the preservation of the nation's diverse historic resources, suggests that "federal agencies should begin . . . consultation early in project planning and should assist applicants in coordinating with Indian tribes in pre-application processes, whenever possible."[63] Specifically, the guidance recommended beginning engagement even before the formal Section 106 consultation.[64]

For a specific example, DOE should consult and work closely with the Tribal Historic Preservation Offices of all nearby Tribes to examine cultural resources along new and existing right of ways. This is essential because many of the existing right of ways may have been granted without proper study.[65] And as Justice Neil Gorsuch explained in the majority opinion in *McGirt v. Oklahoma,* "Congress has defined 'Indian country' to include 'all land within the

[63] Advisory Council on Historic Preservation, Early Coordination with Indian Tribes in Pre-Application Processes: A Handbook, at 3 (Oct. 2019), https://www.achp.gov/sites/default/files/documents/2019-10/EarlyCoordinationHandbook_102819_HighRes.pdf.
[64] *Id*. at 11–12.
[65] OSPA, *Phase 2 Information Submission in Support of Designation of the Proposed Northern Plains National Interest Electric Transmission Corridor* at 17 (June 24, 2024), https://www.ospower.org/wp-content/uploads/2025/02/OSPA-Comments-on-DOE-Proposed-Northern-Plains-NIETC-Designation-June-24-2024-FINAL.pdf.

limits of any Indian reservation . . . including any rights-of-way running through the reservation.'"[66] As Justice Gorsuch later explains, past "[u]nlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law."[67] Thus, any past failures to properly examine existing right of way does not excuse DOE from doing so at this time. As DOE engages with Tribal Historic Preservation Officers, we believe that OSPA will be well-positioned to serve as an invaluable liaison given its significant connections to the Tribes that own and operate it.

Finally, as the Supreme Court reiterated in the majority opinion in *Haaland v. Brackeen* written by Justice Amy Coney Barrett, "the Federal Government has 'charged itself with moral obligations of the highest responsibility and trust'' toward Indian tribes."[68] This trust duty charges DOE with meaningful consultation and coordination with all nearby Tribes. The Dear Tribal Leaders letter sent by DOE on December 11, 2024 was an important first step to initiate this type of coordination with regard to the TEAC, but the duty to consult continues throughout the course of the NIETC designation process. Moreover, consultation is not just a superficial obligation, but when done right, a way for the federal government to respect and facilitate Tribal sovereignty. As Justice Gorsuch emphasized in his concurrence in *Brackeen*, the "Constitution reserves for the Tribes a place—an enduring place—in the structure of American life. It promises them sovereignty for as long as they wish to keep it."[69]

We commend DOE for its efforts to engage with OSPA and its Member Tribes during the design process of the Tribal Energy Access Corridor thus far. At each stage of the NIETC

[66] *McGirt* at 10 (citing 18 U. S. C. §1151(a)).
[67] *McGirt* at 42.
[68] *Haaland v Brackeen* at 12 (quoting United States v. Jicarilla Apache Nation, 564 U. S. 162, 176 (2011); Seminole Nation v. United States, 316 U. S. 286, 296 (1942) ("[T]his Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people")
[69] *Id*. (Gorsuch, concurring) at 38.

designation process, DOE has proven the value of listening to Tribes' input and developing the agency's action in response to the Tribes' articulation of their goals and needs. In response to public comments, including comments from OSPA and public interest organizations, DOE broadened the set of entities that could propose a NIETC, providing a valuable opportunity for OSPA, other Tribes, and various other entities, to identify areas where NIETC designation may be appropriate. That responsiveness to Tribal input then allowed OSPA to propose a Corridor that DOE would originally identify as the potential Northern Plains NIETC.[70] DOE then engaged in fruitful, direct conversations with OSPA to better understand the needs of OSPA's Member Tribes and the role that a NIETC could serve in allowing the Tribes to achieve their energy and economic development goals, while also serving broader national and regional interests. Finally, in altering the shape of this Corridor from the original Northern Plains NIETC to the currently proposed Tribal Energy Access Corridor, DOE not only responded to significant developments in transmission planning conducted by the Southwest Power Pool ("SPP"), but also better enabled the Corridor to promote the interests of a broader array of Tribes. We commend these efforts, which demonstrate that when DOE works closely with affected Tribes, the agency can achieve results that genuinely address Tribes needs, enable Tribes to pursue energy and economic development that would otherwise be inaccessible, while also promoting broad national and regional energy goals.

We strongly encourage DOE to continue to engage closely with OSPA and its Member Tribes during the process for designating the Tribal Energy Access Corridor. In particular, we urge DOE to collaborate with OSPA and its Member Tribes to ensure that the NIETC's route is

[70] OSPA, *Recommendation for Narrow Geographical Boundaries for a Potential NIETC and Supporting Information Submission* (February 2, 2024), https://www.ospower.org/wp-content/uploads/2025/02/OSPA-NIETC-Recommendation-2.2.2024.pdf.

tailored to meet the Tribes' needs to the maximum degree possible. As the sponsors and proponents of the transmission projects most likely to be built within the Corridor, owners of affected lands, and stewards of the affected environment and cultural resources, OSPA and its member Tribes will have unique and invaluable knowledge that will be critical to the success of DOE's Corridor designation and to maximizing the value of the Corridor. For example, OSPA and its Member Tribes will likely have significant knowledge of cultural resources on the Tribes fee, trust, and ancestral lands that the Corridor will affect. Additionally, OSPA and its Member Tribes will have the greatest knowledge of Tribes' energy and economic development goals and the best ways for the Corridor to enable the most meaningful developments. Accordingly, we encourage DOE to continue to collaborate closely with OSPA and its Member Tribes and to defer to their assessments of the Tribes' interests, affected resources, and the optimal route for the Tribal Energy Access Corridor.

III. Environmental analysis for the Tribal Energy Access Corridor should be straightforward and programmatic.

DOE's request for comments expresses uncertainty about whether the National Environmental Policy Act ("NEPA") requires the agency to conduct environmental analysis for the designation of a NIETC. In particular, the agency notes that "[i]f DOE determines that NIETC designation is not a major federal action significantly affecting the quality of the human environment, then DOE expects that NEPA would not apply."[71] However, precedent forecloses that determination. When it initially designated NIETCs in 2007, DOE made a similar determination, contending that a "National Corridor designation is not a proposal for a major Federal action significantly affecting the quality of the human environment that falls within the

[71] 89 Fed. Reg. at 101,597.

purview of NEPA," but the Court of Appeals for the Ninth Circuit disagreed.[72] The court held that "NIETCs are final agency actions that constitute major Federal actions" that require NEPA review.[73] As the court explained, "a decision to encourage, through a number of incentives, the siting of transmission facilities in one municipality rather than another has effects in both municipalities in terms of the values of land and proposed and potential uses of land."[74] These nature and scope of impacts, the court found, are "precisely the type of determination that only can be intelligently made after the preparation of at least an [environmental assessment]."[75]

These comments strongly support the successful designation of the Tribal Energy Access Corridor. To ensure that the designation is successful, it is essential that DOE avoid the pitfalls that the Ninth Circuit identified in its original NIETC designations. Hence, to avoid the risk that litigation could undermine the designation of the Tribal Energy Access Corridor, these comments urge DOE to prepare an Environmental Assessment ("EA") for this Corridor designation.

An EA is very likely to be the appropriate form of NEPA review, because it would provide an evidentiary record to document that while the designation of the Tribal Energy Access Corridor will have impacts on various environmental and cultural resources, the careful design of the Corridor will likely mean that those impacts do not rise to the level of significance that would require preparation of an Environmental Impact Statement ("EIS"). Indeed, we anticipate that the Tribal Energy Access Corridor may provide a net environmental benefit.

The Tribal Energy Access Corridor is well-designed to avoid and minimize adverse environmental impacts, including by largely following existing rights of way. By avoiding

[72] *California Wilderness Coalition v. U.S. Dep't of Energy*, 631 F.3d 1072, 1083, 1096–1106 (9th Cir. 2011).
[73] *Id.* at 1101.
[74] *Id.* at 1103.
[75] *Id.*

environmentally sensitive areas such as National Parks or large concentrations of National Wildlife Refuges, this NIETC would limit its impacts primarily to areas that are already impacted by infrastructure development. Additionally, where existing infrastructure is causing unnecessary or undue environmental damage, close collaboration with affected Tribes on the final route of the Corridor could allow existing infrastructure to be relocated to less harmful locations while retaining the benefits of Corridor designation.

Existing NEPA analyses of transmission projects and other energy infrastructure may facilitate DOE's environmental review for this NIETC. For example, federal agencies including DOE have studied transmission projects under NEPA many times, meaning that many of their general environmental impacts are well-understood.[76] Similarly, some NEPA analyses already exist for transmission or energy projects within the Tribal Energy Access Corridor or the area it will serve.[77] We encourage DOE to use any available, relevant NEPA analyses as a foundation for the analysis of impacts associated with designation of this NIETC.

There are important environmental resources in the Tribal Energy Access Corridor area that will require analysis under NEPA, the Endangered Species Act, and the Migratory Bird Treaty Act. For example, the region includes important migratory pathways for many bird species, including the endangered Whooping Crane and the Sandhill Crane, and DOE must

[76] *See*, *e.g.*, DOE, *EIS-0474: Southline Transmission Project; Arizona and New Mexico*, https://www.energy.gov/nepa/eis-0474-southline-transmission-line-project-arizona-and-new-mexico; DOE, *EIS-0499: Great Northern Transmission Line Project, Minnesota*, https://www.energy.gov/nepa/eis-0499-great-northern-transmission-line-project-minnesota.

[77] *See* DOE, *EIS-0025: Final Environmental Impact Statement for the Miles City-New Underwood 230-kV Electrical Transmission Line*, https://www.energy.gov/nepa/listings/eis-0025-documents-available-download; Western Area Power Administration, *Programmatic Wind EIS*, https://www.wapa.gov/about-wapa/regions/ugp/environment/programmaticwindeis/ (providing programmatic analysis of wind energy development in the Northern Plains); U.S. Fish & Wildlife Service, *R-Project Transmission Line*, https://www.fws.gov/project/r-project-transmission-line (including a prior Environmental Impact Statement and notice of a Supplemental Environmental Impact Statement for a transmission project in Nebraska).

assess the impacts on these species from the NIETC's designation.[78] Similarly, some areas in this NIETC in South Dakota include habitat for the threatened American Burying Beetle, and DOE must consider the impacts on this species as well.[79] Where best practices already exist to reduce impacts to wildlife, such as methods to reduce avian collisions with transmission lines by using bird diverters or a horizontal configuration of transmission lines rather than a vertical configuration,[80] we strongly encourage DOE to analyze how these best practices can minimize or mitigate potential impacts from the NIETC designation. We believe that the successful implementation of these best practices in the past will provide a template for a straightforward determination of appropriate measures to mitigate any adverse impacts from this Corridor.

Similarly, the Tribal Energy Access Corridor crosses or abuts rare and important ecosystems. For example, the Prairie Pothole region, which extends into North Dakota and South Dakota, provides important bird habitat, including more than 50 percent of North American migratory waterfowl.[81] While DOE should consider how designation of this NIETC will impact these important ecosystems, it will likely find that the decision to focus this NIETC primarily on existing rights of way significantly reduces adverse impacts.

Collaboration with affected Tribes will also help ensure that the Tribal Energy Access Corridor is well-designed to avoid, minimize, and mitigate adverse impacts to environmental and cultural resources to the maximum extent possible. For example, with regard to Tribal cultural resources, the Tribes themselves are the most knowledgeable entities and the best situated to

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[78] *See* U.S. Fish & Wildlife Service, *Whooping Crane*, https://www.fws.gov/species/whooping-crane-grus-americana.
[79] *See* U.S. Fish & Wildlife Service, *American Burying Beetle (Nicrophorus americanus)*, https://ecos.fws.gov/ecp/species/66.
[80] *See* National Audubon Society, *Birds and Transmission: Building the Grid Birds Need* at 18 (2023), available at https://media.audubon.org/2023-08/BirdsAndTransmissionReport.pdf (listing methods to minimize adverse impacts to birds).
[81] U.S. Environmental Protection Agency, *Prairie Potholes*, https://www.epa.gov/wetlands/prairie-potholes.

ensure that the Corridor, as well as subsequent projects within or served by the Corridor, are well-sited and well-designed to avoid, minimize, and mitigate adverse impacts. Hence, we urge close collaboration with the affected Tribes during the environmental review process.

We also encourage DOE to take this opportunity to prepare a programmatic environmental analysis. As NEPA's plain text makes clear, an agency may opt to prepare a "programmatic environmental document" that will allow the agency to subsequently "rely on the analysis included" in that document "in a subsequent environmental document for related actions."[82] The statute defines a "programmatic environmental document" as "an environmental impact statement or environmental assessment analyzing all or some of the environmental effects of a policy, program, plan, or group of related actions."[83] Here, DOE should follow this clear statutory authorization to prepare a programmatic EA, because that programmatic analysis would enable the use of the analysis from that EA during any necessary NEPA review for the siting and permitting of any transmission projects within the Tribal Energy Access Corridor. In short, NEPA's plain text provides a mechanism that will promote efficiency in the environmental analysis process, and we respectfully urge DOE to use that tool.

Similarly, a programmatic analysis will enable DOE to best collaborate with Tribes about the Tribal Energy Access Corridor's final route, as well as any actions that DOE, its sub-agencies, or sister agencies may take in collaboration with Tribes regarding transmission projects within the Corridor or energy development projects served by that transmission. In short, a high-level programmatic analysis at the Corridor designation stage will facilitate meaningful collaboration with Tribes and efficient environmental analysis at subsequent project-specific stages.

[82] 42 U.S.C. § 4336b.
[83] 42 U.S.C. § 4336e(11).

CONCLUSION

DOE should continue to prioritize the designation of the Tribal Energy Access Corridor. This Corridor presents a unique opportunity for collaboration between the federal government and Indian Tribes that can yield significant benefits to both. By unlocking transmission development in this underserved region, the Tribal Energy Access Corridor will enable the OSPA Member Tribes to pursue their energy and economic development goals, with potentially profound positive economic impacts. The ensuing development of transmission and generation resources will promote economic growth not only for the Tribes, but also for a host of rural communities in the region that currently experience extreme energy burdens. That same development will also promote more reliable electric service in the region, as well as resiliency in the face of extreme weather, and relief of transmission congestion and constraints. As described above, the Tribal Energy Access Corridor advances important federal interests, including both the discretionary and mandatory factors that Congress directed DOE to consider as a basis for Corridor designations. Accordingly, we respectfully urge DOE to continue to recognize this unique opportunity for productive collaboration with Tribes and to prioritize the successful designation of the Tribal Energy Access Corridor.

DATED February 14, 2025

Respectfully submitted,

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