NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDORS

HEARING

BEFORE THE

SUBCOMMITTEE ON DOMESTIC POLICY

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDORS

Wednesday, April 25, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC POLICY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m. in room 2154, Rayburn House Office Building, Hon. Dennis J. Kucinich (chairman of the subcommittee) presiding.

Present: Representatives Kucinich, Waxman, Cummings, Tierney, Higgins, Davis of Virginia, and Issa.

Also present: Representatives Wolf, Murphy, Hall, Hinchey, and Arcuri.

Staff present: Jaron R. Bourke, staff director; Jean Gosa, clerk; Nidia Salazar, staff assistant; Auke Mahar-Piersma, legislative director, Office of Congressman Dennis J. Kucinich; Natalie Laber, press secretary, Office of Congressman Dennis J. Kucinich; Jacy Darding, full committee intern; Kristina Husar, minority professional staff member; Larry Brady, minority senior investigator and policy advisor; Benjamin Chance, minority clerk; Darcie Brickner, minority legislative assistant; and Bill Womack, minority legislative director.

Mr. KUCINICH. Good afternoon. The Subcommittee on Domestic Policy of the Committee on Oversight and Government Reform will now come to order.

Today's hearing will examine the implementation of section 1221 of the Energy Policy Act of 2005, which is the section of law that established new Federal authority for siting new electric transmission lines which, in certain cases, will preempt State and local authorities.

Without objection, the Chair and the ranking minority member will have 5 minutes to make opening statements, followed by opening statements not to exceed 3 minutes by any other Member who seeks recognition. So ordered.

Without objection, Members and witnesses may have 5 legislative days to submit a written statement or extraneous materials for the record. So ordered.

Without objection, we will be joined on the dais by Members not on our committee for the purpose of participating in this hearing and asking questions of our witnesses. So ordered.

We welcome the ranking Republican, Mr. Issa. Thank you, Mr. Issa, for being here.

Today this subcommittee will examine the Department of Energy's implementation of section 1221 of the Energy Policy Act of 2005 and its implications for public land, private landowners, our Nation's energy infrastructure, and the environment.

The Energy Policy Act of 2005 was signed into law by President Bush in October 2005. I opposed the act because it did not provide any vision for a sustainable energy future. Rather, it was a grab bag of government giveaways to the energy industry. It weakened our environmental laws and the laws that provide for public input while doing almost nothing to help wean this Nation off of our dangerous dependence on oil or addressing the major challenge of global climate change.

Section 1221 amounted to only a few pages in the 1,700-page energy bill, but it was intensely debated within Congress. A host of organizations opposed the provision, including State Governors, utility commissioners, and environmental groups. Now that section 1221 is being implemented, the American people are on the verge of discovering why its enactment was so controversial.

Section 1221 was designed to make it easier for electric companies to construct high-voltage electricity transmission lines over the objection of private property holders and State and local communities. As the law is written, a State may have little or no ability to determine whether a transmission line goes through one of its State parks, a historic battlefield, land protected by conservation easements, or private land.

Energy companies may be able to apply for permits directly with the Federal Government, which can grant them imminent domain authority to construct transmission lines through private property.

This new Federal authority for siting electric transmission lines is exercised through a three-step process. First, the Department of Energy creates a transmission congestion study. This study is used to determine whether parts of the country are suffering from electric transmission congestion.

I should point out that the term congestion, which is used by the Department and the act, does not necessarily mean that an area is facing reliability concerns or that demand will exceed supply within the area. It merely means that additional transmission lines would be used if they were available. Basically, if an energy company says it has plans for new transmission lines, that pretty much satisfies the definition of congestion, and no recourse through alternatives need be made.

Second, once the Department of Energy conducts its congestion study section 1221 authorizes, the Department can designate regions of the country that experience congestion as national interest electric transmission corridors. Remarkably, there is no statutory limitation on the size of these corridors, and, as we will hear today, a corridor could contain nearly an entire State.

Finally, once the Department of Energy designates a corridor, any proponent of a transmission line can propose a project within one of these corridors. Within these corridors, energy companies have special rights to bypass a State and seek permits for a project directly from the Federal Energy Regulatory Commission [FERC], here in Washington, DC. Once approved by the FERC, the energy

company can go to Federal court and force a private land owner to sell a right-of-way through their property for the project.

To date the Department of Energy has completed the first step in this process. In August 2006, the Energy Department released a congestion study that found that a number of regions of the country faced electric transmission congestion. These regions included southern California, the Atlantic coastal area from metropolitan New York through northern Virginia, New England, the Phoenix-Tucson area, the Seattle-Portland area, and the San Francisco Bay area.

As part of the implementation process, the Department of Energy also asked organizations whether any region of the country should be given early corridor designation. A number of proposals were submitted from energy companies and their organizations. The proposals included requests for corridor designations in California, Delaware, Maryland, Ohio, New Jersey, New York, Virginia, and West Virginia. These requests could lead to a designation of corridors covering large populations of States like Pennsylvania, Maryland, and New Jersey.

The Department of Energy has refused at this point to discuss the particular corridor designations that it may be making. However, it has stated that southern California and the Atlantic coastal area are the regions most likely to receive them. Now, with the release of the congestion study and the Department's pending designations, the large number of groups have once again raised a host of concerns about the law, itself, and the Department of Energy's implementation of it. They include: Whether the Department of Energy is taking into account the protection of national parks, State parks, conservation easements, and historical sites like battlefields when determining where an electric transmission corridor should be designated; whether the Department of Energy is considering the effects of a corridor designation on the private property rights of land owners; whether the Department is considering the environmental impact of corridor designations; whether the Department of Energy is considering alternatives to constructing new electric transmission lines like the land side management, distribution generation, and energy efficiency; whether the Department has adequately considered the actual benefit utility consumers would receive from new transmission lines; and, finally, whether the Department has adequately consulted States to determine if corridor designation will adversely impact the energy policies the State has developed.

I hope that, starting today, Congress will begin to get some answers.

Finally, I would like to thank the ranking member of the full committee, Mr. Davis, for suggesting today's hearing. His State is on the front line of this issue, although many other States are probably not very far behind.

I look forward to hearing from each and every witness today and I thank the witnesses for being here.

At this time I would recognize for purposes of making an opening statement the ranking member, Mr. Issa.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Opening Statement of Rep. Dennis Kucinich
Chairman, Subcommittee on Domestic Policy
Committee on Oversight and Government Reform
Hearing on Federal Electric Transmission Corridors
April 25, 2007

Today, the Subcommittee will examine the Department of Energy's implementation of Section 1221 of the Energy Policy Act of 2005 and its implications for public land, private landowners, our nation's energy infrastructure, and the environment.

The Energy Policy Act of 2005 was signed into law by President Bush in August 2005. I opposed the Act because it did not provide any vision for a sustainable energy future. Rather, it was a grab bag of government giveaways to the energy industry. It weakened our environmental laws and the laws that provide for public input, while doing almost nothing to help wean this nation off of our dangerous dependence on oil or addressing the major challenge of global climate change.

Section 1221 amounted to only a few pages in a 1700 page energy bill, but it was intensely debated within Congress. A host of organizations opposed the provision -- including state governors, utility commissioners, and environmental groups. And now that Section 1221 is being implemented, the American people are on the verge of discovering why its enactment was so controversial.

Section 1221 was designed to make it easier for energy companies to construct high-voltage electricity transmission lines over the objections of private property holder state and local communities. As the law is written, a state may have little or no ability to determine whether a transmission line goes through one of its state parks, a historic battlefield, land protected by conservation easements, or private land. Energy companies may be able to apply for permits directly with the federal government, which can grant them eminent domain authority to construct transmission lines through private property.

This new federal authority for siting electric transmission lines is exercised through a three-step process. First, the Department of Energy completes a "transmission congestion study." This study is used to determine whether parts of the country are suffering from electric transmission congestion.

I should point out that the term "congestion," which is used by the Department and the Act, does not necessarily mean that an area is facing reliability concerns or that demand will exceed supply within the area. It merely means that additional transmission lines would be used if they were available. Basically, if an energy company says it has plans for new transmission lines, that pretty nearly satisfies the definition of "congestion," and no recourse to alternatives need be made.

Second, once the Department of Energy conducts its congestion study, Section 1221 authorizes the Department to designate regions of the country

that experience congestion as National Interest Electric Transmission Corridors. Remarkably, there is no statutory limitation on the size of these corridors. And as we'll hear today, a corridor could contain nearly an entire state.

Finally, once the Department of Energy designates a corridor, any proponent of a transmission line can propose a project within one of these corridors. Within these corridors, energy companies have special rights to bypass a state and seek permits for the project directly from the Federal Energy Regulatory Commission, or FERC, here in Washington, DC. Once approved by FERC, the energy company can go to federal court and force a private landowner to sell a right-of-way through their property for the project.

To date, the Department of Energy has completed the first step in this process. In August 2006, the Energy Department released a congestion study that found that a number of regions of the country faced electric transmission congestion. These regions included Southern California, the Atlantic coastal area from metropolitan New York through Northern Virginia, New England, the Phoenix-Tucson area, the Seattle-Portland Area, and the San Francisco Bay area.

As part of the implementation process, the Department of Energy also asked organizations whether any region of the country should be given "early corridor designation." A number of proposals were submitted from energy companies and their organizations. The proposals included requests for corridor designations in California, Delaware, Maryland, Ohio, New Jersey, New York, Virginia, and West Virginia. These requests could lead to the

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Now, with the release of the congestion study and the Department's pending designations, a large number of groups have, once again, raised a host of concerns about the law itself and DOE's implementation of it. They include:

- whether the Department of Energy is taking into account the protection of national parks, state parks, conservation easements, and historical sites like battlefields when determining where a federal electric transmission corridor should be designated;

- whether the Department of Energy is considering the effects of a corridor designation on the private property rights of landowners;

- whether the Department is considering the environmental impact of corridor designations;

whether the Department of Energy is considering alternatives to constructing new electric transmission lines, like demand side management, distributed generation, and energy efficiency;

- whether the Department has adequately considered the actual benefit utility consumers would receive from new transmission lines; and

- whether the Department has adequately consulted states to determine if corridor designation will adversely impact the energy polices the state has developed.

I hope that starting today, Congress will begin to get some answers.

Finally, I'd like to thank the Ranking Member of the Committee, Tom Davis, for suggesting today's hearing. His state is on the frontline of this issue, although many other states are probably not far behind.

I look forward to hearing from each of our witnesses today and I thank them for being here.

Mr. ISSA. And I would yield to the ranking member of the full committee if I could, please.

Mr. KUCINICH. Mr. Davis, the ranking member of the full committee, is recognized.

Again, Mr. Davis, the committee wishes to express to you our appreciation for the work that you have done in setting up this hearing.

Mr. DAVIS OF VIRGINIA. Thank you, Chairman Kucinich. Let me thank you for working on a bipartisan basis to hold today's oversight hearing on the implementation of section 1221 of the Energy Policy Act of 2005. We call it EPAct.

At its core, this section of the act focuses on the creation of national interest electric transmission corridors in areas of the country where DOE has determined that there is a critical need. Many have raised concerns about this section of the act, and I understand both Mr. Hinchey and Mr. Wolf have introduced legislation to address this problem, and I support their efforts. But ultimately we are here today to exercise our committee's oversight responsibility on the provision that is potentially problematical.

Last summer DOE designated two critical congestion areas, which include the Atlantic Coast area from metropolitan New York southward to northern Virginia, and southern California. Based on this finding, DOE is in the process of designing and designating draft national interest electric transmission corridors. The significance of this designation comes from the new authority that the EPAct granted to the Federal Energy Regulatory Commission [FERC].

Utility companies in NIET corridors may apply to FERC, which now has so-called back stop authority to approve new transmission lines if the State process fails for a number of reasons.

My concerns over section 1221 of the Energy Policy Act springs from two sources: federalism/State autonomy issues, and, second, the mind set with which we approach energy management challenges.

With respect to State autonomy, States have been in charge of the approval process of new transmission lines from the beginning. State statutes are set up to balance the interest of their citizens, who are equally consumers of energy, land owners, and consumers of the environment.

For example, in my home State, when the Corporation Commission reviews an appreciate of a new transmission line, they are bound to consider not just need, but also that the new transmission line will minimize adverse impacts on the scenic assets, historic districts, and the environment of the affected area. If a utility applies to FERC, will these issues be given due consideration?

With respect to managing the challenges associated with the energy generation distribution, I would first point out that we in Virginia have an agency problem. According to a 2006 DOE report, the mid-Atlantic region of the country requires billions of dollars of investment in new transmission generation and demand side resources over the next decade to protect grid reliability.

I want to take a moment to reflect on that statement. According to the U.S. Department of Energy, there are three elements involved in solving grid congestion: transmission lines, new genera-

tion, and demand side management. Clearly, there is not a single solution to my State's energy problem. New transmission lines are not a silver bullet. In fact, before they released their national electric transmission congestion study, this here, they released a study on the benefits of demand response and electricity markets and recommendations for achieving them.

As the title suggests, this study evaluates the benefits of investing in demand side management. Demand side management refers to the management of consumer demand in response to supply conditions. For example, demand side management solutions work with electricity customers to reduce their consumption at critical times or in response to market prices. Customers would then shed loads in response to a request by utility or market price conditions. Under conditions of tight electricity supply, demand response could significantly reduce the peak price and, in general, electricity price volatility. In fact, the State of California effectively used demand side mechanisms to cope with last summer's heat wave.

The bottom line is that sound energy policy is and should continue to be a significant priority of both the States and the Federal Government. Reliable and affordable energy is a key component of economic development; however, opportunities for innovation and conservation cannot and should not be ignored.

It is appropriate to require that solutions such as demand side management and conservation be part of the package of alternatives considered when planning for expected energy needs. It is also important that the Federal Government not needlessly usurp the longstanding authority and role of States on this issue. The 2005 Energy Policy Act understood and shared this goal. I hope we can leave here today with a better understanding of the way that the Federal Government can work with States to solve energy congestion problems while respecting State autonomy.

I look forward to hearing today's witnesses and I yield back.

[The prepared statement of Hon. Tom Davis follows:]

Remarks for Ranking Member Tom Davis
Domestic Subcommittee Oversight Hearing
Implementation of Section 1221 of the EPACT
April 25, 2007

Chairman Kucinich- first let me thank you for working on a bipartisan basis to hold today's oversight hearing on the implementation of Section 1221 of the Energy Policy Act of 2005 (EPACT). At its core, this section of the Act focuses on the creation of National Interest Electric Transmission Corridors, in areas of the country where DOE has determined that there is a critical need. Many have raised concerns about this section of the Act, and I understand that both Mr. Hinchey and Mr. Wolf have introduced legislation to address this problem. I support their efforts. But ultimately, we are here today to exercise our Committee's oversight responsibility on a provision that is potentially problematic.

Last summer, DOE designated two Critical Congestion Areas which included the Atlantic Coast area from metropolitan New York southward to Northern Virginia and Southern California. Based on this finding, DOE is in the process of designating draft "National Interest Electric Transmission Corridor." The significance of this designation comes from the new authority that the EPACT granted to the Federal Energy Regulatory Commission (FERC). Utility companies in NEIT Corridors may apply to FERC, which now has so-called "back-stop" authority, to approve new transmission lines if the state process fails for a number of reasons.

My concern over Section 1221 of the Energy Policy Act springs from two sources: 1. Federalism/ State autonomy issues and 2. the mindset with which we approach energy management challenges.

With respect to state autonomy, states have been in charge of the approval process for new transmission lines from the beginning. State statutes are set up to balance the interests of their citizens who are equally consumers of energy, land owners, and consumers of the environment. For example, in my home state, when the State Corporation Commission reviews an application of a new transmission line, they are bound to consider not just need, but also that the new transmission line will minimize adverse impacts on the scenic assets, historic districts, and the environment of the affected area. If a utility applies to FERC, will these issues be given due consideration?

With respect to managing the challenges associated with energy generation and distribution, I would first point out that we in Virginia have an energy problem. According to a 2006 DOE report, The Mid-Atlantic region of the country requires "billions of dollars of investment in new transmission, generation, and demand-side resources over the next decade to protect grid reliability."

I want to take a moment to reflect on that statement – according to the U.S. Department of Energy, there are three elements involved in solving grid congestion- A.) transmission

company itself. I can only hope that the Department of Energy doesn't turn a deaf ear to the overwhelming strong vocal opposition the NYRI proposal is responsible for.

I welcome the opportunity to re-examine the previous Congress' flawed decision to grant federal authorities and companies the power to circumvent states' authority and regulatory decisions.

Again, I thank Chairman Kucinich and Ranking Member Issa for the opportunity to take part in this hearing, and I look forward to hearing from the impressive slate of witnesses who will testify before us today.

Thank you, I yield back the balance of my time.

###

Mr. KUCINICH. I thank the gentleman.

At this time I would like to recognize Mr. Waxman, who is the chairman of the full committee. Henry Waxman of California has set very high levels for Government accountability, and we are honored to have him chair the full committee.

Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. Thank you for holding today's hearing.

Developing sensible energy policies has always required a collaborative approach between the Federal, State, and local governments and the constituents they serve. Since the light bulb's invention, States have been the lead on siting infrastructure like high-voltage transmission lines. State governments are closer to the people impacted by these facilities and know how they want their communities to grow.

That is one of the reasons I was very concerned about the Energy Policy Act of 2005. Rather than being respectful of the traditional Federal/State relationship, the Energy Policy Act trampled on it by creating a legal mechanism for energy companies to end run the States and get practically any transmission project, no matter how ill-considered, approved here in Washington, DC.

By someone who was deeply involved in that legislation, I would like to take a moment to explain how we got where we are to day.

In May 2001, the White House released a national energy policy developed by Vice President Cheney. This plan proposed a new Federal imminent domain authority to provide energy companies with rights of way for proposed electric transmission projects. In October 2001, the Electric Utility Lobby testified in support of the proposal. They testified that, in the preceding 5 years, electric utilities had exercised State-authorized imminent domain more than 400 times. Now they wanted imminent domain at the Federal level, and they wanted State governments preempted whenever a State materially altered an energy company proposal.

In short, they wanted their projects approved without a delay, and they wanted the force of government behind them to assure that private property rights did not stand in their way.

Over the next 4 years, the administration worked hard to give the energy companies exactly that policy. For example, on April 10, 2003, the Executive Office of the President issued a statement in strong support of the new Federal imminent domain authority. Pushed by both the White House and industry, Congress tried to enact the provision. Democrats raised objections to the new Federal imminent domain policy. We attempted to offer a floor amendment to strike the provision in both 2003 and again in 2005. Unfortunately, the House Rules Committee prevented these amendments from being considered on the House floor.

Remarkably, Congress simultaneously dealt with another imminent domain issue in a completely different way. In June 2005, just 2 months after the House had voted to create this sweeping new imminent domain authority, the Supreme Court decided *Kelo* v. *City of New London.* This opinion upheld the States' authorities to use imminent domain in certain circumstances. The response from Congress was swift and furious. Republican leadership immediately brought legislation to the House floor to limit the Supreme Court

decision. They decried the opinion as an attack on private property rights.

In reality, the *Kelo* decision was far less intrusive than the energy provisions passed by Congress 2 months earlier. That is why this hearing is so important. Instead of more rhetoric about property rights, this subcommittee is taking a hard look at the real-world impacts of the provisions. No Member of Congress wants their District to suffer blackouts, but this isn't about blackouts; it is about respecting State authorities, ensuring adequate protections for cultural, historic, and environmental values, and making sure private property rights are protected against needless abuse.

I look forward to the hearing and the testimony of today's witnesses.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Henry A. Waxman follows:]

Statement of
Rep. Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
Hearing on Federal Electric Transmission Corridors
April 25, 2007

Mr. Chairman, thank you for holding today's hearing.

Developing sensible energy policies has always required a collaborative approach between the federal, state and local governments and the constituents they serve.

Since the light bulb's invention, states have been the lead on siting infrastructure like high-voltage transmission lines. State governments are closer to the people impacted by these facilities and know how they want their communities to grow.

That's one of the reasons I was very concerned about the Energy Policy Act of 2005. Rather than being respectful of the traditional federal-state relationship, the Energy Policy Act trampled on it by creating a legal mechanism for energy companies to end-run the states and get practically any transmission project – no matter how ill-considered – approved here in Washington, DC.

As someone who was deeply involved in that legislation, I'd like to take a moment to explain how we got where we are today.

In May 2001, the White House released the National Energy Policy developed by Vice President Cheney. This plan proposed new federal eminent domain authority to provide energy companies with rights-of-way for proposed electric transmission projects.

In October 2001, the electric utility lobby testified in support of the proposal. They testified that, in the preceding five years, electric utilities had exercised state-authorized eminent domain more than 400 times. Now, they wanted eminent domain at the federal level and they wanted state governments preempted whenever a state "materially altered" an energy company proposal. In short, they wanted their projects approved without delay and they wanted the force of government behind them to ensure that private property rights did not stand in their way.

Over the next four years, the Administration worked hard to give the energy companies exactly that policy.

For example, on April 10, 2003, the Executive Office of the President issued a statement in strong support of the new federal eminent domain authority.

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Remarkably, Congress, simultaneously dealt with another eminent domain issue in a completely different way.

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No member of Congress wants their district to suffer blackouts, but this isn't about blackouts. It's about respecting state authorities, ensuring adequate protections for cultural, historic and environmental values, and making

sure private property rights are protected against needless abuse.

I look forward to hearing the testimony of today's witnesses.

Mr. KUCINICH. Thank you, Mr. Waxman.

The Chair recognizes Mr. Issa. And did you want to make the announcements?

Mr. ISSA. Yes. Mr. Chairman, I would like to ask unanimous consent that Members who are not members of the committee be allowed to sit on the dias and make opening statements and ask questions at this time.

Mr. KUCINICH. So ordered.

Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

I will submit my entire opening statement for the record and just paraphrase one small element.

I want to associate myself with both of the previous opening statements, all three of them. This is a piece of legislation that cuts two ways. I think all of us want to make sure that real congestion and real impediments to interstate commerce be, in fact, dealt with, and dealt with by the Federal Government. At the same time, the legislation previously passed now gives us some questions about whether or not perhaps there were some additional items that were left out of it, concerns of States, States' rights, private land use.

I would say in my own home State of California, and particularly in southern California, where what we call the sunrise path, or the path that runs near our Mexican border, one of the paths that has historically been one of the shortfalls that has led to power outages, one of several in the State, is of concern because it only has a choice of going through either various Federal land, including tribal land, or going through a large State desert park. Most of these areas are not inhabited and most of these areas do not have any significant vegetation above about the 1 foot level.

Having said that, finding a path has been a vexing problem, and often the State has found itself in an odd situation. It has found itself wanting to protect the empty space for all, while, in fact, having the alternative be the space which has people in it, and so we have paths in California, neither of which are acceptable for some reason, all of which are stalled, that, in fact, are considering tearing down houses rather than being visible perhaps 60 or 90 miles from some area of natural wilderness. That makes for a very strange situation that exists in California. I don't pretend it exists in every State in the Union. Certainly we are not looking at battlefields and highly populated areas in the case of most of ours, but I do look forward to this hearing and to follow-on legislation.

With that I yield back, Mr. Chairman.

[The prepared statement of Hon. Darrell E. Issa follows:]

for the Record

Congressman Dennis Kucinich and Congressman Darrell Issa
Subcommittee on Domestic Policy
Government Oversight and Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington D.C. 20515

April 25, 2007

Dear Chairman Kucinich and Ranking Member Issa,

We, the undersigned, would like to express our concern with the process that the Department of Energy (DOE) has followed since June of 2006 for designating National Interest Electric Transmission Corridors (NIETC's). Two years ago, Congress gave new authority to DOE to designate NIETC's under §1221 of EPAct 2005, which amends §216 of the Federal Power Act. Once a NIETC corridor has been designated, utilities are granted unprecedented access to federal eminent domain powers to site and construct interstate transmission lines within the geographic area of a NIETC.

While the overall goal of NIETC designation is to reduce economic congestion and constraints on our nation's power grid, these designations should not be made in a vacuum, but instead must take into account important and long-standing policy considerations. NIETC designation would have enormous impacts to the communities within the path of a transmission project by threatening protected natural, historic and scenic resources and opening the door for federal override of the state regulatory decisions on proposed projects. We are submitting this letter to members of the subcommittee on Domestic Policy of the House Government Oversight and Reform Committee to ask that you raise the issues set forth in this letter below with the Department of Energy prior to NIETC designation anywhere within the United States.

The Department has yet to require utilities to come forward with a set of facts which prove the need for a transmission project, including the utility's own consideration of alternatives such as energy efficiency, demand response and distributed generation. Such inaction is exemplified in Allegheny and Dominion Powers' joint application to construct a 240 mile interstate transmission line which passes through parts of Pennsylvania, West Virginia and Virginia and is proposed within PJM Interconnection's southernmost NIETC request, the Allegheny Mountain Path. Neither utility has released data to support a conclusion that the proposed NIETC designation is in the best interest of the regional planning system. This lack of analysis gives an unfair advantage to utilities that have proposed transmission projects over alternative solutions to solving system constraints. Such data should be made available for public comment before any NIETC designation is made by DOE.

We are particularly concerned that the Department has proceeded towards NIETC designation without meeting the statutory requirements of §1221 of EPAct. First, there is accumulating evidence that the Department of Energy has not consulted with

stakeholders, particularly state governments and state utility regulators as to the merits of NIETC designation. DOE should consult with affected states to incorporate demand response, energy efficiency and distributed generation plans which have been implemented to reduce demand on the grid in the jurisdictions where additional transmission is deemed necessary. Second, the Department has not made a full analysis of alternatives to transmission in advance of NIETC designation. Third, DOE has not prepared a programmatic environmental impact statement (PEIS), as required by the National Environmental Policy Act (NEPA) prior to designating a corridor. A programmatic EIS is particularly required when an agency initiates a major new federal program which covers a region of the United States where there will be interrelated environmental and economic effects.

Failure to Consult with Affected States and Stakeholders

EPAct §1221(a) directs "the Secretary of Energy, in consultation with affected States, [to] conduct a study of electric transmission congestions. After considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States), the Secretary shall issue a report" which may designate any area experiencing electric transmission constraints as a NIETC. Although a thorough analysis has not occurred for each state in the U.S., it is our understanding that state officials were not consulted in Virginia, Pennsylvania or Maine, three states primarily affected by requests for early NIETC designation. State identified and protected natural, cultural and historic resources should be respected. In addition, many states are currently developing statewide energy conservation plans that should be incorporated into DOE's understanding of projected demand. Still other states have entered into regional compacts that preclude users from purchasing sources of energy which contribute to excessive carbon-dioxide emissions. Such actions by states should play a significant role in DOE's transmission planning directive.

Failure to Consider Non-Transmission Alternatives

NIETC designation will affect materially resource allocations advantaging transmission infrastructure over other alternatives to meet our nation's energy needs. Alternatives include demand response, energy efficiency, and distributed generation. EPAct §1221(a)(2) requires DOE to undertake a serious and detailed study that considers all alternatives to reduce energy demand that could mitigate both the congestion and need for the construction of additional transmission lines before designating a NIETC.

In DOE's August 2006 National Electric Congestion Study, the Department anticipated "congestion solutions will be based on a thorough review of generation, transmission, distribution and demand-side options, and that such options will be evaluated against a range of scenarios concerning load growth, energy prices, and resource development patterns to ensure the robustness of the proposed solutions." We have yet to witness this analysis of alternatives to new transmission although DOE has indicated it may make NIETC designations within the next month.

Failure to Prepare a Programmatic Environmental Impact Statement

In addition to the failure to meet the explicit statutory requirements under §1221, the Department of Energy has proposed to proceed with NIETC designation without preparing a programmatic EIS as required by NEPA. NEPA requires an EIS prior to any 'major federal action significantly affecting the human environment,' however it has not yet been incorporated into the Department of Energy's procedure dictating designation of a NIETC. As noted in the Piedmont Environmental Council comments on the Congestion Study, a major federal action generally comprises: (i) policies; (ii) plans; (iii) programs; or (iv) projects. DOE announced (together with Interior, Agriculture and Defense) that it would conduct a programmatic EIS in the process of designating transmission lines and oil and gas pipelines under §368 of EPAct 2005 which grants federal eminent domain powers to utilities operating on federal lands. We feel NEPA review should be a requirement for all energy corridors including NIETC designation.

The requirements of NEPA ensure that federal decision makers are informed as to the environmental and cultural consequences of an action. Without an EIS, a precipitous NIETC designation could undermine previously enacted federal, state and local policy decisions designed to maintain and protect public values. Lands which have been previously protected under federal or state policies should be excluded from being considered as throughways for the construction of power lines. These include historically, culturally and environmentally sensitive areas such as historic districts, battlefields, and lands under permanent conservation easement. The designation of a NIETC corridor would undermine the tax policies in place for land conservation which have been enacted to protect watershed, forest and agricultural lands and open space.

Given the high impact, political sensitivity and complexity of NIETC designation, it is essential that this new authority be used cautiously, and only after careful review and consideration of all alternatives. We understand the need and desire to relieve congestion on our nation's power grid but we also believe it should be done in a sensible and reasonable manner.

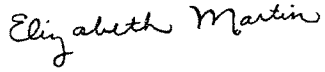
Sincerely,

Mark Brownstein
Managing Director of Business Partnerships
Climate and Air Program
Environmental Defense Fund

Troy Bystrom
Director
Upper Delaware Preservation Coalition

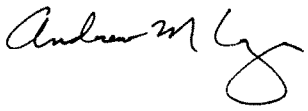
Cale Jaffe
Staff Attorney
Southern Environmental Law Center

Kateri Callahan
President
Alliance to Save Energy



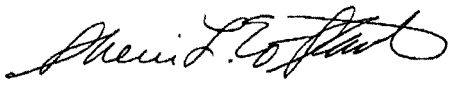
Elizabeth Martin
Climate Policy Specialist, Climate Center
Natural Resources Defense Council

William Prindle
Acting Executive Director
American Council for an Energy
Efficient Economy



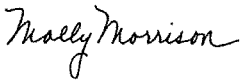
Andrew M. Loza
Executive Director
Pennsylvania Land Trust Association

Stewart Schwartz
Executive Director
Coalition for Smarter Growth

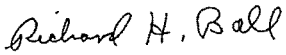


Sherri L. Evans-Stanton
Director, Environmental Management Center
Brandywine Conservancy

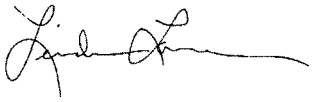
James Lighthizer
President
Civil War Preservation Trust



Molly Morrison
President
Natural Lands Trust

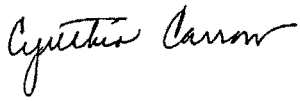


Richard H. Ball
Energy Issues Chair
Virginia Chapter of the Sierra Club



Linda Lance
Vice President for Public Policy
The Wilderness Society

Christopher G. Miller
President
Piedmont Environmental Council



Cynthia Carrow
Vice President, Government and
Community Relations
Western Pennsylvania Conservancy

Mr. KUCINICH. The Chair recognizes Mr. Murphy.

Mr. MURPHY. I thank the chairman for holding this hearing and allowing other Members to sit as part of our panel today.

Mr. Chairman, I hope that this hearing, in part, will expose two fallacies with regard to our current policy through FERC and the siting of transmission lines and other energy facilities that we have witnessed in the State of Connecticut.

With the chairman's indulgence, I would like to submit for the record testimony of M. Jodi Rell, our Governor, today.

Mr. KUCINICH. Without objection.

Mr. MURPHY. Her testimony mirrors the thoughts of many of us from Connecticut, that these two fallacies that hopefully we will be able to overcome, in part through this hearing and in part through our discussions going forward: one, that our Federal Regulatory Agency can be an effective substitute for local processes. As Chairman Waxman has already said, there is simply no way for a removed Federal agency to be able to substitute for the concerns on the ground in a State like Connecticut, or any other State in this Nation. There is no way for this agency to know the true scope of the environmental issues, the private land rights issues, and the public safety issues that surround the siting of a very complex and large energy facility.

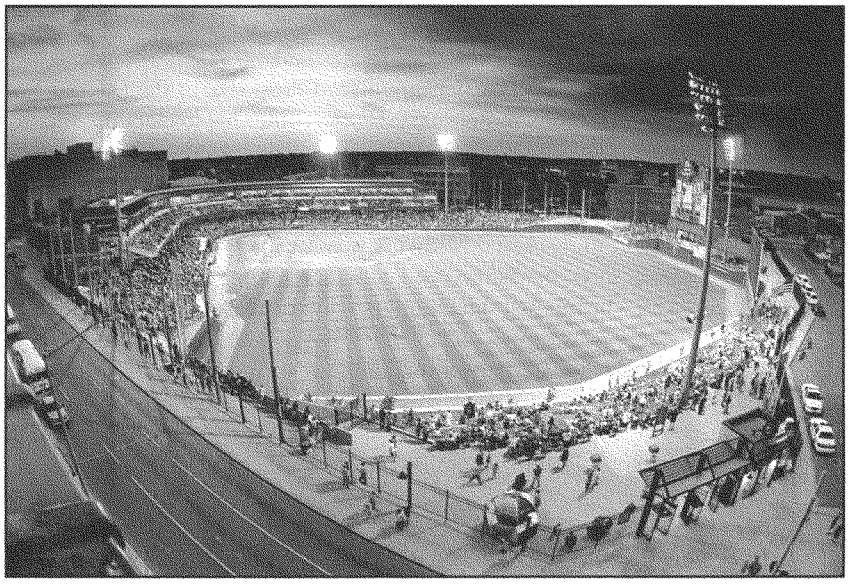
In Connecticut we have had particular experience with this one. We have made simple requests of the Federal Regulatory Agency to come to Connecticut and hold a simple public hearing in order to air out many of the concerns that local landowners have. We have been denied. It is simply hard, in the face of that refusal, to understand how we can have the substitute for that kind of local State oversight.

The second fallacy is that there is some divergent State and Federal interest upon the issue of electricity transmission. We in Connecticut understand the difficulties that confront our system and we are just as interested in making sure that we have the transmission capacity as the Federal Government is. We struggle with that issue just as they do here in Washington, and we believe that our State approval process will strike the right balance between local concerns and the concerns of our electricity grid.

With that, Mr. Chairman, I am very pleased to be part of this hearing and very interested in being part of the legislative effort that goes forward today.

[The prepared statements of Mr. Murray and Governor Rell follow:]

Build it; things change at warp speed



DAYTON DRAGONS
PROFESSIONAL BASEBALL TEAM

mandalay
SPORTS
ENTERTAINMENT

Presenter Information
Robert Murphy

Robert Murphy received his undergraduate degree in communications and media arts from Buffalo State College and received his MBA from the State University of New York at Buffalo.

Robert has been in sports management since 1995. He served as Vice President of Business Operations for both the Las Vegas Thunder of the International Hockey League and the Las Vegas 51's, a Triple-A baseball team operating in the Pacific Coast League.

Robert was appointed President of the Dayton Dragons in February 1999. Under his leadership, the Dayton Dragons organization has set numerous milestones: 1) sellout of all stadium seats before the first pitch every season since inception; 2) breaking the Single-A and Midwest League attendance records on three occasions, and 3) welcoming the four millionth fan during just the Dragons seventh season.

The Dayton Dragons organization has received several awards during the first seven years of its existence.

- Named the 2000 Enterprise Spirit Award winner for professional services.

- Received the 2001 and 2002 Better Business Bureau's prestigious Customer Service Eclipse Award.

- Dragons Owners received the 2001 Ernst and Young Entrepreneur of The Year award in the Dayton region.

- Dayton Dragons front office was honored in 2001 by the Midwest League of Professional Baseball Clubs as the winner of the John H. Johnson President's Trophy. The annual award honors the individual or club that best exemplifies the standards of the complete baseball franchise.

- *Baseball America* awarded the Dayton Dragons with the Bob Freitas Award for being the top Class-A baseball franchise for the 2004 season.

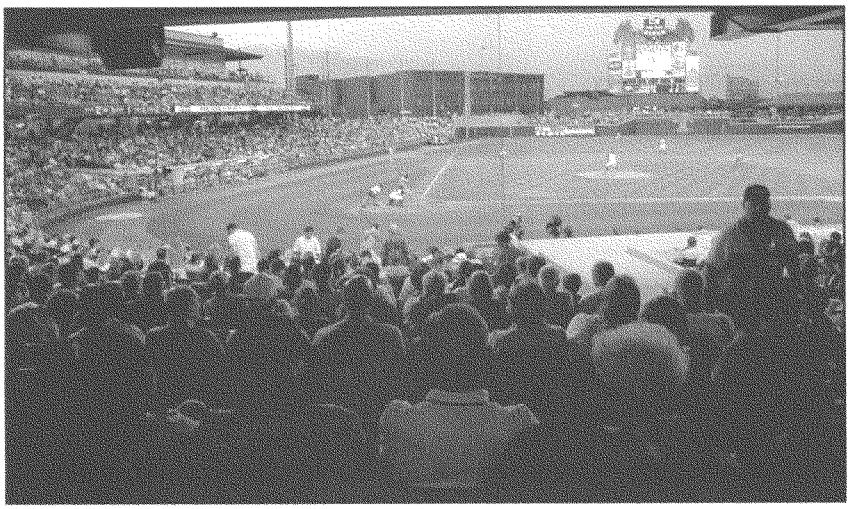
- Dayton Dragons receive the 2002-2003 & 2003-2004 PRISM Award in the minor league category, a national sports industry award presented by *Street & Smith's Sports Business Journal* recognizing the franchise as the best franchise in any minor league sport.

Additional accomplishments of Robert Murphy include:

- Named the Midwest League Executive of the Year in 2000.

- Named to Dayton Business Journal's Top 40 Under 40 in Business in 2000.

- In 2005 the longstanding national sports publication *The Sporting News* named Mr. Murphy the Minor League Baseball Executive of the Year.



"We want you to be Amazingly Successful"

City of Dayton Officials

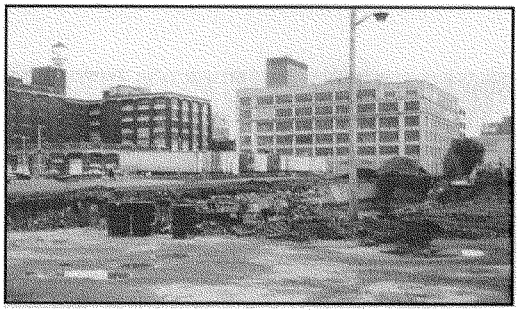
In 1998-1999, the City of Dayton was at a crossroads. Were the city leaders going to lead or just advise folks that the last one out should turn off the lights?

The city was declining. There was overwhelming public perception that downtown was dead, the hub of the region was no longer a viable city.

The prevailing opinion of the entire region was that people would not come downtown. In fact, people had not come downtown for 20 years and there was nothing that would get them to do so.

People believed that crime was everywhere and that it was an unsafe environment.

On top of that, the streets were impossible to navigate and parking was impossible.



That was the view of downtown. That view got worse when you looked to the future site of Fifth Third Field, the home of the Dayton Dragons Professional Baseball Team *(above)*. Deserted lots, deserted buildings, knocked down factories, graffiti, and garbage everywhere. Nobody ventured to this part of town.

It was a classic brownfield situation.

The city made a decision to fight.

The city and the entire region agreed and believed that the first step was to have *an amenity driven project that could act as an economic stimulator.*

They believed that **minor league baseball** was the way to go.

They knew what they were willing to invest to accomplish their goal.

The stadium construction costs totaled $16.7 million.

The stadium project with infrastructure totaled $22.7 million.

The City of Dayton, under the leadership of then-Mayor Mike Turner, and Mandalay Sports Entertainment reached an agreement that:

- The costs to the city for this project would be capped.
- There would be no risk factor for the city on construction costs.
- Mandalay would contribute $4 million cash to the project.
- Mandalay would capitalize the stadium to a minimum of $1.5 million.
- Mandalay would assume all construction cost overruns.
- Mandalay would be responsible for repair and maintenance and utilities for the term of the agreement.
- Mandalay would act as construction managers.
- The city could use stadium 10 times a year for community events.
- Mandalay assumed all operational costs of the facility.

mandalay
SPORTS
ENTERTAINMENT

In summary, the city would make an investment with no risk of exceeding their agreed upon level of investment.

The city also decided that they needed a company that could make the commitment and had the expertise to execute a plan to bring first class, family affordable baseball entertainment to Dayton.

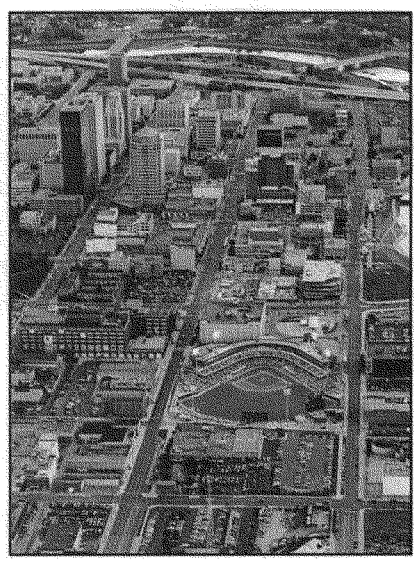
To serve their citizens, the City of Dayton and then-Mayor Mike Turner had an unusual goal. They wanted to have Mandalay Sports Entertainment and the Dayton Dragons Professional Baseball Team become "amazing and successful." Only when the team was amazing and successful would it help revive the downtown, would it fully serve the needs of the city.

Mandalay was chosen and Mandalay would have substantial participation, contribution, and responsibility for the project.

The groundbreaking ceremony of Fifth Third Field, home of the Dayton Dragons

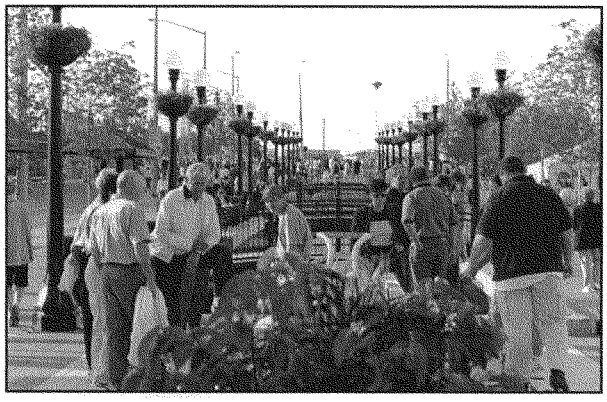
"We must recognize that the City is our partner and we must do everything in our power to make the Dayton Dragons great."

Mandalay Ownership Group



- Mandalay secured the best management and placed them in the Dayton Community.
- Mandalay hired the very best sports marketer in North America—Jon Spoelstra—with over 30 years of sports marketing experience, to join the Mandalay team and help lead the start-up.
- Mandalay management joined the Dayton Development Coalition, Downtown Dayton Partnership, Dayton Area Chamber of Commerce, and the Better Business Bureau, and are supporters of major charities in the Dayton region.
- Mandalay spares no expense in operating the facility and executing the game day experience to ensure excellence.
- Every one of Mandalay's business strategies focused on long-term versus short-term success.
- Mandalay continues to reinvest in the stadium making major improvements each year of operation.

Did the City achieve its outrageous goal?



Let's take a look at the results:

- Since 2001, the number of market rate housing units almost doubled, increasing the number of units from 485 to 929.

- WorkflowOne decided to locate its corporate headquarters adjacent to the baseball stadium. The company relocated more than 500 jobs to Downtown Dayton.

- The baseball stadium in Downtown Dayton was the first of three major developments that led downtown's revitalization. The new stadium was the cornerstone that gave the community the confidence and determination to move other key projects forward.

- Each year, more than 580,000 baseball fans come downtown to enjoy the Dayton Dragons, also enjoying downtown's offerings of restaurant and entertainment options. Clearly, Minor League Baseball has helped strengthened existing businesses, and several new businesses have sprung up as well.

- Minor League Baseball attracts fans from throughout the region, helping to dispel some negative perceptions of Downtown Dayton.

- The CareSource Management Group made the decision to locate downtown, recently breaking ground on a $55 million office building.

- Tech Town, a $25 million development, is currently under construction. This development targets technology-based businesses.

- Now, a major mixed-use development is being proposed around Fifth Third Field, capitalizing on the success of Fifth Third Field. This $230 million development will include housing, office, and restaurants/retail opportunities.

- Clearly, Downtown Dayton is a stronger, more vibrant place, thanks to the community effort to bring minor league baseball to the core of Dayton.

How about that minor league baseball team—The Dayton Dragons—that the city inserted into its community?

- Set the all time Single A attendance record on 3 occasions.

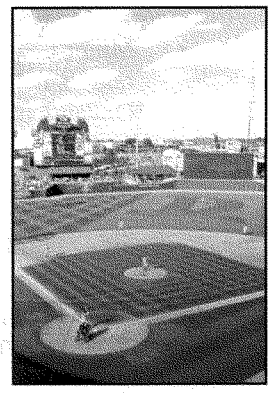
- Have averaged 580,000+ of fans each year.

- Have seen over 4 million fans visit Fifth Third Field.

- Have sold every single seat before the season's first pitch for 8 years.

- Have a sell-out streak totaling 496 games (will grow to 566 games at the end of this year, the 8th season).

- Have been in the Top 10 of attendance in all classes of baseball (160 teams) every season.



- Have had their merchandise in the top 25 in sales in each year of existence.
- Have received numerous community awards for economic development, entrepreneurial leadership, customer service, and community involvement.
- Fifth Third Field, home of the Dayton Dragons, has been selected as one of the Top 10 ballparks in minor league baseball.
- Have received numerous baseball industry awards recognizing the performance of the franchise.
- Four Dragons executives have been selected as Top 40 Under 40 executives in the Dayton region.
- Two Dragons executives have been selected as Executive of th Year in the Midwest League.
- Fifth Third Field has been selected as having the best playing field in five of its first seven years of play.
- The Dragons TV ratings for games rival the major league Cincinnati Reds.
- The Dayton Dragons website received over 35 million visitors last year.
- The Dayton Dragons President has been selected as *The Sporting News* Executive of the Year.
- Have received sports industry awards recognizing the franchise as the best in all minor league sports.

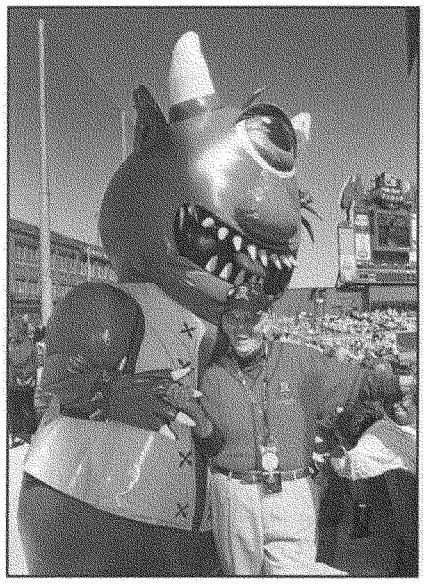
So, did the City achieve its outrageous goal? The answer is an outrageous *yes*.

Change at warp speed

Changing a declining downtown is never quick. However, with the insertion of the Dayton Dragons and their stadium, Fifth Third Field, let's look at the changes:

(1) Employment

The Dayton Dragons is a business and an employer in the City of Dayton.



The Dayton Dragons full-time staff employs 29 people. The concessionaire, Sportservice, at Fifth Third Field includes an additional 8 full-time positions.

An additional 250 people are employed during the baseball season by The Dayton Dragons.

Sportservice hires an additional 225 people and employs dozens of volunteer groups to work in concession stands.

In addition, the entire team staff—players and coaches—are also paid employees.

All of these employees—full time, part time, for both The Dayton Dragons and Sportservice—all pay income taxes.

(2) Real impact on other businesses.

As the Dayton Dragons is a small size business, we must contract with many other businesses to achieve their organizational goals. Other companies that are benefiting economically from the Dayton Dragons organization include cleaning companies, electrical companies, transportation companies, hotels, printing companies, office supply companies, security companies, media companies including radio, television, and newspaper, food suppliers, information technology companies, telephone companies, general maintenance companies, etc.

All of these companies are vendors of the Dayton Dragons and their business with the Dayton Dragons impacts their business and allows them to continue to be companies that employ individuals in this region.

Heater, the Dragons mascot, visits the Dragons print shop to check up on the printing of the game program.

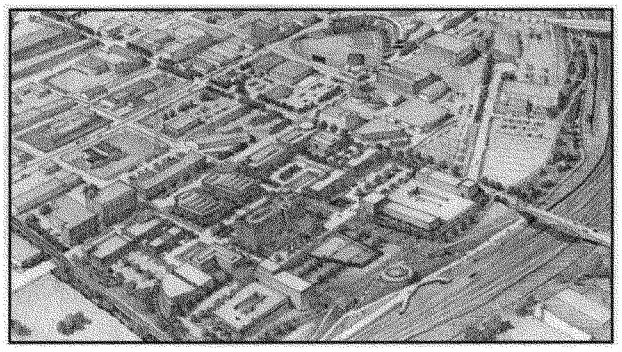
(3) Real economic development impact.

Though the Dayton Dragons was meant to be an amenity driven project, they have had the intended impact of being a stimulant for economic development in and around the stadium area.

For example, WorkflowOne is a $1 billion company that selected a location adjacent to the stadium because of the energy surrounding baseball. This company was one that had many different options, in-state and out-of-state, to select where they were going to locate their headquarters. However, they felt that it was important to their employees to be located in this area due to not only baseball, but other subsequent amenities such as the RiverScape area and the Schuster Performing Arts Center. Also, the CareSource management group is building a new $55 million office building near the ballpark.

Several bars and restaurants have moved to or have started around the stadium. Requarth Lumber—a company that had been in this area for nearly 100 years—completely renovated the front of their building. A market—an old fashioned farmers market—was started up in the stadium area. Other buildings have been built and/or renovated including P&R Communications and the historic McCormick Building, which now houses an architectural firm and loft housing.

In addition, the City of Dayton is moving forward on a $25 million project adjacent to the stadium area called Tech Town. This is a 400,000 square foot project, targeting technology-based businesses.



Tech Town

(4) Paved the way for even more successful amenities.

Schuster Center

The Benjamin and Marian Schuster Performing Arts Center, which opened in 2003, is a world-class, $130 million home to the best in local, national and international performing artists.

In addition to showcasing the latest Broadway blockbusters, the Schuster Center is home to the Dayton Opera and the Dayton Philharmonic Orchestra. Additionally, a variety of local performing arts treasures, such as the Dayton Ballet, also make use of the facilities.

RiverScape, a $32 million project located just one block from the stadium along the Great Miami River, is a hub of activities for all ages — from concerts to laser light and music shows, to paddle boats and even outdoor ice skating in winter.

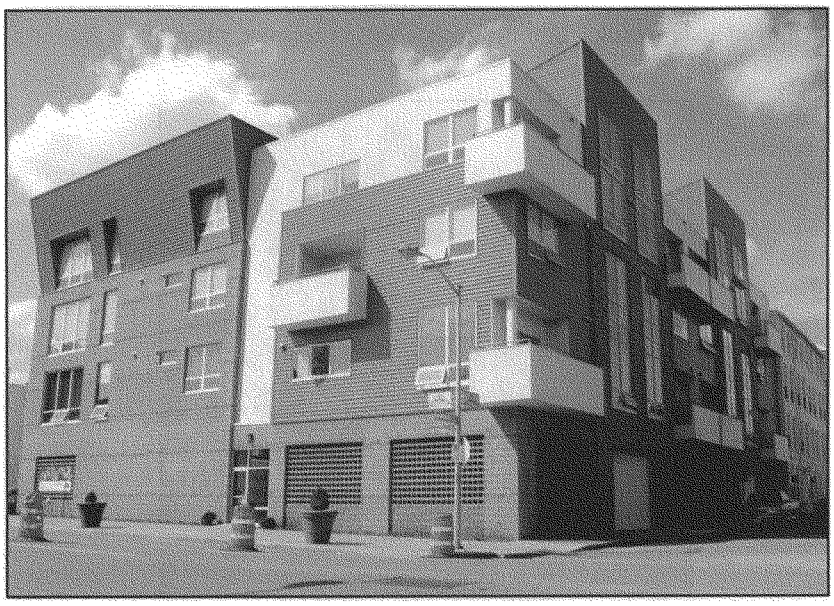
Fans often stick around after Dragons games in the summer to watch one of RiverScape's laser light shows.

RiverScape's laser light show

(5) Could people really live here?

The answer to that question is a resounding, "*Yes.*" Housing has increased in a substantial way around the stadium. Several buildings have been renovated to include apartments, condos, and loft living including the Ice Avenue Lofts, the Cooper Lofts, the Beaver Power Building condos, the Cannery, and the Firefly building. The Schuster Performing Arts Center also includes penthouse living.

In addition, there are plans to include additional building of condos next to the WorkflowOne building.

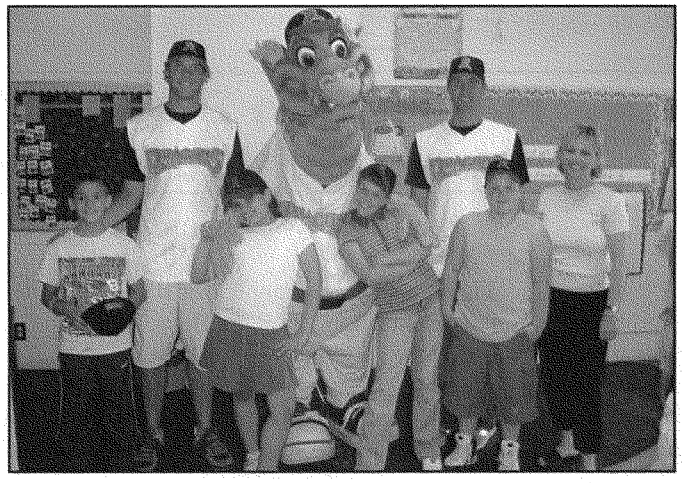


(6) Building people and changing lives.

Recognizing that true "ownership" of the team belongs to members of the community, it has been necessary for the Dayton Dragons to reach out to the community and support as many key organizations and activities as possible. Several programs have been in place to benefit organizations including allowing non-profit organizations to work in the concession stands at Fifth Third Field giving them the opportunity to earn over $2.1 million in the first seven seasons for various charitable and youth organizations. Also, internship programs associated with both high schools and colleges in the area have been started.

Two other very important programs have also been introduced by the Dayton Dragons to the community.

The first program called "Hometown Heroes" is a program designed to thank and take care of families of deployed personnel stationed at the Wright Patterson Air Force Base. Special nights designated as Hometown Hero nights recognize deployed individuals and their families. This program also includes video board messages delivered by loved ones who have been deployed and providing families with a VIP experience when they visit Fifth Third Field.



A player and mascot visit during the Dragons MVP Program

Also, the Dragons have introduced the Dragons MVP program "A Tool for Teachers." This program is an incentive and reward system for fourth and fifth grade classrooms, covering a three county area. It is in 38 different school districts and now in over 850 classrooms. Nearly 25,000 young people and nearly 1,000 teachers have been impacted by this educational program.

Also, the Dayton Dragons are proud to help a variety of organizations including; Dayton Rotary, Webster Station Business Association, the Humane Society of Greater Dayton, the Downtown Dayton Partnership, Dayton Area Chamber of Commerce, Better Business Bureau, Big Brothers-Big Sisters, Make a Wish Foundation, the Ronald McDonald House, Susan Komen Breast Cancer Foundation, Dayton Development Coalition, the Dayton Urban League, the United Negro College Fund, initiatives by the City of Dayton and Metro Parks, the providing of merchandise and memorabilia for use in fundraising efforts (which includes many schools and churches), donations of our time and money to many community events, United Way, healthcare organizations, visits to hospitals by players, the hosting of hundreds of underprivileged children at Fifth Third Field, and many other types of charitable efforts.

Making Fifth Third Field the centerpiece of the community

Fifth Third Field is not in the geographic center of the Dayton area. However, by adding other events along with the Dayton Dragons, it is becoming the centerpiece of the community.

Fifth Third Field is a venue that is beginning to be utilized for many other types of activities including state high school baseball tournaments, college baseball tournaments, concerts, and special celebrations such as the "Inventing Flight" event celebrating the centennial anniversary of flight.

More than 9,000 fans packed the stadium for a concert featuring Def Leppard and Bryan Adams in 2005.

How to dare to make it better

The economic development story does not end after seven years of the Dayton Dragons. In fact, Mandalay Sports Entertainment has started a real estate development company and has begun working with the City of Dayton on the development of a ballpark district adjacent to the stadium.

This proposed $230 million dollar development, which would be the largest economic development program in the history of Downtown Dayton, is currently on the drawing board. Developed to be introduced in three stages, this ballpark district would include big box retail, a ballpark village housing component, and an entertainment district which includes retail, entertainment, and restaurants.

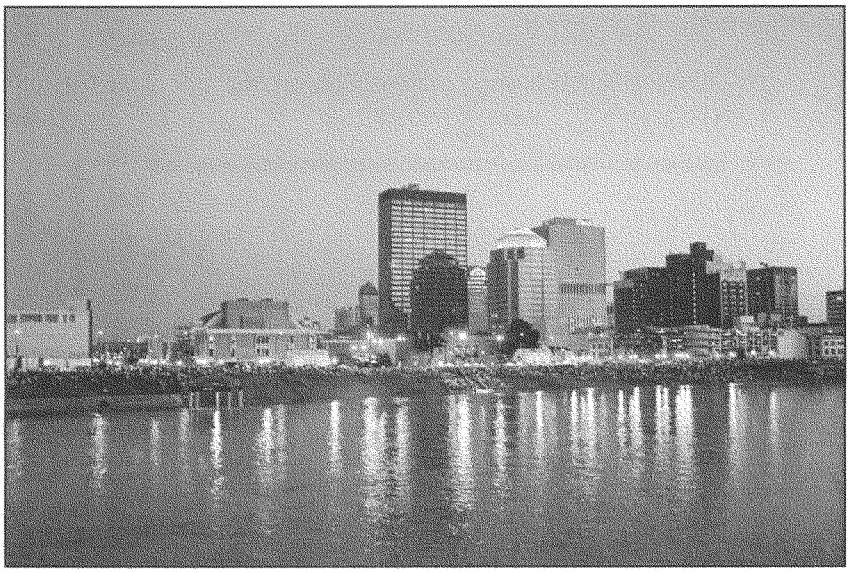
This development is historic and could change the face of the City of Dayton forever.

Artist rendering of the proposed development

Summary

A city with the proper tools, an engaged partner, and with the right economic deal, can create something that cannot only benefit to a community, but something that can be a force to change the community forever.

The City of Dayton and the Dayton Dragons are proud of what has been accomplished and believe that the proper foundation has been built for future growth, economic development. We have truly created a city that has the quality of life that will allow us to compete for people, companies, and economically well into the future.



Mr. KUCINICH. Thank you, Mr. Murphy.

The Chair recognizes Congressman Wolf.

Mr. WOLF. Thank you, Mr. Chairman, for having the hearing. I am not a member of the committee and would like to submit questions at the end if I may, but I want to thank you. I also want to thank Mr. Issa and Mr. Davis for seeking this hearing.

I will work with Mr. Hinchey on his bill, with these other bills, as I told him, to see what we can do to pass them.

I want to associate myself with all of the comments that were made. Being an invited guest, I will not have a formal statement, but thank you for the hearing, thank you for the intensity, and thank you for the commitment. We will do everything we can to deal with this issue.

I yield back.

Mr. KUCINICH. Thank you, Mr. Wolf.

Mr. Higgins, member of the committee.

Mr. HIGGINS. Thank you, Mr. Chairman.

I ask for unanimous consent to enter Mr. Arcuri's statement into the record.

Mr. KUCINICH. So ordered. Thank you very much.

[The prepared statement of Hon. Michael A. Arcuri follows:]

U.S. Representative Michael A. Arcuri (NY-24)
House Committee on Oversight and Government Reform
Subcommittee on Domestic Policy
Hearing on National Interest Electric Transmission Corridors
Wednesday, April 25, 2007

Opening Statement

Thank you Chairman Kucinich and Ranking Member Issa for the opportunity to join this distinguished committee today for an important hearing on National Interest Electric Transmission Corridors.

Today's hearing provides an opportunity for much-needed review of the law passed by the last Congress, specifically section 1221 of the Energy Policy Act of 2005, which gave federal authorities the unprecedented power to approve electric transmission projects, even if they have been rejected by state regulators. This same law would allow a company, if their project were approved by federal authorities, to use federal eminent domain power to take private property for the project.

I don't understand how some of my colleagues, who speak so eloquently of their strong commitment to states' rights, would go so far as to expand federal jurisdiction in this area and allow companies to condemn the land of private landowners.

Nowhere are the flaws of this system more apparent than in Upstate New York. New York Regional Interconnect, or NYRI for short, a privately owned company is seeking to build a 190 mile, high voltage transmission line from the Town of Marcy in Oneida County, NY to the Town of New Windsor in Orange County, NY. This project has a proposed route that originates in New York State; it terminates in New York State; and it does not leave New York State anywhere along the way.

Additionally, the sole purpose of the line would be to serve customers in New York State. And yet, under Section 1221 of the Energy Policy Act of 2005, federal regulators could have the authority to permit the project, even if it were rejected at the state level.

Historically in New York State, projects such as NYRI's have been subject to the approval of the New York State Public Service Commission. New York State has already passed a law – signed by former Governor George Pataki – that would prevent NYRI from using the state eminent domain power to take private property, even if the project were approved by the state Public Service Commission. The citizens who live along this route have made their wishes clear – and they have been heard by their locally-elected officials. And yet, the possibility of federal intervention and eminent domain still threatens landowners in New York State.

I've lived in Upstate New York nearly my entire life, and I can say without hesitation that no other issue has ever generated so much opposition from the community at-large. To be honest, it seems that the only group to support this proposal is the

M. KUCINICH. The Chair recognizes Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman, and thank you both our ranking members for allowing Members who are not on this committee to attend and to ask questions.

I will just briefly say that in my District there are many questions being raised and many lawn signs being put out on virtually every home in the affected areas around the New York Regional Interconnect [NYRI] path, which has been proposed under this section.

There is a lot of concern about imminent domain seizure for profit by a largely foreign-owned company, the owners of which are not readily available to the public, and them seeking a court decision of being a public benefit and thereby having imminent domain rights, a private entity to seize private property for profit. I think that is something a step further than what we saw in the New London case, which was the city of New London seizing, municipality seizing by imminent domain private property and then turning around and selling it for use for private property.

This is a direct transfer from private to private, which I don't really think the majority of the American people would like to enter into lightly, especially because we are having a debate about energy right now in this country. It is very important.

We are really just starting to have this debate, and the more decentralized the sources are, the more renewable decentralized alternative sources come up, be they low-head hydra sites or wind, which is growing rapidly in New York, or other power generation that are not a single huge generating point at one place and then the need to transfer that power to a municipality far away where a huge amount of consumption is centralized.

The mayor of New York, for instance, just proposed this weekend in his Sustainable New York City Proposal, a concept of rooftop wind, which anybody who has been on the roofs of the big buildings of New York or the Windy city of Chicago, for instance, would know that as the air mass accelerates up over a mountaintop or a collection of buildings it increases in speed, and that may be a place that wind can be harvested.

The more we do those kinds of things that generate power where the power is being consumed, the less need there will be for this sort of radical seizure of private land to transmit electricity.

So I appreciate the opportunity to listen and to ask questions and thank you again, Mr. Chairman.

Mr. KUCINICH. Thank you very much, Mr. Hall.

Mr. Issa, your unanimous consent?

Mr. ISSA. Yes, Mr. Chairman.

I ask unanimous consent that a statement from the Edison Electric Institute be put into the record. As you know, they are the preeminent analysis organization as to energy here in Washington.

Mr. KUCINICH. So ordered.

The Chair recognizes Mr. Hinchey. Welcome. Thank you for being here.

Mr. HINCHEY. Thank you very much, Mr. Chairman. I very much appreciate your holding this hearing, and I want to express my appreciation to you for inviting others of us to attend it with you. I think that you are focusing on a very important subject here.

As you know, any aspect of energy is a critically important issue for all of us to deal with, and it has to be dealt with in the most intelligent and respectful and effective ways.

The Energy Policy Act of 2005 has become one of the most controversial pieces of legislation that has come before the Congress recently. It was recognized as such at that time by many of us, particularly those of us who voted against it.

I am just going to mention one aspect of that bill, which is the focus of this attention, and the legislation which I and Mr. Hall and my two friends from Virginia have introduced, which has been mentioned earlier, and that is the ability that this legislation gives to ignore very important constitutional and legal provisions in our country, States' rights, and the rights of private property.

One of the things that this bill does is it allows the Secretary of the Department of Energy to provide energy companies the ability to circumvent State authority by applying for permits to build electric transmission lines and to do so directly with the Federal Energy Regulatory Commission, ignoring completely the fact that constitutionally and legally these kinds of issues ought to be handled by the State and by localities.

So if a State would withhold approval for a transmission line permit for 1 year because they felt that transmission line permit had to be looked at carefully and understood, if they had to do it for more than 1 year, then the energy company could go directly to FERC and get the authority to put this transmission line right through the State, even though the State had not approved it.

If the State requires the mitigation of the project that the applicant believes makes the project economically unfeasible, they can go directly to the Federal Government and get the right to construct these corridors.

Or if the utilization does not serve end-use customers in that State, well, they can just circumvent the State, build the transmission line on the basis of the authority given to them by the Federal Energy Regulatory Authority on the basis of actions previously taken by the Secretary of Energy.

The act offers no limitation on where a Federal transmission corridor can be designated; therefore, National and State parks, land protected with conservation easements, historic battlefields, and all private property, even school yards, could be subject to the siting of these new electric transmission lines.

Additionally, all private lands would be subject to the new Federal imminent domain authority for approved projects, when imminent domain authority has been traditionally and lawfully the right of State and local governments.

So the issue that we are dealing with today, Mr. Chairman, is a very critical one, and we are all very grateful to you for the opportunity to give it the kind of airing that it ought to get in the context of this hearing.

I thank you very much.

Mr. KUCINICH. I thank the gentleman.

If there are no additional opening statements, the subcommittee will now receive testimony from the witnesses before us today. I am pleased to have such a distinguished panel of witnesses here to address section 1221 of the Energy Policy Act.

On Today's first panel, our subcommittee is pleased to have the following witnesses: Assemblyman Paul Tonko, who is a lifelong resident of the city of Amsterdam, NY, and has represented the 105th District in the New York State Assembly since April 1983. Welcome, Representative Tonko. Representative Tonko currently serves as the chairman of the Committee on Energy for the New York State Assembly.

Next, Representative H. William DeWeese. Representative DeWeese, welcome. Representative DeWeese has represented the 50th District in the Pennsylvania House of Representatives since 1976. He has served as Speaker of the Pennsylvania House of Representatives and currently serves as majority leader.

We are glad to have you here, sir.

Mr. DEWEESE. Thank you.

Mr. KUCINICH. Next we will hear from Chairman Kurt Adams. Mr. Adams has served as chairman of the Maine Public Utility Commission since 2005. Prior to that he served as chief legal counsel to Maine Governor John Baldacci. Thank you for being here, Mr. Adams.

Elizabeth Merritt is the deputy general counsel for the National Trust for Historic Preservation, where she has served as in-house counsel for 24 years. The National Trust for Historic Preservation is a private, nonprofit organization chartered by Congress in 1949 to further the historic preservation policies of the United States.

And we have Paul Koonce. Mr. Koonce serves as chief executive officer of Dominion Energy, which is responsible for electric and gas transmission and storage operations for Dominion Resources, Inc.

Thank you very much to Ms. Merritt and Mr. Koonce for being here.

Finally, Mr. Miller, Chris Miller, has served as president of the Piedmont Environmental Council since 1996. He is responsible for the overall management and strategic planning for the Piedmont Environmental Council, which had been very successful in protecting Virginia's landscape through conservation easements.

Welcome to all the committee members. It is the policy of the Committee on Oversight and Government Reform to swear in all witnesses before they testify, so I ask the witnesses if they would please rise.

[Witnesses sworn.]

Mr. KUCINICH. Let the record reflect that the witnesses answered in the affirmative.

I am going to ask that each of our witnesses now give a brief summary of their testimony, and to please keep this summary about 5 minutes in duration. Bear in mind that your complete written statement will be included in the hearing record.

At this time the Chair recognizes the distinguished representative, Mr. Tonko.

STATEMENTS OF PAUL D. TONKO, CHAIR, COMMITTEE ON ENERGY, NEW YORK STATE ASSEMBLY; BILL DEWEESE, MAJORITY LEADER, PENNSYLVANIA HOUSE OF REPRESENTATIVES; KURT ADAMS, CHAIRMAN, MAINE PUBLIC UTILITIES COMMISSION; ELIZABETH MERRITT, DEPUTY GENERAL COUNSEL, NATIONAL TRUST FOR HISTORIC PRESERVATION; PAUL D. KOONCE, CHIEF EXECUTIVE OFFICER, DOMINION RESOURCES, INC.; AND CHRIS MILLER, PRESIDENT, PIEDMONT ENVIRONMENTAL COUNCIL

STATEMENT OF PAUL D. TONKO

Mr. TONKO. Good afternoon, Chairman Kucinich, Chairman Waxman, Ranking Member Issa, Ranking Member Davis, and members of the subcommittee. Might I also express my appreciation for the attendance of good friend and former colleague, Congressman Hinchey and Congressman Higgins, and also a good partner in government, Congressmember Hall. It is a pleasure to be before you, Mr. Chairman.

I have submitted written testimony and will provide for you a consolidated version.

I also point out that my turf is the city of Schenectady, the electric city.

My name is Paul Tonko and I am a member of the New York State Assembly and Chair of the Energy Committee, a role in which I have enjoyed serving for the past 15 years.

During my tenure, few issues have given rise to the concern and sense of disempowerment than the potential exercise of Federal preemption regarding transmission line siting and what it has created. There is little confidence at this moment that Federal Government officials, who are far removed from the physical and socioeconomic location of local proposals, will be able to fully appreciate the environmental, economic, and social impacts of long-range, high-voltage transmission lines.

The purpose of my testimony today is to support a reversal of those provisions of the Energy Policy Act of 2005, which permits the Federal Energy Regulatory Commission to finally determine the siting of electric transmission lines. This newly conferred regulatory power may hold hostage the ability of States to craft and implement energy policy best suited to the States' needs and policy goals.

What is needed at the State level is the freedom to take a holistic approach to energy policy, an approach which looks at all the supply side and demand side options available without fear that such policies, programs and decisionmaking could be trumped or thwarted by private interests seeking alternate Government intervention.

New York is certainly one of the battleground States in this particular arena. New York has already been host to a transmission line proposal which has sought early access to the provisions of section 1221 of the Energy Policy Act. At an Assembly Energy Committee hearing regarding this proposal, the committee received testimony from your colleague, Maurice Hinchey, here today, who was able to speak authoritatively on the dynamics which resulted in the provisions of the Energy Policy Act which you are now examining.

In that testimony, Congressman Hinchey reiterated his concern that provisions of the new act were intended to erode State and local jurisdiction over proposed projects. Thus, it appears that these Federal policies may not have been drafted with the protection of the public interest in mind.

Given New York's experience with creating energy policy behind closed doors, I am well aware of the consequence of creating energy policy that does not meet the multiple needs of all consumers and energy service suppliers. More to the point, these provisions should never have been incorporated into statute, and the time to repeal these provisions is now.

Many times elements of emerging State energy policies are the result of the absence of Federal Government policies and programs to do the same. For example, in New York and the northeast, more broadly, the Regional Greenhouse Gas Initiative, a regional compact amongst 10 northeastern States, has been initiated and is poised to establish a cap in trade program to control emissions of carbon dioxide, primarily from electric-generating plants.

While the possibility that energy prices may increase as a direct result of capping of carbon dioxide, other energy policies are being crafted and implemented to help consumers better control their energy use, thereby reducing their energy costs, and possibly bringing down overall energy prices in the long run.

Individual energy policies are only effective when they are implemented as part of the comprehensive energy plan. Outside factors, or possibly wild cards, can only disrupt the orderly implementation of complementary energy programs which have been designed according to the needs of the system, a forecast of prices from which appropriate incentive levels are set, and the market potential for specific technologies in that given location.

Last week New York's Governor Eliot Spitzer announced just such a comprehensive energy plan. This strategy is premised on the achievement of a 15 percent reduction in energy consumption by 2015. The goals of this new policy are to simultaneously lower New York's high cost of energy, while expanding the supply of cleaner generation sources. Further, implementation of this policy requires that all resources be enlisted to achieve these goals, balancing demand side options with supply side options.

This type of energy plan will also benefit the widest spectrum of economic interests, and not merely give preferred access to very large capitalized corporations.

Certainly the policies outlined by Governor Spitzer will provide an opportunity for new transmission lines to be constructed in New York State; however, a transmission line which does not comport with the policy goals of the comprehensive energy plan and is focused solely on maximizing profit opportunities to the project developer could jeopardize the overall plan.

Transmission line proposals which do not comport with comprehensive State-level planning should not be given new life through Federal Government preemptive power.

In conclusion, I would like to thank the subcommittee for this opportunity to present this testimony and respectfully and strongly urge a reversal of the policies embodied in section 1221 of the En-

ergy Policy Act of 2005. Repeal that provision in my message on behalf of the Energy Committee I chair.

I will be happy to answer any questions that members of this subcommittee may, indeed, have.

Thank you.

[The prepared statement of Mr. Tonko follows:]

Before the

United States House of Representatives
Subcommittee on Domestic Policy
For the
Committee on Oversight and Government Reform

Regarding

Implementation of Section 1221 of the Energy Policy Act of 2005
Concerning Federal Government Authority for Electric Transmission Line Siting

Testimony of

Paul D. Tonko
Member of New York State Assembly, 105th Assembly District
Chairman, Committee on Energy

April 25, 2007

Good afternoon Chairman Kucinich, Chairman Waxman, Ranking Member Issa, Ranking Member Davis, and members of the Subcommittee.

My name is Paul D. Tonko and I am a Member of the New York State Assembly. I represent the 105th Assembly District, which encompasses Schenectady and Montgomery Counties in New York. I am also the Chairman of the Assembly Energy Committee, a position I have enjoyed serving for the past 15 years.

In the 15 years that I have served as Energy Committee Chairman, few issues have given rise to the concern and sense of "disempowerment that the potential exercise of federal preemption regarding transmission line siting has created. At its core, this sense of loss of local power strikes directly to public fears that the voices of individual citizens will be lost to corporate interests; that profit motive will trump the rights of individuals to enjoy private property. There is little confidence, at this moment, that federal government officials – who are far removed from the physical and socio-economic location of local proposals – will be able to fully appreciate the environmental, economic and social impacts of long-range, high-voltage transmission lines in local communities.

Further aggravating this situation is that transmission line proposals, with their wide-ranging environmental and economic impacts, may prove to be disruptive of the state government's attempts to implement broad energy policy. Federal government officials who have not been made aware of the full complement of state energy policies and programs, and their intricate interrelationship – may unwittingly, or possibly purposefully, disrupt progress

towards achievement of those goals, possibly to the sole economic benefit of the corporation seeking that federal government intervention.

The purpose of my testimony today is to support a reversal of those provisions of the Energy Policy Act of 2005 which permit the Federal Energy Regulatory Commission ("FERC") to finally determine the siting of electric transmission lines. This newly-conferred regulatory power may hold hostage the ability of states to craft and implement energy policy best suited to the state's needs and policy goals. What is needed at the state level is the freedom of each state to take a holistic approach to energy policy – an approach which looks at all the supply-side and demand-side options available – without fear that such policies, programs, and decision-making could be trumped or thwarted by private interests seeking alternate government intervention.

New York is certainly one of the battleground states in this particular arena. Eastern New York State was identified as a Critical Congestion Area in the Department of Energy National Electric Transmission Congestion Study of August 2006. Also identified in that study was an Upstate New York to Downstate New York direction of increased energy flows needed to reduce the congestion in the Critical Congestion Area. New York has also been host to one specific proposal which had sought early designation as a National Interest Electric Transmission Corridor, which would then trigger the federal preemption provisions of Section 1221.

What should be made clear to all federal officials who could impact this policy is that local officials and utility companies have been aware of the existence of electric transmission congestion within New York for a very long time. The constraint at a major transmission interconnection outside of Utica has long been known as a bottleneck for moving power from upstate sources to the load in the metropolitan New York City area. This bottleneck is the result of utility systems design as it developed over time. The primary reason why this constraint was never fully alleviated was due to the cross-incentives which existed: Upstate utilities, which owned the systems, were reluctant to make investment in their systems which would only serve to benefit another utility's downstate customers. Nevertheless, the reliability of the electric systems in New York has not suffered as a result of this particular congestion. The electric systems developed and expanded to meet the needs of New York energy consumers taking into account the amount of power that could be moved along existing lines. Local reliability rules, standards, and even reliability governing bodies have all been put in place to ensure that the system delivers reliable energy services.

In the early era of energy deregulation, and prior to the issuance of the August 2006 DOE Congestion Study, a market-based proposal emerged that would construct an electric transmission line which would, in part, alleviate the downstate New York congestion. Ultimately, this project was not constructed. However, the withdrawal of the project for consideration was not the result of a withholding of the State of New York to render a determination on the proposal, a decision by the state to "overburden" the project's economic viability due to mitigation requirements, or a denial of the proposal through an administrative review procedure, all of which are reasons that FERC has indicated it would consider disputes about.

In response to a second merchant transmission line proposal, the Assembly Energy Committee held hearings in the affected areas in response to local concerns regarding this proposal. At that hearing the Committee received testimony from your colleague Maurice Hinchey, who was able to speak authoritatively on the dynamics at the federal level which resulted in the provisions of the Energy Policy Act which you are now examining. In that testimony, Congressman Hinchey reiterated his concerns that provisions of the new act were intended to erode state and local jurisdiction over proposed projects, stating that

> There has been a very unwholesome affiliation between the regulators and ...those to be regulated. The arms length relationship has essentially disappeared and ...much of [the Energy Policy Act] was written by the regulated community, by the electric industry. This has ... unfortunately resulted in the rerouting of complex regulatory rules without legislative action, sufficient oversight or public understanding. (Transcript, Assembly Public Hearing dated August 17, 2006, pg. 16, lines 2-11.)

Thus, it appears that these federal policies may not have been drafted with the protection of the public interest in mind.

In addition, New York, more than any other state, bore the majority of the burden of the Blackout of August 2003. That service disruption affected virtually the entire state. Due to the nature of the outage, restoration of service in the critical New York City system took over 24 hours, resulting in billions of dollars in lost economic activity. The service disruption traveled across the state along the bulk transmission system, entering the state from a relatively small interconnection in what is known as the "Lake Erie Loop." The Assembly Energy Committee conducted extensive hearings in the aftermath of this event, seeking explanations for the cause of the event as well as looking at options to make the system more robust and to avoid another catastrophe. In those hearings, the Committee learned that a divergence of opinion existed. One advocacy side stated that increased transmission could provide alternate routes for energy, and thereby lessen the effect of system disturbances. Another advocacy side stated just the opposite: that expanded transmission systems could create an increased vulnerability to ever-more remote disturbances. Despite the divergence of opinion, what became clear is that any expansion of the transmission system – whether wholly intra-state or interstate – must balance all concerns and be determined within the parameters of a defined energy plan.

As an aside, the Energy Policy Act attempted to "correct" the circumstances which permitted the August 2003 Blackout to occur – namely by making voluntary reliability standards mandatory. However, the standards, as proposed, would have represented a significant weakening of the standards which were already in effect in New York. The standards in New York had been developed keeping in mind the need for augmented reliability, most particularly to ensure greater levels of reliability for the critical New York City economy. Thus New York fought hard – and finally won – an exemption from the standards requirement, and was able to keep its long-standing reliability standards in place, and within its own control. I mention this issue concerning reliability standards as it draws a direct parallel with the issue of federal preemption on transmission line siting – that long-standing state policy should not be undercut by federal policies which do not fully appreciate their impact.

I have described the above incidents – avoiding detail on the hundreds of other transmission-related issues and controversies – to impress upon you one very important idea: New York State is well equipped to balance the needs of energy consumers, maintain the reliability of the electric system, and approve the construction of electric transmission lines where they are needed.

In New York, the specter of federal override will lead to unintended, if not unfortunate, results. The state legislature has already seen, what I predict to be, the first of many pieces of legislation that are designed to challenge transmission line proposals, given the newly-created perceived sense of weakness in state decision-making capability.

Chapter 741 of the Laws of 2006 restricts the ability of a "merchant transmission company" in its ability to use state eminent domain power and procedure, a right granted to most companies seeking to provide utility service to the public. More specifically, this new law applies to merchant transmission companies which, among other requirements, "applied for early designation as a national interest electric transmission corridor" pursuant to the "Energy Policy Act of 2005," and specifically citing the common name of the federal law. This law is currently the subject of a Complaint filed in federal court in New York, the clear and specific reference to the issues being discussed today are a demonstration that local citizens are pressuring state executives and state legislatures to use whatever powers necessary to frustrate access to Section 1221 provisions.

The specter of federal override may also foster deal-making among project proponents and state regulators as a means of avoiding federal intervention. State decision-makers will not want to be seen to have their decisions trumped by Washington regulators, as such will undoubtedly be received negatively by the general public. Thus, deals could be agreed to for specific proposals, even if such proposals would not stand up to the rigor of thorough regulatory review. In New York, this could signal the end of a near 40-year process for transmission line siting and review. The modern era of electric transmission facility siting review was begun with the enactment of Article VII of the Public Service Law, amending and updating earlier versions of administrative procedure governing the same. By all accounts in New York, Article VII is a successful process. Article VII is an administrative review process which assigns the role of the decision-makers, details the requirements of an application for a certificate, identifies appropriate parties for an administrative proceeding, clarifies the standards for decision-making, and provides for judicial review of final determinations. It is a very public, very thorough investigative and review process. And further, the New York Article VII process results in the issuance of certificates to construct transmission lines on a fairly routine basis. As I said earlier, New York has a very successful transmission line siting process.

However, if transmission line project proponents are aware that a determination could be "withheld" or even denied on the merits, the ability to appeal to FERC may prove too attractive. Potential manipulation of the Article VII process may even occur – for example failure to produce all necessary studies through new, creative reading of the statutory requirements. Such potential procedural manipulation could result in failure of a decision to be rendered within the

requisite one-year deadline. It is still unclear whether FERC will look at all these attendant circumstances prior to accepting to review a case

The Energy Policy Act of 2005 is presenting challenges to the states in efforts to craft energy policy. Many times, elements of these emerging state energy policies are the result of the absence of federal government policies and programs to do the same. For example, in New York, and the Northeast more broadly, the Regional Greenhouse Gas Initiative – a regional compact among 10 Northeastern states – has been initiated and is poised to establish a cap-and-trade program to control emissions of carbon dioxide, primarily from electric generating plants. While the possibility that energy prices may increase as a direct result of capping of carbon dioxide, other energy policies are being crafted an implemented to help consumers better control their energy use, thereby reducing their energy costs, and possibly bringing down overall energy prices in the long run. These policies are being implemented even despite this region of the country having the highest average retail electricity prices in the country.

Individual energy policies are only effective when they are implemented as part of a comprehensive energy plan. Outside factors – or possibly wild cards – can only disrupt the orderly implementation of complementary energy programs which have been designed according to the needs of the system, a forecast of prices from which appropriate incentive levels are set, and the market potential for specific technologies in that location.

Last week, New York Governor Eliot Spitzer announced just such a comprehensive energy strategy for New York. This strategy is premised on the achievement of a 15 percent reduction in energy consumption by 2015. The goals of this new policy are to simultaneously lower New York's high cost of energy while expanding the supply of cleaner generation sources. Further, implementation of this policy requires that all resources be enlisted to achieve these goals. This will require a balancing of demand-side options – such as advanced cogeneration systems, energy efficiency, demand reduction programs, smart metering and renewable energy technologies – with supply-side options – such as new central station power plants and long-range, bulk system transmission lines. This balancing will require comprehensive planning, and a renewed focus on the implementation of such an energy plan. New York already has many of the needed programs in place. Now it is time to better coordinate the programs, adjust the incentive levels to foster the smartest development, and to maximize their outcome.

This type of energy plan will also benefit the widest spectrum of economic interests, and not merely give preferred access to very large capitalized corporations. Certainly the policies outlined by Governor Spitzer will provide an opportunity for new transmission lines to be constructed in New York. However, a transmission line which does not comport with the policy goals of the comprehensive energy plan – and is focused solely on maximizing profit opportunities to the project developer – could jeopardize the overall plan. The greatest threat is the potential disruption of demand-side management programs, which are designed according to studied price predictions. Transmission line proposals which do not comport with comprehensive state-level planning should not be given new life through federal government preemptive power.

Rather, the federal government would be better focused on encouraging – if not mandating – interstate energy resource planning. To date, the independent system operators have focused more on maintaining their independence, which has resulted in a degree of balkanization of energy policies and programs. What has perhaps been lost as a result is the ability for the systems to identify the appropriate projects that will foster inter-system exchanges and improve overall system reliability. Without this mutual cooperation, the likelihood of more cross-system Blackouts will increase. A system which does not promote regional planning is more than a case of "good fences making bad neighbors," but they also make for unreliable neighborhoods.

In conclusion, I would like to thank the Subcommittee for this opportunity to present this testimony and to urge a reversal of the policies embodied in Section 1221 of the Energy Policy Act of 2005. I will be happy to answer any questions the members of the subcommittee may have.

Mr. KUCINICH. Thank you very much, Representative Tonko.
Representative DeWeese, thank you.

STATEMENT OF BILL DEWEESE

Mr. DEWEESE. Thank you very much, Mr. Chairman, Congressmen, Congresswomen, staff. My name is Bill DeWeese, and I certainly appreciate the opportunity to appear before the members of the Subcommittee on Domestic Policy and provide some comments on the implementation of section 1221 of the Energy Policy Act.

Parenthetically, I would like to thank Congressman Hinchey for his negative vote. I think it was pregnant with common sense and a respect for States' rights.

I offer these remarks not only as a member of the 50th Legislative District, which encompasses all of Green County, parts of Fayette and Washington County in southwestern Pennsylvania, but as the current majority leader of the Pennsylvania House.

I have 10 quick points, two or three sentences each.

No. 1, as it stands today, FERC, the Federal Energy Regulatory Commission, can use its imminent domain power to locate and construct a transmission line, regardless of what our Pennsylvania Public Utility Commission finds and rules.

No. 2—and obliquely I referred to this when I mentioned my compliment to Congressman Hinchey—this is an unprecedented usurping of States' rights. As a little boy, the term "States' rights" had a vulgar and sometimes malignant connotation, but this is an absolute State right, and our Pennsylvania Public Utility should not have its powers arrested.

No. 3, we in Pennsylvania understand the need for reliable power and are willing to do our part for the PJM grid. We know that the American consumers and companies up and down the east coast need electricity.

No. 4, we are willing to do what we can to allow the Federal Government to be involved, but we don't want it to impose its long arm and its will into our back yards, into our green spaces, and into our lives.

No. 5, if the Federal Government is allowed to dictate on this issue, where does it end? Will they come up to Green County and tell us where we are going to put a nuclear power plant or a hydroelectric plant or a windmill farm?

No. 6, if section 1221 of the Energy Policy Act of 2005 is not repealed—and I certainly join my colleague from the Empire State and request that it is repealed—we will necessarily strip the States of their right to govern their own future when it comes to citing and construction of high-powered transmission lines. Public participation and regulatory review be damned.

No. 7, the following is a mere snapshot of Pennsylvania's economic, cultural, historical, and natural and scenic resources. We have about 2,300 and 23,000 acres of farmland that has been preserved through our Commonwealth's agricultural and land preservation program. We have 120 State parks on 283,000 acres, 20 State forest on over 2 million acres, 300 State game lands on over approximately 1.5 million acres. Pennsylvania State forest land is one of the largest expanses of public forest land east of the Mississippi River. We have Gettysburg National Park. We have Valley

Forge National Park, Fort Necessity National Battlefield. We have 42 other places in Pennsylvania that are listed on the National Historic Record.

No. 8, under the guidance of Governor Edward G. Rendell, Pennsylvania has become one of the first States to implement an alternate energy standards portfolio.

No. 9, nobody has convinced me or any of my constituents that the proposed power line is in the public interest. What I have become convinced of is the fact that at the end of the day Pennsylvania and the Pennsylvania Public Utility Commission should make these determinations, not the Federal Energy Regulatory Commission.

No. 10, and finally, there is no doubt in my mind that section 1221 of the Energy Policy Act should be repealed post-haste.

With that, I will continue my efforts to oppose all efforts to designate the National Interest Electric Transmission Corridor and any projects, Mr. Chairman, seeking to locate and construct interstate high-voltage transmission lines in the Commonwealth of Pennsylvania.

Thank you very kindly.

[The prepared statement of Mr. DeWeese follows:]

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON DOMESTIC POLICY

TESTIMONY OF THE HONORABLE H. WILLIAM DeWEESE
MAJORITY LEADER, PENNSYLVANIA HOUSE OF REPRESENTATIVES

ON

FEDERAL ELECTRIC TRANSMISSION CORRIDORS:
CONSEQUENCES FOR PUBLIC AND PRIVATE PROPERTY

APRIL 25, 2007

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM'S SUBCOMMITTEE ON DOMESTIC POLICY

Mr. Chairman, I am H. William DeWeese. I appreciate the opportunity to appear before you and Members of the Sub-Committee on Domestic Policy to provide comment on the implementation of Section 1221 of the Energy Policy Act of 2005. I respectfully offer these comments in my capacity as the Majority Leader of the Pennsylvania House of Representatives and as the duly elected State Legislator for the 50th Legislative District, which encompasses all of Greene County and parts of Washington and Fayette Counties.

My testimony, in large part, will consider the impact section 1221 will have on the Commonwealth of Pennsylvania, its people and political subdivisions. Accordingly, it is my belief that section 1221 as public policy will, if implemented, advance an element of the Energy Policy Act of 2005 which is void of public benefit, which ignores environmentally clean, renewable, energy-efficient and cost-effective alternatives, and which forsakes the rights of states and their political subdivisions to adopt, administer, and manage land use policies and decisions that conflict with the ambitions of profit seeking corporations seeking to locate and construct high voltage transmission lines.

Section 1221 gives the Secretary of Energy the authority, based on congestion studies, to designate national interest electric transmission corridors in any geographic area of the United States that is experiencing electric transmission capacity constraints or congestion. Furthermore, section 1221 gives the Federal

Energy Regulatory Commission (the FERC) "backstop" authority to issue one or more permits to construct a transmission line in a Department of Energy designated national interest energy transmission corridor, if specific conditions exist. For instance, if the Pennsylvania Public Utility Commission (PA PUC) would fail to approve a transmission line siting application for more than one year following the filing of the application seeking approval to locate or construct a high voltage transmission line or one year after the designation of the relevant national interest electric transmission corridor, whichever is later; OR if the PA PUC would condition its approval in such a manner that the proposed transmission line would not significantly reduce transmission congestion; OR would not be economically feasible, the FERC could use its Federal eminent domain power to locate and construct the transmission line in Pennsylvania, regardless of the findings of the PA PUC or any other state administrative agency that is statutorily charged with assuring that the high voltage transmission line is in the public interest and will provide a public benefit.

The PA PUC is the administrative agency of the Commonwealth statutorily empowered with jurisdictional authority over the rates, terms, and conditions of retail electric utilities. Moreover, it is the duty of the PA PUC pursuant to statute to, among other things, assure that the rates of public utility service, including electric service, are just and reasonable; that there is no discrimination in rates; and that public utility service is safe and reliable. The PA PUC also has regulatory authority over the review and approval of applications to locate and construct transmission lines. Additionally, the Office of Consumer Advocate was established

in 1976 and the Office of Small Business Advocate in 1988 for the explicit purposes of representing the interest of consumers and small businesses, respectfully, in any matter or proceeding properly before the PA PUC, including matters relating to the location and construction of high voltage transmission lines. I submit that if the Department of Energy designates a national interest energy transmission corridor in Pennsylvania with little or no consultation and coordination with all administrative agencies charged with representing the rights and interest of ratepayers and assuring a public benefit, it would be difficult if not impossible to conclude that the project would be in the public interest.

The accompanying backstop authority conveyed to the FERC could diminish or even eliminate the roles of the PA PUC, the Offices of Consumer and Small Business Advocates, and other administrative agencies that were established for the express purpose of protecting Pennsylvania's natural, historical, cultural, and recreational resources and, in some cases, reviewing and commenting on transmission line siting applications. These agencies include the Pennsylvania Department of Environmental Protection, the Department of Conservation and Natural Resources, the Department of Transportation, the Game Commission, and the Historical and Museum Commission.

If the FERC is permitted to use its congressionally conveyed authority to commandeer and usurp the traditional role of states and their administrative agencies to review and approve the location and construction of high voltage transmission lines, Pennsylvania, not unlike every other state, would have no control, no say, and no recourse other than expensive litigation; over transmission

planning, location, and construction within its geographic borders. However, there is a remedy; the repeal of section 1221 of the Energy Policy Act of 2005. I submit that without repeal, implementation of section 1221 could be viewed as one of several acts in a national drama choreographed to alter fundamentally our form of Government in the name of "national security."

It is important for you to know that my colleagues and I in the Pennsylvania General Assembly may face the reality of and be forced to address the issues radiating from Congressional enactment of section 1221 sooner than most. The fact is that on March 6, 2006, both Allegheny Power and the PJM Interconnection submitted an interstate high voltage transmission line project to the Department of Energy for early designation as a national interest electric transmission corridor. This project, known as the *Trans-Allegheny Interstate Line* or *TrAIL* project, proposes to locate and construct a 240-mile, 500 kilovolt interstate transmission line; 40 miles of which will extend from Washington County and traverse parts of my 50th Legislative District in Greene County. From Greene County, the remaining miles of the proposed line would snake through parts of West Virginia and terminate in Northern Virginia.

On Friday, April 13, 2007, Allegheny Power, the jurisdictional electric distribution company that serves most of Southwestern Pennsylvania, filed the *TrAIL* project application with the PA PUC. At this point, review and approval of the *TrAIL* project is subject to PA PUC regulations. However, and although the Department of Energy has delayed action on requests for early designations of national interest electric transmission corridors, Allegheny Power and the PJM,

singular or in combination, could deal their corridor designation requests into play, if the PA PUC would fail to approve the *TrAIL* project.

The PJM has also requested national interest electric transmission corridor designation of another high voltage interstate transmission line project promoted by American Electric Power (AEP), Allegheny Power, and Pepco. This project involves the location and construction of an approximately 550-mile, 765 kilovolt transmission line that would extend from the panhandle region of West Virginia, traverse Pennsylvania and Maryland and end in New Jersey.

If national interest energy transmission corridor designations would be granted to both projects, a Piedmont Environmental Council review of early designation requests revealed that land in approximately 50 of Pennsylvania's 67 counties has the potential of becoming subject to federal eminent domain authority.

There is no doubt that the granting of national interest electric transmission corridors in Pennsylvania and the siting and construction of high voltage transmission lines of the magnitude proposed by Allegheny Power, AEP, and the PJM would have significant negative outcomes for the Commonwealth of Pennsylvania, its people and political subdivisions. The following is a mere snapshot of Pennsylvania's economic, cultural, historical, natural, and scenic resources whose sustainability could be jeopardized by corridor designations:

(1) **As of April 13, 2006, 323,366 acres of farmland had been preserved in 53 counties under the Commonwealth's agricultural land preservation programs.**

(2) **Pennsylvania has 120 state parks on 283,000 acres, 20 state forests on 2.1 million acres of forestland in 48 of 67 counties, and 300 state game lands on 1.4 million acres. Pennsylvania's state forestland is one of the largest expanses of public forestland in the eastern United States.**

(3) **Allegheny National Forest (500,000 acres), Delaware Water Gap National Recreational Area (70,000 acres), Gettysburg National Military Park (6,000acres), Valley Forge National Park (4,000 acres) and Fort Necessity National Battlefield (900 acres).**

(4) **Forty-two places in Pennsylvania are listed on the National Register of Historic Places.**

Implementation of section 1221 would have a devastating impact not only on my constituents in Southwestern Pennsylvania, but also on people across the Commonwealth who may soon discover that their homes, children's schools, businesses, and workplaces could be situated in or near a proposed corridor. The likelihood of this inevitability juxtaposed with the possibility that my constituents and other Pennsylvanians may face increased electric rates but receive no economic or quality-of-life benefit from interstate transmission line projects, could face the possibility of losing their homes through condemnation and living in fear of chronic or terminal health outcomes, makes the rationale for enacting a profit driven public policy in the name of national security difficult to understand.

As I relayed previously, section 1221 is void of public benefit, ignores environmentally clean, renewable, energy-efficient and cost-effective alternatives, and sacrifices the traditional power of states to adopt, administer, and manage land use policies and decisions, especially if a decision would conflict with the ambitions of profit motivated corporations seeking to locate and construct high voltage transmission lines. There are alternatives to high voltage transmission lines. However, our failure to require consistent investment in alternative energy has us here today discussing what may become another failed national energy policy.

Gasoline prices continue to rise at alarming rates; we remain dependent on foreign oil; and whether or not there will be adequate investment in conservation, renewable and alternative energy remains elusive. It is clear that we can not continue on this road of energy uncertainty. However, and as I have stated before, the lives of my constituents and the people of the Commonwealth of Pennsylvania should not be disrupted because of an energy policy that ignores their quality of life for the benefit of profit driven corporations. There is no doubt in my mind that section 1221 of the Energy Policy Act should be repealed posthaste. With that I will continue to oppose efforts to designate national interest electric transmission corridors and any projects seeking to locate and construct interstate high voltage transmission lines in the Commonwealth of Pennsylvania.

I thank you for your consideration of my comments and your willingness to consider the consequences section 1221, if implemented, would have on state sovereignty and the lives of people nationwide.

Mr. KUCINICH. Thank you very much, Mr. DeWeese, for that very powerful statement.

The Pennsylvania PUC chairman also has concerns. Without objection, I will put into the record the statement of Wendell Holland, chairman of the Pennsylvania Public Utility Commission, addressed in remarks to this committee.

Without objection, thank you.

[The prepared statement of Mr. Holland follows:]

Statement of Wendell Holland, Chairman
Pennsylvania Public Utility Commission

House Committee on Oversight and Government Reform
Subcommittee on Domestic Policy
"Federal Electric Transmission Corridors"
April 25, 2007

Thank you for this opportunity to offer comments to the Honorable Chairman, Mr. Kucinich, Ranking Member Issa and Members of the Subcommittee on Domestic Policy[1].

My name is Wendell Holland. I am Chairman of the Pennsylvania Public Utility Commission ("PaPUC"), a State utility regulatory commission that has served the Commonwealth of Pennsylvania and its people since 1913. My remarks are presented to you as one member of the PaPUC and do not necessarily reflect the views of the Commission. In addition to regulating the rates and service of utilities and energy providers within the Commonwealth, the PaPUC also determines whether proposed electric transmission facilities that require the exercise of the Commonwealth's eminent domain powers are "necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public", pursuant to 15 Pa.C.S. § 1511 and 66 Pa.C.S. § 1501. We administer rules providing for consideration of issues such as need (including reasonable alternative routes); safety; environmental impact; impact on archeologic, historical and scenic areas; land use; soil and sedimentation; plant and wildlife habitats; terrain; hydrology; and landscape. 52 Pa.Code § 57.71 – 57.77. Pennsylvania's Constitution, Article II, § 27 provides for a right to the preservation of natural, scenic, historic and esthetic values, declares that the Commonwealth is a trustee of such resources and "shall conserve and maintain them for the benefit of all the people".

Thus, the PaPUC's siting jurisdiction is not a mere technical electrical engineering exercise, but a weighing of a number of (sometimes competing) concerns. Much of the interstate transmission grid that makes up the present day Eastern Interconnection was constructed under the jurisdiction of and supervision by State agencies. Their decisions were reviewed by State courts, while regulation of interstate transmission rates, terms and conditions has been regulated since 1935 by the Federal Energy Regulatory Commission and its predecessor, the Federal Power Commission. This division of responsibilities has generally worked to the nation's benefit.

The enactment of Section 1221 of the Energy Policy Act of 2005 marks a sharp departure from the traditional model of Federal – State collaboration. For the first time in our nation's history, Congress thrust two Federal agencies and the Federal District Courts into the transmission siting arena and has provided for federal administrative review of State siting proceedings. Such review, under Section 1221, is not merely for the review of questions regarding interstate need for proposed lines, but also with regard to the merits of the detailed siting and eminent domain issues that have heretofore been the exclusive province of the States.

The PaPUC recognizes that there may be an appropriate Federal role for the review of issues concerning the need for proposed interstate transmission facilities. However, the intrusion of Federal administrative agencies into distinctively local siting issues is a matter of concern. It is one thing to assess issues of interstate need for new transmission facilities. It is another thing--and

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[1] This statement does not discuss any proceeding pending before the PaPUC, and should not be construed as commenting on the facts or law that may relate to any such pending proceeding.

requires a greatly different skill set--for a Washington-based Federal agency to do the detailed work involved in siting review, while also doing justice to legitimate and long-established local, regional and State concerns.

I also have a concern that the intent and scope of Section 1221 has been misinterpreted and enlarged by the Federal Energy Regulatory Commission in its *Order 689* rulemaking (*Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities*, 117 FERC ¶ 61,202 (2006)) when it declared that it believed that it had the legal authority under Federal Power Act § 216 (b) (1) (C) to review a state siting determination denying an application under valid state law.

Congress did not intend to create an automatic right of appeal to FERC and the Federal Courts from *all* adverse decisions of State authorities under Section 1221. The intent was to give FERC jurisdiction only over those proceedings not completed within one year, or conditioned to such an extent that the project would no longer relieve interstate congestion or be economically feasible.

The plain language of FPA 216 (b) (1) (C) provides that federal siting applications by transmission project owners may only be filed where:

> (C) a State commission or other entity that has authority to approve the siting of the facilities has—
>
> (i) withheld approval for more than 1 year after the filing of an application seeking approval pursuant to applicable law or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later; or
>
> (ii) conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible;

That language makes it clear to me that Congress intended Section 1221 to serve as a federal backstop only for those cases in which delay or procedural obstacles were preventing a State determination.

I believe that Congress did not intend to provide that *all* adverse state siting determinations might be appealed to FERC and the Federal Courts. Neither the Federal agencies or nor the Federal Courts are currently equipped to serve as appellate bodies from state siting proceedings. EPACT § 1221, if it is to remain in its current form, should be correctly interpreted and applied according to the intent of Congress.

Thank you for allowing me to present my comments to you on this very important issue.

Mr. KUCINICH. Next we are going to hear from Mr. Adams, State of Maine.

Welcome.

STATEMENT OF KURT ADAMS

Mr. ADAMS. Thank you, Chairman Kucinich, members of the Subcommittee on Domestic Policy. My name is Kurt Adams, and I am the chairman of the Maine PUC. I am very pleased to be here before you today to discuss the implementation of section 1221.

Section 1221 directed the Secretary of Energy to conduct a congestion study, and that will be most of what I talk about today.

The congestion study was to be a nationwide study of electric transmission congestion. The study was released on August 8, 2006. It is supposed to be renewed every 3 years.

The Secretary may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that will adversely affect consumers as a national interest corridor.

Section 1221, however, requires the DOE, before it exercises this authority, to consult with affected States in conducting the congestion study. Only after consulting with the affected States is the DOE to issue the mandated congestion study.

As is clear from the appendices to the congestion study, DOE never contacted or met with any Maine regulator or government representative in the process of conducting the study.

The study found Maine's New Hampshire interface and Maine's interface with New Brunswick to both be contested and identified the Maine/New Hampshire interface as one of the top 40 congested interfaces in the eastern interconnect.

DOE did contact the Maine PUC on October 6th, and, after communications from our delegation, had a subsequent meeting with the PUC and Maine delegation staff in December 2006, but these after the fact meetings cannot cure DOE's lack of consultation that was required by statute prior to the release of the congestion study.

The congestion study identified several congested pathways in New England and identified the region as a congestion area of concern. It is worth noting that the New England Governors Conference and the New England Council of Public Utility Commissioners also objected over the lack of consultation, and, to the best of my knowledge, there was not a single Governor, a single PUC, or a single elected or government official from any New England State consulted by the DOE consistent with the law.

The DOE's failure to follow the simple requirements of section 1221 mean that the congestion study, as it currently stands, cannot be used as the basis for designations of corridors in Maine or New England. The congestion study is fundamentally legally flawed as to that region.

In addition, getting to the merits of the congestion study—and I am tempted to start making this seem like a PUC hearing room, but I fear everyone will fall asleep—we do very detailed analyses in PUC hearing rooms. We look very carefully at what is behind load flows. We look very carefully at reliability questions. That is what we do for a living.

When we looked at the congestion study, there is insufficient support for the study's finding of congestion at the New Brunswick/

Maine border, and at the Maine/New Hampshire border, and I will just touch on this briefly, but it is concerning to us.

We individually and through NECPUC, our regional regulators association, and NARUC, our national association, have sought access to the load flow studies, input data, and modeling used by DOE and its consultants in arriving at the conclusions in the study. However, it does not appear that DOE has released all of the inputs and modeling data it relied upon to make its findings of the congestion study. What it has released does not appear to support its conclusions. Release of all of the data is important, because the DOE's conclusions in the study conflict with other publicly available information about congestion in New England.

For instance, ISO New England, our RTO, our grid operator, the experts in maintaining reliability in our region, do not believe that the Maine/New Hampshire interface is meaningfully constrained. They have said so to the DOE.

In addition, although not addressed in the report, even though it is publicly available information, two factors will greatly reduce or eliminate congestion from New Brunswick to Maine during the study timeframe. There is a new transmission line being constructed between Maine and New Brunswick as we speak, and it is going to be energized very soon. That new line will increase transfer capability by 300 megawatts over an interface that currently appears not to be congested.

The second widely known fact is that in New Brunswick a nuclear power plant will out for service for 2 years. That will also relieve pressure on the Maine/New Brunswick interface and reduce flows that typically go from New Brunswick into New England.

This information was readily available to the DOE, but it was not or does not appear to have been considered in the congestion study. At this moment we don't know.

It is worth noting, in closing, that both of those facts would have been easily ascertainable had the DOE consulted with the Commission.

Thank you.

[The prepared statement of Mr. Adams follows:]

Testimony of Kurt Adams
Chairman
Maine Public Utilities Commission

Before the

Subcommittee on Domestic Policy
Committee on Oversight and Government Reform

April 25, 2007
2:00pm
Room 2154
Rayburn House Office Building

Chairman Kucinich, members of the Subcommittee on Domestic Policy, my name is Kurt Adams and I am the Chairman of the Maine Public Utilities Commission. I am pleased to be before you today to discuss the implementation of section 1221 of the Energy Policy Act of 2005.

Section 1221(a) of the Energy Policy Act of 2005 ("EPAct") directed the Secretary of Energy to conduct a Congestion Study – a nationwide study of electric transmission congestion – by August 8, 2006, and every three years thereafter (the "Congestion Study"). The Secretary may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a National Interest Electricity Transmission Corridor (a "Corridor").

A. DOE Failed to Consult with Affected States As Required by Law

Section 1221 of EPAct 2005 requires DOE to consult with "affected States" in conducting the Congestion Study. Only after consulting with the affected states, is the DOE to issue the mandated Congestion Study. As is clear from the Appendices to the congestion study, DOE never contacted or met with any Maine regulator or government representative in the process of conducting the study. DOE did contact the MPUC on October 6th, and had a subsequent meeting with the PUC and Maine delegation staff in December 2006, these "after-the-fact" meetings cannot cure the DOE's lack of consultation prior to the release of the Congestion Study in August 2006.

The Congestion Study identified several congested pathways in New England, identifying the region as a Congestion Area of Concern. The Maine-New Hampshire interface was identified as one of the top forty most congested interfaces in the Eastern Interconnect.

However, due to the DOE's failure to follow the requirements of section 1221(a) the congestion study cannot be the basis for designation of a corridor in Maine or New England.

B. There is insufficient support for the congestion study's findings of congestion at the New Brunswick Maine border and the Maine-NH Interface

The MPUC, individually and through NECPUC and NARUC have sought access to the load flow studies, input data, and modeling used by DOE or its consultants in arriving at the conclusions in the study. However, DOE has not released the inputs and modeling data it relied upon to make its findings in the Congestion Study.

Release of this data is important because the DOE's conclusions in the Congestion Study conflict with other publicly available information about congestion in New England. ISO New England, for instance, does not believe that the Maine-New Hampshire interface is meaningfully constrained. In addition, although not addressed in the report, even though it is publicly available information, two factors will greatly reduce or eliminate congestion from New Brunswick to Maine during the study time frame. The first is the Northeast Reliability Interconnect, the transmission line now under construction between Maine and New Brunswick. This transmission line, which will run from Point LePreau, New Brunswick to Orrington, Maine, will increase the transfer capability from New Brunswick to Maine by 300 MW. The second is the widely known fact that the Point LePreau nuclear facility will be closed for repairs during 2008 and a substantial portion of 2009. Thus, there are expected to be significantly reduced power flows from New Brunswick to Maine during this period and the interface may even experience reversed flows. This information gives serious pause to the conclusions in the Congestion Study and is broadly known within New England.

C. Creating Disincentives to Energy Project Development

DOE asked for comments on how allocation of the cost of transmission upgrades will affect the siting of a transmission line. It recognizes that this can be a critical issue in the siting of a line.

In New England, costs of transmission upgrades are socialized among the region. Thus, if a transmission line is built for the purpose of delivering possible surplus generation from Maine to population centers in Boston and Southwestern Connecticut, Maine ratepayers will have to pay for a portion of the transmission upgrade costs (and experience higher prices) even though the purpose of the line is to benefit ratepayers in Southern New England. This methodology provides the wrong incentives. Not only will the line increase energy costs in the state, by reducing or eliminating the 4% differential discussed above, but Maine consumers will have to pay for that to happen.

Transmission cost allocation reform in New England is the first step to getting a line sited to bring surplus capacity from Maine to southern New England. Reform is not only the equitable approach but, as the DOE implicitly recognizes, it is a critical concern in siting a line. However, the DOE must recognize that one or two states cannot effect this change on their own. To date, Southern New England states have not agreed to change the cost allocation methodology. Accordingly, to threaten Maine with a designation is particularly inequitable because it punishes one state for a situation that it is powerless to change.

Moreover, Maine's policies in favor of siting new generation should be recognized and rewarded, not punished. Maine's governor is the only governor in New England to aggressively support energy infrastructure such as wind and LNG, and Maine has consistently sited new generation where other states have struggled to get new generation sited. In fact, Maine has more than 1000 MW of generation, much of it renewable generation such as wind power, on the drawing board, in the permitting process or under construction today. A designation would send the wrong incentive regarding the siting of new generation in Maine. If the result of opening its door to new generation, while other states have not been willing to do so, is a corridor designation and the accompanying loss of state sovereignty over energy policy, opponents of wind towers and other new proposed generation in Maine will have an additional and powerful argument against siting new projects.

D. Conclusion

For the reasons stated above, the DOE congestion study cannot be the basis for designation of a corridor in Maine or New England. DOE has failed to consult with the state of Maine as required by the statute and as a result the study is flawed. The MPUC looks forward to consulting with DOE so that the study can be revised as necessary. Only after the study is revised as necessary, and after consultation with the MPUC and other states, can it form a basis for any designation.

Mr. KUCINICH. Thank you very much for being here, Ms. Merritt. Please continue with the testimony.

STATEMENT OF ELIZABETH MERRITT

Ms. MERRITT. Good afternoon, Mr. Chairman and members of the subcommittee. I am Elizabeth Merritt, deputy general counsel for the National Trust for Historic Preservation, and we really appreciate the opportunity to testify before you about section 1221 of the Energy Policy Act and the designation of national interest electric transmission corridors.

We are particularly concerned that the Department of Energy and other Federal agencies involved in implementing the act should comply with the National Environmental Policy Act and section 106 of the National Historic Preservation Act prior to designating these national corridors. Section 106 is the law that requires Federal agencies to take into account the effects of their actions on historic properties, in particular, prior to making decisions that could harm them. Section 106 is implemented through a consultation and review process that seeks alternatives to avoid, minimize, and mitigate adverse effects on historic properties.

Unfortunately, the Department of Energy has made it very clear that it does not intend to comply with section 106 or with NEPA prior to designating any corridors under section 1221. In our view, this is wrong, and we think Congress should clarify its intention that the agency should be conducting these reviews now, not after corridor designation has already occurred.

As you summarized, Mr. Chairman, the designation of national corridors will have draconian results, including the potential effect of overriding or preempting reviews by State and local governments and by other Federal agencies. If a State regulatory board doesn't approve an application for a power line in the designated national corridor within 1 year, the Federal Government can take control of the review process and approve the project, itself, even if the State has denied the application for legitimate reasons under State law or has requested the consideration of alternatives and mitigation measures that the applicant would prefer not to include.

Most disturbing, section 1221 authorizes the broad use of Federal imminent domain power to advance these projects to construction. In other words, national corridor designation will virtually guarantee the approval of any proposed transmission lines within the corridors. As a result, we believe it will be impossible to ensure any meaningful consideration of alternatives after those corridors have been designated. That is why it is so important for NEPA and section 106 review to occur now, before those corridors are locked into place.

I would also like to summarize a few of the types of historic and cultural resources that are at risk and the ways in which these resources are especially threatened by the visual impact of a major power line.

The map prepared by the National Park Service which is attached as the last page of our testimony—and I also brought a larger poster copy of the map—shows that a wide variety of our Nation's most significant public historic places are in close proximity to these proposed transmission corridors that are currently being

considered. These resources include historic battlefields, rural landscapes, historic districts, and other places from our Nation's past that still retain their authentic setting.

These areas derive their significance and their ability to convey the story of our history in large part from their visual context. These are places that offer members of the public the opportunity to take a step back in time in order to understand our Nation's heritage by seeing the world through the eyes of those who lived in an earlier age.

It is important to understand that in most cases harm to historic places can be even more difficult to mitigate than harm to environmental resources. Historic places are unique, authentic, and irreplaceable. A historic battlefield cannot be moved. It cannot be recreated like a wetland can. It cannot be planted or bred, like an endangered species.

Many of these historic battlefields and landscapes have sweeping views that are highly significant. Visual intrusion into those views cannot be avoided by shifting a power line a little to the left or a little to the right within the designated corridor. The massive infrastructure that is associated with these power lines cannot be camouflaged by planting trees to shield the view. Once the corridor is designated, these visual impacts will be unavoidable and irreparable.

I also want to specifically mention the impact of the proposed corridors on national heritage areas. As you can see from the Park Service map that we have attached to our testimony, many of the proposed corridors would cut right through the heart of our national heritage areas. In contrast to the National Register of Historic Places, these areas are designated by Congress. They are areas where historic, cultural, and natural resources combine to form a cohesive, nationally distinctive landscape. However, the land is not acquired by the Federal Government because these areas have the imprimatur of congressional designation, they have been very effective in cultivating heritage tourism for community and economic development.

The Alliance of National Heritage Areas estimates that every year 68 million people visit our country's 37 national heritage areas, and during those visits they spend more than $8.5 billion a year. Based on the enormous economic benefits for heritage tourism, we are concerned that local communities in these heritage areas may suffer economically, not just environmentally, if massive power lines are allowed to harm the historic areas and assets that draw these visitors in the first place.

Beyond these resources, which are nationally significant and often publicly owned, the transmission projects may also harm thousands of other significant historic properties, including local historic districts, landscapes protected by conservation easements, and privately owned historic properties whose owners have relied on Federal, State, and local legal protections that could be overridden by section 1221.

Many States have sophisticated regulatory agencies that review major transmission projects, and the legislatures have developed carefully crafted policies for balancing the considerations of energy distribution and the protection of sensitive resources. National cor-

ridor designation threatens to override and preempt these important State policies.

In sum, the National Trust is very concerned about the ambiguities and the excesses of section 1221 of the Energy Policy Act and the way it is being implemented by the Department of Energy. We are especially disturbed that the Department does not intend to comply with NEPA or section 106 of the National Historic Preservation Act prior to designating any national corridors, and the impact of this approach could be the future approval of major power lines without fully considering alternatives or ways to minimize the adverse consequence.

We urge Congress to amend section 1221 of the act in order to resolve the concerns that we and others have highlighted today.

Thank you.

[The prepared statement of Ms. Merritt follows:]

NATIONAL TRUST
for HISTORIC PRESERVATION®

Protecting the Irreplaceable®

Testimony of

ELIZABETH S. MERRITT
DEPUTY GENERAL COUNSEL
NATIONAL TRUST FOR HISTORIC PRESERVATION

before the

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON DOMESTIC POLICY
UNITED STATES HOUSE OF REPRESENTATIVES

Hearing on

FEDERAL ELECTRIC TRANSMISSION CORRIDORS:
CONSEQUENCES FOR PUBLIC AND PRIVATE PROPERTY

April 25, 2007

Good afternoon Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to testify before you today regarding Section 1221 of the Energy Policy Act and the designation of National Interest Electric Transmission Corridors. My name is Elizabeth Merritt and I am Deputy General Counsel for the National Trust for Historic Preservation, where I have served as in-house counsel for twenty-four years.

Background on the National Trust

Congress chartered the National Trust in 1949 as a private nonprofit organization to "facilitate public participation" in historic preservation, and to further the historic preservation policies of the United States. 16 U.S.C. §§ 461, 468. With the strong support of our 277,000 members around the country, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. In addition to our eight regional and field offices throughout the country, and our Washington, DC headquarters, we have 29 diverse Historic Sites open to the public around the country.

Congress has also designated the Chairman of the National Trust as one of twenty members of the Advisory Council on Historic Preservation, the independent federal agency whose regulations govern the implementation of Section 106 of the National Historic Preservation Act (NHPA). *See* 16 U.S.C. §§ 470f, 470i(a)(8); 36 C.F.R. Part 800. The

Advisory Council works with other federal agencies, including the Department of Energy, to assist them in fulfilling their responsibilities under the NHPA.

Section 1221 of the Energy Policy Act

Over the past year, the National Trust has tracked the implementation of two key provisions in the Energy Policy Act of 2005 – Section 368,[1] which provides for the designation of energy right-of-way corridors on federal lands, and Section 1221(a),[2] which provides for the designation of National Interest Electric Transmission Corridors (NIETCs or National Corridors). The National Trust submitted comments in July 2006 on the preliminary maps for the federal energy corridors, and we submitted comments in October 2006 on the Congestion Study issued by the Department of Energy (DOE). We have also met with the Bureau of Land Management, the Advisory Council on Historic Preservation, and other groups in an effort to ensure that federal agencies "take into account" the effects of corridor designation on historic properties, as required by Section 106 of the NHPA.

The National Trust is concerned about several aspects of Section 1221 where ambiguities in the statutory language pose broad threats to historic properties and cultural resources. *First*, the law does not clearly define how broad a geographic area constitutes a national "corridor." *Second*, DOE is interpreting its responsibilities under Section 1221 to exclude compliance with the National Environmental Policy Act (NEPA), and other environmental laws such as Section 106 of the NHPA, prior to designating National Corridors. *Third*, the Federal Energy Regulatory Commission (FERC) narrowly defines the elements of "public interest" in balancing whether it should assume control over the approval process for a proposed transmission project. Current agency policies on these issues are setting in motion potential decisions that will preclude meaningful consideration of adverse effects to historic resources under NEPA and the NHPA, and will provide only the most limited ability to seek alternatives that avoid, minimize, or mitigate the potential adverse effects to historic resources.

National Corridor Designation Threatens Harm to Significant Historic and Cultural Resources.

The siting of overhead transmission lines can have dramatic adverse impacts on historic resources. As the attached map prepared by the National Park Service illustrates, a wide variety of our nation's most significant, public historic places are right in the path of,

[1] Section 368 is substantially related to the NIETC designations outlined in Section 1221, although it is not an issue presently before this Committee. Section 368 requires federal land-managing agencies to designate energy right-of-way corridors on federal public lands. These corridors will become designated zones for the transmission of various types of energy, including oil and gas pipelines as well as electric lines. Importantly, because of the need for interconnectivity, the location of these federal corridors will often dictate the location of transmission lines and other rights-of-way on non-federal property.

[2] Section 1221(a) amended the Federal Power Act (FPA), 16 U.S.C. §§ 824 et seq., by adding Section 216 (to be codified at 16 U.S.C. § 824p). 119 Stat. 946 (Aug. 8, 2005).

or adjacent to, many of the proposed transmission corridors. These resources include historic battlefields, rural landscapes, historic districts, and other places that still retain their authentic setting. These places offer members of the public the opportunity to take a step back in time in order to understand our nation's heritage and experience in some small degree what life was like for those who founded our country, fought for its freedom, and settled its frontiers. These areas derive their significance, and their ability to convey the story of our history, in large part from their visual context and setting. As a result, they can be highly susceptible to visual intrusions.

It is also important to understand that harm to historic places can be much more difficult to mitigate, in contrast to some environmental resources. Historic places are unique, authentic, and irreplaceable; they cannot be moved or recreated or replanted or bred. Many of these historic battlefields and landscapes have sweeping views that are highly significant. Visual intrusion to those views often cannot be avoided by shifting the alignment of a project within a designated corridor. Once the corridor is designated, the visual impacts will be unavoidable. As a result, the consideration of alternatives must occur before the corridor is designated.

We also want to draw specific attention to the impact of the proposed corridors on National Heritage Areas, many of which would be cut through by proposed corridors, as the attached map illustrates. National Heritage Areas are designated by Congress as places where historic, cultural, and natural resources combine to form a cohesive, nationally distinctive landscape arising from patterns of human activity shaped by geography. The goal of Congressional designation is to preserve, promote, and celebrate the assets of each Heritage Area, through community and economic development, for the benefit of current and future generations. The Alliance of National Heritage Areas estimates that every year 68 million people visit our country's 37 Congressionally-designated National Heritage Areas. These visitors generate considerable local economic benefits through their spending on lodging, food, hospitality services, and retail sales. According to the Alliance, the direct and indirect economic impact of visitor spending on local economies within the nation's 37 Heritage Areas exceeds $8.5 billion annually.

Because of the enormous economic benefits from heritage tourism, we are concerned that local communities will suffer economically, not just environmentally, if projects such as massive powerlines are allowed to harm the historic areas that draw these visitors in the first place. Unless the problems inherent in the Energy Policy Act are resolved, the Act could have the effect of undermining the very economic revitalization that Congress is working so hard to create in partnership with local communities.

Beyond the resources on the National Park Service map, which are publicly owned and nationally significant, these transmission projects will also harm thousands of other significant historic properties, including local historic districts, landscapes protected by conservation easements, and privately owned historic properties whose owners have relied on federal, state, and local legal protections that could be overridden by Section 1221.

The Definition of a "Corridor" is Ambiguous.

The designation of National Corridors under Section 1221 is intended to identify areas that have a high transmission congestion problem, and to prioritize areas for building new infrastructure to alleviate that congestion. A National Corridor designation would have the effect of all but assuring the approval of proposed transmission lines within the corridors.

However, the Energy Policy Act did not clearly define the term "corridor" in Section 1221(a). These corridors are simply defined as "any *geographic area* experiencing electric transmission capacity constraints or congestion that adversely affects consumers," FPA § 216(a)(2) (emphasis added). The statute includes five factors that DOE should consider in determining whether to designate a National Corridor, such as a lack of reasonably priced electricity, economic growth, energy independence, etc. FPA § 216(a)(4)(A)-(E).[3]

Because the statutory language is vague, there is much confusion as to whether a National Corridor is an entire geographic area, e.g., Washington to New York City, or whether it is an individual right-of-way corridor, e.g., Dominion Power's proposed Meadowbrook 500 kV transmission line through Northern Virginia, or perhaps something in between. The numerous requests for "early designation" of National Corridors reflect a wide range in their degree of specificity.

Unfortunately, DOE has done little to clear up the confusion in the statute or to further define the parameters for designating National Corridors. In fact, DOE has presented confusing and inconsistent statements as to whether it will designate large geographic areas or very specific rights-of-way as National Corridors. In the National Electric Transmission Congestion Study,[4] required by the Act, DOE takes the position that it has broad discretion to interpret what is an NIETC. DOE's implicit position expressed in the Congestion Study is that "a Corridor must be a 'geographic area,' and therefore [DOE] does not intend, as some parties have suggested, to entertain suggestions that it designate 'conceptual' Corridors that do not have specific geographic boundaries. (Congestion Study, at 60.) However, DOE also states that it "will consider the designation of broader geographic areas as National Corridors that are not focused on a single transmission line or facility." *Id.* These statements are confusing, and do not explain whether it is appropriate to designate site-specific proposals as National Corridors, or how "broad" the Corridors may be.

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[3] Unfortunately, the factors for consideration in the Act do not require the consideration of other methods to alleviate energy congestion, such as conservation and demand management, nor do they require the consideration of corridors that will minimize environmental impacts.

[4] *Available at* http://www.oe.energy.gov/DocumentsandMedia/Congestion_Study_2006-9MB.pdf (Aug. 2006).

The Consequences of Corridor Designation by DOE Will Override State Efforts to Balance Energy Development with the Protection of Historic and Environmental Resources.

The designation of specific National Corridors will have draconian results, including the potential effect of overriding or preempting reviews by state and local governments, and other federal agencies. Under Section 1221(a), a National Corridor designation by DOE allows FERC to step in and specifically authorize the construction of transmission facilities, notwithstanding any other federal, state, or local review procedures. *See* FPA § 216(b)-(f). For example, National Corridor designation sets severe time-limits for approving a project. A state regulatory board has one year to issue a transmission line permit, after which the applicant can request that FERC take control of the site approval process in an expedited review – even if the state has denied an application for legitimate reasons under state law, or has requested consideration of alternatives and mitigation measures that the applicant would prefer not to include. Most worrisome, Section 1221 authorizes the broad use of federal "eminent domain" power to advance transmission projects. Although FERC's regulations do require an environmental review in connection with these scenarios, such a review would be unduly constrained, given the limited timeframe, and the fact that the basic corridor will already have been designated. DOE and FERC interpret Section 1221 to make site-specific transmission lines and facilities a foregone conclusion. As a result of this interpretation, applicants for proposed projects within National Corridors will have virtually no incentive to satisfy environmental or historic preservation reviews. Applicants will simply wait out the statutory one-year period, and then invoke FERC review, after which time the project will likely be approved, as long as it meets FERC's subjective standard of the "public interest."[5]

Many states have sophisticated regulatory agencies that review major energy transmission projects, and the state legislatures have developed carefully crafted policies for balancing the considerations of energy distribution and the protection of sensitive resources potentially affected by these projects. National Corridor designation threatens to override and preempt these important state policies. In Virginia, for example, Section 56-46.1(B) of the Virginia Code requires the State Corporation Commission to determine "that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned." Even if the Commission were to deny an application, or require an alternative alignment, because a proposal failed to "reasonably minimize adverse impacts" on scenic, historic, or environmental resources, Section 1221 would allow the federal government to overrule that legitimate decision.

The National Trust has direct experience with the Virginia review process, because Dominion Power has proposed the construction of a major 230 kV powerline directly within the viewshed of Oatlands Plantation, which is a National Trust Historic Site near Leesburg, Virginia. Even though the original proposal did not consider the adverse impacts on Oatlands, the State Corporation Commission required the evaluation of alternative routes

[5] FPA § 216(b)(1)-(6) requires that six criteria be satisfied in order for FERC to assume control over proposed project with a designated National Corridor, one of which is consistency with the "public interest."

and significant mitigation measures in order to ensure that harm to historic resources would be minimized. We do not want to see the federal government preempting or overruling that kind of thorough, balanced review at the state level.

The Energy Department Does Not Intend to Comply with NEPA or the National Historic Preservation Act Prior to Designating These Corridors.

Section 1221 includes a specific provision that states, "nothing in this section [1221] affects any requirement of an environmental law of the United States, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). FPA § 216(j). Although this provision does not specify the timing when environmental review should occur, we believe that compliance with NEPA and other environmental laws such as the NHPA[6] inherently requires that the review must take place prior to the designation of National Corridors. Since the legal consequences of National Corridor designation will likely lead to the approval of specific transmission projects within the corridors almost as a foregone conclusion, delaying the environmental review process until after the Corridor has been designated will almost certainly be too late for a meaningful consideration of alternatives.

However, DOE has not complied, nor does it intend to comply, with the requirements of NEPA and the NHPA prior to designating National Corridors. We are gravely concerned by DOE's interpretation, because we believe that Section 1221(a) does not grant DOE the authority to make these designations in the absence of NEPA review.

DOE announced last November that it has not yet decided whether or where to designate any National Corridors, but promised to issue any proposed designations in draft form, so as to allow an additional opportunity for public comment. However, DOE takes the position that even this additional comment period is "not required by section 1221." We strongly disagree, and in fact, we believe a full Environmental Impact Statement (EIS) is needed prior to National Corridor designation.

DOE's refusal to comply with NEPA and the NHPA prior to the designation of National Corridors exacerbates the potential consequences of the designation process. The future designation of site-specific transmission lines in areas designated as National Corridor when FERC has assumed control of the decision-making process is an unlikely point in which the agency can meet the letter and spirit of NEPA and the NHPA. After all, DOE and FERC have interpreted Section 1221 as a statute aimed at making the elimination of energy congestion a priority above all other national interests, and therefore, any attempt to comply with federal environmental and preservation statutes is disingenuous. It is clear that once a specific area or geographic region is designated as a National Corridor, applicants will have little difficulty getting the location they desire with little or no resistance due to adverse

[6] In our view, the NHPA clearly falls within the generic statutory reference to "environmental law," and thus, DOE must consider how it will meet the specific requirements of Section 106 of the NHPA, which requires the agency to "take into account" the effects of its actions on historic resources, by seeking ways to avoid, minimize, and mitigate any adverse effects. 16 U.S.C. § 470f; 36 C.F.R. § 800.1(a).

effects on significant historic properties and landscape, as well as natural resources, by FERC.

FERC Does Not Establish Standards for Determining Whether a Proposed Transmission Line "is Consistent with the Public Interest."

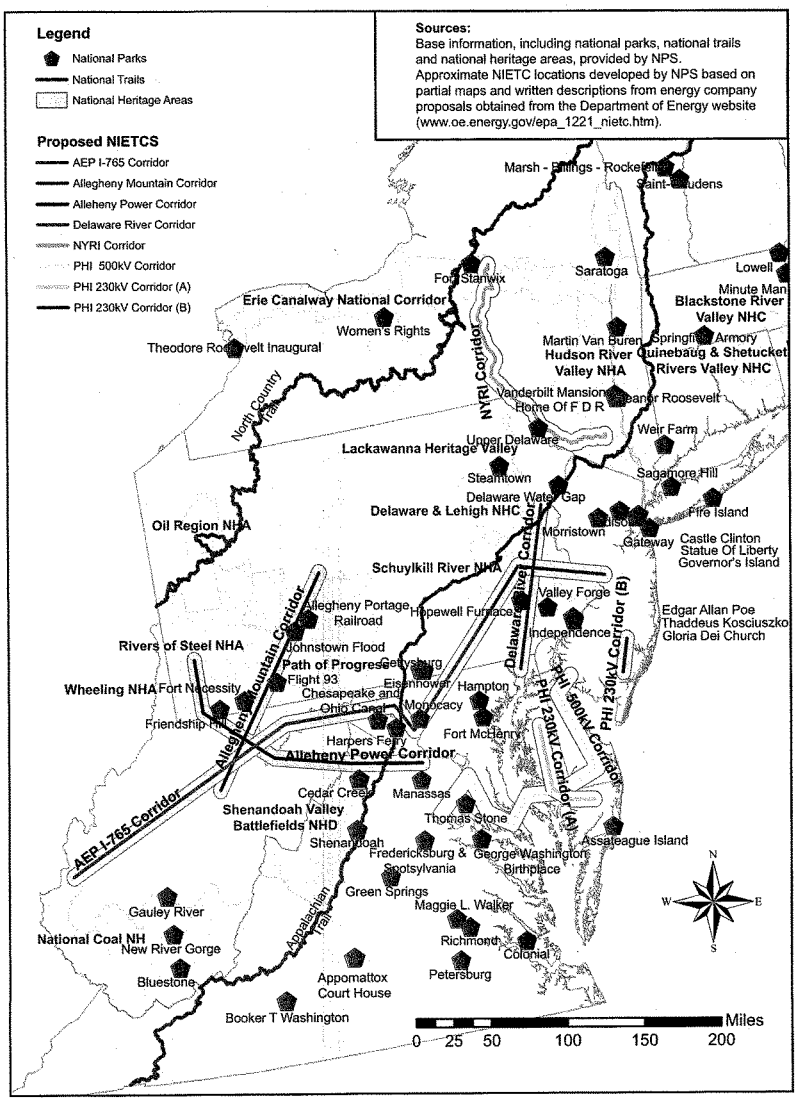
Finally, we are concerned that Section 1221 does not adequately define what is in the interest of the public. Section 1221 requires FERC to consider six threshold factors before it can assume control over the permitting of a proposed transmission line within a designated National Corridor, including a determination that the proposed project "is consistent with the public interest." FPA § 216(b)(3). However, FERC's regulations do not establish a standard for defining whether the "public interest" is satisfied.[7] Without clarity in the implementation of Section 1221, it is unclear whether FERC will be including consideration of the public interest in a variety of resource values, such as the preservation of historic properties and protection of the environment, when determining whether a proposed project "is consistent with the public interest." We encourage Congress to clarify the statute in order to address this issue.

Conclusion

Overall, the National Trust, along with many other preservation and conservation organizations, is concerned about the ambiguity of Section 1221 of the Energy Policy Act and the way in which DOE and FERC are implementing Section 1221. Most importantly, we are concerned that the National Corridor designation process, as implemented by DOE, will not include compliance with NEPA and NHPA. We believe the impact of such an approach could be the future approval of transmission lines and facilities without fully considering the adverse consequences on significant historic properties and landscapes, or providing an adequate examination of alternatives. We hope that this hearing will help to elevate awareness of the potential devastating and irreversible consequences of National Corridor designations upon our nation's historic and natural resources. Mr. Chairman and members of the Subcommittee, the National Trust urges Congress to amend Section 1221 of the Act in order to resolve the concerns that we have raised today.

[7] *See* 71 Fed. Reg. 36,258, 36,259 (June 26, 2006); 71 Fed. Reg. 69,440 (Dec. 1, 2006).

Proposed National Interest Electric Transmission Corridors



Prepared by the National Park Service, Northeast Region, Resource Planning and Compliance Division

September 2006

Mr. KUCINICH. Thank you very much.
The Chair recognizes Mr. Koonce.

STATEMENT OF PAUL D. KOONCE

Mr. KOONCE. Thank you Mr. Chairman, members of the subcommittee, fellow Virginians Congressmen Davis and Wolf. I appreciate the opportunity to be here today.

My name is Paul Koonce, and I am executive vice president of Dominion Resources and CEO of Dominion Energy. Dominion Energy operates the natural gas and electric transmission, natural gas storage, and L&G operations of Dominion Resources, one of our Nation's largest energy providers.

Dominion supports the Energy Policy Act of 2005, including those sections that call for Government to establish NIETC corridors. In the wake of the August 2003, cascading blackout from the midwest to New York State, the entire country realized that we had to improve our Nation's energy infrastructure. Our economy and security simply cannot tolerate such events.

The Energy Policy Act of 2005 recognized this need and established two important principles among many. First, that reliability is no longer voluntary. The Energy Policy Act of 2005 established nationwide reliability standards and backed those standards with substantial penalty authority, some penalties as high as $1 million per day per violation. Second, in areas where national interest are at stake and cross-border State permitting stymied, the Energy Policy Act of 2005 provides Federal backstop siting authority.

While Dominion has not sought such authority, we support Congress' actions to protect and improve this vital network. The interconnected network of power plants, wind turbans, and transmission lines are an asset and strength to our entire Nation's economy. The NIETC designations and the Federal regulatory siting process, once it is established and tested, have the potential to improve the Nation's reliability.

I stress potential is the operative word here. We must not prejudge the outcomes, regardless of which side of the debate we are on.

Last week Dominion filed an application with the Virginia State Corporation Commission to construct a 65-mile, 500 KB line to serve the greater northern Virginia region. Our six-volume filing for this project totals more than 1,000 pages and presents overwhelming evidence of need. It contains independent reports that validate the need, expert testimony on the load forecasting model use, and detailed information on the proposed route.

Dominion has stated repeatedly that we intend to use our State siting process, but we recognize our industry and technology are changing. Wind does not blow uniformly, and in many cases natural gas and coal handling and transportation infrastructure does not exist to support power plant development in many metropolitan areas. I believe the Energy Policy Act of 2005 recognized this reality and has attempted to address our changed circumstance.

Turning to customers, Dominion encourages customers to conserve energy when they can and use it wisely. The company offers a variety of energy and money-saving resources to encourage its customers to conserve. We supported House bill 3068, recently

passed by the Virginia General Assembly. This legislation guides Dominion away from retail choice, and in doing so makes it our responsibility to do more.

After years of promoting retail choice and giving retail providers access to time of use rates and smart metering, expecting that retail providers would aggregate customers and provide load management incentives, the market solutions did not achieve the level of success we had all hoped. This lackluster result, combined with the rate shocks witnessed in Maryland, Illinois, and Texas, is why Dominion was a leader in the discussion and moved toward enactment of House bill 3068.

In sum, Dominion is a company dedicated to serving its customers, and doing so responsibly. Dominion is a company dedicated to the State siting process, and Dominion is a company that recognizes the importance of the interconnected electric grid and the potential role the Department of Energy and the Federal Energy Regulatory Commission may play to ensure our Nation's reliability.

I appreciate the opportunity to be here today. I look forward to answering your questions.

[The prepared statement of Mr. Koonce follows:]

TESTIMONY OF
PAUL D. KOONCE
CHIEF EXECUTIVE OFFICER
DOMINION ENERGY

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON DOMESTIC POLICY

APRIL 25, 2007

Good afternoon.

My name is Paul Koonce and I am chief executive officer of Dominion Energy. Dominion Energy is responsible for the electric and gas transmission and storage operations of Dominion Resources Inc., one of the nation's largest energy providers.

Dominion Energy owns about 6,000 miles of electric transmission lines in Virginia and northeastern North Carolina, delivering bulk power to more than 6 million residents in a region that *Forbes.com* calls the No. 1 state in which to do business. We are proud to play a significant role in Virginia's jobs success story and that ranking by providing reliable, low-cost electricity for the Commonwealth's high-tech industries, small businesses and homes.

I thank the subcommittee for giving me the opportunity to address how Dominion is responding to the urgent need for new electric transmission infrastructure in Virginia, especially in the greater Northern Virginia region.

Last August, this region was identified as one of the two most critically congested areas for electric transmission by the National Electric Transmission Congestion Study conducted by the U.S. Department of Energy.

Northern Virginia is part of the D.C. Metro area, including Washington and its Virginia and Maryland suburbs. This greater region is home to 12 local jurisdictions, two states,

the District of Columbia, the three branches of federal government, 231 federal departments and agencies, the largest number of high-ranking defense contracting companies, 2,100 non-profit organizations and more than 4.2 million Americans, 340,000 of whom are federal workers.

In addition to the government security and intelligence agencies, the region includes a concentration of 251 military bases with a total of more than 204,000 military personnel.

It is also home to what the U.S. Census Bureau says is six of the fastest-growing counties in the nation, with their schools, hospitals, businesses and a high quality of life. It is the site of major new transportation projects, including the $3.4 billion renovation and expansion of Washington Dulles International Airport and the $4 billion expansion of the Metrorail system. This region is a worldwide hub for the Internet and the site of dozens of data centers with electrical demands 15 to 20 times greater than a typical office building.

In short, this is a region where neither we as a nation nor Dominion as a company can afford <u>any</u> increased risk to the electricity supply or the transmission network.

Now allow me to address the subcommittee's specific questions.

Dominion's Position on the Designation of National Interest Electric Transmission Corridors (NIETCs)

Dominion supports the Energy Policy Act of 2005, including those sections that called for the government to establish NIETC designations.

In the wake of the August 2003 cascading blackout from the Midwest to New York State, the entire country realized that we had to improve our nation's electricity infrastructure. Our economy cannot tolerate such events becoming regular. The Energy Policy Act of 2005 recognized this need and established two important principles.

First, reliability was no longer voluntary. The Energy Policy Act of 2005 established reliability standards and backed those standards with substantial penalty authority, some penalties as high as $1 million per day per violation.

Second, in areas where national interests are at stake, and permitting across state lines stymied, the Energy Policy Act of 2005 provides Federal "Backstop" siting Authority.

While Dominion has not sought such authority, we support Congress' actions to protect and improve what the National Academy of Engineering in 2000 called the No. 1 greatest positive impact on society in the last century – and that is electrification.

As consumers of energy, we take our infrastructure for granted, and only appreciate its operations in time of stress and even failure. While the August blackout was unfortunate, our society today more clearly understands that the interconnected grid moves bulk power daily – not just during emergencies – and is an asset and strength to our nation's economy. The NIETC designations and the federal regulatory siting process, once it is established and tested, have the potential to improve our nation's grid.

Potential is the operative word here. We must not jump to conclusions and prejudge the outcome, regardless of which side of the debate we are all on. We simply do not know if the Energy Policy Act of 2005 will deliver the balanced outcomes we all seek. It's too early. No designations have been established and no federal "backstop" siting requests have been filed.

Dominion's Anticipated Need for a New Transmission Infrastructure

Dominion presently has 14 projects representing 244 miles of transmission lines 150,000 volts or greater either before the Virginia State Corporation Commission or under construction. Since 2000, we have made $142 million in improvements to the transmission infrastructure in Northern Virginia. Clearly, we are doing our part to ensure reliability and to assure our 2.3 million retail customers in Virginia and northeastern North Carolina that their lights will stay on.

Last week, we filed an application with our Virginia regulators for a 65-mile, 500,000-volt transmission line to serve the greater Northern Virginia region. The application for this $234-million project is our part of a 265-mile transmission line that will run between southwestern Pennsylvania and Northern Virginia. Allegheny Energy will build the remainder of this project.

This line is needed to relieve identified violations of the North American Electric Reliability Corporation mandatory reliability standards on our Northern Virginia transmission system beginning in the summer of 2011. Without this line, we may find it necessary to relieve the overload violations by a series of "rolling blackouts," perhaps on the hottest days of the summer.

These violations are because of significant increases in electrical demand over the past 10 years as well as expected demand growth in the future. In the last five years, the company's total electric demand has grown by almost 2,400 megawatts, with almost half of this increase in Northern Virginia. In the next five years, PJM Interconnection, the regional transmission organization to which Dominion belongs, says the increase in demand on our system would be like adding approximately 1 million new houses. More growth is expected to occur in our load area in the next five years than in any other PJM region.

Our six-volume filing for this project totals more than 1,000 pages. It presents overwhelming evidence of the need for this transmission line. It contains independent

reports that validate the need, expert testimony on the load-forecasting model we used and detailed information on the proposed route. It is, without a doubt, the most thoroughly researched and prepared application for a high-voltage transmission line in our company's history.

Dominion's Efforts to Develop Alternatives to the Construction of New Transmission Infrastructure

Dominion encourages its customers to conserve energy when they can and use it wisely. The company offers a variety of energy- and money-saving resources to encourage its customers to conserve.

This includes time-based rate programs that have customers shifting their heavier uses of electricity to off-peak hours in exchange for savings. A number of industrial customers and other large electricity users help reduce loads by up to 314 megawatts during times of peak demand, or enough electricity to serve about 80,000 homes.

We also offer pages and pages of energy conservation information on our Web site. These easy-to-use tips can end up saving energy and money.

For example, we recently sent our weatherization expert to a Northern Virginia family to show them some simple changes in their home's insulation and their family's lifestyle could lower its monthly consumption of electricity and their monthly bill. Over a three-

week period, the family reduced its electricity use and its monthly bill by more than a third. Their story was featured in a news show by a Washington television station.

We also realize that we need to do more. The company has formed a new department to grow our demand-side management and conservation efforts over the next several years. The group is in the research and planning stages now.

In Virginia, we also supported major energy legislation enacted by the General Assembly earlier this month. The legislation makes it easier for utilities to implement conservation and load management programs. It also sets an ambitious goal of reducing Virginia's electricity consumption by 10 percent by 2022, and directs the State Corporation Commission to develop a plan to achieve that goal. Finally, the new law places great emphasis on energy produced from renewable resources.

However, most transmission system problems are energy transportation issues and not ones that can be remedied through energy efficiency measures alone.

But we wanted to be sure that was the case in Northern Virginia. So in preparing our filing for this recent transmission line application, we looked at potential best-in-class conservation efforts and other alternatives from across the country. We wanted to consider all the possible solutions to the potential overload violations.

Furthermore, we asked KEMA of Burlington, Mass., an internationally recognized power engineering consulting firm, to look at the same load forecasting data and give us an independent assessment of how we could solve the potential overloads without building a multi-million dollar transmission line.

KEMA said that the critical overload on a key, existing transmission line in 2011 would require a reduction in electric load of 2,850 megawatts. That is almost 40 percent of the present Northern Virginia load. KEMA concluded that it was clearly not reasonable to assume such a massive demand-side management or conservation program could be designed, approved, implemented, and accepted by Dominion customers in less than four years.

So the only answer for today is to build this line. Pursuing any other action would be just wishful thinking that puts us on a collision course with potential blackouts.

This concludes my comments. I will be happy to answer any questions.

Mr. KUCINICH. We appreciate you being here too, sir.
Mr. Miller, thank you.

STATEMENT OF CHRIS MILLER

Mr. MILLER. Chairman Kucinich and members of the committee and Congressman Davis and Congressman Wolf, you have been wonderful leaders in this issue in Virginia. Thank you for the opportunity to testify.

As president of the Piedmont Environmental Council, I have spent a decade on issues of land use planning, regional land use planning, and land conservation, and in that exercise, working with a professional staff, with thousands of land owners, and with the communities in the nine-county region that is almost the size of the State of New Jersey, we have learned a lot about a lot of policies, including energy policy, and about the potential impacts of transmission siting on those local, State, and Federal policies.

I think I am here today to present a perspective from the land owner and local level. The result of implementing 1221, which creates this new power of Federal imminent domain, affects hundreds of thousands of land owners in Virginia and millions across the United States.

The graphic that you see on the screen is the combined corridor request from PGM Interconnection, a regional transmission organization operating in 11 States and representing about 400 utilities. This is what the utilities of the mid-Atlantic area requested. Dominion is part of that process, in fact, shares the committee that put together this proposal.

The implications are enormous. Every land owner, every jurisdiction within that area, which includes almost the entire State of Delaware—does include the entire State of Delaware, Maryland, most of Pennsylvania, parts of West Virginia, and Virginia now face the prospect of Federal preemption over an undefined set of potential corridors.

Very specifically, PGM requested that authority be continued for at least 10 years, and that parts of it be expedited. In fact, they asked the Department of Energy to rule on these corridors before the end of 2006, December 31, 2006, and requested that a specific line-to-line that we are dealing with in Virginia be given special status no later than August 31, 2006.

Those of us who live on the ground are concerned that the process by which this policy is being implemented is not protective of public interests and the balancing of the need for clean and reliable energy and the need to protect national and State resources, priorities that we have had long established.

The process thus far has been described I think adequately by the representatives from New York, Pennsylvania, and Maryland, but from the perspective of our organization, when we learned of a potential corridor designation in Virginia we were the first to notify Governor Tim Kaine, we were the first to notify the Federal elected officials, we were the first to notify State elected officials, we were the first to notify local elected officials, and certainly the first to notify affected land owners. So just the basic idea of these corridors being designated, no one who is going to be affected was part of the process.

When we asked for meetings with the Department of Energy we were told that they could not meet. Once they closed the comment period, October 10th, they refused to meet with representatives of PEC and have continued to state that a meeting with representatives of PEC would violate a prohibition on ex parte contact. So it raises real questions about how stakeholders are supposed to discuss the alternatives to transmission, discuss the mitigation that potential transmission corridors may require.

Let me talk a little bit about the types of resources that are implicated, national resources. This is a perspective from Virginia. We have probably the highest concentration of Civil War battlefields. There are eight Civil War battlefields designated by the National Park Service as worthy for protection within the study area created by the Dominion and Allegheny request, by PGM's request. We have the highest concentration of nationally recognized rural historic districts. We are the view shed of the national scenic trail, the Appalachian National Scenic Trail. There are over 200,000 acres of land within this area that are visible from the Appalachian Trail, one of the most visited parts of the National Park System. We have 37 individual historic sites, including the homes of Chief Justice John Marshall of the Supreme Court, and a host of other important historic sites to both national, State, and local history.

All of this area is part of a proposed national heritage area, the Journey Through Hallowed Ground, which Congressman Wolf and Senator Warner and Members of the delegations from Maryland and Pennsylvania have supported the Congress approving, and these proposed lines would cut right through the heart of that proposed heritage area.

Let me argue this. Please refer in our testimony to the letter from David McCullough and James McPherson, probably the most recognized historians in American history. What they call for, what many energy leaders call for is a different process if we are going to go forward with national interest corridor designation, and that process would call for two things: openness, transparency; and a programmatic EIS.

Why is that so important? This is a decision which has the potential to shift the market for energy in a dramatic way. Transmission lines will bias our future energy decisions in a very significant way, and now is the time, before designation takes place, to look at all alternatives, look at the environmental impacts, look at the impacts on other national interests, national priorities, and be sure the that balancing is done before designation, not after it is complete.

Thank you very much for this opportunity.

[The prepared statement of Mr. Miller follows:]

Testimony of

CHRISTOPHER G. MILLER
PRESIDENT
PIEDMONT ENVIRONMENTAL COUNCIL

before the

SUBCOMMITTEE ON DOMESTIC POLICY
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

Hearing on

FEDERAL ELECTRIC TRANSMISSION CORRIDORS:
CONSEQUENCES FOR PUBLIC AND PRIVATE PROPERTY

April 25, 2007

Chairman Kucinich and Members of the Committee,

My name is Christopher G. Miller, and I am President of the Piedmont Environmental Council, which is headquartered in Warrenton, Virginia. Thank you for the opportunity to testify on behalf of the Piedmont Environmental Council with respect to the Department of Energy's implementation of Section 1221 of the Energy Policy Act of 2005.

The Piedmont Environmental Council is a non-profit organization incorporated in Virginia in 1972 with a mission of promoting and protecting the natural resources, rural economy, history and beauty of the northern Virginia Piedmont. We have members through-out a nine county region that runs from Loudoun County and the Potomac River south to Albemarle County and the City of Charlottesville. We have a professional staff that supports programs to educate communities and policymakers about the importance of good regional planning including land conservation, transportation planning and energy policy. We also play a dynamic role in land use planning and land conservation policy and practice which protect natural resources, historic sites, scenic areas and riparian lands within the Chesapeake Bay watershed to meet local, state, and national goals.

The reason we are here today is that national and state designated resources may not be adequately protected by the Department of Energy's implementation of §1221 of

EPAct. We are particularly concerned that the Department has proceeded towards NIET corridor designation without meeting the statutory requirements of this section. The Department of Energy has not prepared a programmatic environmental impact statement (PEIS), as required by the National Environmental Policy Act (NEPA) prior to designating a corridor. This process would identify important national and state resource lands that should continue to be protected. A programmatic EIS is particularly required when an agency initiates a major new federal program which covers a region of the United States where there will be interrelated environmental and economic effects. Second, the Department of Energy should incorporate demand response, energy efficiency and distributed generation plans which have been implemented by states to reduce demand on the grid. The Department has not made a full analysis of alternatives to transmission in advance of NIET corridor designation. Finally, there is accumulating evidence that the Department of Energy has not consulted with stakeholders, particularly state governments and state utility regulators as to the merits of NIET corridor designation.

Section 1221 Inadequately Protects Federal and State Designated Resources

The Piedmont region of Virginia is an unusual place in the degree to which communities have actively participated in federal, state and local policies to provide protection for historic, cultural, and natural resources, helping to meet many of our nation's environmental and historic preservation goals. These goals are set forth in federal policy such as the American Battlefield Protection Program of 1996, the Historic Preservation Resources Act of 1966, the Appalachian National Scenic Trail, the Chesapeake Bay 2000 Agreement, and in state policies and goals such as agricultural land preservation, the Virginia State Park System, Virginia Historic Landmarks and the State Scenic Byway Program. Although certain categories of land under Federal ownership are exempt from a Presidential decision to allow location of transmission lines, such as components of the National Park System and National Wildlife Refuges, other lands that are important to Federal and State conservation priorities may be put at risk by NIET corridor designation. While in the west, large areas of federally owned land can be set aside as National Parks and Wildlife Refuge areas, in states east of the Mississippi River, national resource values have been protected through cooperative efforts with states and private landowners.

One tool that has been particularly effective is conservation easements which often protect multiple values including agricultural land preservation, watershed protection, wildlife habitat and historic resources. However, the primary motivation for many landowners to put their land in conservation easement is the protection of scenic values. The designation of a NIET corridor that includes lands under conservation easement would undermine successful efforts encouraged by federal and state tax policies that reward conserving lands to protect historic resources, watershed, forests, agricultural lands and open space. The conservation values of hundreds of thousands of acres of conservation easements that help achieve both federal and state land conservation policies will be adversely impacted. Easements on those several hundred thousand acres of land within the Piedmont represent more than $500 million in federal and state tax incentives. Just as important, landowners will be less willing to donate conservation

easements in the future if there is a prospect that land, adjacent land or areas within nearby viewsheds will be taken by federal eminent domain for 120-170 foot high transmission towers.

Important environmental, scenic and viewshed resources such as lands visible from the Appalachian National Scenic Trail, lands within Civil War Battlefield areas designated for protection by the American Battlefield Protection Program, and lands in Historic Districts and Rural Historic Districts listed or eligible for listing on the National Register of Historic Places are not expressly exempt from NIET corridor designation and use of federal eminent domain to locate transmission lines. Also at risk are the scenic values of state parks, wildlife management areas, natural heritage areas, scenic rivers, and scenic byways from transmission lines located on or adjacent to those resources. (See Attachment H, Piedmont Environmental Comments And Request for Preparation of An Environmental Impact Statement, Exhibit B., Affidavit of Christopher G. Miller, October 10, 2006). State owned land, federally designated resources, and lands under permanent conservation easement which implement federal and state policy should be exempt from NIET corridor designation and federal eminent domain.

The Department of Energy apparently plans to designate National Interest Electric Transmission Corridors without performing a Programmatic Environmental Impact Statement putting local, state and federal priorities at risk.

Because of Piedmont Environmental Council's explicit involvement in resource management and regional planning, we are aware of the many federal and state programs and resources put at risk by the threat of NIET corridor designation. Our concern is that the Department of Energy has indicated it may designate NIET corridors in the near future, giving utilities access to a new and unprecedented federal eminent domain power, without first having completed a programmatic EIS as required by the National Environmental Policy Act, and without consultation with affected stakeholders. While the overall goal of NIET corridor designation is to reduce economic congestion and constraints on our nation's power grid, these designations cannot be made in a vacuum. NIET corridor designations would enormously affect communities within the path of a transmission project by threatening protected natural, historic and scenic resources and opening the door for federal override of the state regulatory decisions on proposed projects. A programmatic EIS would enable not only a timely consideration of alternatives to transmission lines and consultation with stakeholders required by Section 1221, but also a full comparison of the impacts on potentially affected communities.

NEPA requires an EIS prior to any 'major federal action significantly affecting the human environment.' A programmatic EIS is required when an agency initiates a major new federal program that covers a region of the United States where there will be interrelated environmental and economic effects. DOE announced (together with Interior, Agriculture and Defense) that it would conduct a programmatic EIS in the process of designating transmission lines and oil and gas pipelines under §368 of EPAct 2005 which provides for utilities to operate on federal lands. But there has not been a commitment by Department of Energy to conduct a programmatic EIS prior to NIET corridor designation pursuant to EPAct §1221.

The requirements of NEPA ensure that federal decision makers understand the environmental and cultural consequences of their actions. Without an EIS, a precipitous NIET corridor designation could undermine previously enacted federal, state and local policy decisions designed to maintain and protect public values. These include historically, culturally and environmentally sensitive areas such as historic districts, battlefields and lands under permanent conservation easement.

A programmatic EIS would also ensure that the Department of Energy conducts a full analysis of alternatives to transmission in advance of NIET corridor designation. Pennsylvania, New Jersey, Maryland and other states in the Mid-Atlantic region have recently acted to implement better demand management programs, strengthen energy conservation and energy efficiency, and encourage clean energy generation closer to demand. In Pennsylvania, Governor Edward Rendell announced a comprehensive plan, including state assistance to purchase "smart meters" and efficient appliances, to achieve conservation savings and offset need for 4 or 5 large coal or nuclear plants in 15 years. In New Jersey the goal is to reduce demand by 1.5% per year (15% in 10 years) and Governor Corzine recently issued an Executive Order calling for 20% reduction from projected demand by 2020. Maryland has established state wide energy efficiency standards; requires utilities to install smart meters for time of use rates; and programmable thermostats to cycle air conditioners during periods of peak demand. Governor Tim Kaine of Virginia recently directed significant conservation measures in government facilities and the State Corporation Commission was directed to consider these measures more broadly. The widespread implementation of these strategies could substantially affect the need for additional interstate transmission capacity.

Communities and affected landowners deserve a full review of the alternatives such as these progressive programs, before being subjected to the potential of federal eminent domain. EPAct §1221(a)(2) requires the Department of Energy to undertake a serious and detailed study that considers all alternatives to reduce energy demand-alternatives that could reduce congestions and could eliminate any need to carve new transmission corridors through the countryside and our communities. In the Department of Energy's August 2006 National Electric Congestion Study, the Department anticipated "congestion solutions will be based on a thorough review of generation, transmission, distribution and demand-side options, and that such options will be evaluated against a range of scenarios concerning load growth, energy prices, and resource development patterns to ensure the robustness of the proposed solutions." We have yet to witness this analysis of alternatives to new transmission although the Department of Energy has indicated it may make NIET corridor designations within the next month.

The Department of Energy has failed to require utilities to come forward with a set of facts, including the utility's own consideration of alternatives, which prove the need for a transmission project before designating a NIET corridor. Such inaction is exemplified in Allegheny and Dominion Powers' joint application to construct a 240 mile interstate transmission line which passes through parts of Pennsylvania, West Virginia and Virginia and is proposed within PJM Interconnection's southernmost NIET corridor request, the Allegheny Mountain Path. Dominion says it doesn't intend to use federal siting authority but it has not asked PJM to withdraw its application for NIET corridor designation. Neither utility has released transparent data to support a conclusion that the proposed NIET corridor designation is in the best interest of the regional planning

system. This lack of analysis gives an unfair advantage to utilities that have proposed transmission projects over alternative measures to resolve system constraints. Such data should be made available for public analysis and comment before any NIET corridor designation is made by the Department of Energy.

The Secretary of Energy has not consulted with affected States on electric transmission congestion or NIET Corridor Designation

EPAct §1221(a) directs "the Secretary of Energy, in consultation with affected States, [to] conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States), the Secretary shall issue a report" that may designate as a NIET corridor any area experiencing electric transmission constraints.
Despite this clear mandate, the Department of Energy has not consulted with state governments and state utility regulators as to the merits of NIET corridor designation. It is our understanding that state officials in Virginia, Pennsylvania or Maine, three states included in requests for early NIET corridor designation, have not been consulted. The need to consult is increasingly important as affected states implement load management, energy efficiency, and energy conservation plans to reduce overall demand on the transmission grid.

Our experience with the process thus far suggests that the Department of Energy is proceeding in an ad hoc manner in response to specific utility proposals rather than undertaking a systematic analysis of optimal energy solutions in the national interest that take into account other national interests and stakeholder concerns. There is a record of dozens of meetings by Department of Energy officials with utility representatives but a pattern of refusing meetings with other stakeholders after its self-determined October 10, 2006 deadline.

In March 6, 2006, PJM Interconnection, LLC submitted a request to the Department of Energy to expedite the designation of a corridor as proposed by Allegheny Power, "no later than August 31, 2006." That route was modified in July-August to include a different route that would terminate some 75 miles to the south at Loudoun substation in Arcola, Virginia, rather than Kemptown, Maryland. From the perspective of hundreds of communities in Virginia, there is an immediate prospect of a federally designated corridor that would, for the first time, allow the Federal Energy Regulatory Commission to grant utilities federal condemnation powers. When PEC contacted local, state, and federal officials from Virginia in June 2006, none of them were aware of the NIET corridor designation process or the potential federal condemnation authority. PEC staff provided the first notice that there was a National Congestion Study underway and the potential for NIET corridor designation; none of the elected officials of the potentially affected jurisdictions recalled being contacted as part of the study process or requested to comment in an organized stakeholder process. Virginia Attorney General Robert F. McDonnell, wrote to the Secretary of Energy on November 15, 2006 that, "the Department's August 2006 transmission congestion study in which it identified portions of the Commonwealth as Critical Congestion Areas, apparently was conducted without this required consultation with Virginia."

When we requested clarification from the Department of Energy about NIET corridor designation, agency officials implied that corridor designation would occur soon after close of the comment period of the National Congestion Study on October 10, 2006. PJM Interconnection, LLC's comments included proposals for three broad NIET corridors, which together cover most of the Mid-Atlantic from central Virginia north to New York, west to eastern Ohio and the most of the Atlantic coast, including the Delmarva peninsula. Is this what Congress had in mind as a "corridor"? There was also a specific request for designation of the Allegheny Mountain Corridor as PJM's first priority, with one of the main reasons being that the utilities (Allegheny and Dominion) are prepared to invest capital to initiate construction immediately. (Comments of PJM Interconnection, LLC on Designation of National Electric Transmission Corridors, October 10, 2006). In addition, PJM requested DOE to provide an accelerated designation "no later than December 31st of 2006."

Since the end of the National Congestion Study comment period October 10, 2006, there has been no official clarification about the process that the Department of Energy will follow for NIET corridor designation. Officials at the Department of Energy have suggested that they may make "preliminary" designations with a period for comment, followed by final corridor designation. But no further information about the proposed process has been provided and there is no indication that the Department will consider alternatives or conduct an impact study. While officials from Virginia, West Virginia, Maryland, Pennsylvania, New Jersey, Delaware, New York and Ohio are now generally aware that PJM Interconnection has requested NIET corridor designation through their lands, the Department of Energy has not provided them any procedures, criteria or other guidance as to how to analyze or respond to that request. In fact, the Department of Energy has not even provided a public map of proposed NIET corridor areas for the United States despite repeated requests by PEC.

Conclusion

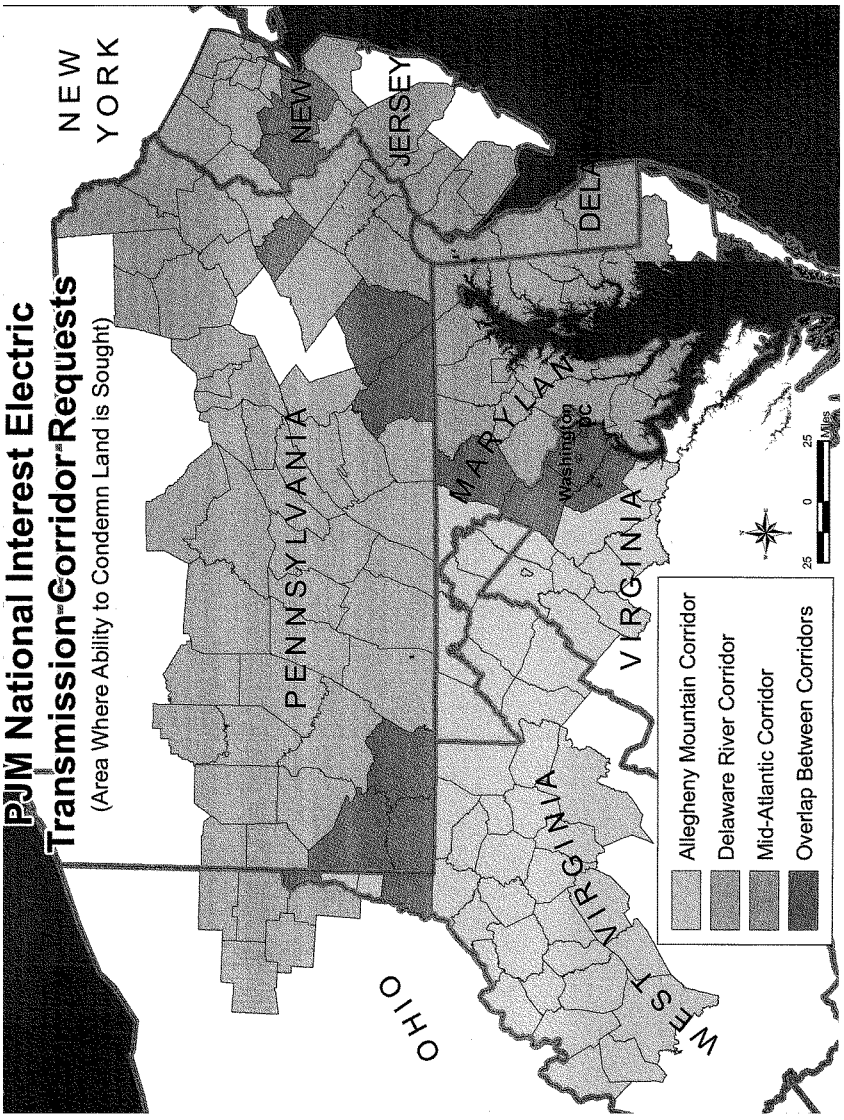
First, historically, culturally and environmentally sensitive areas such as historic districts, battlefields and lands under permanent conservation easement already recognized under state and federal law must remain protected. Second, the Department of Energy must undertake an EIS and full evaluation of alternative measures before any NIETC is designated and, third, the state role in the siting of transmission lines must be protected.

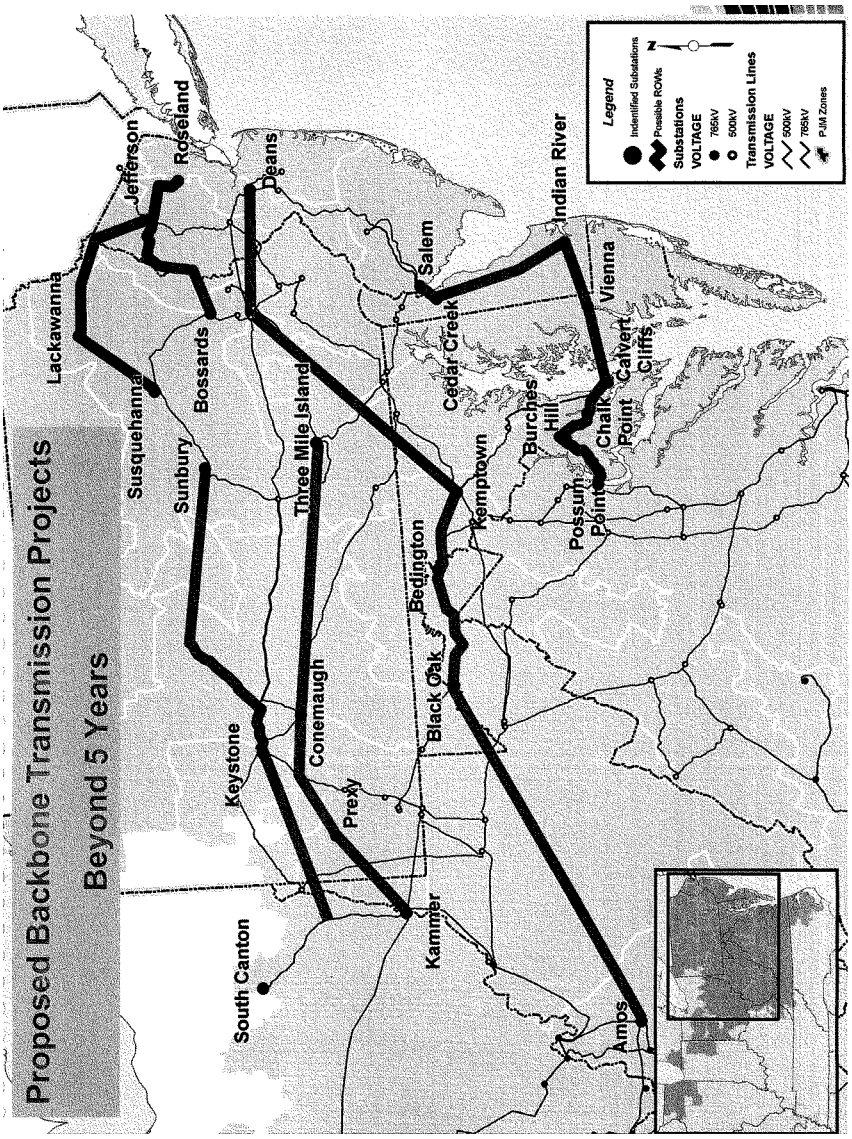
The adoption of these three principles will ensure Americans will always have the electricity they need while, at the same time, protecting our most precious resources. We at the PEC look forward to working with Congress and the Administration on this very important issue to find sensible solutions.

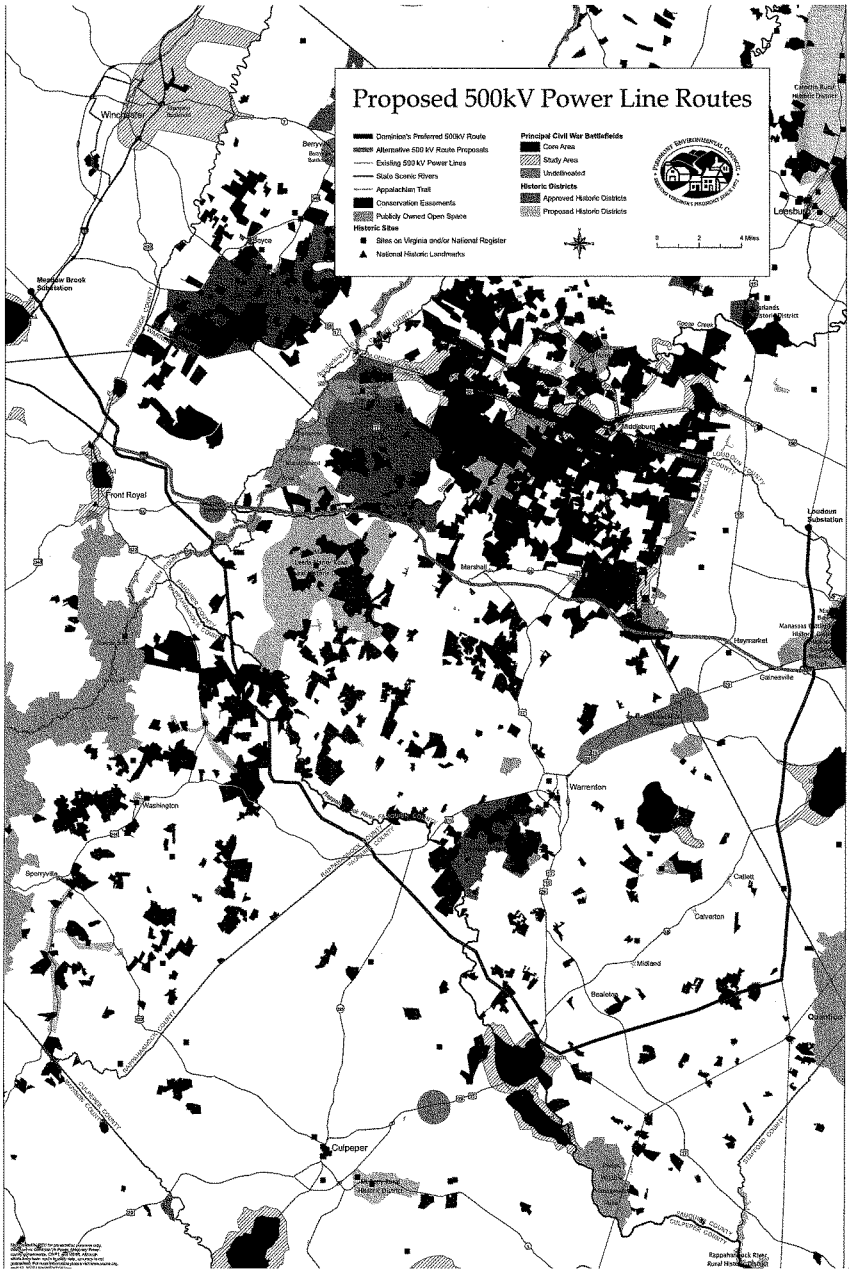
Thank you again for inviting me to testify today before the subcommittee and I look forward to answering any questions you might have regarding this important issue.

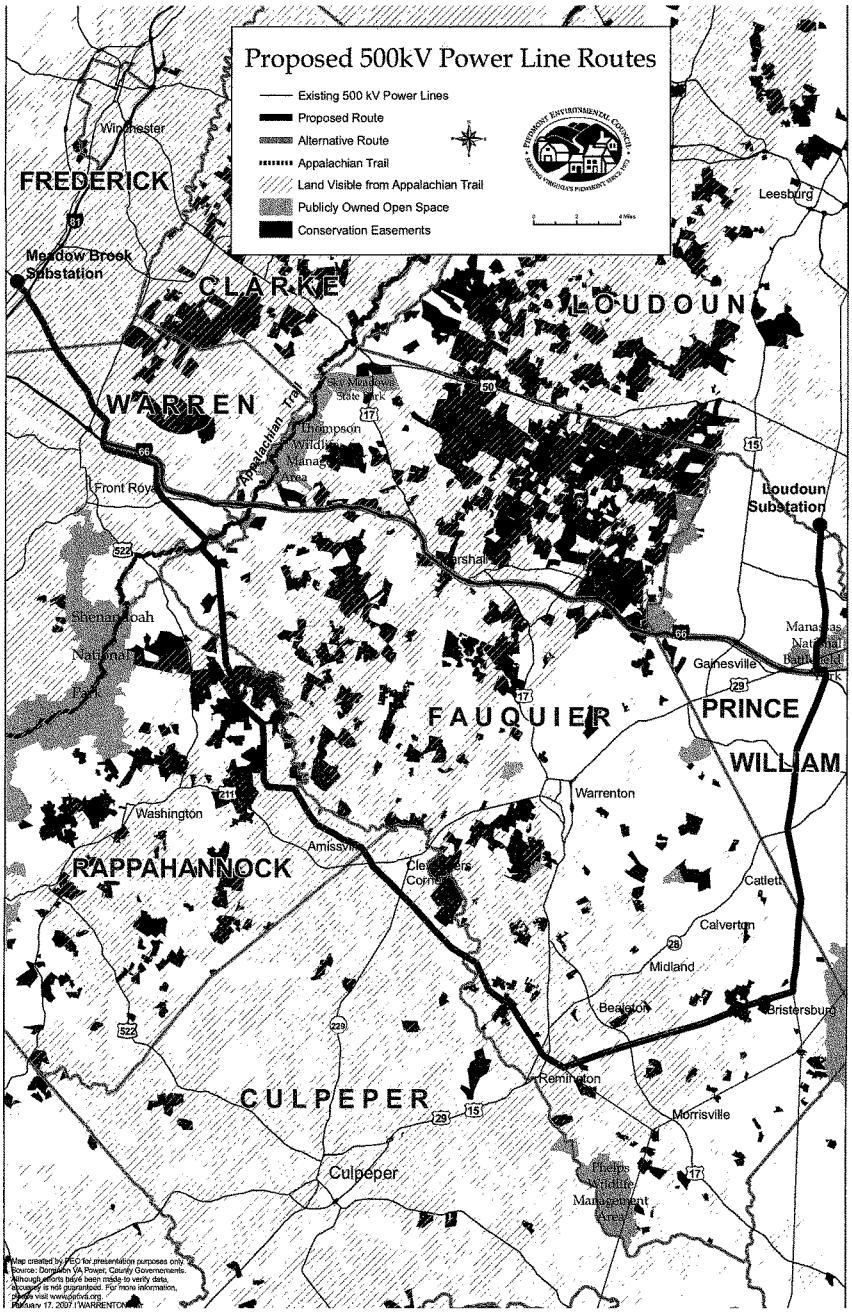
Attachments

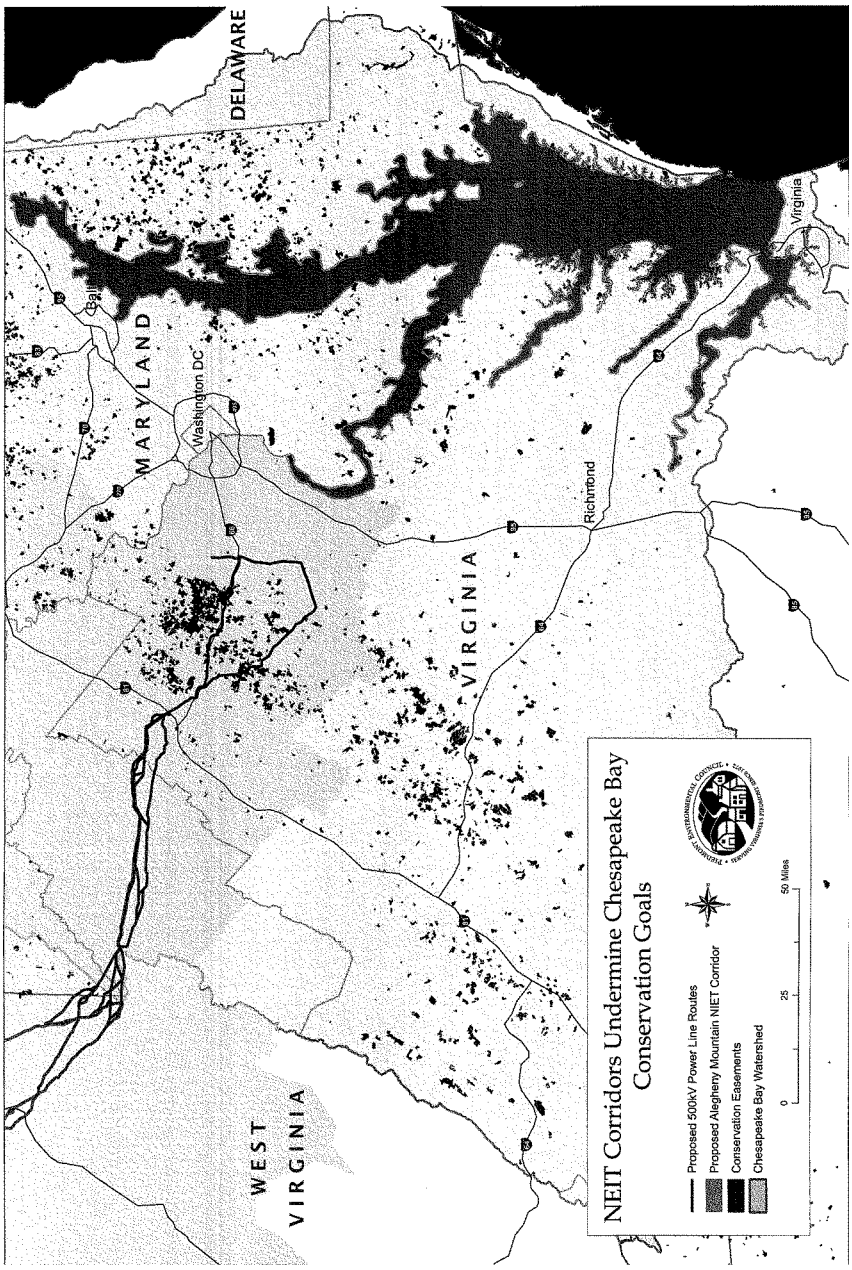
A. Map depicting PJM Interconnection, LLC's National Interest Electric Transmission Corridor requests in the Mid-Atlantic.
B. PJM's proposed backbone transmission projects beyond 5 years.
C. Map showing publicly owned lands, battlefields, historic districts and conservation easements which could be impacted within the Virginia section of PJM's proposed Allegheny Mountain Corridor.
D. Map of lands visible from the Appalachian Trail and protected resources within the Virginia section of PJM's proposed Allegheny Mountain Corridor.
E. Map of lands held in conservation easement within the Chesapeake Bay watershed
F. Letter from Rodger Sant *et al.* to Secretary of Energy Samuel Bodman, October 25, 2006.
G. Letter from David McCullough and James McPherson to Congressman Frank Wolf, March 2, 2007.
H. Letter from Virginia Attorney General Robert F. McDonnell to Secretary of Energy Samuel Bodman, November 15, 2006.
I. Comments of the Piedmont Environmental Council to the Department of Energy on the August 8, 2006 Congestion Study (one copy provided to the subcommittee staff).


PJM National Interest Electric Transmission Corridor Requests
(Area Where Ability to Condemn Land is Sought)
NEW YORK
NEW JERSEY
PENNSYLVANIA
MARYLAND
DELA
Washington DC
VIRGINIA
WEST VIRGINIA
OHIO
Allegheny Mountain Corridor
Delaware River Corridor
Mid-Atlantic Corridor
Overlap Between Corridors
25 0 25
Miles


Proposed Backbone Transmission Projects
Beyond 5 Years
Legend
Identified Substations
Possible ROWs
Substations
VOLTAGE
765kV
500kV
Transmission Lines
VOLTAGE
500kV
765kV
PJM Zones
Jefferson
Roseland
Deans
Lackawanna
Susquehanna
Bossards
Sunbury
Three Mile Island
Keystone
Conemaugh
Prexy
Black Oak
Bedington
Kammer
South Canton
Amos
Salem
Cedar Creek
Kemptown
Indian River
Vienna
Calvert Cliffs
Burches Hill
Chalk Point
Possum Point


Proposed 500kV Power Line Routes
Dominion's Preferred 500kV Route
Alternative 500 kV Route Proposals
Existing 500 kV Power Lines
State Scenic Rivers
Appalachian Trail
Conservation Easements
Publicly Owned Open Space
Historic Sites
Sites on Virginia and/or National Register
National Historic Landmarks
Principal Civil War Battlefields
Core Area
Study Area
Undelineated
Historic Districts
Approved Historic Districts
Proposed Historic Districts
0
2
4 Miles
Winchester
Berryville
Boyce
Meadow Brook Substation
Front Royal
Middleburg
Loudoun Substation
Marshall
Haymarket
Gainesville
Warrenton
Washington
Sperryville
Calvert
Calverton
Midland
Bealeton
Culpeper
Loesburg
Rappahannock River Rural Historic District


Proposed 500kV Power Line Routes
Existing 500 kV Power Lines
Proposed Route
Alternative Route
Appalachian Trail
Land Visible from Appalachian Trail
Publicly Owned Open Space
Conservation Easements
FREDERICK
Winchester
Meadow Brook Substation
CLARKE
LOUDOUN
WARREN
Appalachian Trail
Front Royal
Loudoun Substation
Leesburg
Shenandoah National Park
FAUQUIER
PRINCE WILLIAM
Gainesville
Warrenton
Washington
Amissville
RAPPAHANNOCK
Catlett
Calverton
Midland
Bealeton
Bristersburg
Remington
CULPEPER
Morrisville
Culpeper
Phelps Wildlife Management Area


DELAWARE
MARYLAND
Washington DC
Richmond
VIRGINIA
WEST VIRGINIA
Virginia
NEIT Corridors Undermine Chesapeake Bay Conservation Goals
Proposed 500kV Power Line Routes
Proposed Allegheny Mountain NIET Corridor
Conservation Easements
Chesapeake Bay Watershed
0
25
50 Miles

October 25, 2006

The Honorable Samuel W. Bodman
Secretary
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Bodman:

We, the undersigned, are concerned that the Department of Energy's National Electric Transmission Congestion Study of August 2006, developed in response to the Energy Policy Act of 2005, needs significant strengthening to serve the country well and to properly address the issue of corridor designation.

We Believe Corridor Designation Is A Significant Government Act

The Congress, in the Energy Policy Act of 2005, gave new authority to you to designate 'National Interest Electric Transmission Corridors'. Such corridor designation is a highly significant decision since it gives advantage to specific approaches in a specific geography over other alternatives. Additionally, any designation has the potential of overriding local, state and even federal protections of sensitive, scenic and historic lands, waterways, and parks not included in Section 216, and of overriding state regulatory decisions on proposed projects. Corridor designation can have profound impact on fuel usage patterns and on emissions patterns. It has important national security and grid reliability implications since some approaches to meeting congestion needs are clearly more vulnerable while others are more secure. It obviously has a major effect on the citizens in the corridor. Given the high impact, political sensitivity and complexity of corridor designation, it is essential that this new authority be used cautiously, and only after careful review and consideration of all alternatives.

An Open And Robust Process Is Appropriate

We agree with your approach of designating several areas of the nation as "critical congestion areas" and with the recommendation that consideration should be given to a wide variety of regional options, including alternative transmission upgrades and routes, demand side management and generation. We also strongly agree that corridor selection must utilize a robust analytical process, based on publicly accessible data, and be made available to a variety of regional stakeholders.

The Analysis Should Include A Programmatic Environmental Assessment

Our greatest concern is that the process described in the DOE study does not require assessment of environmental impacts prior to corridor designation, and departs from the guidelines of the National Environmental Policy Act. Our view is that such a significant decision as corridor designation requires a programmatic EIS and Secretarial consideration of regional alternatives which include the wide variety of possible solutions presented in the study, examining them against a broad array of criteria, including both economic and transmission physical impacts, but also examining impacts on the environment, energy security, state and local priorities and concerns, and national security.

The Analysis Should Take Into Account The Anti-Competitive Effect Of Corridor Designation

We are also concerned that the study does not mention the potential anti-competitive effect of corridor designation on alternative paths, nor does it consider non-transmission solutions. It does not contemplate providing any benefit or support to any option other than transmission, despite Congressional approval and funding for many such alternatives.

We Appreciate The Need For Solutions And The Complexity Of This Issue

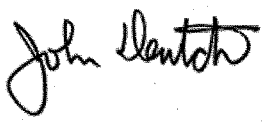
We have considerable experience with the nation's power system, with energy policy and with a wide variety of electric power technologies and approaches. We are well aware of the concerns about grid congestion and the need for safe, reliable and competitively priced electric power to support the nation's economy and meet the needs of its citizens. We understand that a wide variety of solutions can address these real needs. Further, we understand that the interconnected electric system is complex and possible solutions require sophisticated analysis. We are also quite aware of the impact that major infrastructure projects can have on the environment, and on citizens and their communities.

We Look Forward To Working With You On This Very Important National Issue

We thank you for your time and attention to our views. We look forward to the opportunity of working with you to achieve an effective process for addressing this important national issue.

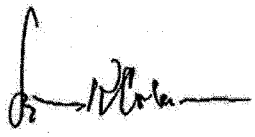
Respectfully Yours,

Roger W. Sant
Co-founder and Chairman Emeritus
AES Corporation



John Deutch
Former Undersecretary of Energy
Deputy Secretary of Defense
Director of Central Intelligence Agency

Robert Hemphill
Former Deputy Assistant Secretary
of the Department of Energy
Former Deputy Manager of Power of
Tennessee Valley Authority



Lynn R. Coleman
Former General Counsel & subsequently
Deputy Secretary to the Department of Energy
(1978-1981)

Wayne Gibbens
Independent Oil & Gas Producer

Dr. John H. Gibbons
Former Assistant to the President
for Science and Technology (1993-1998)

Bruce Smart
Former Undersecretary of
Commerce for International Trade (1985-1988)

Mitchell S. Diamond
Lead Vice President (Retired)
Booz Allen & Hamilton
World-Wide Energy Practice

David McCullough
148 Music Street
West Tisbury, MA 02575

James McPherson
15 Randall Road
Princeton, NJ 08540

March 1, 2007

The Honorable John Warner
225 Russell Building
Washington, D.C. 20510

The Honorable Jim Webb
Senate Russell Building, C1
Washington, DC 20510

The Honorable Frank Wolf
241 Cannon House Office Building
Washington, DC 20515

The Honorable Tom Davis
2348 Rayburn House Office Building
Washington, DC 20515

The Honorable Jo Ann Davis
1123 Longworth House Office Building
Washington, DC 20515

The Honorable Eric Cantor
329 Cannon House Office Building
Washington, D.C. 20515

The Honorable Tim Kaine
1111 East Broad Street
Richmond, VA 23219

Gentlemen:

We are writing you to express our grave concern about the Meadowbrook to Loudoun transmission line proposed by Allegheny Power and Dominion Energy, which would slice across Virginia's northern Piedmont and lower Shenandoah Valley. Notwithstanding that Dominion has recently proposed a new "preferred route," we have been told that the original routes will be considered by the State regulatory agency. While we appreciate Dominion's recognition that the impacts on nationally important historic resources should be avoided, the new proposed route actually expands the area of potential impacts. We are also very concerned by the threat of Federal eminent domain either now or in the future should this area be designated a National Interest Electric Transmission Corridor, as is proposed.

We are dismayed by the possibility that a major 500,000 volt transmission line, with 15-story metal towers every 1,000 feet, would cut a 200-foot scar for 40 miles or more across one of the most historic landscapes in America. This

historic landscape looks much as it did when George Washington surveyed the region over 200 years ago, or when Civil War troops camped, marched, fought, bled and died across this terrain. It is a unique part of the heritage of all Americans.

Generations of landowners have proactively invested in the preservation of this cultural landscape, and these private efforts have been encouraged and supported by long-standing Federal, State and local public policies designed to protect our nation's historic and cultural heritage. We thank you for your support of these policies and this special landscape over the years. We believe, however, that these policies are now at serious risk of being undermined if this transmission line is built.

This region contains a wealth of historic homes, agricultural-related structures and villages found in few other places. In addition, what is especially unusual and valuable is the cultural landscape of farms and forests in the region which provides the context for and connection to these places. More important is the extraordinary level of effort and commitment that has been demonstrated by both private citizens and government throughout the years to preserve these resources.

Huge transmission towers and power lines will cause disinvestment in historic properties marred by such a significant visual intrusion, whether or not the lines actually cross the property. These lines will also diminish the public's enjoyment of the unique and valuable historic landscape and therefore visitation by the many national and international tourists to this region, upon which much of the region's deserved reputation and economy depends.

The Federal and State regulatory agencies and the Dominion Board of Directors need to respect not only this history, but what the community has done to protect it. We join with those who urge Dominion to seek alternatives, for which we have been told the technology exists, to this industrial behemoth.

The area at risk (not including Dominion's recent announcement of another "preferred route"--which endangers other historic resources) encompasses 231,700 acres, including:

- 7 major Civil War Battlefields: Aldie, Cedar Creek, Front Royal, Manassas Gap, Middleburg, Thoroughfare Gap, and Upperville. Several are described as the most pristine in the U.S.
- 11 Historic Districts on the Virginia and National Registers, including the Cedar Creek and Belle Grove National Historic Landmark District, the Shenandoah Valley Battlefields National Historic District, the Crooked Run Valley Rural Historic District, the Burrland Farm Historic District, the Front Royal Recreational Park Historic District, and the Villages of Asheville, Delaplane, Markham, Marshall, Morgantown and Rectortown.

- 7 Proposed Historic Districts, including John Marshall's Leeds Manor Rural Historic District and the communities of The Plains, Georgetown, Bowmantown, Catharpin, Haymarket, and Lenah.
- 19 Historic Sites on the Virginia and National Registers, one of which is a National Historic Landmark.
- 48,000 Acres of conservation easements
- 83 miles of Scenic Byways.
- 13 miles of the Appalachian Trail, and 72,734 acres visible from the Trail.

The area directly at risk includes Oak Hill, home of Chief Justice of the Supreme Court John Marshall, and his boyhood home, The Hollow. It also includes such diverse sites as the historic African-American Beulah Baptist Church and the Thoroughfare Gap Battlefield. Attached is a list of the Federally-recognized historic sites and districts that could be adversely affected.

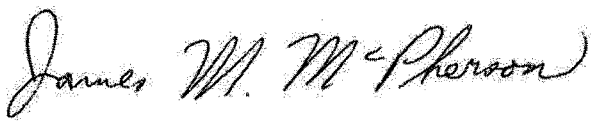
Surely the region's power needs could be satisfied by a wide variety of less intrusive approaches than a gigantic new transmission line. We urge you to encourage Dominion to find alternatives that respect this unique area and these communities' actions to preserve it.

Both of us have had a long term interest in protecting this special area. More than a decade ago we served as Chairman and President, respectively, of Protect Historic America, an organization of 200 historians dedicated to preserving this treasured part of American history.

We thank you for your attention to this very serious new threat that has arisen.

Sincerely,

David McCullough



James McPherson

cc: Dominion Board of Directors

COMMONWEALTH of VIRGINIA

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November 15, 2006

The Honorable Samuel W. Bodman
Secretary of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0001

Dear Secretary Bodman:

I am writing to express my concern with the Department of Energy's potential designation of a National Interest Electric Transmission Corridor ("NIETC") through parts of the Shenandoah Valley and Virginia's Piedmont region. This area of the Commonwealth of Virginia includes numerous sites of significant historic, scenic, and cultural importance to the Commonwealth and to the Nation. As legal counsel for the Virginia Outdoors Foundation, I am particularly concerned with the preservation of the scenic integrity of more than 70,000 acres of open-space easements held by this Foundation pursuant to state law. While I recognize the need for ensuring sufficient electric transmission infrastructure in the Mid-Atlantic, the unique qualities of this region of the Commonwealth must be considered carefully and affected parties must be consulted.

Section 216(a) of the Federal Power Act requires that any NIETC designation be made only after an electric transmission congestion study *conducted in consultation with affected States*. It has come to my attention that the Department's August 2006 transmission congestion study, in which it identified portions of the Commonwealth as Critical Congestion Areas, apparently was conducted without this required consultation with Virginia. Before proceeding further with any designation of a NIETC in Virginia, the Department must engage the Commonwealth of Virginia -- and by implication its agencies and localities -- in this very important undertaking. In addition, because of the environmental and cultural sensitivity of this area, a full Environmental Impact Statement should be prepared in accordance with the National Environmental Policy Act so all relevant information on the environmental and social costs of an NIETC in this area and possible alternatives may be known and considered in making this decision.

Thank you for your attention to this matter.

Sincerely,

Robert F. McDonnell

RFM/cmb

cc: Hon. Timothy M. Kaine, Governor of Virginia
Hon. John Warner, Member U.S. Senate
Hon. George Allen, Member U.S. Senate
Hon. Frank R. Wolf, Member, U.S. House of Representatives
Hon. Mark R. Herring, Member, Senate of Virginia
Hon. Clifford L. Athey Jr., Member, Virginia House of Delegates
Mr. G. Robert Lee, Executive Director, Virginia Outdoors Foundation
Hon. Betsy A. Davis, Mayor, Town of Middleburg
Hon. Scott K. York, Chairman, Loudoun County Board of Supervisors
Mr. Daniel Murphy, President, The Hill School Board of Trustees Directors
Hon. Richard H. Traczyk, Chairman, County of Warren Board of Supervisors
Hon. Ray Graham, Chairman, Board of Supervisors of Fauquier County
Hon. John R. Staelin, Chairman, Clarke County Board of Supervisors

Mr. KUCINICH. Thank you very much for your testimony, Mr. Miller, and thanks to all members of the panel.

We are now at the point where members of the committee will begin with questions.

The Chair will recognize for 5 minutes—each Member will have a 5-minute round of questions—the gentleman from New York, Mr. Hinchey.

Mr. HINCHEY. Thank you, Mr. Chairman.

I want to express my appreciation to all of you for your very competent and informing testimony. We very much appreciate all of your being here.

I would like to ask a question of Mr. Tonko, who is a dear friend and a colleague of mine formerly in the State House of Representatives in Albany, NY.

Paul, you are one of the most informed and reliable people on this issue of energy that I know. I think that your importance of being here is very considerable.

One of the main provisions of this act, as has been pointed out here over and over again, is 1221, which preempts the right of imminent domain and preempts State authority. Do you think it is possible for the States to maintain a reliable electric system without this kind of preemption, and States should be giving energy companies the right of Federal imminent domain?

Mr. TONKO. The first point I would make is it is absolutely possible for States to do this work. We have been doing it for decades, if not a century, whereby States have maintained systems, albeit deregulation has entered into the mix. But I think it is important to recognize that, A, we have done it, we have a track record, B, no one has to tell me or a State that we have a congestion corridor. We know that. We are working with it, but we are developing comprehensive energy policy, especially with the onset of the new administration.

It is a mix of phenomena that take hold in that comprehensive plan, from renewable energy to energy efficiency, demand side management, conservation, perhaps upping some generating facilities that have been not operating, and yes, perhaps transmission lines. But my concern about the preemption from the Federal level is that, once you develop a strategy and a plan you can then have that intercepted, interrupted by Federal action, which may not be the outcome we need.

Where we need transmission, to what degree, how it is incorporated with renewables, how it blends with the strategy for efficiency, those are all important factors that will be, I think, not part of the mix if the Feds intercept and do their decisionmaking outside the context of that plan.

So I think, because of our track record, because we didn't need anyone to tell us we had a congestion highway, because we need comprehensive strategies, and I would add to that if there are any incentives the Feds need to provide, it is to encourage interstate planning, creating the compacts where there is a better bit of understanding about how the States can deal with their inter-relationships. That is far more comprehensive and valuable than this heavy hand entering in, and perhaps at an inopportune time or

without the discipline that is required to live in accordance with a given State's comprehensive energy policy.

Mr. HINCHEY. Thank you very much.

There is also the idea that the only way to deal with the electricity needs is through the establishment of these massive transmission lines, but we know that there are other ways to deal with this. Would you comment for us on other aspects of this? What about more broadly distributed generation, energy efficiency? Are those the kinds of things we ought to be focusing attention on?

Mr. TONKO. Absolutely. The aggressive nature of the plan that has been presented, to which I alluded in my testimony, by our new Governor is speaking to just that. I think there is an untapped resource in distributed generation. I think it is something that will get great focus. We need to think outside the box.

I think that what we have in New York State is an opportunity to utilize our natural resources in a way that produces great energy outcomes, and to also emphasize renewables. Wind will become, I think, very much part of the solution. And we have said in testimony that we need to regard energy efficiency as an energy resource. Just as they drill and well various items out there, we need to tap into that resource and consider it a major player, a major solution in the outcome that allows us to avoid perhaps some of the additional transmission activity that won't serve useful.

We have had contrary opinions as to whether or not more transmission opportunity actually serves us well in some cases. It may cause some additional disturbances or re-route disturbances in a way that may not be the kind of outcome we want for any of our States.

Mr. HINCHEY. Thank you, Paul.

Mr. TONKO. Thank you, sir.

Mr. KUCINICH. I thank the gentleman.

The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. And thanks, again, for this hearing. I think it is very, very important that we look at legislation as soon as possible after it begins impacting our States.

Mr. Tonko, I would like to ask you a question sort of in the abstract, because I think, as a legislator, and in the case of New York, it is a good what if. New York is between several States. If New York is under the in state commerce clause, if New York for some reason their failure to build transmission line was causing problems in Connecticut, and Connecticut came to the Federal Government and said, "you know, we have done everything we can but we can't get our transmission line from X to Y," would you look into this and preempt other States, would you say that was within the historic—forget about this legislation, per se, but within the historic rules of the road similar to the interstate road system, would you say that in a sense there are some cases in which the FERC might appropriately come in and make sure something happened for interstate commerce reasons?

Mr. TONKO. Right. Congressman, I agree it could be set into that historic context, but, more importantly, being done with comprehensive strategy, with interstate cooperation. That is the best assistance we could hope for from our Federal partners in government.

Earlier Congressman Murphy talked about his concerns, and immediately coming to line was the cross-sound cable from Connecticut to Long Island, which was decided by FERC, and that decision was deemed to be a decision that was made on an emergency basis, which was later rerouted as a permanent solution.

Now, I would suggest to you that outcome was not the best outcome for Connecticut, and I think that if you had encouraged through Federal policy intergovernment comprehensive planning, where we can avoid the need to step in and usurp State rights and bring and build a plan, constantly updating it and implementing it, we are in a new world of energy need out there, and I think that the interdependency that we all share as States—I look at the major impact from the blackout of 2003 in August 2003 befalling New York State, and the lack of maintenance of the infrastructure in a neighboring State caused disruption in our State.

So the States need to have the reliance of Federal Government to bring about that cooperation, but not a heavy hand that tells you when to do things.

Mr. ISSA. But I think you hit the point. As a New Yorker, you have asked for that. You have said that we, in fact, somebody has to make sure that something going wrong in Cleveland doesn't turn your lights off. So the very case that is the balance, the reason that we may have to mend this don't end it, is the lights going off in the northeast; that, in fact, the system was not robust enough and, as a Federal Government, when you say we have to be fair, wouldn't it be fair to say that we have to give the States a chance to propose an interstate compact that they believe meets the test, and if they fail to do so the Federal Government still has a role on behalf of any one of the States or on behalf of the commerce?

And I am saying this because I am very concerned that this hearing today could potentially cause people to say we will just scrap what we have and hope that the States agree. I think New York's lights going off shows that decades of loose agreements, all of which were designed to benefit each State, did tend to have every other State not looking at excess robustness to protect anyone other than themselves.

Mr. TONKO. Congressman Issa, I think that you can accomplish these goals by working within the bounds of the existing law and encouraging the kind of——

Mr. ISSA. This is existing law.

Mr. TONKO. Well, within the context of the law that guided the process prior to preempting the process by encouraging the kind of planning that is essential. I think what was taken was a leap to the extreme without offering——

Mr. ISSA. My time is limited, so I am just going to do one final one, and it can be for another member of the panel that would like to weigh in.

If we require planning and if that planning is not executed on, wouldn't you all agree that, if you make the plans, the Federal Government holding you to those plans or to your accomplishing those plans is still within Federal jurisdiction under interstate commerce?

Mr. TONKO. I would think there is a role to be played to make certain that plans—I think, very importantly, plans need to be de-

veloped, updated, and implemented, and if there is a role to encourage that without usurping the States' rights and without perhaps derailing regional compact, comprehensive plans, or individual State comprehensive plans, let's do it. But this I think supersedes in a way that is very disruptive.

Mr. ISSA. I just wonder if anyone can give me a "yes" to the question I asked.

Mr. KUCINICH. The gentleman's time has expired. I want to acknowledge that, but also go ahead and answer the question.

Mr. ISSA. I don't want to ask another question. If there is anyone on this panel today that can give me an answer of "yes" to the Federal Government having that role if the compact fails to occur or if one or more States fail to provide their share of it. I will leave it for the record, I think. I don't see anyone, unless Mr. Adams wants to answer.

Mr. ADAMS. Your question is prior to the Energy Policy Act of 2005? Absent the Energy Policy Act of 2005 does the Federal Government have the authority under the——

Mr. ISSA. No, should we do it constitutionally is the question, because we are considering, if we get rid of this act, do we scrap the whole idea that if one State doesn't meet the requirements, even if agreed, for another State, that the Federal Government should just sit on the sidelines and watch the lights go off in New York.

Thank you, Mr. Chairman.

Mr. KUCINICH. Mr. Tonko, did you want to add anything?

Mr. TONKO. No. I will stand with the answer I gave.

Mr. KUCINICH. Yes. The gentleman's time expired about 2 minutes ago.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. KUCINICH. But let me, with unanimous consent, just ask a question or engage in a colloquy with my good friend.

The question that was raised with respect to the 2003 power failure, which began in northern Ohio, the District I represent, if I remember correctly, the occasion of that power failure was not so much the lack of robustness of the system as it was the failure of maintenance by First Energy, which is our local power company.

Mr. ISSA. And for the chairman, I completely agree that we could look at an initial cause. What has been discovered, as I understand it from our work in the last Congress, was that the reason that the failsafes never stopped—in other words, Cleveland was allowed to go completely black, and the rest of the country should have stayed up. You should not be only as strong as one engine failing.

So, as much as we know why Cleveland failed, the system was not robust enough to keep one after another from being pulled down, and that is where the interstate commerce question comes, because, Mr. Chairman, I am very aware that there are failures in 2005 act. The question is what is the legitimate role, and hopefully under your leadership we will define the limits of that role but not fail to meet that requirement of interstate commerce. When does the Federal Government have an appropriate role? I think the Cleveland to New York blackout is the best example where we as Federal officers, if we don't make sure the States do their job so that that network is robust enough, we will be held accountable.

Mr. KUCINICH. You know, maybe the gentleman and I could cooperate in producing another hearing on the relationship between the causative factors of the 2003 blackout as it reflects on some of these issues and other issues relating to capacity. I think that could be quite constructive.

I am going to go to Mr. Hall right now for purposes of his asking questions.

We are in a series of votes soon.

Mr. HALL. I will make it quick.

Mr. KUCINICH. No, please, you get 5 minutes. Proceed.

Mr. HALL. Thank you, Mr. Chairman, and thank you to all of our witnesses.

Representative DeWeese, I would like to ask you, regarding the Allegheny Energy requests of March 2006, to designate a national interest electric transmission corridor they call the TRAIL project, Trans-Allegheny Interstate Line project, which, if it is approved, will give them power of imminent domain from Maryland through the tip of northern Virginia across western Virginia through southwest Pennsylvania and into Ohio, which is a remarkable stretch of imminent domain. Two questions about this. First of all, for a project of this size, how long would you expect the normal State permitting process, the environmental impact statements or what have you, to take?

Mr. DEWEESE. I do not know, but my speculation would be a 1½ to 2 years. My colleague from Maine would probably be more precise in extrapolating a Maine or a Pennsylvania Public Utility Commission dynamic. I only know that Wendell Holland, the chairman of the Pennsylvania Public Utility Commission, has expressed to Chairman Kucinich and the membership some of his reservations and comments, but I do not know the exact number of months that it would take.

Mr. HALL. I could ask everybody at the table, are you aware of any such size projects that comes in through the normal environmental review process at under a year? I am not. I mean, in New York, I am familiar, as Mr. Tonko is.

Mr. TONKO. Right. I think the 1-year timeframe is a very threatening situation. There needs to be flexibility. It is very murky. The definition of when the clock starts ticking is very murky. I think that it can be a very troublesome bit of nomenclature in the law that really might undo a very valuable project.

Mr. HALL. Or, as one might put it, it is sort of a gone to the head of the State government saying don't screw up too many roadblocks or ask too many questions, don't drag the process out, or else it is going to get kicked out of your hands and up to FERC. Yes, sir.

Mr. MILLER. Our concern about the 1-year clock is that in many States the process of discovery, getting the data, acquiring the information, analyzing impacts is structured as an adversarial process. I mean, you have to ask the question, you have to do the interrogatories, you have to depose the witnesses, you have to review the testimony.

For example, in the case of the 1,000-page filing by Dominion, all of the flow data was submitted in a sealed document, so it is not available to anyone to review. They are assertions and studies that back up assertions by making other assertions, but there is not

public access, until the intervention process is triggered by the State Corporation Commission, to the actual flow data so that they can be independently verified.

Similarly, as you have heard, at the Federal level there hasn't been access to the underlying data to make sure the conclusions were drawn fairly and with consideration of alternative perspectives.

That process, by its very nature, can take more than a year. And it is interesting that Dominion in this case, while claiming not to plan on using the corridor designation and Federal imminent domain, has requested that the State rule on their application within a year of the date of filing, which is exactly the unusual characteristic of the Federal law.

Mr. HALL. Thank you.

Chairman Adams, can you tell me exactly what the Department of Energy has refused to share with your State?

Mr. ADAMS. There are two categories of information. One, information when we look at what they provided, they provided, after a fair amount of complaining from NARUC, NECPUC, and a variety of individual States, they eventually posted on their Web site some certain assumptions that they gave their consultant, but in peeling that back the assumptions did not appear to be the whole picture and they just don't add up to the result, and a lot of the information we get, for instance, in a PUC hearing room that would lead us to conclusions about things like reliability or congestion we just don't see there.

But, more troublesome, our public advocate issued a Freedom of Information Act request on the DOE, and there was an e-mail chain amongst DOE staffers talking about forwarding confidential information among themselves delivered to them by PGM, the New York ISO, and ISO New England.

We have asked for that confidential information, and it has not been provided. DOE has actually said that they don't have it.

So, from our perspective, from Maine's perspective, the dots just don't quite line up to the conclusions that they have come to, and that is what we don't understand. There does appear to be at least some information that they relied upon that either has been lost or misplaced or is no longer in DOE's possession to provide to us.

Mr. HALL. Thank you, Chairman Adams.

Thank you, Mr. Chairman.

Mr. KUCINICH. I thank the gentleman.

Mr. Davis.

Mr. DAVIS OF VIRGINIA. Mr. Koonce, thanks for being with us. Let me just start with you.

I understand Dominion Power has filed its application with the State Corporation Commission last week to move ahead with the transmission line in Virginia. Is the intention to work through and abide by the decision of the State Corporation Commission with respect to the Meadowbrook Loudoun 500 KB transmission line?

Mr. KOONCE. Yes, Congressman, it is. We have had great success working with our State Corporation Commission. Every line that we operate today has been approved by that State Corporation Commission. We don't see that relationship changing.

Mr. DAVIS OF VIRGINIA. I mean, there has been some concern in the community that the State process is now just a mere formality for utility companies located in the NIET corridors, but that is not your intention?

Mr. KOONCE. No, sir, that is not our intention. We have great confidence in our commission to weigh the issues, analyze the load flow studies, look at the need, make that determination, and provide the pathway for the company to move forward.

Mr. DAVIS OF VIRGINIA. Now, in your application, which I understand is lengthy——

Mr. KOONCE. That is correct.

Mr. DAVIS OF VIRGINIA [continuing]. You make the case for a new power line. Can you just briefly highlight some of the needs—you did some in your testimony—in terms of the areas that are impacted to where the power would be going?

Mr. KOONCE. Yes, sir. We filed an application for a 65-mile line. It is a 500 KB system, moving from the western part of the State, traveling along an existing transmission line corridor, ultimately terminating at the Loudoun substation, which is just west of the Dulles International Airport. The line that we propose will transfer about 3,400 megawatts of energy into what has been described by many as the fastest-growing region in the eastern seaboard. Our load data certainly reflects that. It is a rapidly growing area.

The transmission corridor that we have identified will be residing beside an existing 500 KB system, so there will be areas where we will be able to stay within the preexisting footprint. For example, where we cross the Appalachian Trail we have proposed to change the pole structures so that the two power lines can coincide within the existing footprint. There will be areas where we will have to acquire an extra 100 feet so that we can put the line adjacent to an existing information. And then there is much of the route that we won't have to take any additional right-of-way, the right-of-way is already suitable to this transmission line.

Mr. DAVIS OF VIRGINIA. You are obviously aware of the public comment. You have done your best to minimize, assuming the need for it, minimize the taking of additional right-of-way, is that——

Mr. KOONCE. Yes, Congressman. We have had five open house meetings where we have tried to show people how we would route the line, the structures that we would use. We have had over 100 meetings with community planning boards, chambers of commerce, and have participated in over 300 media interviews. We have done everything that we could to try to engage the community, and I think through the Piedmont Environmental Council and Virginians for Sensible Energy we, I think, have engaged the communities, and I think we have a good filing that reflects that.

Mr. DAVIS OF VIRGINIA. You certainly have them engaged. There is no question.

Mr. Miller, let me just ask you, do you think there is overwhelming evidence for the need for the proposed transmission line in northern Virginia? Do you share the same conclusions at this point?

Mr. MILLER. At this point we don't. The evidence we have been able to evaluate up to this point reaches very different conclusion, which is that, as NERC found in 2005, Virginia is adequately

served, both generation and transmission, and that the need is being generated outside of northern Virginia and actually part of a much greater region than the larger PGM interconnection.

The question then becomes: is this the best place to locate a line to serve that interregional need, and are there other solutions?

One of the interesting things about the Dominion filing is that they attribute the amount of demand reduction that would be necessary to obviate the need for this line. Remember that they are using rather unusual contingency scenario where they close down Opossum Point and a line fails, so it is sort of a double whammy, not just a transmission issue.

But, in addition to that, they then say that, in order to avoid building a transmission line, northern Virginia would have to reduce demand by 2,800 megawatts when, in fact, the area of demand that this line would be serving and the reliability that it would be serving includes all of Maryland and the District of Columbia.

So if you spread that demand reduction over that area, it is less than 10 percent reduction for the actual service area. The point being, the kinds of initiatives that Maryland, that Governor Kaine has initiated for the State agencies, Government Rendell, Governor Corzine have all proposed would actually reduce demands from levels where these transmission lines may not be necessary.

Our concern is that the analysis process, the data that is held as confidential and proprietary doesn't allow for any independent analysis of whether the conclusions reached and asserted actually match reality on the ground or accommodate potential future changes on the generation and demand management side.

Mr. DAVIS OF VIRGINIA. But the State Corporation will be able to get all that, won't they?

Mr. MILLER. If they have time. But, as I was trying to say before, this is not a process where the application is only deemed sufficient when all of the information is made available. It is, unfortunately, structured as an adversarial process, and so the answers may not come in the first 6 months, 8 months, 9 months, twelve months.

Mr. DAVIS OF VIRGINIA. Thank you.

Mr. Chairman, my time is up.

I do want to note the presence of John Stirrup, one of the Prince William County supervisors that is in the room attending to this. We appreciate your being here as well. Thank you.

Mr. KUCINICH. All right.

Would the gentleman from Virginia yield for a question? Do you need more time?

Mr. DAVIS OF VIRGINIA. I am OK.

Mr. KUCINICH. Sure. OK.

The Chair recognizes Mr. Arcuri.

Mr. ARCURI. Thank you, Mr. Chair, and I thank you for giving me an opportunity to be here.

I would like to thank the panel, all of you, for being here. Assemblyman Tonko, thank you very much for coming down.

Assemblyman, in response to one of the questions that my colleague from California asked you, do you think that there is a distinct difference between seeing to it that the States work together to prevent the kind of blackout that we saw on the east coast, as

opposed to overruling a position that a State takes if a State chooses not to allow a corridor and then the Federal Government comes in and preempts it?

Mr. TONKO. I think it is very important for us to bring States together in these regional compacts so as to address concerns that have already been documented, with the point in case being the 2003 blackout. You know, it wasn't about the robust issue, it was about communication, it was informing another State as to what was coming, and it was about maintaining a system as you theoretically had indicated in your guidelines. We need to make certain that kind of deliberative effort is made.

There are also concerns. I look at the interrelationships or the potential partnerships amongst not only the New York ISO but the PGIM and New England ISO where we could develop, I think, sound policy and encouragement from the Federal level to deal with inter-ISO seams that would address not only economic outcomes but reliability potential.

Mr. ARCURI. My other concern is this. If a State creates a policy that it chooses to, for instance, in New York, if the policy were to promote generation down State, wouldn't a power line such as being proposed create a disincentive to creating generation in another place, because what they are doing is bringing power from one place to another place rather than promoting generation?

Mr. TONKO. It could. I think, again, in the case of New York State there needs to be ample opportunity, total opportunity to exercise our strategy as a State with a comprehensive plan.

Mr. ARCURI. I just have one more question. And if the strategy of New York was to keep the cost of power down in a place like upstate New York where unemployment is high, then wouldn't taking power from there, driving up their cost, also serve as a disincentive for creating caps?

Mr. TONKO. It absolutely would be a disincentive, and that is why I think the mix of energy efficiency, onsite distributed generation, conservation efforts, and renewables are all blended into the discussion and the determinations of policy within New York, and having some sort of preemptive process that could cause price fluctuations for regional outcomes in New York State would be a tremendous setback.

Mr. ARCURI. Mr. DeWeese, do you see that in Pennsylvania, as well?

Mr. DEWEESE. I do. I do. I live in the heart of the coal fields, and we are honeycombed with the tritus of coal mining underground. We are scarred with the results of coal mining on top. Our water volume and our water quality are questionable. The paradigm that you offered seems to be very, very accurate relative to the future.

Clean coal technology that Ed Rendell and a variety of other people in our State and General Electric are advocating seems to me a very, very aggressive alternative. We should be building plants where population bases exist. The river valleys and steel valleys of western Pennsylvania have paid their fair share over our national history, and we don't think that we should be developing power in those little corners in the red in the southwestern part of rural Pennsylvania for the burgeoning populations of the east.

Mr. ARCURI. Thank you very much.

Mr. DEWEESE. Yes, sir.

Mr. TONKO. Mr. Chairman, if I might again refer to the upstate economy, which has been a primary focus, energy costs obviously are a tremendous concern. If that comes at the expense of outcomes for transmission owners' profit margin and reduces our opportunity to revitalize the upstate economy, it would be a dreadful outcome.

I think, again, it has to be looked at in totality. It has to be a holistic approach so that we can balance the needs for energy within New York State and to do that in partnership with neighbors and regional compacts.

Mr. KUCINICH. I thank the gentleman.

The gentleman from Virginia, Mr. Wolf.

Mr. WOLF. Thank you, Mr. Chairman.

In the interest of time, thank you and Mr. Davis for the hearing. I want to thank the witnesses.

If I may, I would like to submit a series of questions for the record, if I may.

Mr. KUCINICH. Without objection.

Mr. WOLF. Again, thank you very much.

[The information referred to follows:]

FRANK R. WOLF
10TH DISTRICT, VIRGINIA

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Congress of the United States
House of Representatives
May 3, 2007

Mr. Paul Koonce
Dominion Virginia Power
1 James River Plaza
Richmond VA 23219

Dear Mr. Koonce:

Thank you for your testimony and participation at the Subcommittee on Domestic Policy of the Oversight and Government Reform Committee hearing on the implementation of Section 1221 of the Energy Policy Act of 2005. I ask that you answer the following questions for the official hearing record within the next 30 days.

1. The KEMA study included in your filing with the SCC stated on page 60 that less than 10 percent of the load on the congested lines serves northern Virginia. How can you then claim that northern Virginia is the reason you need a new line?
2. You mentioned that Dominion is working with industrial and commercial partners to reduce demand during peak energy usage. What percentages of your industrial and commercial customers are in these programs? How do you market these programs?
3. What is the last date you can get your permits and still have your line in service by 2011?
4. Have you looked at the possibility of using superconductor technology to increase the efficiency of existing lines therefore reducing the need for completely new lines? How long have you been using the same transmission grid infrastructure technology?
5. DOE's August 8, 2006 study p. 41 defines the Atlantic coastal Critical Congestion Area. Is your "greater Northern Virginia" not a relatively small part, electrically speaking, of the Atlantic coastal Critical Congestion Area? How would you account for congestion north of Maryland? It seems that a line as massive as the one Dominion proposes is intended to address the needs of the larger area. How is it that a 3,000-MW line is the only way to solve a few hundred MW shortfall in Northern Virginia? The PJM Regional Electric Transmission Plan report dated February 27, 2007, says that, "[This line] is needed to . . . serve the Delmarva Peninsula and other eastern PJM load centers."
6. In your opinion does the present rate structure in Virginia compensate Dominion fairly for loss of electricity sales due to conservation? Specifically, does Dominion make more, about the same, or less money on conservation than it does on electricity sales, per kW or per kWh? What are the total expenditures for conservation and energy efficiency by Dominion in each of the past 10 years?
7. 2005 EIA Data show that Dominion Virginia Power ranked 39th overall in terms of spending on Demand Side Management (DSM) ($5.8 million on load management for about 77.5 million customers), the least amount of money of any company at a similar

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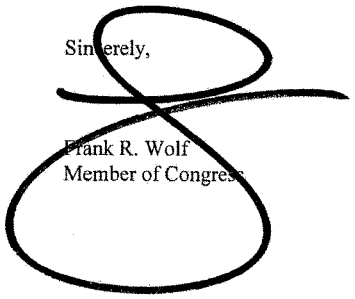
level of sales. How do you justify this low level of spending?

8. Are there any conceivable changes in the regulatory environment or other government actions that could cause your projections of load management - including conservation - to increase or decrease?
9. American Electric Power and Allegheny Power propose to build a 765-kV line from West Virginia to just north of Washington, DC . To what extent will this line reduce flows on your proposed Loudoun Line? Would this other line reduce the need for the Loudoun Line?
10. How much has Dominion Virginia Power been fined to date for violations of NERC reliability criteria? Do you anticipate any such fines in 2007? In 2008?
11. According to the American Council for an Energy-Efficient Economy (ACEEE), the Commonwealth of Virginia and its franchise and municipal utilities rank near the bottom of states on electric energy efficiency spending per capita. Do you have any basis for disagreeing with this ranking? What level of expenditures would be necessary to reduce peak loads by 750 MW in Northern Virginia? What specific DSM measures could be implemented for $50 million? $100 million? $200 million?
12. Would you support a requirement that would condition FERC authority to grant construction applications and confer federal eminent domain authority on the applicant utility demonstrating that it achieves some minimum level of demand reduction through utility-financed demand-side management and efficiency programs?
13. At page 8 of your prepared remarks, you testify that "we looked at potential best-in-class conservation efforts and other alternatives [to your proposed Northern Virginia 500 kV transmission line] from across the country." Can you provide the Subcommittee with a listing of the best-in-class measures that you looked at, indicating where each measure has been implemented, and most importantly, tell us whether and how your company has implemented these measures?
14. Assuming the DOE's draft mid-Atlantic NIET Corridor designation is approved, would you deem it appropriate for Dominion Virginia Power to seek federal "backstop" siting for a proposed transmission project if the Virginia Department of Transportation (VDOT) were to refuse to grant use of its right-of-way for such a project?
15. On page 7 of your testimony, you state that "It (Dominion Power's six-volume filing) is, without a doubt, the most thoroughly researched and prepared application for a high-voltage transmission line in our country's history." Could you please explain why Dominion Power's application failed to fully analyze the significant extent to which multiple combinations of DSM programs, transmission and generation options, and large-scale conservation efforts could collectively assist the electric grid?
16. On page 9 of your testimony, you state, "Further we asked KEMA...(to) give us an independent assessment of how we could solve the potential overloads without building a multi-million dollar transmission line." Did Dominion ask KEMA to analyze multiple combinations of DSM programs, transmission and generation options, and large-scale conservation efforts?

17. NOVEC offers a load management program to all of its residential customers. The program involves switches installed free of charge on air conditioning units and hot water heaters that can be activated during peak demand periods via a transmitted signal to cycle off the units for brief periods to curtail usage during peak demand times. Has Dominion Power ever offered its residential customers a program equivalent to NOVEC's load management program? If so, when? If not, why not?

If you have any questions regarding this letter please contact Elizabeth Becker on my staff at (202) 225-5136.

Sincerely,



Frank R. Wolf
Member of Congress

FRW:eb

Mr. KUCINICH. I thank the gentleman. I just want to assure Mr. Wolf and Mr. Davis that you have the complete and total cooperation of all of us on the committee relative to your concerns.

I would like to ask some questions, and I understand there is a series of votes right now. What it is my intention to do is to finish with this panel, unless the Members are looking for another round. If you want to do another round of questions, let me know and I will ask if the panelists—if Members wanted another round of questions, would the panelists be able to stay. We will see how far we get.

I want to start with Mr. Koonce.

Sir, in your testimony you state that you are committed to the State siting process. Would you be able to assure this committee that Dominion would, under no circumstances, seek to preempt the State process by invoking section 1221?

Mr. KOONCE. Mr. Chairman, I could not make that commitment.

Mr. KUCINICH. Why not?

Mr. KOONCE. We are a company that provides energy and interstate commerce in many forms. We operate interstate natural gas pipelines. We are constructing a wind farm. And we provide energy throughout New England, as well as Virginia. There can be circumstances where we believe Federal back stop siting authority can have a use.

I don't know the exact year, but in 1989 American Electric Power filed an application in West Virginia to construct a line into Virginia. It took them 13 years to construct that line because the two States could not reconcile their interstate conflicts.

I would not make a commitment to this company. I would not make a commitment to this subcommittee to subject our customers to that same type of interstate conflict.

Mr. KUCINICH. Now, in 2002 the American Council for Energy Efficiency Economy [ACEEE], released a report that examined utility spending on energy efficiency in the year 2000. ACEEE ranked the States to determine which States were doing the most to become more energy efficient. At the top of that list was Connecticut. Connecticut spent just under $20 per capita on energy efficiency. At the very bottom of the list was Virginia. They found that Virginia utilities were dead last in their spending. Virginia spent nothing, zero. The Virginia utilities simply made no investment in energy efficiency.

Now, in 2005 the ACEEE updated their report for the year 2003. Things have changed. Vermont had moved to the head of the pack. Utilities there spent about $30, $28.26 per capita on energy efficiency programs. Unfortunately, Virginia was still spending zero per capita on energy efficiency.

Now, Mr. Koonce, according to your testimony today Dominion's hands are tied. You seem to be saying you have no option but to build a new transmission line, but you can't increase the efficiency within your service territory fast enough, but it seems your problem has been years in the making. Nothing was spent on energy efficiency in 2000, and today you have come before this committee explaining that your demand is so high that it has limited your options.

Now, Mr. Koonce, how much did Dominion invest last year per capita on energy efficiency?

Mr. KOONCE. Mr. Chairman, that report captured ratepayer-funded energy efficiency. In 1999 the General Assembly passed the Utility Restructuring Act. The purpose of that act was to promote, in its widest and complete form, retail competition. The 1999 Utility Restructuring Act contemplated that our generation, transmission, and distribution entities would be functionally separated and ultimately legally separated such that retail providers could come into the marketplace and could look at peak versus off-peak consumption and could come up with creative packages, offerings to customers so that they would be economically incentive to engage in demand side management conservation.

Mr. KUCINICH. I understand that, but your question is how much did Dominion invest last year per capita on energy efficiency.

Mr. KOONCE. I don't have that number today. What I can tell you——

Mr. KUCINICH. Would you be able to submit that information for the record?

Mr. KOONCE. I will seek to do that.

I will tell you that we still have and continue to work with all of our commercial industrial customers, as well as our homebuilders. We have certified energy planners. They work throughout the year——

Mr. KUCINICH. If you could submit that planning, those documents to the committee it would be very helpful. I am sorry to interrupt you. We have just got a couple of minutes before we have to run and vote.

Do you know how much you are going to spend this year then on energy efficiency? You don't really know?

Mr. KOONCE. Again, the Virginia General Assembly, which is charting the course for Virginia, which we certainly support, passed a new law this spring. That law required the State Corporation Commission to pull together across-State group to identify ways to cut energy consumption by 10 percent.

Mr. KUCINICH. What I would like, if you could, sir, is for you to submit to this committee, if you have such information, how much money Dominion expects to invest per capita on energy efficiency, if you could submit that, because in the case of Dominion the facts seem to suggest that there has been a failure to anticipate the need for energy efficiency ahead of time.

I would like to ask about another important issue and see if Dominion is acting proactively. There is no longer any doubt that human activities are resulting in global climate change. What steps are you taking to reduce Dominion's greenhouse gas emissions over the coming decade?

Mr. KOONCE. Mr. Chairman, in 2003 Dominion was the first utility to enter into an agreement with EPA. That agreement called for our company to spend $1.7 billion to install NO_X/SO_X pollution control equipment. Since that time, we have also acquired the generation assets in New England of U.S. generation. We will be spending, in total, $2.5 million on fossil plants to improve air quality, both with NO_X and SO_X pollution control equipment.

We anticipate that by the year 2015 we will reduce our emissions by 70 percent, at the same time increasing plant output by 30 percent.

Mr. KUCINICH. Let me just ask you one question before we take a break for votes. How about reduction in CO_2 emissions?

Mr. KOONCE. We have plants that are in New England, as part of the REGI program, where we feel confident that we will be in compliance with the regulations as they are promulgated. We are——

Mr. KUCINICH. But are you able to state—I am not talking about regulation, I am talking about plans to reduce greenhouse gas emissions. That is two different things. Can you provide this committee with information about the efforts that you are taking to provide for reductions in CO_2?

Mr. KOONCE. Sure, we can provide that information.

Mr. KUCINICH. We appreciate that.

At this point the Chair is going to call this committee in recess for 45 minutes. We have a series of five votes. We will return.

Mr. Hinchey.

Mr. HINCHEY. Thank you very much, Mr. Chairman.

I just wanted to ask one question before we left of Mr. Tonko.

The regional transmission line that is being proposed for New York, the so-called New York regional interconnect, it is not really regional. It is entirely within the State of New York. You have been personally involved in these energy issues for a long time, and I know you know them very well. Can you describe the New York review process for these transmission review facilities and how that process would conflict with the 1-year arbitrary limitation in section 1221 of this energy law?

Mr. TONKO. Sure. Basically, we allow for intervener activities. There are funds that are set aside for that. There is a process that is conducted by our own regulatory group that will review comments made by the applicant. I don't think that the pressures of a 1-year framework are very helpful.

When we looked at that whole system, as was asked by Congressman Arcuri earlier, it is obviously looking at impacts that will befall not only the various communities, the economy, the environment, but also looking at the outcomes in terms of what ratepayer impact there would be.

Again, to put that into the context of a bigger picture, which is the strategy within New York State, all of those aspects are looked at.

What is troublesome here is we might have activity spurred by deal brokering which may empower the applicant to forego this process or not—will have the local regulator feel as though they are at risk or threatened by this process, because there is always an outcome whereby they can circumvent our process and move to a Federal decisionmaker, which I think would be disruptive.

In many cases our process, Mr. Chair, is longer than 1 year.

Mr. KUCINICH. Mr. Hinchey, we are going to come back for another round of questions right after we return from votes, so the committee is in recess for approximately 45 minutes, and we will look forward to another round of questions.

Thank you.

[Recess.]

Mr. KUCINICH. The committee will come to order.

We will go to Mr. Davis.

Mr. DAVIS OF VIRGINIA. Thank you.

Mr. Koonce, I just have a couple other questions.

In your testimony you mentioned the 2005 EPAct established reliability standards and that these standards are backed with substantial penal authority.

Mr. KOONCE. Yes.

Mr. DAVIS OF VIRGINIA. Can you elaborate on these standards and how Virginia is faring in relation to them?

Mr. KOONCE. Yes, Congressman. First off, we have always operated our electric transmission system as if the standards were mandatory, even when they were voluntary prior to the Energy Policy Act, so we have always done the planning and done the operations of our system with that in mind. So, as a result of the Energy Policy Act and these reliability standards now being mandatory, we see effectively no change to our operations. We are compliant. We were compliant. So this move is one that we certainly welcome.

In terms of the substantial penalty authority, the $1 million per day tight fine, the most egregious tight fine, are fines associated with operating your system in a manner that could put its system and the neighboring systems in a blackout condition. That is obviously the most egregious. The other is the planning criteria that you use to plan for adequate reliability. Those are the two areas where there is the greatest potential for the largest fine.

Mr. DAVIS OF VIRGINIA. OK. Mr. Miller, let me just get in with you and Mr. Koonce for a minute on the demand side management. In my opening testimony we talked about demand side management. That is an important part of the equation. Could you give us your vision, and then, Mr. Koonce, hear your vision on how we are dealing with this, because transmission authority is important, but that shouldn't be the only part of the equation, and I think under the law it is not.

Mr. MILLER. Well, I think generation, as well, could be a third leg of the stool.

Mr. DAVIS OF VIRGINIA. Right.

Mr. MILLER. We have actually commissioned a study by Summit Blue of what opportunities exist in Virginia, and we asked them to look at Virginia and then a broader region, which is actually the service territory for PGM, which is Virginia, D.C., and Maryland.

What they concluded is that there was so much low-hanging fruit in all three jurisdictions in terms of readily available investments that could be made to reduce demand and to do better load management that achieving 10 percent of reductions in that large area, which is over 3,000 megawatts, was achievable in a very short timeframe.

I think that was the reason that we asked the General Assembly to consider and the Governor to make amendments to the re-regulation bill in Virginia so that the goal of a 10 to 15 percent reduction within a very short period of time would be a statutory goal and included in the SEC's decisionmaking structure.

Dominion actually opposed that amendment and offered, I think, much softer language that makes it sort of a study of whether it is possible, as opposed to a mandate.

The second part of this is that these things can be done quite quickly. We have talked to Chairman Connelly in Fairfax County about, you know, what it would take to get 10 light bulbs changed at every residence in Fairfax County. That could have the effect of something on the order of 750 megawatts of demand reduction simply by changing lightbulbs. There are so many people there, there is so little that has been done previously, that in a matter of months you could reduce demand during peak hour by changing light bulbs.

Mr. DAVIS OF VIRGINIA. Changing light bulbs? Seriously, I keep hearing that.

Mr. MILLER. But you have to do it in bulk. If we all change one, that isn't going to get us there, but if we all change 10, which is good economics, we could get there.

Let me give you the math. Each light bulb that you change from 100 watt incandescent to a 23 watt compact fluorescent saves 75 watts. You multiply that by Dominion's 1.1 million customers in northern Virginia and you have 75 megawatts. You multiply that by 10 and it is 750 megawatts.

Now, is that all at peak hour? That might be debatable, but it is still a real savings.

The investment that would be required to do that is about $10 million, $1 a light bulb. For $10 million we could reduce demand by 750 megawatts, but instead we are going to look at a $250 million power line that will take 4 years to build.

I just think that the opportunities in northern Virginia, throughout the region that is served by these proposals are so real and so under-developed that we have to look at them.

Another one that is very important, another one where Dominion is falling short, is A/C cycling, air conditioning cycling. By comparison, NOVEC, which acts in the 11th District, has an aggressive program of encouraging customers to use A/C cycling. A third of their customers have had A/C cycling devices installed that allows the utility to switch off the compressor 7 minutes out of every half hour during the peak demand period, thereby reducing demand by nearly a third in most critical components. That service is not available from Dominion.

Mr. DAVIS OF VIRGINIA. Thank you.

Mr. Koonce, do you want to respond?

Mr. KOONCE. Yes, Congressman.

We do think that it is a combination of transmission, generation, and energy conservation. All should play an equal part in providing for reliable infrastructure going forward.

On the day that we filed the application for this transmission line, we also filed an application to install 300 megawatts of clean natural gas peaking capacity in the region to support the region's continued growth. We also intend to work very closely with the State Corporation Commission, as has been called for by the recently enacted law, to identify all the measures that we can employ in order to conserve energy and to employ demand side management techniques.

We currently have about 314 megawatts under demand side management programs. We have about 17,000 customers using time of use rates. We sell about 4 million megawatt hours under those time of use rates. But we are anxious to do more, and we think that the legislation that has been enacted that really required we stay on the sidelines and let retail merchants provide these services, we don't think that has worked, and we are anxious to work with the State Corporation Commission, with the Piedmont Environmental Council to identify those programs and put those programs in place.

Mr. DAVIS OF VIRGINIA. Finally, let me ask about new generation. You have a North Anna plant that will be coming on in, what, 10 years; 5 years?

Mr. KOONCE. We are currently working on securing an early site permit for the North Anna plant. That is correct.

Mr. DAVIS OF VIRGINIA. What will that mean to ability to deliver generation to the region? You will still have to transmit it?

Mr. KOONCE. No question. The discussion around North Anna, could be a plant as great as 1,500 megawatts. To unload a 1,500 megawatt plant, unload it, and get the power to where it is needed will require some investment in infrastructure. We have looked at that. We think it is modest. But certainly when you build generation you have to also be prepared to construct the transmission to move that power to market.

Mr. DAVIS OF VIRGINIA. OK. Thank you.

Mr. MILLER. Mr. Chairman.

Mr. DAVIS OF VIRGINIA. Did you want to respond to that?

Mr. MILLER. Yes. I think there is some new facts that have also affected generation. The ruling that the Mirant plant can continue operations, both as a regulatory issue and as a land use issue, actually changes the scenario that these projects are being analyzed against. The assumption of PGM is that Mirant would be retired.

There are other proposals for generation starting to move through the process. I think all those kinds of things have to be taken into account. Our concern always with this process so far is it is not clear how the Department of Energy is looking at the three, you know, major components. The decision on NIET corridors seems to be weighted toward a transmission-only analysis, not a balance of the different factors.

Mr. DAVIS OF VIRGINIA. Good point. Thank you.

Mr. KUCINICH. I thank the gentleman.

I would like to followup on a question that I had asked Mr. Koonce earlier.

Mr. Koonce, in your earlier responses you seemed pretty proud that Dominion was spending, I think you said, $1.2 billion on NO_X and SO_X reduction. For the record, we are talking about a reduction of sulfur dioxide and nitrogen oxides. That is known as NO_X, sulfur dioxide known as SO_X for short. Isn't it true that the 1.2 billion you have spent is pursuant to an EPA enforcement action against your company in 2003?

Mr. KOONCE. Mr. Chairman, the correct number is $1.7 billion, but the question you asked is exactly correct. We did not pursue litigation with EPA. We reached an agreement with EPA to spend the money to improve the air quality in Virginia, and we feel like

that has been rewarded by being able to get equipment and manpower in place earlier than many of our competitors who are still litigating in a much more expensive construction market. So yes, we were pursued by EPA. We did reach that agreement, and those expenditures have been made.

Mr. KUCINICH. All right. I thank the gentleman.

Now, just out of curiosity, do you think you would have made that level of investment, in this case $1.2 billion pursuant to a consent agreement that was filed in Federal court, without the enforcement action that was taken?

Mr. KOONCE. I am not sure how to answer.

Mr. KUCINICH. You know, I just want to make sure that you have come before this committee and what you are saying is you are trying to be a good corporate citizen, and I think everyone appreciates that, but I also think that it is important for the record that we establish what incentivized you to be a good corporate citizen, and that the incentive was a threat of prosecution for the company violating laws by making major modifications to its power plants without installing equipment to control pollution that causes smog, acid rain, and soot, this according to a release by the Environmental Protection Agency which I am going to put into the record.

And I say this not in any way to demean your efforts, but I really think that, as we proceed in this committee's investigation into the dynamics in the marketplace, that it is important for us to be entirely fact based, and at the same time it is absolutely true that the cooperation of Dominion in moving toward more effective efficiencies in the marketplace are mandatory, so that is why your presence here today is so important. But I wouldn't want anybody to leave this hearing with a misimpression as to what was one of the stimulating factors in the transit to a more effective expression of civic responsibility. I just want to express my gratitude to you.

Mr. Arcuri.

Mr. ARCURI. Thank you, Mr. Chairman.

I want to thank the panel again for your patience during our vote.

I have a question for the gentlemen from New York and Pennsylvania. I was thinking during the recess about what happens in terms of Federal preeminence to State policy decisions. I asked questions earlier about cost and I asked about trying to promote generation, but my question is this: if the State has a policy of protecting the environment or choosing one idea or one concept over another because it feels that it is environmentally more sound, does the fact that the Federal Government can come in and preempt and change that affect the planning for a State in the future?

Mr. TONKO. I think it could. I think it is problematic. I think that, again, usurping States' rights in regard to such important matters and principles that are established is a negative outcome.

I think it is very obviously, listening to the exchange here today, that we need to promote the kinds of partnerships amongst States that will enable them to foster the best outcomes for energy consumers. We need not to encourage pollution or taking the easy route, but rather encourage the binding of energy efficiency, which is our country's greatest resource, and allowing for outcomes that have a full continuum, a complement of activities going on that will

express respect for the environment and strong energy outcomes for all categories of ratepayers. I think that, indeed, is important.

Earlier we were asked about the heavy hand coming in if States don't do their thing or compacts if States don't do their thing. That is one approach. I think the better approach is to provide incentives for us to burn clean, to reduce carbon dioxide emissions, and to encourage efficiency. Building those incentives, rather than going to the extreme where you usurp State rights and perhaps deny them public policy, that should be their given opportunity and responsibility.

Mr. DEWEESE. It would be pretty difficult for me to amplify or burnish the remarks of the Honorable Energy Committee chairman from the Empire State.

Mr. ARCURI. How about with respect to populations? I mean, if the State of Pennsylvania wanted to choose one route for a power line or, for instance, to bury a power line or to put it in a place where less people live, would the fact that the Federal Government can then come in and preempt and change that route affect Pennsylvania's ability to plan for the future?

Mr. DEWEESE. Yes, sir. No doubt about it. And if you check the map of Pennsylvania, the northern tier counties that abut New York State, which are in white—they are not even delineated with county lines because they are not involved in this discussion today—are very sparsely populated. In fact, most of the middle counties are sparsely populated.

To invoke, although metaphorically, of course, that famous line from James Carvel, "Pennsylvania is Philadelphia and Pittsburgh and Alabama in the middle," well, I think he was talking politically. I am going to talk population-wise. Most of our population is based in the southwest and the southeast, so the Pennsylvania Public Utility Commission I think could make much better decisions than, again, having the long arm of the Federal Government, FERC, Federal Energy Regulatory Commission, come in to the Keystone State and make these decisions for us.

Mr. ARCURI. Mr. Tonko, would that apply to New York, as well?

Mr. TONKO. Absolutely. You know, a lot of discussion today was focused on the NYRI line. That is a line that was proposed totally internal to New York State. There is no impact on other States. That tells me that the decision should rest with our State. We should be able to incorporate the logic, the thinking on the impact on rates, on economic recovery, for regional economies in our State. This is, I think, an overuse of power that just does not spell good public policy.

Mr. ARCURI. In effect, the energy is for the most part produced in New York, run through New York, and consumed in New York——

Mr. TONKO. Exactly.

Mr. ARCURI [continuing]. Yet the Federal Government can come in and tell New York how to run its lines?

Mr. TONKO. Right. I think it is wrong. Again, to repeat myself, there are better things that you can provide to the energy outcomes and to the environment outcomes of Americans by doing those incentives that encourage the addressing of reducing emissions of carbon dioxide and encouraging efficiency.

Mr. ARCURI. Do you agree with that?

Mr. DEWEESE. The Greek philosopher Plato said that repetition is the first law of learning. I want to repeat one more time, apropos of your question, I believe that clean coal technology now and clean coal technology in the next 2, 4, 6, 8 years will be such that we could construct power plants further toward the coast without as much challenge of air pollution, and Pennsylvania Coal, Ohio Coal, Kentucky Coal, Union Railroad workers, and so forth, would be favorably impacted.

I don't think we need this big power line, and I think we can still have very, very beneficent impacts culturally, historically, economically, socially, and with the production of energy.

I think, again, I represent coal miners and coal mining, and I really believe that we can build these power plants further east and still not suffer negative consequences.

Mr. ARCURI. Chairman Adams, do you agree that the Federal Government should stay out of intrastate shipping of power, movement of power?

Mr. ADAMS. You know, it is an interesting question because it is so foreign to New England context, but I am intrigued by that very question. The issue that you are grappling with on what a State ought to do is one piece of it that is extraordinary to me that is lost in the shuffle that I think my colleagues from the States understand, and that is, when you are studying a transmission line you spend a lot of time with neighbors talking about where the line ought to go. Should it go behind Oak Street or behind Pine Street? Maybe you put it under that river, and maybe you put it there. It is a long, painful, excruciating process for the utility, and it is supposed to be, because that is how a utility's business is supposed to work.

If you move that forum out of the State regulatory bureau, you let PUCs off the hook. If we don't have to make a decision and we can't, we won't. Regulatory authorities like ours won't go down and sit with the communities and angry residents and make the difficult decisions. They won't go and stand up and do what we are supposed to do what we are paid by our ratepayers to do. We will pass the buck to the Federal Energy Regulatory Commission and those citizens will have a heck of a time making their interests known between Elm Street and Oak Street in Washington, DC.

It is a profoundly important issue for just about every State.

Mr. ARCURI. Thank you.

Mr. KUCINICH. The gentleman's time has expired.

Mr. ARCURI. Thank you, sir.

Mr. KUCINICH. The Chair recognizes Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

I thank all the witnesses for their testimony. I am sorry that scheduling conflicts prevented me from being here throughout the whole presentation, but I do want to ask some questions.

I indicated in my opening comments that I was involved in the legislative process that developed the Energy Policy Act of 2005. I identified many of the problems we have heard about today. In fact, I released a report in July 2005, that highlighted the problems this bill would pose for the States. Unfortunately, the House Re-

publican leadership at the time just wasn't interested in addressing the problems.

Frankly, section 1221 was included in the bill over my objections. It was one of the reasons I opposed the bill.

Proponents of this provision dubbed it the back stop provision. The idea was that if States were unreasonably delaying the siting of a new transmission line, there would be a Federal backstop to ensure that needed infrastructure was able to be constructed on time.

Chairman Tonko, I would like to ask you about this. Under section 1221, if a proponent of a transmission line doesn't serve end users within a State, the proponent can bypass the State altogether. Does that sound like a backstop against unreasonable delays?

Mr. TONKO. I think it is interesting nomenclature, but basically it is preempting the powers of individual States which need to be able to work within the context of their own State and get things done. I think it is going to be very difficult to broker some of the outcomes if they know that there is a way to circumvent that process, as just was alluded to by Chairman Adams.

Mr. WAXMAN. Yes.

Mr. TONKO. I think that when you have that given obstacle in the path of this process, it produces strong challenges for any State.

As was mentioned earlier today, some of these lines proposed, their impact is totally within defined territory of States, so they need to have that power, they need to have that decisionmaking process, and no sort of threats to them that eventually someone could opt out to another decisionmaker that will be doing that in a vacuum. And FERC would be doing that decisionmaking in a far more greater vacuum.

I also think that comprehensive plans are important here and they need to be implemented and we need to give States that authority and that ability. I think that comprehensive quality is important to look at all these elements of energy policy that will help reduce cost or reduce pollution or reduce dependency on fossil-based fuels.

Mr. WAXMAN. Talking about proposals that are completely within a State, New York is considering a proposal for a line that is nearly 200 miles in length, and this would essentially be a new permanent feature through the heart of the State. I assume there are many issues to address. Do you think that having 1 year as section 1221 provides a State to deal with the project is a reasonable thing for the State to do?

Mr. TONKO. I think the timeframe of 1 year is troublesome and problematic.

Mr. WAXMAN. Yes.

Mr. TONKO. I think that certainly some projects have been resolved within the confines of 1 year. Some haven't. I think the flexibility is important, and I think that also there is that murkiness of when the clock really begins ticking. I think the definition of that timeframe is not solid enough, and 1 year limiting something that may be a good line—there are transmission lines that States may want to incorporate, and if they are lost in the process

because of this artificial restriction that is imposed in the process, that is not helpful.

Mr. WAXMAN. So it is your view that this is not really a back stop authority. That is more rhetoric than reality. What it is is trumping the authority of the State and giving the energy companies the upper hand because they can go right to the Feds after the State?

Mr. TONKO. Right. Well, earlier I was asked if the Feds should step in if States or an individual State does not do its right thing, does not put together the good energy outcome. There are far better things to do—encourage partnership among States, enabling people to address those seams between ISOs, perhaps providing resources for switching technology that will allow the avoidance of some of the outcomes of the Ohio/New York experience of 2003.

There are many things that can be done. Try the incentives for cleaning up pollution out there or providing incentives for energy efficiency, but don't bring in the heavy hand that can disrupt the thought process and the planning process that is driven by a State or a compilation of States that should be their opportunity. I find it troublesome that we would have that happen.

Mr. WAXMAN. Thank you very much.

Mr. Adams, do you agree with those comments?

Mr. ADAMS. I absolutely do. To his point, one of the most fascinating issues to me as an economic regulator about this whole area of law is DOE has really punted on the question of who pays, the economic relationship between building a transmission line and the cost to certain consumers on a variety of different respects and the incentives that develops.

As the issues start moving forward, the idea of planning and getting economic signals right to create incentives is completely lost in the middle to build transmission lines. It seems to me that the economic incentives ought to be driving what gets built, as opposed to building what we can.

Mr. WAXMAN. Thank you.

Thank you, Mr. Chairman.

Mr. KUCINICH. I thank the gentleman.

I yield myself 5 minutes.

The question that arises here that is a result of some of the colloquy I had earlier, should the Feds step in in the event of disputes within a State or between the States, I don't know if that is the right question, because I think the question which gives rise to this committee meeting is: should the utilities have such a broad reach into planning and siting and basically setting energy policy without consulting with the States, because what this section of the law did, essentially, I think, in reading it, was to go a long way toward nullifying the States' abilities to be able to enter into the decision-making process because, in effect, what 1221 does is it trumps a lot of States' powers.

I don't know if any States' attorneys general have filed any action to raise questions relative to this, but, you know, absent a congressional remedy, there might be some constitutional issues here that haven't been appropriately addressed.

I would like to ask Chairman Tonko and also Representative DeWeese, once the Department of Energy designates a transmission corridor, energy companies can get their projects approved

by the Federal Government at the level of the Federal Energy Regulatory Commission. Since we have State legislators with us, I would like to explore the wisdom of this policy and how it might affect States.

Representative DeWeese, in your testimony you stated that Pennsylvania's agricultural land preservation program had preserved over 300,000 acres of farmland in 53 counties. Do you have any reason to think that the Federal Energy Regulatory Commission here in Washington, DC, understands the nuances of Pennsylvania's farmland preservation policies?

Mr. DEWEESE. No, sir, Mr. Chairman, I do not, and I think that the sharing that my colleague from Maine offered 10 or 15 minutes ago to me was the most telling aspect of today's hearing. I believe it was Congressman Murphy from Connecticut who said that after repeated supplications FERC refused to go up to Connecticut for a hearing. If that is their degree of casuality and nonchalance when the U.S. Congressmen and others are asking them to make a visit and to explicate their policy, I think they would be comparatively cavalier and disregard those of us who are trying to alter the power line for Allegheny Energy in Pennsylvania. I think that the farmland preservation dynamic apropos of your question specifically would be on the far periphery, if available for their thought process at all.

Mr. KUCINICH. Thank you. Thank you very much.

Chairman Tonko, the administration has taken a very different approach to global climate change than New York. For example, New York and other States sued the EPA for denying a petition to regulate greenhouse gases.

Mr. TONKO. Yes.

Mr. KUCINICH. Obviously, the States just won in the Supreme Court and the White House lost. Do you see any reason to believe that the Federal Energy Regulatory Commission is committed to seeing New York's greenhouse gas reduction program succeed?

Mr. TONKO. Not really. I think this whole approach really denies or delays progressive thinking, a new realm of thinking in the energy policy area. It is taking us back into the same old traditions, the status quo, and I think this country is sadly in need of progressive energy policy, and the way to do it is to, again, have a full complement of responses in a comprehensive energy strategy, in a planning concept, and this disrupts that opportunity to implement that planning. I think it is wrong, I think it is hurtful, it is harmful, and it certainly holds back on a progressive, proactive order of policy creation and implementation.

Mr. KUCINICH. Thank you very much.

To Ms. Merritt, why is Section 106 of the National Historic Preservation Act important to corridor designation? Can you explain that for members of the committee?

Ms. MERRITT. Well, section 106, like NEPA, would provide a mechanism for looking at alternatives that could be less harmful to historic properties. And, like NEPA, it can be implemented programmatically by looking broadly at the kinds of resources that could be harmed. But if it is done after the fact, after corridor designation is also completed, then the options for minimizing or avoiding harm to historic resources are extremely limited, and, be-

cause of the magnitude of the infrastructure involved in these projects, very little can be done at that point to try to mitigate harm to historic properties.

Mr. KUCINICH. So is it your understanding that the Department of Energy doesn't want to take into account historic resources before designating transmission corridors?

Ms. MERRITT. They have made no indication that they intend to comply with section 106 prior to designating new corridors.

Mr. KUCINICH. Is there a public policy rationale for that?

Ms. MERRITT. Well, it is our understanding that they intend to comply with section 106 after the corridors are designated, but at that point our view is that meaningful alternatives will be foreclosed.

Mr. KUCINICH. Well, we are going to look forward to hearing from the Department of Energy in the next panel.

We have come to the time where we have asked sufficient questions of the members of the panel. I would just like, because of the importance that each member of this panel has, I would like to give you approximately 1 minute, if you want to make a final statement before you leave. If you don't want to, that is OK.

Chairman.

Mr. TONKO. So many things have been said here today, and I have repeated myself a few times only because of the importance of the message. But where the Feds do not provide for progressive orders of thinking, let the States or compacted States be those laboratories of change. Let them exercise their rights to really bring about sound energy policy, environmental policy that will allow us now to come to a new realm of thinking that will help us revitalize the regional economies of so many areas of this country.

Mr. KUCINICH. Representative DeWeese.

Mr. DEWEESE. Very succinctly, sir, I would just say that 1221, the most malignant section of that act of 2005, be eliminated by congressional action, and that we return the power of the States to the States. I believe that is an ethos that both Republicans and Democrats can embrace prospectively, notwithstanding this temporary mischief.

This is a wrong-headed, rickety 2005 action by the Congress, and my polite admonition would be that you change it, sir.

Thank you.

Mr. KUCINICH. Thank you.

Mr. Adams.

Mr. ADAMS. Thank you.

Maine is a potential site for over 1,000 megawatts of new generation. In a non-CO_2 environment that we are heading into for generation, Maine is potentially the Saudi Arabia of New England for the purposes of non-CO_2 generation.

The problem with this particular statute is, if preemption is forced in a way that is not consistent with Maine's interests, Maine does not have an incentive to site that generation that New England needs to help reduce CO_2 emissions.

I would look forward to watching your deliberations carefully.

Mr. KUCINICH. Thank you very much.

Ms. Merritt.

Ms. MERRITT. I would just like to echo the concerns expressed by the other panel members of the importance of making changes to section 1221. You have heard a lot about the problems with the law as it is written now, and it has really got to be addressed.

Mr. KUCINICH. Mr. Koonce.

Mr. KOONCE. Mr. Chairman, I appreciate having the opportunity to participate in this discussion. I recognize that my views are in the minority, but I appreciate the way I have been treated today and I appreciate being here. Thank you.

Mr. KUCINICH. You are welcome, Mr. Koonce. And I want to say that we could not have this hearing without you, because we really need to get all of the elements in this discussion, and we are going to continue to want to engage you and other people in the industry. We appreciate it.

Mr. Miller.

Mr. MILLER. One thing I would like to add is that, you know, the act as it is currently constituted does recognize that there are certain lands that really deserve permanent protection, the national park system and the national wildlife refuge, land that is acquired with Federal dollars through the Land and Water Conservation Fund.

Unfortunately, what that ignores is that east of the Mississippi the way that we have pursued land conservation and protection of national priorities, be they battlefields, be they historic sites, is through public-private partnerships, and those are conservation easements. Private individuals, State government, and Federal Government has invested billions of dollars into trying to get those lands preserved, and this act would disregard all of those actions and allow for Federal condemnation of those very values. That has to be changed.

Mr. KUCINICH. I appreciate that very much. We have concluded our first panel.

This is the Subcommittee on Domestic Policy, Committee on Oversight and Government Reform. This is a hearing on Federal electric transmission corridors. I am Congressman Kucinich, the chairman of the committee. We are pleased to have with us the ranking Republican on the full committee, Mr. Davis, as well as our colleague, Mr. Arcuri.

I want to thank all members of the panel for being here. We are going to be continuing this discussion. We will look forward to all of you presenting any ideas that you have about more effective energy policies, and also ideas with respect to 1221. Thank you, and the first panel is dismissed.

We will move immediately to the gentleman who constitutes the second panel. We are going to have to move right to the second panel here because of the business of the committee. If anyone has any other business inside the room, I would ask that you take it outside, because we do want to proceed.

Our next witness will be Kevin Kolevar. He is the Director of the Office of Electricity Delivery and Energy Reliability for the U.S. Department of Energy, and he will testify at this hearing on Federal electric transmission corridors, consequences for public and private property. I want to welcome Mr. Kolevar.

I would ask that you stand.

[Witness sworn.]

Mr. KUCINICH. Let the record show that the witness has been duly sworn and has answered in the affirmative.

Welcome. Please proceed.

STATEMENT OF KEVIN KOLEVAR, DIRECTOR, OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY, DEPARTMENT OF ENERGY

Mr. KOLEVAR. Thank you, Mr. Chairman, Ranking Member Davis, members of the committee, for the opportunity to testify before you today on the Department of Energy's statutory authority under section 1221(a) of the Energy Policy Act of 2005 regarding national interest electric transmission corridors.

Today the availability of and access to electricity is something that most Americans take for granted, even though it is vital to nearly every aspect of our lives.

As our Nation's economy continues to grow, consumers' demand for more electricity will steadily increase. In fact, even when accounting for advances in energy efficiency, the Energy Information Administration estimates that by the year 2030 U.S. electricity consumption will increase by 43 percent from the 2005 level.

Our future electricity needs will only be met through a combination of options, such as new generation, transmission, advanced technologies, demand response programs, and improved efficiency. That said, perhaps the greatest challenge will be developing the appropriate network of wires and other facilities to reliably and responsibly deliver electricity.

The Office of Electricity Delivery and Energy Reliability was assigned the responsibility of executing many of the provisions in title 12 of EPAct. Specifically, EPAct amended the Federal Power Act by adding a new section, 216(a). The act now required that "not later than 1 year after the date of enactment of this section, and every 3 years thereafter, the Secretary of Energy, in consultation with affected States, shall conduct a study of electric transmission congestion."

In accordance with that law, Mr. Chairman, on August 8, 2006, DOE published the first National Electric Transmission Congestion Study. During the development of the study, the Department provided numerous opportunities for discussion and comments by States, regional planning organizations, industry, and the general public, as required by section 216(a). Outreach included conference calls with States to request suggestions and relevant information, notice of inquiry explaining the Department's intended approach for the study and inviting comment, and a public technical conference to address the questions presented in the notice of inquiry.

In addition to these efforts, the Department held numerous meetings with State officials and participated in regional conferences across the Nation.

The congestion study defines congestion as the condition that occurs when transmission capacity is not sufficient to enable safe delivery of all scheduled or desired wholesale electricity transfers simultaneously.

In analyzing transmission congestion, the Department identified congestion and other related concerns through two approaches:

first, the Department conducted a thorough review of recent reliability studies and transmission expansion plans conducted by regional reliability councils, regional transmission organizations, independent system operators, and sub-regional transmission planning groups. Altogether, the Department reviewed 65 studies and related documents for the eastern interconnection and 38 for the western interconnection.

Second, DOE developed projections for both the eastern and western interconnections using industry transmission planning models.

Based on this data, the congestion study identifies existing, projected, and potential congestion and reliability problems in different parts of the country.

The first category, critical congestion areas, is comprised of two large, economically vital, and heavily populated areas that have widespread existing or potentially severe congestion. These two geographic regions are in southern California and the Atlantic coastal area from New York City to northern Virginia.

A second group, congestion areas of concern, consists of four areas where a large-scale congestion problem exists or may be emerging but that aren't as critical or longstanding.

And the third area, conditional congestion areas, consists of areas where congestion is not acute at present but where congestion would become so if large amounts of new electric generation were to be built without associated transmission capacity.

The Department invited and received over 400 public comments on the findings of the congestion study and has posted all of the comments it has received on its Web site.

Section 216(a) also requires that "after considering alternatives and recommendations from interested parties, including an opportunity for comment from affected States, the Secretary shall issue a report based on the study which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor. However, prior to issuing a report that designates any national corridor, the Department will first issue a draft designation to allow affected States, regional entities, and the general public additional opportunities for review and comment."

Following an appropriate comment period on a draft designation, the Department would decide whether the designation of a corridor is, in fact, warranted. The Secretary is expected to release his decision with respect to draft national corridor designations very soon.

With the enactment of section 216(a), Congress gave the Federal Government the new responsibility of identifying electric congestion and its causes. The Department takes this new rule seriously, and we will execute the letter and the spirit of the law conscientiously with the Nation's best interest in mind.

This concludes my statement, Mr. Chairman. I look forward to answering any of your questions and those of your colleagues.

[The prepared statement of Mr. Kolevar follows:]

STATEMENT OF KEVIN M. KOLEVAR
DIRECTOR, OFFICE OF ELECTRICITY DELIVERY & ENERGY RELIABILITY
U.S. DEPARTMENT OF ENERGY
HEARING ON FEDERAL ELECTRIC TRANSMISSION CORRIDORS: CONSEQUENCES FOR PUBLIC AND PRIVATE PROPERTY

BEFORE THE

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON DOMESTIC POLICY
APRIL 25, 2007

Mr. Chairman and Members of the Committee, thank you for this opportunity to testify before you today on the Department of Energy's (DOE) statutory authority under section 1221(a) of the Energy Policy Act of 2005 (EPACT) regarding national interest electric transmission corridors (National Corridors).

Electricity is Vital to Americans

Today, the availability of and access to electricity is something that most Americans take for granted even though it is vital to nearly every aspect of our lives from powering our electronics and heating our homes to supporting commerce, transportation, finance, food and water systems, and national security.

As our Nation's economy continues to grow, consumers' demand for more electricity will steadily increase as we move forward into the 21st Century. In fact, even when accounting for advances in energy efficiency, the Energy Information Administration estimates that by the year 2030, U.S. electricity consumption will increase by 43 percent from the 2005 level. Although this is a positive indicator of a growing economy, it is also a significant amount of new demand on an electricity infrastructure that is already stressed and aging.

Meeting our future electricity needs will not occur overnight or with one solution. The need will only be met through a combination of options, such as new generation, transmission, advanced technologies, demand response programs, and improved efficiency. That said, perhaps the greatest challenge will be developing the appropriate network of wires and other facilities to reliably and responsibly deliver electricity. For example, the Department expects that much of the Nation's future electricity demands will be supplied by clean and renewable sources of energy. Wind generation, for example, holds great promise, but will almost always be sited in locations far from densely populated demand centers.

DOE/OE Mission

The mission of the Office of Electricity Delivery and Energy Reliability (OE) at DOE is to lead national efforts to modernize the electricity delivery system, enhance the security

and reliability of America's energy infrastructure, and facilitate recovery from disruptions to energy supply. These functions are vital to DOE's strategic goal of protecting our national and economic security by promoting a diverse supply and delivery of reliable, affordable, and environmentally responsible energy. Following the passage of EPACT, OE was assigned the responsibility of executing many of the provisions in Title XII—Electricity.

National Electric Transmission Congestion Study

Specifically, section 1221(a) of EPACT amended the Federal Power Act (FPA) by adding a new section 216 to that Act. My testimony will reflect the new authority under this Act as it relates to OE's role under FPA 216(a). Section 216(a) requires that, "[n]ot later than [one] year after the date of enactment of this section and every [three] years thereafter, the Secretary of Energy (Secretary), in consultation with affected States, shall conduct a study of electric transmission congestion." In accordance with the law, on August 8, 2006, DOE published the first *National Electric Transmission Congestion Study* (Congestion Study).

The Congestion Study examines transmission congestion and constraints and identifies constrained transmission paths in many areas of the Nation, based on the analysis of historical studies of transmission conditions, existing studies of transmission expansion needs, and unprecedented region-wide modeling of the North American Electric Reliability Corporation's (NERC) Eastern and Western Interconnections.

Stakeholder Involvement

During the development of the study, which relied on extensive consultation with States and other stakeholders, the Department provided numerous opportunities for discussion and comment by States, regional planning organizations, industry, and the general public as required by FPA section 216(a)(1). The Department initiated a series of conference calls with States in December 2005 and January 2006 to describe the Department's plan for the development of the Congestion Study and to request their suggestions and relevant information. On February 2, 2006, the Department published a Notice of Inquiry explaining the Department's intended approach for the Congestion Study and invited comment. On March 29, 2006, the Department held a technical conference for the public in Chicago, Illinois to address the questions presented in the Notice of Inquiry. In addition to these efforts, the Department held numerous meetings with State officials to discuss the Congestion Study and participated in several State conferences and events where information about the study was presented.

The Department sought input from the following: National Conference of State Legislatures, Seattle, WA, Aug. 18, 2005; Southern States Energy Board, Atlanta, GA, Aug. 27, 2005; Midwest State Energy Office, via webcast, Aug. 31, 2005; National Association of State Energy Officials, New York, NY, Sept. 12, 2005 and Washington, DC, Feb. 7, 2006; CREPC, San Diego, CA, Sept. 20, 2005, Sept. 27, 2006, and Portland, OR, April 4, 2006; NARUC, Palm Springs, CA, Nov. 14, 2005, Washington, DC, Feb. 14

and 22, 2006, San Francisco, CA, Aug., 1, 2006, and via conference calls on Jan. 11, 2006, and June 16, 2006; NYPSC, Albany, NY, Dec. 20, 2005; OMS, via conference call, May 11, 2006; Florida Public Service Commission, Tallahassee, FL on June 15, 2006; Midwestern Legislative Conference, Chicago, IL, Aug. 20, 2006; Organization of PJM States, Inc., Cambridge, MD on Sept. 17, 2006; CPUC, via conference call on Sept. 20, 2006; CEC, via conference call on Sept. 22, 2006; and Maine PUC, via conference call, Oct. 6, 2006.

Definitions of Congestion and Constraints

The Congestion Study described congestion as the "condition that occurs when transmission capacity is not sufficient to enable safe delivery of all scheduled or desired wholesale electricity transfers simultaneously." When actual or scheduled flows of electricity on a transmission line or a related piece of equipment are constrained below desired levels, either by the physical or electrical capacity of the line, or by operational restrictions created and enforced to protect the security and reliability of the grid, congestion occurs. Although transmission congestion varies hourly and even daily, the examination of data from longer periods of time can reveal recurrent congestion patterns.

As used in the Congestion Study, a transmission "constraint" may refer either to a piece of equipment that limits electricity flows in physical terms, or to an operational limit imposed to protect reliability. Constraints can contribute to or cause electric congestion. When a constraint prevents the delivery of a desired level of electricity across a line in real time, system operators have few options. They may increase output from a generator on the customer's side of the constraint and reduce generation on the other side, cut wholesale transactions that were previously planned to meet customers' energy demand at lower cost, or reduce electricity deliveries to consumers. All of these actions have adverse impacts on electricity consumers.

Analyzing Transmission Congestion

In analyzing transmission congestion, the Department identified reliability and other congestion-related concerns through two approaches. First, in order to ensure that the Congestion Study built upon the work of others and did not duplicate any existing data, the Department conducted a thorough review of recent reliability studies and transmission expansion plans conducted by regional reliability councils, regional transmission organizations (RTOs), independent system operators (ISOs), and sub-regional transmission planning groups. Key findings and conclusions from these studies were noted and summarized in sections 3.1 and 4.1 of the Congestion Study. Altogether, the Department reviewed 65 studies and related documents for the Eastern Interconnection and 38 for the Western Interconnection. The eastern studies and the western studies are listed in Appendices I and J, respectively, of the Congestion Study. These appendices are included with my testimony.

Second, DOE developed projections for both the Eastern and Western Interconnections using standard industry transmission planning models. DOE identified constraints in this

modeling using all of the reliability and security limits required at the time by both the North American Electric Reliability Council (NERC), which is now the North American Electric Reliability Corporation, and relevant regional reliability organizations. It is necessary for the industry to adhere to these limits in order to maintain network reliability in the event of unanticipated events, such as the outage of a major generator or transmission line.

Eastern Interconnection

The model used for analysis of the Eastern Interconnection was based on load flow cases provided by the NERC Multiregional Modeling Working Group (MMWG). This analysis used the MMWG 2005 series load flow cases for the summer of 2007 and the summer of 2010. The load flow cases encompassed the entire Interconnection, including lines, transformers, phase shifters, and direct current ties. The Cross-Sound and Neptune high voltage Direct Current cables were added to these cases. Apart from these direct current cables, no transmission upgrades were added except for those included in the MMWG cases. Monitored constraints were identified from the following sources:

- The NERC flowgate book.
- The list of flowgates published by the Midwest ISO on their website.
- A list of flowgates provided by the Southwest Power Pool.
- FERC Form 715 filings, seasonal transmission assessment reports, and studies published by NERC regions and Independent System Operators.
- Regional Transmission Expansion Plan (RTEP) reports published by various ISOs.
- The 2004 Intermediate Area Transmission Review published by the New York ISO.
- The CP-10 Working Group report (2004) by the Northeast Power Coordinating Council.
- Contingency analyses performed by General Electric and by CRA International.
- Historically binding constraints monitored by CRA International.

Western Interconnection

The western analysis reflected the traditional western practice of identifying constraints in a catalogue of transmission paths. (The Eastern Interconnection does not have an official path catalogue.) Key reliability-related assumptions and inputs to DOE's simulations included:

- Models of all WECC Cataloged Paths, representing potentially constrained Western Interconnection (W.I.) Paths, including Unscheduled (Loop) Flow Qualified Paths and Operating Transfer Capability (OTC) Policy Group paths. They represent all the significant paths in the W.I. These catalogued paths were supplemented in the study with other known constraints.

- A Path may represent a single line or combination of parallel transmission lines from one area or a combination of areas to another area or combination of areas.
- A Path may be between Control Areas or internal to a Control Area.
- Paths are defined based upon extensive planning studies and operating experience. They are well documented through a formal process.
- Ratings are established thru an open process described in the WECC "Procedures for Regional Planning Project Review and Rating Transmission Facilities" document.
- Ratings are documented in the WECC Path Rating Catalog. The ratings of all paths were updated with the most recent information available for the study timeframe.
- Ratings include both non-simultaneous and simultaneous limits, including development of nomograms.
- All ratings are established applying NERC/WECC reliability criteria; the path must be able to withstand an outage while operating at rated capacity.
- Ratings in the West are determined by the more restrictive of either applicable steady state or contingency limits. These include transient, voltage stability and thermal limits.
- At the time of the analysis, 67 existing WECC paths were rated in the catalogue.
- The WECC OTC Policy Committee reviews seasonal operating ratings for selected critical paths.
- All production cost modeling in the West (SSG-WI, RMATS, STEP & CDEAC studies) recognizes seasonal OTC limits on all WECC paths and on all "internal" lines, but not the "day to day" operational limits that are based upon prevailing system conditions.
- To maintain reliable operation, western path ratings are often based upon stability limits which may be more limiting than the thermal limits that typically limit eastern paths. This is primarily because of long transmission distances in the West.

Congestion Identified

DOE identified existing and projected or potential congestion and reliability problems in various areas by thoroughly reviewing recent reliability studies and transmission expansion plans and by modeling to confirm data and project congestion problems. The first category, "Critical Congestion Areas," is comprised of two large, economically vital, and heavily populated areas that have widespread existing or potentially severe congestion and reliability problems. These two geographic regions are in Southern California and the Atlantic coastal area from New York City to northern Virginia.

The Department's review of historical transmission studies and data and found that key transmission paths into and within southern California have been constrained for portions of time in recent years. The modeling performed for the Congestion Study projected that several of these constraints will continue to be significant in 2008. Additionally, the California ISO's summer assessment for 2006 found that electricity import capability into Path 26 (an area of southern California that includes Los Angeles) was so limited that various combinations of extreme electricity demand, generator unavailability, and transmission facility outages could require that non-firm or firm loads be cut to maintain reliability. NERC's summer assessment for 2006 came to the same conclusion.

New York City is one of the most congested areas of the country. Additionally, some of the transmission constraints creating this congestion may affect grid operations across a large part of the Eastern Interconnection. Given these facts and New York City's economic and strategic importance to the Nation as a whole, the Department concluded that it is appropriate to include the City in the Mid-Atlantic Critical Congestion Area.

A second group, "Congestion Areas of Concern," consists of four areas where a large-scale congestion problem exists or may be emerging, but that isn't critical. These are: New England, the Phoenix-Tucson area, the Seattle-Portland area, and the San Francisco Bay area. Generally speaking, the "Congestion Areas of Concern" have congestion problems, but the problems are not as long-standing, widespread, or acute as in the first category. The third group, "Conditional Congestion Areas," consists of areas where congestion is not acute at present, but where congestion would become so if large amounts of new electric generation were to be built without associated transmission capacity, including: Montana-Wyoming, the Dakotas-Minnesota, Kansas-Oklahoma, Illinois, Indiana, Upper Appalachia, and the Southeast.

Because of the broad public interest in the implementation of section 216(a), the Department invited and received over 400 public comments on the findings of the Congestion Study and on ways to improve future studies. The formal comment period began on August 8, 2006 and ended on October 10, 2006. Since the end of the comment period, the Department has continued to accept written comments and has posted all of the comments it has received since August 8, 2006 on its website for public information.

Annual Reports and Triennial Studies

In 2006 the Department announced that, in addition to the statutory requirement under section 216(a)(1) that the Department release a congestion study every three years, DOE would issue annual progress reports in addition to the triennial studies. Accordingly, the Department is beginning a review of mitigation activities underway in each of the congestion areas identified in last year's Congestion Study, which was released on August 8, 2006. The activities that will be examined include the status of transmission projects that are proposed, permitted and completed since last August's study. We will also be identifying new or proposed local generation, demand response programs, and

energy conservation and efficiency programs affecting congestion in the identified congestion areas.

Draft Corridor Designation

Section 216(a) of the Federal Power Act also requires that, "after considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States), the Secretary shall issue a report, based on the study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor." However, prior to issuing a report that designates any National Corridor, the Department will first issue a draft designation to allow affected States, regional entities, and the general public additional opportunities for review and comment. Following an appropriate comment period on a draft designation, the Department would decide whether the designation of a Corridor is, in fact, warranted.

Modernizing the Electric Grid

In order to meet the demands of our growing economy and population, we must consider ways of upgrading and modernizing our energy infrastructure, paying particular attention to the electricity grid. Although the problems that we are examining are not new, they will get substantially worse if we don't take action. In fact, my office has been very active in providing technical assistance, when requested, to States, regional grid operators, and utilities on demand response, energy efficiency, and coordinated regional planning. These efforts include facilitating the Mid-Atlantic Distributed Resources Initiative, the Midwest Distributed Resources Initiative, the Pacific Northwest Distributed Resources Project, and a previous project in New England. We have also partnered with the Environmental Protection Agency in developing the National Action Plan for Energy Efficiency, under which a group of leading electric and gas utilities, utility regulators, and related organizations issued a call for increased energy efficiency as delivered by utilities and allied groups.

Conclusion

With the enactment of the new section 216(a) of the FPA, Congress gave the Federal Government the new responsibility of identifying electric congestion and its causes. The Department takes this new role seriously, and will execute the spirit of the law conscientiously with the Nation's best interest in mind.

This concludes my statement, Mr. Chairman. I look forward to answering any questions you and your colleagues may have.

Mr. KUCINICH. The Chair recognizes Mr. Davis.

Mr. DAVIS OF VIRGINIA. Thank you.

Do you think that section 1221 of the EPAct weakens the power of the States over the authorization of transmission lines?

Mr. KOLEVAR. I don't believe it weakens the power of the States. It does present another opportunity for application to be made to the FERC should a company not be able to reach agreement with a State on a proposed transmission route.

Siting has long been the province of the States. That doesn't change by virtue of section 216(a) of the Federal Power Act. It does provide one more opportunity for another entity to hear arguments in favor of building new transmission.

Mr. DAVIS OF VIRGINIA. I wonder if, in fact, what happens to an elected public service commission, whether it be elected or something, whether at this point they can't more easily go the populist route, reject it, knowing there is a backup, and let FERC make the decision.

Mr. KOLEVAR. That is a legitimate argument, and I know the first panel made comment to that. I have heard both sides of that. I have heard a number of commissioners that insist they will do their job, they will do the job that they were elected to do. I am of the view that is the way that most of these situations will be handled.

Is it possible that there are situations where some commissioners wash their hands of it and just decide that they are going to say "no" but, wink-wink, there is an understanding it will go up to the FERC for consideration.

Mr. DAVIS OF VIRGINIA. I guess we will find out.

Mr. KOLEVAR. I can't predict whether that will happen.

Mr. DAVIS OF VIRGINIA. Let me ask you this. Since this is new for FERC, since we are just getting established, in fact, we are just getting the probable lines established later this week, what do you foresee, what circumstances would you foresee FERC considering an application from a utility after they have applied at the State level? Would they have to exhaust all their appeals at the State level first?

Mr. KOLEVAR. Right.

Mr. DAVIS OF VIRGINIA. And once the issue is raised to FERC level, would the utility then be able to disregard State laws such as consideration of wetlands, historic sites, and so on, or do you think the FERC would take those into account?

Mr. KOLEVAR. This is a very important point, Congressman. And I do appreciate the opportunity to testify on this, because there are, in my opinion, a number of misperceptions with respect to section 216(a) that ought to be addressed.

To your point, section 216(a) in no way allows a scenario by which the FERC would be able to permit a line and through permit of that line have the authorities of imminent domain conveyed to any federally owned lands, to any State owned lands. That means Federal parks, that means State parks, for example, that means schools, to the extent that some schools are owned by State lands.

But the FERC authorities with respect to Federal imminent domain are very limited and, of course, in addition to those limita-

tions, they are only empowered when considering application within a national corridor.

It is worth noting that State unions with respect to imminent domain are much more robust. A State can route a line through a State-owned park if it chooses. A State could run a line through a school yard if it so chooses. There are good reasons for doing neither.

My opinion is that federally elected officials, Federal Governmental officials appreciate the reasons for not doing something in a sensitive area for the very reasons that a State official would.

It is also the case that there are a number of permits that will, in all situations, have to be received by an applicant prior to ultimate permission of a line, notwithstanding a FERC decision to permit a line. By way of example, the very same authorities that we are talking about here—that is, FERC authority to allow for imminent domain on transmission lines—this is precisely the very same authority that FERC enjoys today with respect to certificating natural gas lines, and FERC has enjoyed this authority since section 7 of the Natural Gas Act was passed in 1938, 69 years. There was significant precedent for this kind of action.

Mr. DAVIS OF VIRGINIA. So you think that precedent could——

Mr. KOLEVAR. It will, sir. Not to filibuster your time. To get to the point of that, notwithstanding a FERC permit for a line to go through, the permitee will still be required to secure, where applicable, permits for section 404, when proposing to cross wetlands, permits from State agencies that administer the Clean Water Act——

Mr. DAVIS OF VIRGINIA. How about historic sites?

Mr. KOLEVAR [continuing]. The Clean Air Act, and Coastal Zone Management Act.

Mr. DAVIS OF VIRGINIA. How about historic sites?

Mr. KOLEVAR. I will report back on historic sites, because I am not aware of——

Mr. KUCINICH. Without objection, the committee would like to enlist your report.

Mr. KOLEVAR. Yes, sir, I will respond.

Mr. DAVIS OF VIRGINIA. Finally, just a quick question, the NIET corridors that are going to be, we think, coming out maybe this week, do you have any idea what they are going to be? Are they going to be very general? How specific will they be? Any thoughts on that?

Mr. KOLEVAR. They are coming out very soon, and the Secretary has not announced his decision and I cannot——

Mr. DAVIS OF VIRGINIA. You wouldn't want to scoop him on that, would you?

Mr. KOLEVAR. No, sir.

Mr. DAVIS OF VIRGINIA. OK. Give us an exclusive here? OK. Thank you.

Mr. KUCINICH. I thank the gentleman. I just want to followup on that.

The pending proposals for early designation cover an expansive territory. They propose corridors in New York, New Jersey, Pennsylvania, Virginia, Louisiana, Oklahoma, California, North Carolina, Ohio, West Virginia, Maryland. That is about right, isn't it?

Mr. KOLEVAR. Yes, 10 or 11.

Mr. KUCINICH. OK. When will the Department act on these requests for early designation?

Mr. KOLEVAR. The Department has already indicated that it would not act on those requests. If I could take a moment, sir, to give the background so that you understand the context behind that——

Mr. KUCINICH. I understand the context. What I want to know, though, is that, I am sure you know, these proposed transmission corridors are causing an uproar.

Mr. KOLEVAR. Yes, sir.

Mr. KUCINICH. We have received testimony that the administration has refused to share the data it is using to determine transmission congestion. What I want to know, can you commit today that the Department will address all the concerns you have heard today prior to designating any transmission corridor?

Mr. KOLEVAR. I think yes, sir, I will, and the reason we will do that is precisely because the Department has taken an extra step and inserted an extra step into this process that we were not bound to by virtue of the statute. In November of last year the Department announced that prior to any final designation, that should the Secretary decide to move forward on designations, the next release would be a draft.

I have indicated that action by the Secretary is imminent. That action will be with respect to draft national corridors. When that happens, a 60 day comment period will go into effect and this agency will work aggressively to seek consultation with all affected parties, and so there will be opportunities for all interested parties, certainly all affected parties, to present their point of view and opinions and recommendations to the Department.

Mr. KUCINICH. I thank the gentleman.

With unanimous consent, I would introduce into the record the testimony of National Parks Conservation Association and the testimony of the National Association of State Utility Consumer Advocates, without objection.

Final question to Mr. Arcuri.

Mr. ARCURI. Thank you, Mr. Chairman.

Thank you, sir, for being here. I will move quickly. We don't have a lot of time left.

You indicated that the purpose of 1221 was to ease congestion, and you talked about areas like New York and Los Angeles. I take it areas like Chicago, Houston, Dallas, Denver are areas of congestion that the Department of Energy is concerned with?

Mr. KOLEVAR. Yes, sir.

Mr. ARCURI. All right. And does the potential for the creation of energy corridors exist throughout the country?

Mr. KOLEVAR. Well, the Department has to come back every 3 years and update the study, so——

Mr. ARCURI. My question is, do they exist universally throughout the country, the continental United States?

Mr. KOLEVAR. Congestion?

Mr. ARCURI. No, the ability to create the corridors. Are there any places that are exempt?

Mr. KOLEVAR. That authority would convey upon a report that found congestion and constraints causing congestion——

Mr. ARCURI. Well, if there was congestion found in Houston or Dallas, would the FERC corridor be allowed to run a corridor through the State of Texas?

Mr. KOLEVAR. Oh, I see your point. No, sir. That is not covered by this.

Mr. ARCURI. It has been exempted out, the State of Texas; is that correct?

Mr. KOLEVAR. It sure has.

Mr. ARCURI. All right. And do you know why the State of Texas has exempted out?

Mr. KOLEVAR. No, sir, I don't.

Mr. ARCURI. OK. So basically what happens to the citizens in New York, the Federal Government feels that the Department of Energy can make the decisions for the people of New York but not for the people of Texas?

Mr. KOLEVAR. Congressman, I am bound to act within the confines of the statute. This is the way that the Congress put the statute into effect.

Mr. ARCURI. I take it that the only time you can put a corridor in is when there is a demonstrated need?

Mr. KOLEVAR. When there is a finding of congestion and/or constraints causing congestion.

Mr. ARCURI. Who determines when that need is demonstrated?

Mr. KOLEVAR. The Department, through virtue of the congestion study.

Mr. ARCURI. What if an area like New York City is in need of power? Who determines where the corridor should be located to meet that need? Is it a private company that stands to reap a hefty profit, or would it be placed in a place where it was most convenient for the citizens?

Mr. KOLEVAR. To be clear, are you talking about a line that is——

Mr. ARCURI. A corridor.

Mr. KOLEVAR. OK, because a corridor is defined in the statute as a geographic region.

Mr. ARCURI. Who decides where to put the corridor?

Mr. KOLEVAR. The Department of Energy after appropriate consultation and public input.

Mr. ARCURI. And would they look into the fact that there would be a private company that would want to run a line in a particular area?

Mr. KOLEVAR. No.

Mr. ARCURI. They would not?

Mr. KOLEVAR. No.

Mr. ARCURI. That would not be in their consideration if a private company had a plan already in place to run a line in a particular area?

Mr. KOLEVAR. No, it is not part of the criteria that we are bound to consider in making a needs determination and identifying a problem.

Mr. ARCURI. Thank you, sir.

Mr. KUCINICH. I want to thank the gentleman. Thank you very much.

Thank you very much. I want to thank the witness for his patience. The committee members may have some followup questions they will submit in writing.

This has been a hearing of the Domestic Policy Subcommittee of the Oversight and Government Reform Committee. It has been a hearing on the national interest electric transaction corridors.

I want to thank all those who have participated.

I am Dennis Kucinich, Chair of the committee, and the committee stands adjourned.

Thank you.

[Whereupon, at 5:45 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Elijah E. Cummings and additional information submitted for the hearing record follows:]

U.S. House of Representatives
110th Congress

Opening Statement

Representative Elijah E. Cummings, D-Maryland

"Federal Electric Transmission Corridors: Consequences for Public and Private Property"
Subcommittee on Domestic Policy
Committee on Oversight and Government Reform

April 25, 2007

Mr. Chairman,

Thank you for holding this important hearing to examine the Department of Energy's (DOE) implementation of Section 1221 of the "Energy Policy Act of 2005" and its upcoming designation of regions of the country as National Interest Electric Transmission Corridors (NIETCs).

I am aware of the critical impact that these designations could have on property owners and citizens living within the corridors, the country's energy infrastructure, and the environment.

I am concerned about this issue as a federal policymaker, and as a Representative of the 7th Congressional District of Maryland.

DOE's National Electric Transmission Congestion Study identifies the Baltimore-Washington, D.C., area as a "congestion area of concern," and I am interested to learn more about how this designation will affect my constituents.

To be sure, I recognize that we must address the problems plaguing our national energy infrastructure. The system is already stressed and aging—and the growing use of energy is creating a demand that we are unprepared to meet.

Cities like my hometown of Baltimore have serious problems to address.

DOE's report notes that if we do not take action now, the Baltimore-Washington area's energy infrastructure will deteriorate significantly over the next 15 years.

We must address this issue now, before the situation reaches the point of crisis; however, I am not convinced that expanded federal control of our nation's energy infrastructure is the answer.

Our states, cities, and communities are already working to address this critical issue on their own—in ways that respond to the concerns of local residents.

Maryland is involved in the Mid-Atlantic Distributed Resources Initiative Working Group, which seeks to identify and remedy retail barriers to the deployment of distributed generation, demand response, and energy efficiency in the Mid-Atlantic region.

Further, the Maryland Public Service Commission has recently formed its own Demand Response/Distributed Generation Working Group.

I am well aware of the controversy over plans for Dominion Energy to build an additional electric line in Northern Virginia.

I am very concerned with the federal government's ability to usurp state authority in that case, and the implications for what Section 1221 of the "Energy Policy Act of 2005" could mean for other states, like Maryland.

Unfortunately, the changes made in our nation's energy policies in 2005 essentially removed from all state and local governments the

right to be meaningful players—with veto powers—from many decisions regarding the placement of energy infrastructure.

Just this Monday, I chaired a field hearing of the Subcommittee on Coast Guard and Maritime Transportation to examine the safety and security of liquid natural gas (LNG) terminals generally, and of a project proposed for Sparrow's Point in the Port of Baltimore, specifically.

This terminal could expose the residents of Baltimore not only to the risks that a terminal will bring to the community but also to the risks that associated LNG tankers could bring. State and local governments have virtually no ability to protect the interests of local residents by demanding that this facility be placed somewhere more suitable.

In an effort to give state and local governments the ability to speak for their residents regarding the types of infrastructure placed in their communities, today, I joined my colleagues from Maryland, Congressman Dutch Ruppersberger and Congressman John Sarbanes, in introducing legislation that will give local and state governments the right to veto the location of LNG terminals.

Similarly, I believe that states and local governments should have a significant role in the siting of electricity infrastructure.

I look forward to the testimonies of today's witnesses and yield back the remainder of my time.

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NATIONAL PARKS CONSERVATION ASSOCIATION

Protecting Parks for Future Generations

Statement of
Craig Obey, Vice President for Government Affairs
National Parks Conservation Association

Re: "Energy Corridors"

House Subcommittee on Domestic Reform
Committee on Oversight Hearing and Government Reform
U.S. House of Representatives

April 25, 2007

On behalf of our 335,000 members, the National Parks Conservation Association (NPCA) would like to thank you for the opportunity to submit a written statement on the possible siting of new electricity transmission facilities located within National Interest Energy Transmission Corridors (NIETCs) designated by the Department of Energy (DOE). Since 1919, NPCA has been the leading voice of the American people in protecting and enhancing our National Park System.

As outlined in the National Electric Transmission Congestion Study, certain regions of the country may need upgraded electricity transmission facilities to relieve electricity congestion. NPCA understands that the DOE faces a complex challenge in updating our nation's electrical grid system in a deregulated energy environment. Furthermore, we recognize that new electricity transmission facilities may be needed. Thanks to the foresight of former congresses and administrations, statutes have been passed requiring that environmental reviews be completed before development projects occur that might harm our national heritage.

We firmly agree with members of Congress who have indicated that the Energy Policy Act of 2005 was not intended to alter existing law with respect to energy-related rights-of-way crossing National Park Service lands, which can only occur with explicit congressional approval. NPCA believes that it would be wrong to site electricity transmission facilities through national parks or within their scenic viewsheds. Our nation's citizens take great pride in the remarkable wildlife, scenic beauty, historical character, and inspiring cultural resources found in our national parks.

Simply stated, America's national parks are not blank spots on a map in which to site new electricity corridors.

A number of companies have already proposed electricity corridors that would damage national parks. For example, the New York Regional Interconnect would pass through 73 miles of the Upper Delaware Scenic and Recreational River and impair the very resources the park was established to protect. Additionally, the construction of new electricity corridors within the

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scenic viewsheds of Gettysburg National Military Park, Antietam National Battlefield, Monocacy National Battlefield, Shenandoah National Park, Cedar Creek and Belle Grove National Historical Park, Delaware Water Gap National Recreation Area, the Appalachian National Scenic Trail, and other national parks could seriously damage park resources, the experience of park visitors, and the tourism-based economies of nearby communities.

Environmental Reviews Must Be Completed Before Designating NIETCs

While the 1916 National Park Service Organic Act requires that the Park Service "**conserve the scenery** and the natural and historic objects and the wild life therein…" the agency has limited ability to protect the landscapes surrounding park boundaries. Fortunately, Congress passed the National Environmental Policy Act (NEPA) in 1969 to require federal agencies to conduct environmental reviews of "major Federal actions significantly affecting the quality of the human environment."[1] Section 1221(j)(1) of the Energy Policy Act of 2005 specifically acknowledged that NEPA requirements must be met stating, "Nothing in this section shall be construed to affect any requirement of the environmental laws of the United States, **including, but not limited to, the National Environmental Policy Act of 1969**."

NPCA is gravely concerned by the DOE's apparent contention that the designation of major electricity corridors is not a major action. We believe that the designation of one or possibly multiple corridors constitutes a "major federal action" because such a designation would meet several of the categories outlined in 40 C.F.R § 1508.18, including the "adoption of official policy," the "adoption of programs," and the "approval of specific projects." According to 40 C.F.R § 1508.27 "Significantly as used in NEPA requires considerations of both context and intensity." Context refers to how an action affects "society as a whole (human, national), the affected region, the affected interests, and the locality." Intensity refers to the severity of the impact. Among other aspects, officials are instructed by the regulation to consider:

- **"Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas;"**

- "The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources;" and

- "The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973."

We are also concerned by the lack of action taken by the DOE to meet the requirements of Section 106 of the National Historic Preservation Act (NHPA). Under the NHPA, federal

[1] 42 U.S.C § 4332(2)(C)

agencies must "take into account" any effects that proposed projects might have on historic and cultural resources. The NHPA requires federal agencies to consider potential impacts on historic districts, sites, buildings, structures, and objects that are listed on or eligible for the National Register of Historic Places "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license."[2] The Act also allows the Advisory Council on Historic Preservation an opportunity to comment on proposed projects.[3] These actions must take place early in the planning process so that developed alternatives avoid damaging America's cultural and historic resources.

NPCA encourages Congress to examine why the DOE has decided to avoid these basic legal requirements that would ensure America's "significant" and irreplaceable national treasures are protected from new electricity transmission lines before NIETCs are designated.

National Parks Must Be Avoided

Our national parks are the most significant natural, cultural, and historic places within the American landscape, which is why they were set aside for protection in the past and why we cannot allow their impairment now.

The protection of national parks and other special lands are a testament to the public interest of the American people. It would be inappropriate for units of the National Park System to be included within the geographic boundaries of a National Interest Energy Transmission Corridor. Units of the National Park System include: National Parks, National Monuments, National Battlefields, National Preserves, National Recreation Areas, National Historic Sites, National Historic and National Scenic Trails, National Natural and Historic Landmarks, and National Rivers. None of these various park units, along with National Park study areas and other protected public lands, should be included within the designation of any NIETC.

National Parks Must Not Be Impaired

Existing authorities make electrical transmission and distribution rights-of-way permits discretionary, and contingent upon those proposals being consistent with the National Park Service Organic Act.[4] While the Secretary of Interior is authorized to issue rights-of-way permits for electricity distribution, "such permits shall be allowed... only upon the approval of the chief officer of the Department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest."[5] For those instances where private interests own an easement through a national park, land deeds will have to be examined to determine the extent of the property right, including the size of the easement and the utilities permitted within the easement.

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[2] 36 C.F.R. § 800.1(c)
[3] 16 U.S.C. § 470(f)
[4] 2006 National Park Service Management Policies, Section 8.6.4.2
[5] 31 Stat. 790 and 43 U.S.C. § 959

Agencies and NIETC applicants need to be advised that there exists a "congressional mandate not to allow any use of NPS land that would impair or be a derogation of the values and purposes for which the park was authorized or be incompatible with the public interest, except when authorized by Congress."[6] Moreover, any proposal must be consistent with the Park Service's mandate to conserve resources and avoid resource impairment, which is prohibited by the National Park Service Organic Act.

According to the Section 1.4.5 of the National Park Service's 2006 Management Policies, an impact would constitute impairment if it "affects a resource or value whose conservation is:

- Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park, or
- Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or
- Identified in the park's general management plan or other relevant Park Service planning documents as being of significance."

Furthermore, the agency's Management Policies state, **"Impairment may also result from sources or activities outside the park."** Hence, it is possible that poorly sited electricity transmission towers and lines could be found by the professional judgment of the responsible Park Service manager to be an impairment of park resources or values.

LWCF Purchased Lands Are Protected

It remains unclear how the DOE plans to ensure that conservation lands purchased or partially funded through the Land and Water Conservation Fund will be protected. Congress established the Land and Water Conservation Fund (LWCF) in 1964 to create and preserve recreational opportunities by using revenue from offshore oil and gas drilling. The properties acquired or developed with LWCF monies are exempted from being used for energy transmission without the prior written approval of the Park Service Regional Director who must base their decision on criteria specifically outlined in the LWCF Act.[7]

If electricity corridors bisect lands acquired or developed with LWCF monies, it would constitute a "conversion" of public land to non-public uses because the electricity corridor would limit the recreational value of those lands. If a project proponent pursues a land conversion, they must initiate the process by meeting with the appropriate local land managers who would then decide whether to submit the conversion request to the State, which in turn must still get the approval of the Park Service Regional Director. Applicants, federal agencies, and interested stakeholders should consult the Park Service's "Project List By County and Summary Reports" website

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[6] National Park Service Reference Manual 53, Appendix 5
[7] 16 U.S.C. § 460l–8 and 36 C.F.R. Part 59

(http://waso-lwcf.ncrc.nps.gov/public/index.cfm) to discover where LWCF lands and funded recreation projects are located.

Marred Viewsheds Are Bad For Business

In November of 2006, NPCA published an economic study titled, "The U.S. National Park System: An Economic Asset at Risk," which found that national parks support an astounding $13.3 billion of local private-sector economic activity and 267,000 private-sector jobs, providing a $4 return to state and local economies for every $1 invested in park budgets. However, these economic benefits could be compromised if new electricity lines are erected within the scenic viewsheds of national parks.

According to a 2004 study by the University of North Carolina—Asheville Department of Economics, visitation to national parks is affected by the quality of scenic vistas. The study was conducted with the cooperation of the Park Service-managed Blue Ridge Parkway unit, and found that respondents "indicated that the scenic quality along the Parkway is an important reason for their visitation. They indicated they would take fewer trips if scenic quality declines, and would make more trips with scenic quality improvements."[8] New electricity transmission lines in Northern Virginia could very well scar the scenic views from Blue Ridge Parkway as it passes through Shenandoah National Park negatively impacting the tourism-based economies of nearby communities.

While new electricity transmission lines may in some situations have some economic benefits for certain electricity users, Congress should not forget the tremendous economic role national parks and open space provide to communities, states, and our country.

NYRI Proposal Would Impair Upper Delaware Scenic and Recreational River

NPCA is particularly concerned about the New York Regional Interconnect (NYRI) proposal that would construct a new 400 Kv electricity transmission line through the Upper Delaware Scenic and Recreational River. NYRI's primary route would follow four miles of mountain ridges above the river, while the alternative route would run adjacent along 73 miles of the park's Wild and Scenic River. Either of these alternatives would impair the Upper Delaware Scenic and Recreational River.

The park's river management plan, developed with the help of 15 communities within the park's boundary, states that "major electric lines" are an incompatible use anywhere in the river corridor due to their impact on the park's cultural landscape.[9] The management plan also defines a "clear and direct threat" as being a "instance where new land use is proposed which is either: (1) identified on the list of new land uses which are incompatible within the Upper Delaware river corridor; or (2) identified as a land use which would, if developed in such a way, be counter to one or more of the principles and objectives set out in the river management plan and the Land

[8] University of North Carolina-Asheville. Blue Ridge Parkway Scenic Experience Project Results Synthesis: Phase I Southwest Virginia and Phase II Northern North Carolina. April 2004.
[9] National Park Service. 1986 Upper Delaware River Management Plan. November 1986.

and Water Use Guidelines."[10] Clearly, the NYRI, which proposes to erect a 400 Kv transmission line through the park, is inconsistent with the park's river management plan, and qualifies as a "clear and direct threat" to the resources the park was established to preserve.

Due to the threat posed by NYRI, the nonprofit organization American Rivers recently designated the Upper Delaware River as one of the most endangered rivers in the country. According to American Rivers, "the transmission corridor would require clear-cutting all trees and vegetation and regular spraying of herbicides within a 100-foot wide swath along the river, harming fish and eliminating significant amounts of wildlife habitat and beneficial vegetation along the river's edge. The proposed power line would also cross numerous streams, creeks and other wetlands along the river."[11] Furthermore, American Rivers is concerned that "construction of this power line would do irreparable harm not only to the Upper Delaware, but would set a bad precedent for the management of all rivers in the Wild and Scenic Rivers System."[12]

The NYRI proposal has had many setbacks because of such public concern. In July 2006, the New York Public Service Commission determined that the NYRI's application was incomplete and "significantly deficient"[13]. Last year, New York Governor George Pataki signed into a law legislation that established "additional protections for communities across New York State by prohibiting transmission companies from utilizing eminent domain if a proposed project does not meet designated criteria. These new restrictions help to clarify the rights of a community and its residents, and will uphold their interests with regard to certain projects involving eminent domain."[14] This new law was crafted to specifically block the NYRI from being approved and could arguably be considered an illustration that the public interest of New York State residents requires that national park lands not be impaired by electricity corridors.

NPCA is deeply concerned that if energy corridors extend to include the Upper Delaware Scenic and Recreational River, FERC could decide to approve the New York Regional Interconnect—even if the New York Public Service Commission decides that the Regional Interconnect is not in the best interest of New York. Already there is a substantial question as to whether the designation of a National Interest Energy Transmission Corridor is needed. For example, the New York Independent System Operator's Comprehensive Reliability Plan of 2005 concluded "no action needs to be taken at this time to implement a regulated backstop solution or alternative regulated solution to address this reliability need."[15]

Civil War Battlefields and Other Parks Are Threatened

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[10] Ibid.
[11] American Rivers. America's Most Endangered Rivers of 2007: #4 Upper Delaware River. 2007.
[12] Ibid.
[13] New York Department of Environmental Conservation. Letter to New York Public Service Commission, Re: Case No. 06-T-0650 Application of New York Regional Interconnect, Inc. For a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law. July 18, 2006.
[14] State of New York. Press Release: Govenor Signs Legislation Limiting the Use of Eminent Domain. October 3, 2006.
[15] Ibid.

The number of electricity transmission line proposals in the Mid-Atlantic region is staggering. The threat to Civil War battlefields is so immense that the Civil War Preservation Trust listed the entire Northern Piedmont, which includes parts of Maryland, Pennsylvania, and Virginia, as one of America's most endangered battlefields in their "History Under Siege" report. According to the report,

> "The Northern Piedmont is home to some of the most iconic battlefields of the entire war. The area is defined by the battles that raged across it, creating a unique cultural identity based on history... In the summer of 2006, electric energy giants Dominion Virginia Power and Allegheny Power announced plans for a 500-kilovolt power line through portions of Maryland, Pennsylvania and Virginia. The proposed routes would devastate environmental, cultural and historical resources throughout the region. The most controversial route, in Northern Virginia, would affect some 48,000 acres of land protected under preservation easements, including 11 existing historic districts, one National Historic Landmark, 19 State and National Historic Sites and seven Civil War battlefields. Other proposals would impact Monocacy and South Mountain in Maryland and Gettysburg in Pennsylvania."[16]

The Dominion Virginia Power and Allegheny Power proposal calls for erecting electricity towers standing almost 200 feet tall and require up to 200-foot-wide rights-of-way through one of the country's most historically rich and protected landscapes. In Virginia alone, approximately 434,000 acres of land visible from the Appalachian National Scenic Trail. The proposal would also damage the scenic and historical viewsheds of Cedar Creek and Belle Grove National Historical Park and Shenandoah National Park and cross through the Shenandoah Valley Battlefields National Historical District, Rivers of Steel National Historic Area, and the proposed Journey Through Hallowed Ground National Heritage Area.

While siting maps have not yet been released, NPCA is concerned that a separate 550-mile electricity line proposal by American Electric Power could also have serious visual impacts on national parks in Maryland and Pennsylvania. Parks whose scenic viewsheds could be damaged include Antietam National Battlefield, Monocacy National Battlefield, Gettysburg National Military Park, Chesapeake and Ohio Canal National Historic Park. The proposal would also cross through Schuylkill River National Heritage Area, Delaware and Lehigh National Historic Corridor, and the proposed Journey Through Hallowed Ground National Heritage Area.

Finally, PJM Interconnection has proposed two separate projects known as the "Delaware River Path" and the "Allegany Mountain Corridor." Although there is limited public information regarding the two proposals, we are concerned that many natural and historic resources could be affected. For example, the Delaware River Path proposal could pass through Delaware Water Gap National Recreation Area, which received 5.2 million visitors in 2006—making it the eighth

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[16] Civil War Preservation Trust. History Under Siege: A Guide to America's Most Endangered Civil War Battlefields. 2007.

most visited national park in the National Park System. This popular 67,000-acre park, located within both Pennsylvania and New Jersey, is home to many rare, threatened, and endangered species, including the peregrine falcon, which could be affected by these proposed energy corridors.

Conclusion

NPCA strongly believes that Americans need not have to make the false choice between having electricity for their homes and protecting our national heritage. Thankfully, Congress has passed various statutes, including NEPA, to ensure that federal agencies consult the public and work with appropriate stakeholders so that national parks and other protected lands are considered when major federal actions are undertaken. NPCA encourages Congress to examine whether the DOE plans on fulfilling the stated requirements of Section 1221(j)(1) and anticipates performing the necessary environmental reviews before National Interest Energy Transmission Corridors are designated.

Certainly, providing adequate supplies of energy at a reasonable cost is an important national priority, but it is not the only national priority. Due to the Park Service's mandate to "conserve the scenery and the natural and historic objects and the wild life therein..." national parks and other protected lands should be considered off-limits and not included within the geographic boundaries of NIETCs.

Thank you for this opportunity to outline our concerns regarding this important issue. With your help, we can ensure that America's national parks are protected unimpaired for future generations.

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