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June 24, 2024

Via email to NIETC@hq.doe.gov

Maria Robinson
Director, Grid Deployment Office
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Re: Pennsylvania Public Utility Commission's Comments on the Preliminary List of Potential NIETCs and Phase 2 Information Submission

Director Robinson:

The Pennsylvania Public Utility Commission (PA PUC) submits these comments, including information in response to the U.S. Department of Energy (DOE) Grid Deployment Office's (GDO), 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 (FPA) on May 8, 2024. Please acknowledge this submission by return email to our principal point of contact: Elizabeth Barnes, Deputy Chief Counsel at ebarnes@pa.gov.

The PA PUC is an interested party as it is an independent state agency with siting authority over all high voltage electric transmission lines within the territorial borders of Pennsylvania. Section 1151 of the Business Corporation Law (BCL), 15 Pa.C.S. § 1511, requires that all public utilities seeking to exercise their eminent domain power to construct transmission lines within Pennsylvania must first file an application with and seek approval from the PA PUC. *See* 15 Pa.C.S. § 1511(a)(3), (b), (c). Further, the PA PUC's regulations require that public utilities annually provide data to facilitate publication of the Annual Resource Planning Report, which contains a description of all transmission needs in Pennsylvania within a 5-year forecast period. *See* 52 Pa. Code 57.144.

The DOE has identified 10 potential NIETCs on a preliminary basis, targeted as high-priority areas for transmission development but DOE does not conclude areas excluded from the list are not also high priority. Thus, because PA PUC was verbally advised by DOE Staff that DOE will not consult or provide more information at this Phase 2 and extend the comment deadline of June 24, 2024, the PA PUC objects to the two preliminarily identified Mid-Atlantic and Mid-Atlantic – Canada corridors that traverse through Pennsylvania.

The PA PUC respectfully disagrees with the DOE’s position that the NIETC Phase 2 Preliminary Designations did not require prior consultation with affected States or landowners. Consultations with State entities and the affected public allow for more transparency and better communications even if this is the rough-draft stage. The conclusory statements in the *National Transmission Needs Study* (Needs Study) are not supported by clear and substantial evidence in the document. Accordingly, PA PUC requests that the preliminarily-designated Mid-Atlantic and Mid-Atlantic – Canada corridors Pennsylvania be withdrawn from further consideration during Phase 3.

I. The PA PUC Is Best Positioned To Review And Approve Applications For Siting Transmission Projects In Pennsylvania

The General Assembly of Pennsylvania has empowered the PA PUC with the regulation of investor-owned utilities, participating in Regional Transmission Organizations (RTOs) (specifically, PJM Interconnection, LLC (PJM)), and siting of energy infrastructure. The PA PUC is also empowered to make determinations as to utility status as defined in Section 102 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 102, and whether a transmission operator needs a certificate of public convenience under Section 1102(a), 66 Pa.C.S. § 1102(a), to own and operate equipment and facilities in Pennsylvania to furnish electric transmission service subject to the jurisdiction of FERC. Additionally, the PA PUC reviews and grants permits for siting transmission facilities in Pennsylvania through an efficient, effective, and robust process.¹

¹ See 66 Pa.C.S. § 1103(a). Chapter 57, Subsection G of Title 52 of the Pennsylvania Code, “Commission Review of Siting and Construction of Electric Transmission Lines”. Specifically, Sections 57.71- 57.77 apply to the procedures governing the siting of high-voltage transmission lines.

DOE states that the NIETC designation will “expedite and streamline [the permitting] process.”² However, DOE fails to acknowledge that the PA PUC has a long history of determining need for additional transmission facilities within Pennsylvania, conferring public utility status and certificates of public convenience, considering siting applications, and permitting reasonable high-voltage electric transmission projects that are in the public interest.³

A. The PA PUC’s Transmission Siting Application Process Mandates Notice To Affected Landowners, As Well As All Local, State, And Federal Agencies

In the Needs Study, DOE touted the need for meaningful engagement with landowners, communities, stakeholders, and Tribes.⁴ However, federal preemption would negatively impact those goals. In Pennsylvania, before a public utility can exercise its statutorily granted authority to condemn property for the purposes of constructing aerial transmission or distribution facilities, it must obtain a finding from the PA PUC that the taking is “necessary.” 15 Pa.C.S. § 1511(c). Accordingly, the PA PUC’s regulations at 52 Pa. Code §§ 57.71 – 57.77 establish a thorough application review process for siting new transmission facilities, which is more robust than the process recently adopted by FERC in Order 1977.

Specifically, Section 57.72(c), 52 Pa. Code § 57.72(c), sets forth an expansive list of information that applicants must provide with a transmission siting application, and also empowers the PA PUC to seek any additional information it deems necessary. Section 57.74(b), 52 Pa. Code § 57.74(b), requires an applicant to serve copies of its transmission siting application on key individuals from all municipalities and utilities (other than the applicant) that will be affected by the proposed transmission siting project, as well as the Pennsylvania Department of Environmental Resources: Bureau of Environmental Planning. Section 57.74(c), 52 Pa. Code § 57.74(c), requires the applicant to provide notice of its application to the Pennsylvania Department of Transportation, the Pennsylvania Historical and Museum Commission. Further, the applicant must provide notice to all local, State and Federal

² <https://www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process>.

³ See *American Transmission Systems, Inc. (ATSI)*, PA PUC Docket No. A-2016-2566356 (Order entered December 8, 2016); *Mid-Atlantic Transmission, LLC (MAIT)*, PA PUC Docket No. A-2015-2488903 (Order entered August 24, 2016); *Trans-Allegheny Interstate Line Company (TrAILCo)* A-110172 (Order entered December 12, 2008).

⁴ *National Transmission Needs Study* (October 2023), p. 131.

governmental agencies which have requirements which shall be met in connection with the construction or maintenance of the proposed transmission line. *Id.* Most importantly, Section 57.74(d), 52 Pa. Code § 57.74(d), requires that the applicant provide notice to all known persons, corporations and other entities of record owning property within the proposed right-of-way, together with an indication of transmission line rights-of-way acquired by the applicant.

B. The PA PUC Already Considers A Wide Range Of Factors When Reviewing Transmission Line Siting Applications

The PA PUC will then schedule and provide notice of a hearing on the transmission siting application, pursuant to Section 57.75 of its regulations, 52 Pa. Code § 57.75. This process involves holding public input hearings in affected areas and granting party of record status to intervenors, including public interest advocates such as the Pennsylvania Offices of Consumer Advocate and Small Business Advocate. During the hearing on the transmission line siting application, the PA PUC will consider the following matters:

- (1) The present and future necessity of the proposed HV line in furnishing service to the public.
- (2) The safety of the proposed HV line.
- (3) The impact and the efforts which have been and will be made to minimize the impact, if any, of the proposed HV line upon the following:
 - (i) Land use.
 - (ii) Soil and sedimentation.
 - (iii) Plant and wildlife habitats.
 - (iv) Terrain.
 - (v) Hydrology.
 - (vi) Landscape.
 - (vii) Archeologic areas.
 - (viii) Geologic areas.
 - (ix) Historic areas.
 - (x) Scenic areas.
 - (xi) Wilderness areas.
 - (xii) Scenic rivers.
- (4) The availability of reasonable alternative routes.

52 Pa. Code § 57.75(e).

C. The PA PUC's Regulations Provide For Consolidation Of Transmission Siting Applications And Eminent Domain Applications.⁵

Section 57.75(i) provides that proceedings on eminent domain applications for the same HV line are entitled to be consolidated with the proceeding on the HV line siting application.⁶ Section 57.75(i)(2) provides that the consolidation shall be considered by the presiding officer at the hearing on the siting application. Section 57.75(i)(3) also provides that unless the application for eminent domain is withdrawn by the public utility, the person, corporation or other entities having a property interest in the right-of-way will be a party to the siting application.

The transmission line application and the application for eminent domain generally will be filed at the same time; however, there is no requirement for simultaneous filings and on rare occasions, the eminent domain filing may be made later than the siting application filing. Pursuant to Section 57.74(c), the high voltage line application is served directly on any person, corporation or other entities of record owning property within the proposed right-of-way. The application for eminent domain is served directly on the owner of the specific property that is the subject of the eminent domain action. Any delays in the filing of condemnation applications after the transmission operator files its siting application are caused by the transmission operator, not the PA PUC.

DOE should not interfere with the State's ability to give due process and allow transmission operators an opportunity to "game the system" by delaying their true intentions regarding condemnation of lands or the true purposes of their projects until well into the proceedings, then file before FERC for backstop authority when the siting authority fails to determine a siting application within one year of its initial filing date.

Given these expansive regulations, the PA PUC is fully capable of considering the reliability of the electric grid both in and beyond this state when reviewing transmission siting

⁵ Section 57.1 of the PA PUC's regulations, 52 Pa. Code § 57.1, defines an eminent domain application as "an application filed with the Commission by a public utility for a certificate of public convenience for approval of the exercise of eminent domain to acquire rights-of-way for the construction, operation and maintenance of an aerial transmission line."

applications. These efficient processes provide ample due process and have allowed Pennsylvania to not only be responsive to siting requests but to also become an energy exporter.

II. Neither The Mid-Atlantic Nor The Mid-Atlantic – Canada Corridors Would Reduce Transmission Congestion Nor Promote Clean Energy In The Mid-Atlantic Region

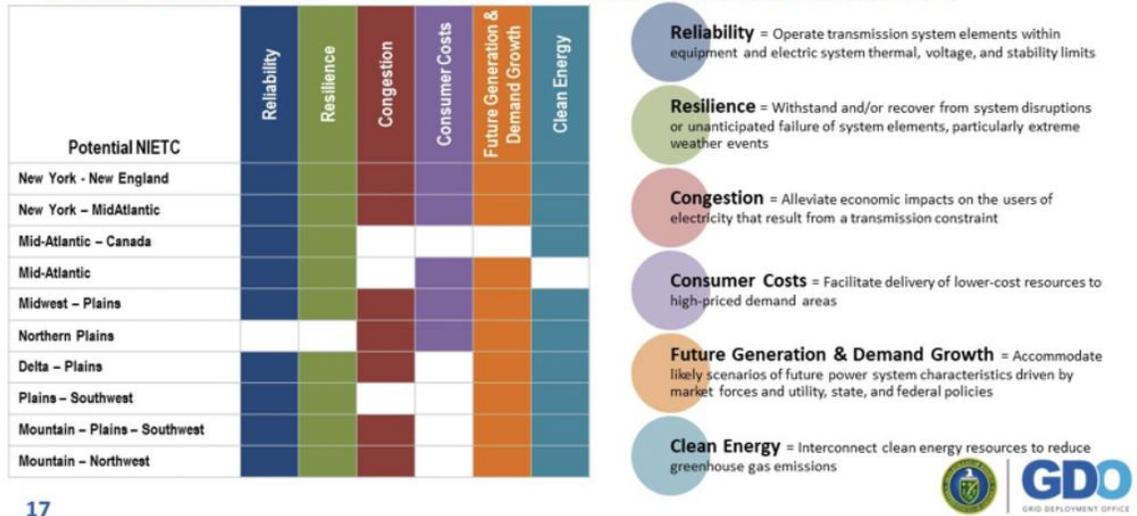
The nearly 300-page Needs Study offers little support for the preliminarily designated corridors in the Mid-Atlantic and Mid-Atlantic-Canada NIETCs. The Needs Study cites to non-performance and lack of capacity issues that occurred in PJM during Winter Storm Elliott, but neglects to consider that many of these communications, generation, and electric-gas coordination issues were reduced during the January 2024 winter storm event without the additional build-out of transmission facilities.⁷⁸ The Needs Study points to congestion in the Delmarva and Maryland areas to support the Mid-Atlantic corridors. However, the DOE table below does not specifically indicate reduction in congestion as an outcome of either the Mid-Atlantic or Mid-Atlantic Canada NIETC designations. Given the conclusions of the Needs Study, it is unclear to the PA PUC how DOE concluded that the NIETC designations in Pennsylvania are necessary.

Further, the Needs Study fails to analyze or articulate whether there are transmission constraints downstream that would prevent any benefit from being realized even if additional transmission facilities were constructed in Pennsylvania. Without a more complete disclosure of the proposals beyond the Needs Study used to justify the extreme remedy of establishing federal preemption, the designation of the NIETCs in Pennsylvania falls short.

⁷ See FERC – NERC Joint Report [FERC, NERC Release Final Report on Lessons from Winter Storm Elliott | Federal Energy Regulatory Commission: https://www.ferc.gov/news-events/news/ferc-nerc-release-final-report-lessons-winter-storm-elliott](https://www.ferc.gov/news-events/news/ferc-nerc-release-final-report-lessons-winter-storm-elliott).

⁸ See https://americaspower.org/wp-content/uploads/2024/02/2024_02_14-Jan-2024-Winter-Storms-Analysis-FINAL.pdf

Threshold Need Determination



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The PA PUC has concerns that neither the Mid-Atlantic nor the Mid-Atlantic – Canada corridors have been preliminary designated for transmission congestion reasons. According to the above slide from GDO’s recent webinar, neither the Mid Atlantic nor the Mid Atlantic – Canada designations were based upon reducing any congestion costs. Further, as evidenced by this table on slide 17, the Mid-Atlantic preliminary designation is admittedly not for “clean energy” goals, and the Mid-Atlantic – Canada preliminary designation is not positive for reducing “consumer costs” or promoting “future generation and demand growth” goals. Rather, the Mid-Atlantic – Canada designation involves obtaining energy from Ontario, Canada’s hydropower plants at an unsupported cost to regional ratepayers.

In the 2023 Needs Study, the findings given to support the Mid-Atlantic NIETC designations, which contains multiple corridors, included: 1) improve reliability and resilience; 2) alleviate transfer capacity limits between Mid-Atlantic and New York; 3) deliver cost-effective generation to meet demand in high-priced areas of Maryland, Virginia and Delmarva Peninsula; and 4) meet future generation and demand with additional interregional transfer capacity of 28 – 51 GW with the Midwest in 2035.⁹ However, it is clear that the Mid-Atlantic

⁹ Fact Sheet 2023 National Transmission Needs Study – Mid-Atlantic Region.

NIETC corridor containing several sections depend upon aging coal-fired power plants that may not even be in existence in the year 2030, as FirstEnergy’s Fort Martin Power Station in Madsville, West Virginia and Harrison Power Station in Haywood, West Virginia may retire in 2030. The Mid-Atlantic NIETCs will not address the growth of data centers probably with first priority contracts in Northern Virginia, which causes the expected doubling of electricity demand by 2040, and the lack of equivalent generation to replace planned retirements in Maryland and Virginia to meet the growing need for load. The construction of high voltage transmission wires to coal fired plants that may be retired under the final rule recently published by the U.S. Environmental Protection Agency will not increase capacity on the grid to meet the expected growth of load. Furthermore, the Mid-Atlantic corridor with several sections parallel to each other are not consistent with the renewable energy policies of the U.S. Government. The PA PUC notes that PJM already examined and selected reliability projects for the same area in its 2022-RTEP-Window 3, and rejected some project bids that seem to be the basis for preliminarily-designated NIETCs in the Mid-Atlantic region. While the PA PUC agrees there is a need for greater capacity on the grid, the designations of the Mid-Atlantic corridors are contingent on existing fossil fuel generation.



The Mid-Atlantic – Canada preliminary designation is an approximately one-mile wide, 42-mile long north-south geographic area within the service territory of Pennsylvania Electric Company (Penelec), ranging from onshore in the far northwest corner of Pennsylvania in Erie County to the international border with Canada in Lake Erie. It has potential to facilitate

international transmission between PJM and the Independent Electricity System Operator (IESO) system in Ontario, Canada. This preliminary designation is based on a “needs study” and further goals of clean energy as IESO system uses hydropower and is 90% GHG emissions free.

On April 4, 2024, the PA PUC received a copy from Lake Erie Connector Transmission, LLC, of its *Application of Lake Erie Connector Transmission, LLC for Amendment or, in the Alternative, Rescission and Reissuance of a Presidential Permit and Notification of Change in Upstream Ownership*, DOE Docket No. PP-412-2. According to this filing, on January 12, 2017, DOE issued a Presidential Permit (PP-412) authorizing ITC Lake Erie Connector to construct, own, maintain and connect the Lake Erie Connector Project a 72-mile long, 1,000 MW high-voltage direct current (HVDC) merchant transmission system that will originate in Haldimand County, Ontario, Canada and terminate in Erie County. The Project will cross the US-Canadian border in Lake Erie as a submerged cable and extend approximately 35.4 miles underwater through Lake Erie and emerge onshore in Erie County, PA. The Project will run approximately 7 miles underground to a converter station in Conneaut Township, Erie County, PA and ultimately connect to the nearby Penelec Erie West Substation. The total US portion of the line will be approximately 42.8 miles.

The PA PUC seeks clarification as to whether the DOE has already granted Lake Erie Connector Transmission, LLC a Presidential Permit and whether that grant is the main driving force behind the preliminary designation of the Mid-Atlantic – Canada corridor. It is difficult to ascertain the extent of the corridor without more detailed geographic specification. Further, the vagueness of the description renders it functionally impossible for the PA PUC and potentially-impacted Pennsylvania landowners to determine how their real property rights will be impacted by such a corridor.

III. The Preliminary Designations Of The Mid-Atlantic And Mid-Atlantic – Canada Corridors Violate The Federal Power Act And Are Counterproductive To Advancing Environmental And Energy Justice

One of the Biden Administration’s guiding points is the promotion of environmental and energy justice. As previously discussed, neither the Mid-Atlantic nor the Mid-Atlantic – Canada corridors were selected for congestion reasons, which is supposed to be the primary purpose of

the NIETC. The preliminarily-designated Mid-Atlantic corridor roughly follows the pathway for a project known as the Mid-Atlantic Resiliency Link Project (MARL). Per NextEra Energy, the transmission developer behind this project, MARL is designed to improve the reliability of the electric grid by building a new approximately 130-mile 500-kV transmission line across Maryland, Pennsylvania, West Virginia, and Virginia, as well as a new 500/138-kV substation in Virginia. MARL will place multiple transmission line projects connecting coal-fired generators in West Virginia, through Pennsylvania to areas in northern Virginia to meet needs caused by the planned retirement of fossil fuel generation in Maryland and Virginia as well as increased load caused by the construction of new data centers in Northern Virginia.¹⁰

Section 216(a)(1) of the Federal Power Act (FPA) provides that DOE may consider “other information relating to electric transmission capacity constraints and congestion” in designating a NIETC under section 216(a)(2). However, the statute envisions that the Department will designate NIETCs as “any geographic area that... is experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers; or... is expected to experience such energy transmission capacity constraints or congestion.” In fact, Section 216(b)(4) of the FPA enumerates eight factors that DOE may take into consideration in designating a NIETC. Congress has only authorized the DOE to independently exercise its judgment based on all available information. DOE’s failure to disclose the sources of its designation fails Congress’ intent and corrupts the purposes of the designation. *See See* Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117–58, Section 40105 (regarding siting of interstate electric transmission facilities and amendments to Section 216(a) of the Federal Power Act (16 U.S.C. 824p(a)). The PA PUC also notes that, under the FPA, the Federal Energy Regulatory Commission (FERC) must first make a determination that congestion exists before exercising any backstop siting authority. *See* 16 U.S. Code § 824p (concerning siting of interstate electric transmission facilities).

Finally, and perhaps most importantly, the proposed designation may threaten the historic, scenic, and environmental integrity of a significant portion of Pennsylvania. Captured within the designated “corridors” are farmlands, lakes, aquatic life, historic sites, as well as

¹⁰ More information about MARL can be found at:
<https://www.nexteraenergytransmission.com/midatlantic-resiliency-link.html>

protected open spaces and habitats. The designation undermines Pennsylvania’s ability to preserve and protect these precious natural and historic assets, which are guaranteed under the Pennsylvania State Constitution.¹¹

V. Conclusion

PA PUC objects to and respectfully requests that DOE not grant the proposed designation of NIETCs in Pennsylvania. The evidentiary support for these designations is lacking. We thank the DOE for considering these comments, and request that all correspondence and other communications related to this proceeding should be addressed to the following persons.

Respectfully submitted,

/s/ Tiffany L. Tran

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Dated: June 24, 2024

¹¹ “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” PA Constitution, Article I, § 27.