



# Recommendations Concerning National Transmission Corridors

Recommendations for the U.S.  
Department of Energy

APRIL 2023

## Introduction/Approach

The Transmission Working Group, formed under the Electricity Advisory Committee (EAC) Smart Grid Subcommittee (Subcommittee), proposed that the EAC submit the following key recommendation to the U.S. Department of Energy (DOE): *The EAC recommends that DOE move forward quickly to designate national corridors under Federal Power Act § 216.*

## Findings

### Finding 1. History of National Corridors

In 2005, DOE was given authority to designate National Interest Electricity Transmission Corridors (“National Corridors”), which was intended to be step one in federal backstop siting authority. This authority allowed DOE to designate National Corridors meeting specific standards, and further allowed an applicant to apply to the Federal Energy Regulatory Commission (FERC) for a federal permit that under certain conditions could preempt state action. However, the original law was ambiguous on what could trigger preemption. After a court struck down FERC’s first attempt at preemption, the law was never used again. In November 2021, the Bipartisan Infrastructure Law (IIJA) revised § 216 of the Federal Power Act in several important ways, including:

- (1) clarifying when preemption could be triggered, including a state’s disapproval of a National Corridor
- (2) clarifying what is needed to be designated as a corridor in the national interest
- (3) clarifying that DOE could designate a corridor based on anticipated future needs
- (4) expanding the consultant requirements to include tribes and regional grid entities
- (5) providing funding under the Transmission Facilitation Program (IIJA § 40106)

The Inflation Reduction Act, signed into law August 2022, provides additional loans for National Corridors (see § 50151).

### Finding 2. DOE Process for Designating National Corridors

DOE was required to conduct a Needs Study identifying where transmission lines are needed per the standards set forth in the statute and DOE rules. A draft Needs Study was released to the public in February of 2023, with the final study to be released later. Instead of designating National Corridors based on the Needs Study, DOE now intends to solicit applications from potential developers who would propose solutions to the needs identified in the study. Based on

DOE's evaluation of the applications, DOE would then designate National Corridors based on both the Needs Study and the specific area(s) specified in the applications.

### **Finding 3. Importance of DOE's Designation of National Corridors**

Congress has clearly spoken: build transmission lines that bolster the national interest. As the industry transforms, and as we experience more extreme weather events, the grid must also transform. Many studies have emphasized that for both reliability and resilience, our nation needs to develop long interstate, interregional, and cross-interconnection lines. History has shown that states, for parochial reasons, can reject transmission lines that are needed for the region.

Imagine if, when the national highway system was being built, states through which Interstate 95 now runs were able to say "No, go around us." That is the current state of affairs with the transmission grid. But the backstop siting rule of § 216 says that if DOE and FERC *both* conclude that a transmission line meets the statutory standards and is needed for the national interest, the law allows states, tribes, or any other approving authority to specify the location of the line through their jurisdiction, but they cannot simply say "No, go around us."

After its first attempt to designate National Corridors, DOE has been disinclined to designate new ones. The EAC can help prompt DOE to utilize this important authority by adopting the simple resolution noted above. The full text of § 216 of the Federal Power Act can be found in the appendix.

## **Recommendations**

### **1. Recommendation 1**

The EAC recommends that DOE move forward quickly to designate National Corridors under Federal Power Act § 216.

### **2. Recommendation 2**

The EAC asks DOE to provide a specific schedule for the following milestones:

- (1) publication of the final Needs Study
- (2) publication of the request for applications for a designated corridor
- (3) selection of the designated corridors
- (4) publication of the designated corridors
- (5) referral to FERC

## Appendix

### 42 U.S.C. § 824p

#### (a) Designation of national interest electric transmission corridors

- (1) Not later than 1 year after August 8, 2005, and every 3 years thereafter, the Secretary of Energy (referred to in this section as the “Secretary”), in consultation with affected States and Indian Tribes, shall conduct a study of electric transmission capacity constraints and congestion.
- (2) Not less frequently than once every 3 years, the Secretary, after considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States and Indian Tribes), shall issue a report, based on the study under paragraph (1) or other information relating to electric transmission capacity constraints and congestion, which may designate as a national interest electric transmission corridor any geographic area that—
  - (i) [\[1\]](#) is experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers; or
  - (ii) [\[2\]](#) is expected to experience such energy transmission capacity constraints or congestion.
- (3) Not less frequently than once every 3 years, the Secretary, in conducting the study under paragraph (1) and issuing the report under paragraph (2), shall consult with any appropriate regional entity referred to in [section 824o of this title](#).
- (4) In determining whether to designate a national interest electric transmission corridor under paragraph (2), the Secretary may consider whether—
  - (A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;
  - (B) (i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and  
    - (ii) a diversification of supply is warranted;
  - (C) the energy independence or energy security of the United States would be served by the designation;
  - (D) the designation would be in the interest of national energy policy;
  - (E) the designation would enhance national defense and homeland security;
  - (F) the designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid;

- (G)** the designation—
  - (i)** maximizes existing rights-of-way; and
  - (ii)** avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites; and
- (H)** the designation would result in a reduction in the cost to purchase electric energy for consumers.

### **(b) Construction permit**

Except as provided in subsection (i), the Commission may, after notice and an opportunity for hearing, issue one or more permits for the construction or modification of electric transmission facilities in a national interest electric transmission corridor designated by the Secretary under subsection (a) if the Commission finds that—

#### **(1)**

- (A)** a State in which the transmission facilities are to be constructed or modified does not have authority to—
  - (i)** approve the siting of the facilities; or
  - (ii)** consider the interstate benefits or interregional benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;
- (B)** the applicant for a permit is a transmitting utility under this chapter but does not qualify to apply for a permit or siting approval for the proposed project in a State because the applicant does not serve end-use customers in the State; or
- (C)** a State commission or other entity that has authority to approve the siting of the facilities—
  - (i)** has not made a determination on an application seeking approval pursuant to applicable law by the date that is 1 year after the later of—
    - (I)** the date on which the application was filed; and
    - (II)** the date on which the relevant national interest electric transmission corridor was designated by the Secretary under subsection (a);

(ii) has conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission capacity constraints or congestion in interstate commerce or is not economically feasible; or

(iii) has denied an application seeking approval pursuant to applicable law;

(2) the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce;

(3) the proposed construction or modification is consistent with the public interest;

(4) the proposed construction or modification will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers;

(5) the proposed construction or modification is consistent with sound national energy policy and will enhance energy independence; and

(6) the proposed modification will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.

#### **(c) Permit applications**

(1) Permit applications under subsection (b) shall be made in writing to the Commission.

(2) The Commission shall issue rules specifying—

(A) the form of the application;

(B) the information to be contained in the application; and

(C) the manner of service of notice of the permit application on interested persons.

#### **(d) Comments**

In any proceeding before the Commission under subsection (b), the Commission shall afford each State in which a transmission facility covered by the permit is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons, a reasonable opportunity to present their views and recommendations with respect to the need for and impact of a facility covered by the permit.

#### **(e) Rights-of-way**

(1) In the case of a permit under subsection (b) for electric transmission facilities to be located on property other than property owned by the United States or a State, if the

permit holder cannot acquire by contract, or is unable to agree with the owner of the property to the compensation to be paid for, the necessary right-of-way to construct or modify, and operate and maintain, the transmission facilities and, in the determination of the Commission, the permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process, the permit holder may acquire the right-of-way by the exercise of the right of eminent domain in the district court of the United States for the district in which the property concerned is located, or in the appropriate court of the State in which the property is located.

- (2) Any right-of-way acquired under paragraph (1) shall be used exclusively for the construction or modification of electric transmission facilities within a reasonable period of time after the acquisition.
- (3) The practice and procedure in any action or proceeding under this subsection in the district court of the United States shall conform as nearly as practicable to the practice and procedure in a similar action or proceeding in the courts of the State in which the property is located.
- (4) Nothing in this subsection shall be construed to authorize the use of eminent domain to acquire a right-of-way for any purpose other than the construction, modification, operation, or maintenance of electric transmission facilities and related facilities. The right-of-way cannot be used for any other purpose, and the right-of-way shall terminate upon the termination of the use for which the right-of-way was acquired.

#### **(f) Compensation**

- (1) Any right-of-way acquired pursuant to subsection (e) shall be considered a taking of private property for which just compensation is due.
- (2) Just compensation shall be an amount equal to the fair market value (including applicable severance damages) of the property taken on the date of the exercise of eminent domain authority.