
September 26, 2018

The Honorable Rick Perry
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Perry:

Thank you for the opportunity to provide comments on procedures for the upcoming Department of Energy (DOE) triennial electric transmission congestion study (2019 Congestion Study), which will provide the basis for the designation of national interest electric transmission corridors (National Corridors). 83 Fed. Reg. 42647 (Aug. 23, 2018). We urge you to fulfill DOE's statutory obligation to consult with Governors or their designees before preparation and throughout development of the 2019 Congestion Study – an obligation which cannot be satisfied through notice and comment procedures.

States have primary authority over the siting and permitting of interstate and intrastate transmission lines. The 2019 Congestion Study and subsequent designations of National Corridors will greatly affect state and regional energy, infrastructure and land use planning. In recognition of the designations' significant impacts on planning and state authority, the Federal Power Act requires DOE to conduct its triennial studies of electric transmission congestion "in consultation with affected states."

Western Governors have defined state consultation as an early, meaningful, substantive, and ongoing exchange between the Governors or their designees and federal agencies (WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship). The treatment of states as mere stakeholders or interested parties does not recognize their legal status in our system of dual sovereignty and foregoes opportunities for information-sharing, improved efficiency and avoidance of conflict.

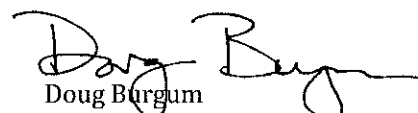
The Ninth Circuit has held that DOE's failure to consult with states outside of notice and comment and before completing a triennial electric transmission congestion study is contrary to the Federal Power Act. California Wilderness Coalition v. Dept. of Energy, 631 F.3d 1072 (9th Cir. 2011). The court concluded that DOE failed, as a matter of law, to meet its consultation obligation to affected states because: it did not invite affected states or their Governors to consult; no draft of the study was circulated to states; no committee was created that included representatives of states; and affected states were not given access to the data that informed the study or the opportunity to contribute to that data.

Western Governors look forward to working with DOE as authentic partners to improve the nation's electric transmission system. We strongly recommend that you reach out to gubernatorial offices with an invitation to consult on the 2019 Congestion Study. Please contact Western Governors' Association if you need assistance with this outreach.

Sincerely,



David Ige
Governor of Hawaii
Chair, WGA



Doug Burgum
Governor of North Dakota
Vice Chair, WGA