

July 6, 2007

Attn: Docket No. 2007-OE-01
The Office of Electricity Delivery and Energy Reliability, OE-20
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

To Whom It May Concern:

This letter is in response to the solicitation for comments on the Draft National Interest Electric Transmission Corridor Designations that was published in the May 7, 2007 issue of the *Federal Register* Vol. 72, No. 87.

Western Pennsylvania Conservancy (WPC) is a 501(c)3 non-profit conservation organization which has been active in the region since 1932. Our mission is to protect, conserve and restore land and water for the diversity of the region's plants, animals and their ecosystems. Through science-based strategies, collaboration, leadership and recognition of the relationship between humankind and nature, WPC achieves tangible conservation outcomes for present and future generations.

WPC appreciates the fact that the Department of Energy is voluntarily providing an opportunity for interested parties to comment. We feel this is always the wisest course to take when considering such long-term, broad policy actions that will have significant ramifications for large areas of the country and for millions of citizens.

Concerns regarding the designation

Western Pennsylvania Conservancy is concerned that the Mid-Atlantic Corridor designation will create the potential to undermine 50 years of public and private land conservation investments in the Commonwealth. Our own efforts over this time period have accounted for the protection of over 214,000 acres through purchase of land or easements. Many of these land protection efforts involved the use of public funds and, as a result, were made available for the public's use and benefit. WPC has completed projects in 37 counties.

Western Pennsylvania Conservancy has invested great amounts of time and resources in creating a deliberate, planned approach to our conservation work. We have mapped out our priority conservation areas and they include identified features in every single one of the fifty counties proposed for inclusion in the designation.

The size and scope of the designation

Fifty counties in Pennsylvania are proposed for inclusion in the Mid-Atlantic Corridor. Landowners large and small could lose their land, even though other viable alternatives exist. The area proposed for inclusion is so large as to effectively give utility companies *carte blanche* in making infrastructure siting decisions.

In addition to thousands of purely private properties, the fifty counties included under the draft designation contain state, county and local municipal park and forest lands; historic sites, districts and battlefields; farms and wild lands protected under conservation easements; national parks and heritage areas as well as the federally designated Highlands region. Designation of the Mid-Atlantic Corridor also potentially undercuts efforts to conserve thousands of additional acres of high-priority but as-yet unprotected lands by the entire land trust community.

Much is at risk. Within the Pennsylvania boundaries of the proposed Mid-Atlantic NIETC lie millions of acres of state forest, park, and game lands, dozens of critical habitat areas, and tens of thousands of acres of conserved natural and agricultural lands. Resources wholly within the corridor include:

- 1,156,773 acres of state forest lands
- 216,165 acres of State Parks
- 55 Important Bird Areas
- Eight Pennsylvania-designated heritage areas

In addition, the large majority of the following Pennsylvania resources will also be threatened by the corridor:

- 44,813 acres of lands owned and managed by land trusts and conservancies
- 151,484 acres of private land protected by conservation easement
- 323,366 acres of farmland protected under Pennsylvania's agricultural land preservation programs
- 240,791 acres acquired by land trusts then conveyed to governmental bodies
- forty-two sites listed on the National Register of Historic Places

These figures do not begin to capture the sheer number, variety and richness of the many resources in the proposed corridor, resources such as Pennsylvania's national parks, historic sites, memorials and recreation areas, the multitude of state, county, and local parks, public and private wildlife refuges, preserves and priority habitat areas, and other critically important community and regional resources. DOE's designation of the Mid-Atlantic Corridor threatens to undo decades of effort to preserve these important natural resources and heritage sites.

Western Pennsylvania Conservancy recommends that the DOE reduce the number of counties to the smallest number necessary in order to carry the proposed transmission capacity and infrastructure.

Furthermore, the counties selected for designation should include those that already have existing capacity transmission lines, in order to facilitate the use of existing rights of way as opposed to using pristine land. Use of existing transmission corridors, which are already fragmenting features for forest ecosystems, should be promoted throughout all stages of the process.

Also, no counties should be designated until a thorough study is conducted by DOE to identify the natural and cultural resources contained in each. Conservation planning has taken place for many important forests and watersheds in Pennsylvania. These tools should not be ignored or jeopardized by a National Corridor designation that does not take such planning into full account.

Impacts on wildlife habitat

While most public attention given to the designation focuses on the potential loss or devaluation of land that private landowners will suffer if transmission lines are sited on their property, the primary concern of WPC is the adverse effect on the ecology and biodiversity of the proposed corridor area. One of the main contributions that Pennsylvania and other mid-Atlantic region states make to biodiversity conservation in the nation and across the globe is the stewardship of a wealth of forests.

Forestland Fragmentation

Forests are valuable for many reasons including clean water, clean air and recreation. Development and related activities such as road building often lead to extinction of native species and invasive species colonization. Forest slopes and riparian zones are some of the key environments for many species, including, but not limited to, forest interior birds and riparian herbaceous plants.

One of the greatest threats to our privately held forests and the functions they provide is fragmentation. Fragmentation of contiguous blocks of forest has been demonstrated to have a substantial negative impact on the indigenous wildlife and natural resources. Many species, such as forest interior birds, including dozens of species of warblers, tanagers, thrushes and vireos rely on uninterrupted forest habitat to maintain their global populations. Species such as the scarlet tanager, depend upon Pennsylvania forests to supply at least 18% of the species' breeding habitat. A primary conservation objective for both public management agencies and non-governmental conservation groups is to maintain large expanses of forest habitat, because science has shown that bird and other wildlife populations suffer when forested landscapes are divided by significant unnatural fragmenting features, such as highways and massive power lines.

Water Quality

Additionally, the stewardship of watersheds in the region is best accomplished by keeping forest cover on those lands to protect water quality and quantity. Protecting forests from fragmentation is vital to maintaining excellent water quality. Regardless of whether drinking water comes from surface water or ground water, it is simply the most effective way to maintain water quality and quantity. The ability of the forest to absorb, store, and filter water is what really helps bring clean water to Pennsylvania citizens and aquatic life. How our forests are managed has a profound effect on the quality of our watersheds and our water supplies.

Western Pennsylvania Conservancy recommends that the corridor designation should take into account potential impacts on biodiversity and wildlife habitat that future siting will have, by excluding counties with significant public land and natural resources. Furthermore, FERC or DOE should institute restrictions or create incentives to steer the future siting decisions for transmission facilities and structures within the corridor away from areas of critical importance to at-risk species and habitats.

Eminent domain

Designation of the Mid-Atlantic Corridor to include the entirety of fifty counties will create, for the first time, a legal means for giving federal eminent domain authority to power companies, enabling the facility siting process to supersede other property rights and public benefits considerations. While allowable under the law, the use of eminent domain as a tool for imposing new land uses is an option that has been consistently rejected by the public and should be considered only as a last resort. The potential distribution of costs and benefits associated with interstate transmission projects may put Pennsylvania landscapes and communities at a disadvantage, while benefiting other markets and areas within the region.

As a landowning entity, Western Pennsylvania Conservancy is gravely concerned about the possibility of land that we have permanently protected being sited, crossed or otherwise affected by a transmission line.

Opening the door to the use of eminent domain for acquisition of rights of way—to the exclusion of other considerations—is a matter of serious concern. Of special note are the expedited regulatory timelines set forth under section 1221 of EPAct. Projects of this magnitude—which cross multiple jurisdictional areas—require thorough and careful review and meaningful public comment. The greatly accelerated decision timeline under the “backstop” siting process limits the opportunity for proper consideration of local and intrastate costs and impacts. This threatens Pennsylvania’s irreplaceable resources, both those in protected status today and those targeted for future conservation efforts, by restricting the ability to conduct the proper impact assessments needed for sound decision-making. This shift to federal oversight transfers electric transmission siting authority away from states, where it has always resided, without regard for the merits of the decisions being made at the state level.

Western Pennsylvania Conservancy recommends that individual tracts of land previously protected for conservation values be excluded or exempted from the county designations. Furthermore, no land permanently protected for conservation values should be eligible for eminent domain condemnation.

Bypassing existing regulatory and legal safeguards

In Section **V. Environmental and Cultural Analysis**, the notice reads:

Section 102(2)(C) of NEPA requires that all Federal agencies include an environmental impact statement in “every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. 4332(2)(C). The designation of a National Corridor under FPA section 216(a)(2) does not significantly affect the quality of the human environment.

Western Pennsylvania Conservancy disagrees with the Department of Energy’s interpretation that the National Corridor designation has no effect on the quality of the environment. Indeed, the action effectively opens the door for numerous subsequent actions to have exactly this type of profound and significant impact.

Section 1221 of the Energy Policy Act (EPAct) was not designed to change requirements of existing law, such as the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA). DOE contends that the impact assessments required under these laws will fall to the Federal Energy Regulatory Commission (FERC) to implement. Were the NEPA and NHPA requirements to be transferred to FERC and/or the states for implementation, the 12-month timelines under section 1221 are incompatible with the impact assessment processes as currently understood and implemented under these laws. The net result would be a process by which the private utility companies could easily sidestep federal requirements in addition to completely subverting the state’s role in the regulatory and permitting process.

Conclusion

To summarize, Western Pennsylvania Conservancy feels that the currently proposed Draft National Interest Electric Transmission Corridor designation is a) too broad in both size and scope, b) potentially destructive to sensitive wildlife habitat and protected land (both private and public), c) promotes the use of eminent domain by private companies, and d) seeks to establish a dangerous precedent in its avoidance of established state and federal regulatory safeguards.

If the Department of Energy proceeds with the NIETC designation, we urge you to carefully consider implementing the recommendations we offer above, and to postpone or re-craft the designation to better take into account the irreplaceable values offered by protected land or land with significant conservation values.

Thank you for this opportunity to formally comment. I can be reached at 412-288-2777 or at publicpolicy@paconserve.org if you require further information related to our suggestions and recommendations.

Sincerely,

Brian Gallagher
Public Policy & Government Relations Coordinator
Western Pennsylvania Conservancy
209 Fourth Avenue
Pittsburgh, PA 15222