U.S. Department of Energy Grid Deployment Office
Guidance on Implementing Section 216(a) of the Federal Power Act
to Designate National Interest Electric Transmission Corridors

December 19, 2023

Action	Date
Phase 1: Guidance Issuance Date; Opening of Phase 1 Information Submission Window	December 19, 2023
Phase 1: Close of Phase 1 Information Submission Window	February 2, 2024
Phase 2: Estimated Date for Issuance of Preliminary List of Potential NIETC Designations; Opening of Phase 2 Information Submission Window	Spring 2024
Phase 2: Estimated Date for Closing of Comment Period on Preliminary List of Potential NIETC Designations and Phase 2 Information Submission Window	Spring/Summer 2024
Phase 3: In-Depth NIETC Evaluation and Preparation of Draft Designation Report(s) and NEPA Draft Environmental Document, As Needed	TBD
Phase 4: Final Designation Report(s) and NEPA Environmental Document, As Needed	TBD

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I. General Announcement

This Guidance, prepared by the U.S. Department of Energy (DOE) Grid Deployment Office's (GDO) Transmission Division, is intended to support DOE's goal of facilitating electric transmission development by setting forth a nonbinding process that DOE plans to generally follow to designate National Interest Electric Transmission Corridors (NIETC) pursuant to section 216(a) of the Federal Power Act (FPA),[1] as amended by the Infrastructure Investment and Jobs Act (IIJA).[2] This Guidance expands on DOE's May 15, 2023 Notice of Intent and Request for Information (NOI/RFI),[3] which set forth key elements of a process through which interested parties could propose designation of a NIETC, and requested comment on the process generally and in response to other specific questions.

In general, a NIETC is a geographic area where, based on its triennial National Transmission Needs Study (Needs Study)[4] or other relevant information, DOE has identified present or expected transmission capacity constraints or congestion that adversely affects consumers, and which has been designated by the Secretary of Energy (Secretary) as a NIETC. One or more transmission projects could be located within that geographic area to alleviate such constraints or congestion. NIETC designation enables DOE and the Federal Energy Regulatory Commission (FERC) to use valuable federal financing and permitting tools to spur construction of transmission projects within a NIETC.

By focusing on narrow geographic areas where one or more potential transmission projects are under development, the process outlined in this Guidance assists DOE in identifying NIETCs in targeted, high-priority areas, meaning those areas where NIETC designation is more likely to catalyze transmission development to alleviate transmission capacity constraints or congestion and the associated adverse effects on consumers, thereby making the most efficient and effective use of DOE's resources. NIETC designation will further the timely buildout of a reliable, resilient, and efficient national transmission system that facilitates the achievement of national energy policy goals while reducing consumer energy costs.

This Guidance describes a NIETC designation process with four phases:

- Phase 1: information submission window and preliminary analysis focused on geographic boundaries of, need within, and discretionary factors relevant to potential NIETCs;

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[1] 16 U.S.C. 824p.

[2] Pub. L. No. 117-58 (Section 40105).

[3] *Notice of Intent and Request for Information: Designation of National Interest Electric Transmission Corridors*, 88 FR 30956 (May 15, 2023) (NOI/RFI).

[4] *See* 16 U.S.C. 824p(a)(1) (requiring DOE to conduct a triennial nationwide study of transmission capacity constraints and congestion); DOE, *National Transmission Needs Study* (Oct. 2023), https://www.energy.gov/sites/default/files/2023-10/National_Transmission_Needs_Study_2023.pdf (2023 Needs Study).

- Phase 2: preliminary list of potential NIETC designations, public comment, and second information submission window focused on additional information on geographic boundaries and permitting;
- Phase 3: preparation of draft NIETC designation report(s) pursuant to the FPA and draft environmental document pursuant to the National Environmental Policy Act (NEPA),[5] as needed, including public engagement; and
- Phase 4: issuance of final NIETC designation report(s) and final NEPA environmental document, as needed.

Pursuant to FPA section 216(a)(2), DOE will consider the results of its 2023 Needs Study (as well as other information relating to electric transmission capacity constraints and congestion) when issuing any final NIETC designation reports following issuance of this Guidance. DOE recognizes that the 2023 Needs Study identifies significant need for additional transmission development within and across numerous regions. DOE invites information and recommendations from interested parties on potential NIETCs that such parties believe meet needs identified in the 2023 Needs Study (or needs identified based on other relevant information). As detailed below, DOE will evaluate such recommendations, including information submitted throughout the NIETC designation process, and exercise its independent judgment regarding whether the geographic areas recommended for NIETC designation by interested parties warrant such a designation.

In order to facilitate DOE's identification of targeted, high-priority areas for potential NIETC designation during this four-phase process, in this Guidance, DOE also preliminarily finds that NIETC designation may be particularly valuable in geographic areas where the 2023 Needs Study identifies the need for increased interregional transfer capacity. This preliminary finding is further described below. Importantly, in making such preliminary finding, DOE is not foreclosing consideration of NIETC designation based on other transmission needs identified in the 2023 Needs Study beyond the interregional transfer capacity needs that are the subject of DOE's preliminary finding.

The issuance of this Guidance opens a Phase 1 information submission window, as indicated in the table above. DOE anticipates opening at least one Phase 1 information submission window following each issuance of the triennial Needs Study, this being the first following issuance of the 2023 Needs Study.

II. Authority

The authorizing statute for the NIETC designation process is section 216(a) of the FPA, as amended by the IIJA, codified at 16 U.S.C. 824p(a).

[5] 42 U.S.C. 4321, et seq.

A. Statutory Framework

In response to increasing concerns about the capacity and reliability of the nation's electric transmission system, Congress added section 216 to the FPA to address siting of interstate electric transmission facilities.[6] Congress amended this section in 2021, in the IIJA, in response to unsuccessful past attempts to implement the authority therein and relevant court precedent.[7] In particular, Congress sought to revive the authorities in FPA section 216 by expanding the bases for NIETC designation, including the scope of the Needs Study and factors that DOE may consider in designating a NIETC, as well as imposing a time requirement on DOE. Congress also directly addressed barriers to the use of FERC's permitting authority within NIETCs by expanding the circumstances under which FERC may act, described further below.[8]

FPA section 216(a)(2) requires that at least once every three years, the Secretary must issue a report (a designation report) and "may designate as a national interest electric transmission corridor any geographic area that—(i) is experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers; or (ii) is expected to experience such energy transmission capacity constraints or congestion."[9] A designation report and any NIETC designation therein must be based on the findings of DOE's triennial nationwide "study of electric transmission capacity constraints and congestion" required by FPA section 216(a)(1), which DOE refers to as the National Transmission Needs Study, or Needs Study, "or other information relating to electric transmission capacity constraints and congestion."[10] In addition, the Secretary must consider "alternatives and recommendations from interested parties (including an opportunity for comment from affected States and Indian Tribes)," and consult with regional entities.[11]

While the Secretary must consider the findings of the Needs Study or other pertinent information in designating one or more NIETCs in a designation report, section 216(a)(4) allows the Secretary to consider several additional factors in determining whether to designate a NIETC. Specifically, 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;

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[6] 16 U.S.C. 824p; *see also Piedmont Envtl. Council v. FERC*, 558 F.3d 304, 310 (9th Cir. 2009) (discussing the impetus for the addition of FPA section 216); *Piedmont*, 558 F.3d at 320-21 (Traxler, J., dissenting) (describing blackouts and increased consumer costs resulting from inadequate transmission capacity).

[7] Pub. L. No. 117-58 (Section 40105). *See generally Piedmont*, 558 F.3d at 304 (vacating in part FERC's regulations under section 216(b) of the FPA); *Cal. Wilderness Coalition v. DOE*, 631 F.3d 1072 (9th Cir. 2011) (vacating DOE's designation of two NIETCs).

[8] *See Piedmont*, 558 F.3d at 310 (reversing FERC's interpretation of FPA section 216(b) as granting FERC permitting authority when a state commission has denied an application).

[9] 16 U.S.C. 824p(a)(2).

[10] 16 U.S.C. 824p(a)(2).

[11] 16 U.S.C. 824p(a)(2)-(3).

(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.

In a 2011 decision, *California Wilderness Coalition v. DOE* (*California Wilderness*),[12] the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) held that, pursuant to NEPA, DOE's designation of a NIETC—regardless of the lack of any siting decision made in that geographic area—constitutes a major federal action that may significantly affect the quality of the human environment, such that documentation of environmental compliance is required.[13] Therefore, in addition to the above statutory considerations in FPA section 216(a)(2), DOE will conduct a study of environmental impacts pursuant to NEPA. DOE will also examine any requirements that may apply under other federal statutes, such as the National Historic Preservation Act (NHPA) and the Endangered Species Act (ESA).

B. Effect of NIETC Designation

Designation of a NIETC is a prerequisite to the ability of DOE and FERC to use certain statutory tools to advance the development of transmission facilities necessary to relieve present and expected transmission capacity constraints and congestion that adversely affects consumers.

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[12] 631 F.3d at 1072.
[13] *See* 42 U.S.C. 4332(2)(C).

Starting with DOE's federal investment tools, in 2021 in the IIJA and in 2022 in the Inflation Reduction Act (IRA),[14] Congress appropriated funds for DOE to help overcome commercial hurdles to the development of transmission facilities within NIETCs. Specifically, the IIJA established the Transmission Facilitation Program, a $2.5 billion revolving fund that DOE can use to support the construction of high capacity new, replacement, or upgraded transmission lines.[15] While DOE's implementation of the Transmission Facilitation Program is not entirely dependent on NIETC designation, the Transmission Facilitation Program authorizes DOE to enter into public-private partnerships to co-develop transmission projects specifically located within NIETCs.[16] In addition, in the IRA, Congress established a Transmission Facility Financing (TFF) program, under which DOE can provide direct loan support for transmission facilities designated by the Secretary to be necessary in the national interest under FPA section 216(a).[17] This is described more fully in the section that follows. NIETC designation also opens one avenue for DOE, acting through either the Western Area Power Administration or the Southwestern Power Administration, to use the authority granted by section 1222 of the Energy Policy Act[18] to accept contributed funds and to partner with third parties to develop, construct, and own new or upgraded transmission lines.[19]

As for federal permitting tools unlocked by NIETC designation, under section 216(b) of the FPA, as amended by the IIJA, designation of a NIETC allows an interested party seeking to develop a transmission line to apply for a permit from FERC for the construction or modification of transmission facilities within a NIETC, provided that certain other statutory conditions have been met.[20] At a high level, under certain circumstances, FERC may grant permits within a NIETC where a state does not have authority to site a transmission line or a state siting authority has not acted on an application to site a transmission line for over one year or has denied an application. This includes granting the transmission developer the ability to obtain rights-of-way by exercise of the right of eminent domain.[21] Recently, in response to the revisions to section 216(b) in the IIJA,[22] FERC issued a notice of proposed rulemaking proposing regulations that would implement this permitting authority, including regulations governing the environmental,

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[14] Pub. L. No. 117-169.

[15] Pub. L. No. 117-58 (Section 40106).

[16] The Transmission Facilitation Program also authorizes DOE to enter into public-private partnerships generally where transmission facilities are needed to connect states or transmission planning regions to accommodate increased demand.

[17] Pub. L. No. 117-169 (Section 50151); 42 U.S.C. 18715.

[18] 42 U.S.C. 16421.

[19] If the relevant transmission lines are not located within a designated NIETC, DOE may still act via section 1222 if the project "is necessary to accommodate an actual or projected increase in demand for electric transmission capacity." 42 U.S.C. 16421(a)(1)(B).

[20] 16 U.S.C. 824p(b).

[21] 16 U.S.C. 824p(e)(1).

[22] The IIJA amended FERC siting authority for transmission facilities located within NIETCs in section 216(b) to clarify FERC's authority to act where a state agency: lacks authority to consider either interstate *or interregional* benefits of a transmission project; *has not made a determination* on a siting application within one year of the later of the date of the application and the NIETC designation; has conditioned approval of the transmission facility such that the facility will not significantly reduce transmission *capacity constraints or* congestion; or *has denied an application*. *See* Pub. L. No. 117-58 (Section 40105) (additions italicized).

cultural, and environmental justice resource information that applicants for a FERC-issued construction permit in a NIETC must submit.[23]

In designating a NIETC, DOE must find present or expected transmission capacity constraints or congestion that adversely affects consumers in the geographic area. Where such conditions are present, a solution is needed to avoid adverse effects on consumers. But it is up to market participants, transmission planning entities, state and local authorities, Tribal entities, and potentially FERC to determine the appropriate facilities to address the needs within any given NIETC. In many cases, the solution will be constructing new transmission facilities, and NIETC designation can unlock key federal financing and permitting tools to facilitate such transmission infrastructure.

C. Transmission Facility Financing

As discussed above, Congress authorized the TFF program in the IRA, under which DOE can provide direct loans to non-federal borrowers for the construction or modification of electric transmission facilities "designated by the Secretary of Energy to be necessary in the national interest under section 216(a) of the [FPA]."[24] DOE intends to deem transmission facilities that would be located within a NIETC designated pursuant to this Guidance eligible to receive a loan under the TFF program.

A TFF loan would carry such terms and conditions as the Secretary determines to be appropriate, and must: (1) have a term of the lesser of 90% of the projected useful life of the facility or 30 years; (2) not exceed 80% of the project costs; and (3) be subject to the condition that the direct loan is not subordinate to other financing. While Congress did not specify a maximum volume of loans that may be issued, Congress appropriated $2 billion to carry out the program, which may be used to pay the Credit Subsidy Cost for loans made under this program.[25] TFF funds remain available through September 30, 2030, and disbursements under loan agreements may continue until September 30, 2031.

The TFF program will allow DOE to facilitate the construction of critical transmission infrastructure in areas of the country that, through the rigorous and independent NIETC designation process described in this Guidance, DOE has determined to have the greatest need for transmission to enhance reliability and resilience and reduce consumer costs by providing access to low cost, clean energy resources. This includes DOE's consideration of the results of the 2023 Needs Study as well as the list of discretionary factors in FPA section 216(a)(4) to identify areas where consumers are being significantly harmed by the lack of adequate transmission capacity. The ability of DOE to provide low-cost financing to developers of

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[23] *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (2022) (Notice of Proposed Rulemaking).

[24] Pub. L. No. 117-169 (Section 50151); 42 U.S.C. 18715.

[25] *See* OMB Circular No. A-11, Preparing, Submitting, and Executing the Budget, Section 185.2.

transmission facilities within NIETCs through the TFF program is thus another potentially important tool to further the national energy policy described below.

Details about how to apply for a TFF loan are forthcoming at a later date.

D. National Energy Policy

One of the statutory factors in FPA section 216(a)(4) that DOE may consider in determining whether to designate a NIETC is whether "the designation would be in the interest of national energy policy."[26] This section sets out some high-level national energy policy considerations that DOE may take into account as part of NIETC designation.

A reliable and resilient electric transmission system is essential to the nation's economic, energy, and national security—and a cornerstone of any national energy policy. Additional transmission capacity is necessary to maintain reliability and bolster resilience to meet the challenges of more frequent extreme weather and other disruptive events. For example, increased transmission capacity can enable greater resource sharing across wider regions, including enhanced access to resources that are essential for faster restoration and recovery.[27] Significant consumer cost savings flow from this greater transmission system resilience, particularly during extreme weather events.[28] Increased interregional and cross-interconnection transmission capacity is especially important to enable access to diverse sources of clean electricity and to meet new demand for electricity driven by the electrification of end-use sectors such as transportation and industry.[29] Additional transmission deployment can also reduce costs for consumers by alleviating transmission capacity constraints and congestion, thereby expanding access for consumers in regions with persistently high-priced electricity to low-cost electricity

[26] 16 U.S.C. 824p(a)(4)(D).

[27] 2023 Needs Study at 52-63 (discussing recent literature that demonstrates that transmission infrastructure plays an important role in maintaining reliability and resilience); *id.* at 110 (concluding that "[s]ystem reliability and resilience remain key drivers in the need for transmission infrastructure in nearly every geographic region across the United States and are anticipated to drive transmission in the future").

[28] *Id.* at 39-42 (citing study findings that highest transmission congestion is found during extreme weather events); *id.* at 55-59 (discussing recent literature focused on the role of transmission in maintaining reliability and resilience during extreme events); *id.* at 55, 57 (citing study findings "that an additional 1 GW transmission tie to the Southeast during the Texas heat wave of 2019 could have saved Texas consumers nearly $75 million" and that during the January 2018 cold snap across the northeast, consumers in the affected regions "could have saved $30-$40 million for each GW of stronger transmission ties among themselves or to other regions").

[29] *Id.* at 51 (concluding the greatest transmission value is found by connecting regions in the middle of the country with their more eastern or western neighbors, particularly by connecting the three transmission interconnections); *id.* at 110 (concluding that the "need for additional interregional and cross-interconnection seams transmission capacity is particularly acute between the Plains, Midwest, Delta, Texas, and Southeast regions and their neighboring regions").

supply. This includes access to energy that may be generated far from load centers, as well as to existing electricity supply that can offset the need for new generation.[30]

The Biden-Harris Administration has set national goals to reduce U.S. greenhouse gas emissions at least 50% below 2005 levels by 2030 and to reach net zero emissions by 2050. These goals include transition to a 100% clean electric power sector by 2035,[31] which would require an estimated increase in transmission system capacity of between 1.3 to 2.9 times the amount of existing transmission capacity.[32] The proliferation of state and local clean energy standards and goals as well as private-sector clean energy purchase commitments[33] further underscores the nation's need for additional transmission infrastructure to deliver clean, reliable, and low-cost energy.[34] Recent independent analysis has found that transmission systems may need to expand as much as 60% by 2030 and triple by 2050 to deliver clean electricity to consumers.[35] The capacity expansion modeling included in the 2023 Needs Study shows that regional transmission across the United States "needs to increase 14% by 2030 and 24% by 2040" just to meet needs associated with moderate load and moderate clean energy growth scenarios, and 64% by 2035 to meet needs in "scenarios with moderate load but high clean

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[30] *Id.* at 142-43 (concluding that increases in transmission capacity help regions meet growing demand needs reliably and cost effectively by connecting supply to demand); *see also id.* at 110 (discussing the value of geographic and temporal diversity of energy resources in bolstering reliability); *id.* at 50-51 (finding regions with high-priced electricity include Southwest Missouri, Southern Oklahoma, Northwest Wisconsin, Eastern and Upper Michigan, Eastern Maryland/Virginia, the Delmarva Peninsula, Long Island, Southern Cost California, and Northern Coast California); *id.* at 110-11 (finding that congestion is a major driver of transmission needs "in the California, Northwest, Texas, Plains, Midwest, Delta, Mid-Atlantic, and New York regions, as well as in Alaska and Hawaii"); *Building a Better Grid Initiative to Upgrade and Expand the Nation's Electric Transmission Grid To Support Resilience, Reliability, and Decarbonization*, 87 FR 2769 (Jan. 19, 2022), https://www.federalregister.gov/documents/2022/01/19/2022-00883/building-a-better-grid-initiative-to-upgradeand-expand-the-nations-electric-transmission-grid-to.

[31] *See* Executive Order 14008 of Jan. 27, 2021, *Tackling the Climate Crisis at Home and Abroad*, 86 FR 7619 (Feb. 1, 2021), https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-homeand-abroad; *Fact Sheet: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies* (Apr. 22, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/.

[32] *See* Paul Denholm, et al., *Examining Supply-Side Options to Achieve 100% Clean Electricity by 2035* (Aug. 2022), www.nrel.gov/docs/fy22osti/81644.pdf.

[33] For example, in November 2022, the Clean Energy Buyers Alliance reported that "[c]orporate energy customers have played an influential role in the clean energy transition by accelerating over 57 gigawatts of clean energy in the U.S. alone." *Corporate and Government Collaboration for Clean Energy Investment Moves from Commitment to Action: Up to $100 Billion in Clean Energy Investment Potential across the World Bureau of Energy Resources, Washington DC* (Nov. 2022), https://www.state.gov/corporate-and-government-collaboration-for-clean-energy-investment-moves-from-commitment-to-action-up-to-100-billion-in-clean-energy-investment-potential-across-the-world/.

[34] *See* Database of State Incentives for Renewables & Efficiency (DSIRE), Detailed Summary Maps, Renewable Portfolio Standards and Clean Energy Standards (Dec. 2023), https://www.dsireusa.org/resources/detailed-summary-maps/.

[35] Eric Larson, et al., *Net-Zero America: Potential Pathways, Infrastructure, and Impacts* (Dec. 15, 2020), https://netzeroamerica.princeton.edu/img/Princeton%20NZA%20FINAL%20REPORT%20SUMMARY%20(29Oct2021).pdf.

energy assumptions—in line with the future power sector enabled by all currently enacted laws, including the IIJA and the IRA."[36] This need is even greater when modeling high load and high clean energy assumptions, which are in line with a future power sector that supports economy-wide decarbonization.[37]

The IIJA and IRA together authorize significant investments in clean energy manufacturing and generation, as well as investments in the electrification of homes, businesses, and vehicles. The benefit of those investments will not be realized fully unless the United States can accelerate the development of necessary electric transmission infrastructure.[38] This includes promoting new local, regional, and interregional transmission development and the use of innovative transmission technologies, such as advanced conductors, that maximize the capacity of existing transmission infrastructure. NIETC designation is an important tool that DOE has available to facilitate the timely development of transmission infrastructure to meet all these needs.

III. Acronyms and Definitions

A. Acronyms

APA means the Administrative Procedure Act.

CAISO means the California Independent System Operator Corp.

CEII means Critical Electric Infrastructure Information.

CEQ means the Council on Environmental Quality.

DOE means the U.S. Department of Energy.

EIS means environmental impact statement.

ERCOT means the Electric Reliability Council of Texas.

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[36] 2023 Needs Study at 143.

[37] *Id.* at 143-44 (discussing modeling results for high load and high clean energy growth, which show a 40% increase in regional transmission needed by 2030 and a nearly 150% increase needed by 2040, and a nearly 140% increase in interregional transfer capacity needed by 2030 and a nearly 470% increase needed by 2040); *id.* at 119 (describing the policy assumptions underlying high load and high clean energy growth scenarios).

[38] *Id.* at 143 (finding that in future scenarios with moderate load but clean energy assumptions in line with the future power sector enabled by all currently enacted laws, including the IIJA and IRA, transmission deployment and transfer capacities need to significantly increase across the United States to meet future needs); Princeton University, REPEAT Project, *Electricity Transmission is Key to Unlock the Full Potential of the Inflation Reduction Act* 4 (Sept. 2022), https://repeatproject.org/docs/REPEAT_IRA_Transmission_2022-09-22.pdf (finding that "[o]ver 80% of the potential emissions reductions delivered by the IRA in 2030 are lost if transmission expansion is constrained to 1%/year, and roughly 25% are lost if growth is limited to 1.5%/year").

ESA means the Endangered Species Act.

FERC means the Federal Energy Regulatory Commission.

FPA means the Federal Power Act.

GDO means DOE's Grid Deployment Office.

IIJA means the Infrastructure Investment and Jobs Act.

IRA means the Inflation Reduction Act.

ISO means Independent System Operator.

ISO-NE means ISO New England, Inc.

MISO means the Midcontinent Independent System Operator, Inc.

NEPA means the National Environmental Policy Act.

NERC means the North American Electric Reliability Corporation.

NHPA means the National Historic Preservation Act.

NIETC means National Interest Electric Transmission Corridor.

NOI means Notice of Intent.

NYISO means the New York Independent System Operator, Inc.

PJM means PJM Interconnection, L.L.C.

RFI means Request for Information.

ROD means Record of Decision.

RTO means Regional Transmission Organization.

SPP means the Southwest Power Pool.

B. Definitions

For the purpose of this Guidance:

Affected landowner means an owner of real property interests who is usually referenced in the most recent county or city tax records, and whose real property: (1) is located within either 0.25

miles of a potential NIETC or at a minimum distance specified by state law, whichever is greater; or (2) contains a residence within 3,000 feet of a potential NIETC.

Federal Authorization, as defined in FPA section 216(h)(1), means any authorization required under Federal law in order to site a transmission facility.

Communities of interest means the following communities that could be affected by a NIETC designation: disadvantaged communities; rural communities; Tribal communities; indigenous communities; geographically proximate communities; communities with environmental justice concerns; and energy communities.

Critical Electric Infrastructure Information, as defined in FPA section 215(a)(3), with designation criteria codified at 18 CFR 388.113(c), means information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to FERC or another federal agency, other than classified national security information, that is designated as CEII by FERC or the Secretary pursuant to FPA section 215A(d), 16 U.S.C. 824o-1(d). Such term includes information that qualifies as critical energy infrastructure information under FERC's regulations. *See* 10 CFR 1004.13(c)(4).

Designation report means the documentation of the Secretary's decision to designate a NIETC and its rationale, as required by FPA section 216(a)(2), 16 U.S.C. 824p(a)(2). The contents of a designation report are described in greater detail in this Guidance.

Environmental document means an environmental assessment, environmental impact statement (EIS), finding of no significant impact, or NOI, as provided in 40 CFR 1508.

Environmental impact statement or EIS means a detailed written statement as required by section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C).

Geographic boundaries mean the perimeter of a geographic area, which may be considered for NIETC designation.

Independent system operator, as defined in FPA section 3, 16 U.S.C. 796, means an entity approved by FERC to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce, and to ensure nondiscriminatory access to the facilities.

Indian Tribe, as defined in 25 U.S.C. 5304(e), means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Information submission means information and recommendations submitted consistent with this Guidance within an information submission window—whether during Phase 1 or Phase 2—to

assist with DOE's consideration as to whether to designate a particular geographic area as a NIETC.

Information submission window means the period of time during which interested parties may make information submissions to DOE to assist with DOE's consideration as to whether to designate a particular geographic area as a NIETC. The process outlined in this Guidance includes two information submission windows—one during Phase 1 and one during Phase 2.

Interested party means any person or entity, State, or Indian Tribe, concerned with DOE's exercise of its discretion to designate a geographic area as a NIETC.

National Interest Electric Transmission Corridor means a geographic area where, based on the Needs Study or other relevant information, DOE has identified, in consultation with any appropriate regional entity referred to in FPA section 215, 16 U.S.C. 824o, present or expected transmission capacity constraints or congestion that adversely affects consumers, and which has been designated by the Secretary as a NIETC.

Needs Study means the study that DOE must conduct every three years, in consultation with affected States and Indian Tribes, of electric transmission capacity constraints and congestion, as required by FPA section 216(a)(1), 16 U.S.C. 824p(a)(1). The most recently issued is the 2023 Needs Study.

Notice of intent means a formal announcement of intent to prepare an EIS, as defined in the Council on Environmental Quality's (CEQ) NEPA regulations, 40 CFR 1508.22. DOE publishes notices of intent in the *Federal Register* in accordance with DOE's NEPA regulations, 10 CFR 1021.311.

Preliminary list of potential NIETC designations means the first public announcement following the close of a Phase 1 information submission window in the NIETC designation process, in which DOE identifies which potential NIETCs it is continuing to consider, provides a high-level explanation of the basis for those potential NIETCs, and opens a public comment period.

Record of decision means a concise public document that records a federal agency's decision(s) concerning a proposed action for which the agency has prepared an EIS. See CEQ and DOE NEPA regulations at 40 CFR 1505.2 and 10 CFR 1021.315, respectively.

Regional entities mean regional reliability organizations to which the North American Electric Reliability Corporation (NERC), as the designated Electric Reliability Organization under FPA section 215, 16 U.S.C. 824o, has delegated authority to propose and enforce electric reliability standards.

Regional transmission organization, as defined in FPA section 3, 16 U.S.C. 796, means an entity of sufficient regional scope approved by FERC to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce, and to ensure nondiscriminatory access to the facilities.

Regional transmission planning entity means one of the transmission planning regions formed in compliance with FERC Order No. 1000[39] and the Electric Reliability Council of Texas (ERCOT).

Scoping means the range of actions, alternatives, and impacts to be considered in an EIS. The scope of an individual EIS may depend on its relationships to other such statements. See 40 CFR 1501.11 for additional information.

Secretary means the Secretary of DOE or such officers or employees of DOE as designated by the Secretary of DOE.

Siting authority means a State, local, or Tribal governmental entity with authority to make a final determination regarding the siting, permitting, or regulatory status of a transmission project that is proposed to be located in an area under the jurisdiction of the entity.

State, as defined in FPA section 3, 16 U.S.C. 796, means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

Technical completeness assessment means the step in Phase 2 of the NIETC designation process during which DOE evaluates potential NIETC designations for relative completeness of the information on geographic boundaries and permitting.

Threshold need determination means the step in the NIETC designation process following the close of a Phase 1 information submission window whereby DOE preliminarily determines whether the narrow geographic area for potential NIETC designation has present or expected transmission capacity constraints or congestion that adversely affects consumers.

Transmission congestion means the economic impacts on the users of electricity that result from operation of the system within the physical limits on the amount of electricity flow the system is allowed to carry to ensure safe and reliable operation (otherwise known as transmission constraint).

Transmission capacity constraint means a suboptimal limit of transfer of electric power on the grid, including those that reduce operational reliability of the power system; power transfer capability or capacity limits between neighboring regions that reduce resilience or increase production costs; and limits on the ability of cost-effective generation to be delivered to high-priced demand.

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[39] *See Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 76 FR 49842 (Aug. 11, 2011), *order on reh'g*, Order No. 1000-A, 77 FR 32184 (May 31, 2012), *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); FERC, *Regions Map Printable Version Order No. 1000*, https://www.ferc.gov/media/regions-map-printable-version-order-no-1000 (last updated Nov. 9, 2021) (providing a map of transmission planning regions).

Transmission planning entity means transmission providers, regional transmission planning entities, and any other entity with responsibility for engaging in transmission planning.

IV. NIETC Designation Process

A. Why is DOE taking this approach?

In this Guidance, DOE describes an approach for using its authority under FPA section 216(a) on a selective basis. This Guidance describes a public process through which DOE will receive input (including the opportunity for comment from affected States and Indian Tribes) to inform the designation of NIETCs. DOE will use that public process to identify geographic areas for consideration for NIETC designation that are much narrower than those DOE designated in 2007, the only instance in which DOE has designated NIETCs. To understand why DOE is proposing to use its authority selectively and across a narrower geographic footprint, it is helpful to understand DOE's 2007 designations, the judicial response to those designations, and the subsequent acts of Congress amending section 216(a).

In August 2006, DOE issued a Congestion Study that identified two "Critical Congestion Areas," which it described as "areas where the current and/or projected effects of congestion are especially broad and severe."[40] DOE also identified four "Congestion Areas of Concern," which it described as "areas where a large-scale congestion problem exists or may be emerging but more information and analysis appear to be needed to determine the magnitude of the problem."[41] And DOE identified several "Conditional Congestion Areas," which it described as "areas where future congestion would result if large amounts of new generation were to be developed without simultaneous development of associated transmission capacity."[42] In May 2007, DOE proposed to designate two areas that corresponded to the two "Critical Congestion Areas" identified in the Congestion Study as NIETCs. DOE finalized those designations in October 2007. In doing so, DOE did not rule out future action on the other areas identified in the Congestion Study.[43]

The two NIETCs designated by DOE each covered a vast territory. The first, the "Mid-Atlantic Area National Corridor," stretched from the Canadian border of New York State to West Virginia. The second, the "Southwest Area National Corridor," covered the southern half of California and much of western Arizona. Together, the two NIETCs covered over 100 million acres across 10 states.[44] The breadth of the two NIETCs was the result of what DOE described as a "source-and-sink approach," where "source" referred to areas of existing or potential future generation and "sink" referred to load. The NIETCs captured the vast number of possible routes

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[40] *National Electric Transmission Congestion Report*, 72 FR 56992, at 56995 (Oct. 5, 2007), *order on reh'g*, 73 FR 12959 (Mar. 11, 2008), *vacated sub nom. Cal. Wilderness*, 631 F.3d at 1072.

[41] *Id.*

[42] *Id.*

[43] *Id.* at 56997.

[44] *Cal. Wilderness*, 631 F.3d at 1101.

by which transmission could connect sources to sinks and were therefore very expansive. In response to comments that these NIETCs were impermissibly broad, DOE pointed to the phrase "[a]ny geographic area" in FPA section 216(a)(2), and concluded that "the language of FPA section 216(a) does not appear to limit the shape, proportion, or size for a National Corridor."[45]

In 2011, these two NIETC designations were vacated by the Ninth Circuit in *California Wilderness*. The court relied on two independent grounds for its decision. It held that DOE had not properly consulted the affected States as required by section 216(a)(1). And, more relevant here, the court held that the designation of NIETCs was a "major federal action" under NEPA, triggering the obligation to prepare an environmental document. While DOE has authority to designate "any geographic area" that meets specified criteria as a NIETC, including, as it did in 2007, one that covers wide swaths of land, this Guidance outlines an alternative approach to designating NIETCs that DOE believes will be a more effective way to advance the goals Congress has tasked DOE to achieve through section 216, and will be a more effective use of resources. To begin, were DOE to take the same "source-and-sink" approach to designation that it took in 2007, the amount of territory eligible to be considered for designation could be unworkably vast. Transmission investment has slowed considerably in recent years, especially investment in projects that resolve multiple transmission needs. At the same time, expectations for load growth are resurgent. Accordingly, the 2023 Needs Study identifies very significant unmet transmission needs in every region in the United States. Moreover, in the IIJA, Congress expanded the grounds upon which DOE can designate NIETCs and added new discretionary factors that DOE may consider to justify NIETC designation.

A process to consider the designation of vast swaths of the United States as NIETCs would cause delay and consume considerable resources. When DOE designated broad NIETCs in 2007, it did not prepare an environmental document pursuant to NEPA, which was one ground upon which the Ninth Circuit vacated those NIETCs in *California Wilderness.* As DOE now considers the breadth of potential NIETCs for designation, it must also consider that conducting a study of environmental impacts of new transmission development that could be located anywhere within vast territories of the United States that may be designated as NIETCs would be a long and expensive process both for the government and for interested parties that choose to participate. Many States, Indian Tribes, communities, and stakeholders would be drawn into a potentially controversial process despite the likelihood that very few of them would ever be directly affected by a transmission project enabled by a NIETC designation. Further, an environmental review with such an expansive scope could not possibly address the local issues that often matter most to States and communities.

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[45] *National Electric Transmission Congestion Report*, 72 FR at 57006. DOE also rejected suggestions that it instead designate narrower NIETCs by stating that it was not "engaging in land use planning." *Id*. As explained above, the Ninth Circuit disagreed that DOE could ignore the land use implications of its designations and held that DOE must prepare an environmental document pursuant to NEPA. *Cal. Wilderness*, 631 F.3d at 1078. In any event, the 2007 order did not claim that DOE lacked authority to designate narrow corridors.

Instead of such an approach, DOE is setting forth a process in this Guidance that would better focus its own resources—and the resources of other federal agencies, States, Indian Tribes, and stakeholders—on more narrow geographic areas that are more likely to be affected by a NIETC designation. Doing so will have several benefits. First, a more geographically focused process will benefit States, Indian Tribes, and communities by concentrating their attention on areas where new transmission is most likely to be built as a result of the federal financing and permitting benefits that come with NIETC designation. Second, environmental documents based on narrower geographic areas will be more useful for federal and state permitting agencies, thereby eliminating or reducing the need for further review. Third, by narrowing the geographic areas under consideration, DOE believes it can reach the point of decision on NIETC designations more efficiently and more readily deliver on Congress' directive that it issue a NIETC designation report not less frequently than once every three years and use its authority to advance needed transmission development. Fourth, narrower NIETCs will allow DOE to give meaning to the additional policy factor that Congress added in the IIJA that NIETC designations should "maximize[] existing rights-of-way," which would be difficult to satisfy in the context of wide NIETC designations.[46]

The process described in this Guidance has been designed as an efficient means to gather and disseminate information on the geographic areas where NIETC designation may be of the greatest value in the near term. The initial phase focuses on the statutory framework in the FPA, as amended by the IIJA, by providing an opportunity for interested parties—including any person or entity, State, or Indian Tribe—to submit information on present or expected transmission capacity constraints or congestion, on associated adverse effects on consumers, and on the list of discretionary factors in FPA section 216(a)(4) that may be relevant to a potential NIETC, including recommendations that DOE designate a particular narrow geographic area as a NIETC.[47] DOE welcomes and encourages interested parties to submit information and recommendations related to narrow geographic areas that would help address any of the numerous needs identified in the 2023 Needs Study. DOE guides interested parties at the outset by making the preliminary finding, based on the 2023 Needs Study, that NIETC designation may be particularly valuable in geographic areas where the need for increased interregional transfer capacity has been identified. After receiving initial information submissions, DOE intends to narrow the list of potential NIETCs that move forward in the process based on the requirements—and discretionary factors—in FPA section 216(a), informed by information and recommendations submitted by interested parties. Throughout the process, DOE plans to conduct robust public engagement, consistent with the FPA and NEPA, including specific engagement with affected States, Indian Tribes, and regional entities. The NIETC designation process will conclude with DOE's exercise of its independent judgment regarding whether to designate one

[46] *See* Pub. L. No. 117-58 (Section 40105(a)(4)(D)).

[47] DOE included language in the NOI/RFI specifying information that would be "required" of "applicants" for NIETC designations. In this Guidance, DOE moves away from this initial framing towards a voluntary process in which interested parties may submit information and recommendations to DOE to assist DOE in making NIETC designations. This Guidance does not mandate that any information must be submitted before DOE will make a NIETC designation.

or more geographic areas as a NIETC through the issuance of one or more final designation report(s), consistent with the FPA, and appropriate NEPA environmental documents for each NIETC designation.[48]

Where this Guidance refers to "narrow geographic areas" as potential candidates for NIETC designation, DOE means geographic areas that are narrow enough to identify key stakeholders and to meaningfully evaluate the potential impacts of NIETC designation on environmental, cultural, and Tribal resources within the geographic area. DOE intends for these geographic areas to be of sufficient size to allow for market participants, transmission planning entities, state and local authorities, Tribal entities, and potentially FERC to determine the appropriate facilities to address the transmission capacity constraints or congestion within the geographic area. In other words, a NIETC is not a route determination for a particular transmission project, nor is it a broad geographic area covering large swaths of regions, but it is of a linear nature, drawn such that development of one or more transmission projects could proceed entirely within the geographic boundaries of the NIETC. The geographic area must be of sufficient size to: construct, maintain, and safely operate one or more transmission projects in accordance with applicable regulatory requirements and reliability standards; allow for the evaluation of alternative routes within the geographic area with differing environmental, engineering, and regulatory constraints, as well as accommodate reasonable route changes needed to address local community and/or resource concerns; and allow for meaningful evaluation of the impacts of one or more potential transmission projects within the geographic area.

This NIETC designation process is also designed to maximize efficiency and promote well-informed and durable decision making in several ways. The phased approach to NIETC designation announced here provides multiple opportunities for public comment and engagement, including by Tribal entities and key stakeholders, such as affected landowners and communities of interest, siting authorities, regional transmission planning entities, and regional entities. The diverse perspectives of these participants inform the scope of potential NIETCs, including the environmental analysis. Greater opportunities for this type of engagement are more meaningful in the NIETC designation process set forth in this Guidance than in alternative approaches (including DOE's prior approach) because narrow geographic areas allow for more effective identification of and engagement with key interested parties, as explained above. Early, meaningful engagement with interested parties should reduce opposition to NIETC designation and to eventual transmission project siting and permitting within NIETCs, meaning more timely deployment of essential transmission investments.[49] Narrower geographic areas also minimize

[48] DOE will determine the need for an environmental document—and the appropriate form of NEPA review—based on the details and impact analysis of each potential NIETC.

[49] *See* 2023 Needs Study at 112 (concluding that "[m]eaningful engagement with landowners, communities, stakeholders, and Tribes early in the transmission development process is key in ensuring equitable transmission solutions that mitigate potential impacts to communities").

disruption to communities, both in terms of more targeted identification of relevant parties and in terms of limiting the area of potential impact.

The early engagement via the phased approach in this NIETC designation process should further promote efficiency by leveraging the best available information to inform NIETC designation. This includes drawing on industry expertise and best practices to scope the geographic boundaries of a potential NIETC, taking into consideration not only the present or expected transmission capacity constraints or congestion in the geographic area encompassed by those geographic boundaries, but also collecting recent relevant environmental data that identifies potentially significant environmental issues as well as areas with potentially fewer environmental and cultural resources that could be impacted by the designation. Employing more accurate and comprehensive environmental information early in the process will lead to a more efficient determination for NIETC designation, as well as improved opportunities for tiering or building on DOE's environmental document by other federal and state permitting agencies to reduce duplication and bring more efficiency to the siting and permitting process. Gathering this information is both time- and resource-intensive, however. For this reason, DOE plans to first focus on the underlying need within a geographic area as well as relevant discretionary factors to narrow the list of potential NIETC designations. It is only with this narrowed list that DOE gathers more complete information on geographic boundaries and permitting, thereby balancing the delay in collecting certain detailed information with more efficient use of DOE's resources, as well as the resources of interested parties, to maximize overall efficiency.[50]

Although some commenters caution against relying on interested parties—notably, on private entities with interests that may differ from the broader national interest—in determining whether and where to designate NIETCs,[51] these commenters fail to consider that Congress explicitly directed DOE to "consider[] recommendations from interested parties."[52] More importantly, they misconstrue the nature of the approach DOE is taking. DOE is requesting information and recommendations from the public, including market participants, in order to inform DOE's independent determination of whether and where to designate NIETCs. In other words, DOE will use information and recommendations to shape its own identification and scoping of geographic areas with present or expected transmission capacity constraints or congestion that adversely affects consumers. DOE will exercise its independent judgment throughout the NIETC designation process, starting with the preliminary finding described below. Before making any NIETC designation, DOE will independently consider whether such designation is in the national interest, based on the totality of the information available

[50] For these reasons, DOE declines to make broad NIETC designations with a programmatic EIS at this time. *See* Comments from Clean Air TF, CPUC/CEC, NWF Coalition, Policy Integrity, Public Interest Organizations, REC/NGH, and Southern Public Interest. However, the approach identified in this Guidance in no way forecloses the possibility of such a designation in the future; DOE retains the legal authority to consider designating "any geographic area" as a NIETC so long as it meets the statutory requirements in section 216(a).

[51] *See* Comments from AEU, EEI, LPSC/MSPSC, PAPUC, SERTP Sponsors, and State Farm Bureaus.

[52] *See* 16 U.S.C. 824p(a)(2) (directing DOE to issue a report, which may designate a NIETC, "after considering alternatives and recommendations from interested parties").

(including but not limited to information and recommendations submitted by the public), and then release one or more comprehensive, detailed designation reports that explain the evidentiary basis for the findings required by FPA section 216(a)(2), supported by consideration of relevant factors in FPA section 216(a)(4).

B. Preliminary Finding of Geographic Areas Where NIETC Designation May be Particularly Valuable

As explained above, the Needs Study is a key input into the designation of NIETCs, in accordance with FPA section 216(a). On October 30, 2023, DOE released the 2023 Needs Study. Based on an assessment of publicly available data and more than 120 recently published reports that consider current and anticipated future needs under a range of electricity demand, public policy, and market conditions, the 2023 Needs Study identifies transmission needs across the country.[53] In fact, the 2023 Needs Study identifies regional and interregional needs in every region in the United States.[54] In light of the strength of the information in the 2023 Needs Study, DOE is making a preliminary finding regarding key areas where NIETC designation may be particularly valuable.

Specifically, based on the 2023 Needs Study, DOE preliminarily finds that NIETC designation may be particularly valuable in geographic areas where the need for increased interregional transfer capacity has been identified. The 2023 Needs Study finds that the need for additional interregional transfer capacity across the United States is vast and deep, both presently and in the future under a wide variety of potential future scenarios of load growth and generation development. The level of interregional transfer capacity expansion that the 2023 Needs Study concludes will be needed will not only require changes to the way in which transmission is planned, permitted, and paid for; it will require deploying all the tools available to catalyze large-scale transmission lines, including those unlocked by NIETC designation.

1. Meaning of Preliminary Finding

DOE preliminarily finds that NIETC designations that would facilitate (through DOE's financing tools and/or the use of federal permitting authority) the construction of transmission to address identified needs for interregional transfer capacity may be particularly valuable. These identified needs are summarized below and discussed in greater detail in the 2023 Needs Study. DOE will consider this preliminary finding, along with any additional information provided in the Phase 1 information submission window, to make the threshold need determination and develop the preliminary list of potential NIETC designations for which it will seek public input in Phase 2 and ultimately reach a final conclusion regarding the need for NIETC designation in one or more final designation reports at the conclusion of the process described in this Guidance.

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[53] 2023 Needs Study at ii.
[54] *Id.* at xi.

DOE acknowledges that while it makes a preliminary finding regarding the suitability of NIETC designations to address the need for increased interregional transfer capacity, the geographic areas where the 2023 Needs Study finds the need for increased interregional transfer capacity are broad. Any NIETC designation that proceeds in the NIETC designation process described in this Guidance will have much narrower geographic boundaries—and may even be within a single region.[55] It is within the narrow geographic boundaries that DOE must find present or expected transmission capacity constraints or congestion that adversely affects consumers. This means that DOE will be making further findings, based on the 2023 Needs Study and/or other information assessed during the NIETC designation process, on the transmission needs within a particular geographic area.

While DOE focuses this preliminary finding on the need for increased interregional transfer capacity, DOE is not foreclosing information and recommendations on other geographic areas and the transmission needs within those geographic areas for potential NIETC designation in response to this Guidance issuance. There are many findings of transmission need in the 2023 Needs Study that are not tied to interregional transfer capacity, including needs that must urgently be addressed to relieve consumer burdens and ensure a resilient and reliable transmission system. DOE encourages multi-driver, multi-value transmission planning and, likewise, approaches NIETC designation with the aim of maximizing value across the range of transmission needs that may be addressed through transmission development within a potential NIETC. As the 2023 Needs Study explains, within-region congestion can itself impact interregional transfer capacity, e.g., within-region congestion may limit the ability to maximize existing import and export capabilities across regional seams.[56] Therefore, DOE welcomes and encourages information and recommendations that identify potential NIETCs wherein transmission development could address multiple categories of transmission needs that adversely affect consumers, including ones based on needs other than those identified in this preliminary finding.

In addition, there is likely "other information," within the meaning of FPA section 216(a), available to demonstrate additional transmission needs and support NIETC designation. For example, the 2023 Needs Study acknowledges that there are gaps outside of regional transmission organization and independent system operator (RTO/ISO) regions where information regarding the economic value of congestion is not available, so the 2023 Needs Study does not find transmission needs in some areas based on the absence of market data rather than analysis of such data.[57] The 2023 Needs Study is also limited by the historic data, literature, and existing forward-looking capacity expansion modeling available to DOE at the time of conducting the study. New data and studies may be available that are relevant to finding

[55] To be clear, DOE is not suggesting that the narrow geographic area that constitutes a NIETC need be interregional; rather, the geographic boundaries would be such that transmission development within that area may effectively address a need for increased interregional transfer capacity.

[56] 2023 Needs Study at 58 (stating that "because of the complex nature of transmission flows, interregional transfer capability can be limited by insufficient transmission capacity internal to a region").

[57] *Id.* at v.

transmission capacity constraints or congestion that adversely affects consumers for purposes of NIETC designation, and DOE welcomes submissions of such other information as part of the NIETC designation process. Similarly, although DOE's preliminary finding at this time is with regard to the need for increased interregional transfer capacity, based on the 2023 Needs Study, DOE will consider, and welcomes information and recommendations for NIETC designation to address other transmission needs.

2. Basis for Preliminary Finding

DOE preliminarily finds that NIETC designation may be particularly valuable in geographic areas where there is an identified need for increased interregional transfer capacity because, based on the 2023 Needs Study, DOE believes that such NIETC designations will result in a more efficient and effective implementation of the NIETC program. In addition to the findings in the 2023 Needs Study regarding the vast present and expected future needs for interregional transfer capacity, and the associated harm that the lack of interregional transfer capacity has already inflicted on consumers, as detailed further below, there are also certain acute challenges with planning for increased interregional transfer capacity. These challenges have created significant uncertainty in the development of transmission projects to meet identified interregional needs and increased the urgency of deploying all available tools, including NIETC designation, to address those needs.

As explained in the 2023 Needs Study, local and regional planning is typically conducted pursuant to FERC rules and regulations that require certain minimum process features and inputs, focused principally on near-term reliability, economic, and public policy-based needs, each considered independently from one another.[58] These rules and regulations require coordination among regions but do not require interregional transmission planning. The result is a planning paradigm where transmission development is principally planned to reactively address local or regional transmission needs caused by a single driver—reliability needs or economic congestion or public policies—rather than being planned on a long-term, forward-looking, multi-driver, interregional basis, considering the full suite of benefits of transmission. The majority of transmission also is developed by incumbent transmission developers, or entities that develop transmission within their own retail distribution footprint, with 25% or less of total circuit-miles installed by non-incumbent transmission developers, or entities that do not have a retail distribution footprint or are developing transmission outside of their footprint.[59] This narrow focus limits consideration of larger-scale, regional and interregional transmission solutions that may address multiple transmission needs in a wider area more cost-effectively than the piecemeal transmission expansion that dominates today. The result of the current system of transmission planning is that only 72 circuit-miles of interregional transmission were energized

[58] *Id.* at 139.
[59] *Id.* at 25.

between the regions on average each year between 2011 and 2020,[60] and transmission investment overall decreased during the second half of the 2010s.[61]

With these challenges as a backdrop, it is not surprising that one of the key national findings in the 2023 Needs Study is that there is a significant, unmet need for additional interregional transfer capacity, now and growing substantially over time. For example, the median capacity expansion model results reviewed in the 2023 Needs Study find that interregional transfer capacity must grow by 25% to meet future moderate load and moderate clean energy growth scenarios (i.e., scenarios that very likely underestimate the amount of load growth and clean energy generation by ignoring existing policies, including the IIJA and IRA), by 114% to meet moderate load and high clean energy growth scenarios, and by 412% to meet high load and clean energy growth scenarios by 2035.[62] The moderate load and high clean energy growth scenarios, which represent the most likely future, show a need to double current interregional transfer capacity. If load growth is higher than expected or public policy or economic drivers result in faster clean energy growth, that need goes from a doubling to quintupling of the status quo. In general, the value of interregional connections has been growing over the past five years of data considered by the 2023 Needs Study.[63] This value is only expected to grow further, such that, by 2040, there is a significant need for new interregional transfer capacity between nearly all regions considered by the study.[64]

The 2023 Needs Study also finds that addressing the need for increased interregional transfer capacity around the country produces the largest benefits for consumers. Increased interregional transfer capacity is critical to achieving national energy policy goals, including reducing costs to consumers, providing access to new low-cost clean energy resources, maintaining reliability, and improving resilience, especially in increasingly frequent extreme weather events. As explained in the 2023 Needs Study, recent experience with extreme weather events demonstrates the value additional interregional transfer capacity would have for consumers in ensuring reliability and resilience and lowering costs by ensuring that energy can be delivered from where it is available to where it is needed during these extreme events.[65] For example, one study reviewed in the 2023 Needs Study found: an additional 1 GW transmission tie to the Southeast during the Texas heat wave of 2019 could have saved Texas consumers nearly $75 million; each additional 1 GW of transmission ties between the Texas power grid and the Southeast could have saved nearly $1 billion during the multi-day Winter Storm Uri; and during the "bomb cyclone" cold snap across the northeastern regions in January 2018, the affected regions—New England, New York, and the Mid-Atlantic—could have saved $30-40

[60] *Id.* at 22.
[61] *Id.* at 21-24.
[62] *Id.* at viii.
[63] *Id.* at 51.
[64] *See id.* at 143 (explaining that median study results in future scenarios with moderate load and high clean energy growth assumptions—the best representation of the future power system—anticipate a fivefold increase in interregional transfer capacities across the contiguous United States compared to scenarios with similar load assumptions but lower clean energy growth).
[65] *Id.* at 3.

million for each GW of stronger transmission ties among themselves or to other regions.[66] Regional grid reliability and resilience—even absent extreme weather conditions—is strengthened by the diversity of generation by geographic location and energy resource type provided by interregional transfers.[67] Interregional transfer capacity also enables regions to import electricity when they cannot meet growing demand with local generation and/or when the combination of remote generation and interregional transmission has lower overall system costs than local generation. Conversely, interregional transfer capacity enables regions with excess electricity to export that power to offset the costs for consumers in their region.

3. Geographic Areas of Preliminary Finding

Turning to specific findings in the 2023 Needs Study, the study identifies the relative need for interregional transfer capacity across different regional boundaries. The findings are summarized below and are the focus of DOE's preliminary finding here. Note that the 2023 Needs Study organizes transmission need results by geographic region, to the extent possible and if data sources considered are specific to an RTO/ISO, a transmission planning region formed in compliance with FERC Order No. 1000, or a regional reliability entity, the discussion uses the appropriate power system entity name.[68]

To identify current transmission needs in the 2023 Needs Study, DOE examined historic wholesale market price differences across geographic locations, including between regions, which signal areas of congestion on the transmission system that could be alleviated with additional transmission to allow lower cost energy to reach high-demand areas.[69] DOE also undertook a review of recently published power systems studies from a broad cross-section of subject matter experts and industry sectors (i.e., the literature review). Several regions of the country—notably portions of the Plains, Midwest, Mid-Atlantic, New York, and California—have experienced persistently high wholesale electricity prices over the past 3–5 years.[70] The highest congestion relief value is found across the Eastern, Western, and Texas Interconnections and between New England and New York.[71] More specifically, the highest value is shown by connecting Texas to the Southwest region of the Western Interconnection, followed by connecting Texas with the Plains and Delta regions in the Eastern Interconnection.[72] The February 2021 Winter Storm Uri had reliability implications across the Texas, Plains, and Delta regions, but the 2023 Needs Study explains that, unlike other regional markets like MISO and the Southwest Power Pool (SPP) that were also affected, ERCOT has very limited

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[66] *Id.* at 55-57.

[67] *Id.* at 130.

[68] *Id.* at 14-15.

[69] *Id.* at 20.

[70] *Id.* at v, 50-51 (finding regions of high prices exist in Southwest Missouri, Southern Oklahoma, Northwest Wisconsin, Eastern and Upper Michigan, Eastern Maryland/Virginia, the Delmarva Peninsula, Long Island, Southern Cost California, and Northern Coast California).

[71] *Id.* at v, 37, 50-51 (stating that in 2022, 2021, and on average between 2012 and 2020, the highest value links were between SPP (Plains region) and its neighbors, between ERCOT (Texas region) and its neighbors, and across the northeastern regions (New England, New York, Mid-Atlantic)).

[72] *Id.* at 51.

interconnections with its neighbors (ERCOT can only import just over 1,000 MW across its ties).[73] The result was devastating for Texans. Exploring the time trends of these links reveals that the value of interregional transmission to SPP (i.e., the Plains region) and to ERCOT has been increasing over time.[74] The literature review similarly shows that the need for additional interregional and cross-interconnection seams transmission capacity is particularly acute between the Plains, Midwest, Delta, Texas, and Southeast regions and their neighboring regions.[75] Among the most common interregional transmission needs found by one study reviewed is between the Southeast and Florida.[76] There is also significant value—and growing over time—in connecting the Plains with the Mountain region of the Western Interconnection and with the Midwest and Delta regions to the east.[77]

The 2023 Needs Study also finds significant constraints and congestion between the Midwest and Delta regions. For example, MISO's 2020 State of the Market Report, prepared by MISO's external market monitor, records that congestion costs in MISO increased because of increased wind output, generation and transmission outages, and the impact of Hurricane Laura in the Delta region (MISO South), highlighting the importance of transmission to increase system resilience, in addition to the significant economic impact on consumers from congestion on the transmission system.[78] Despite lower gas prices and transmission upgrades in MISO, the value of real-time congestion rose by 26% to $1.2 billion in 2020 relative to 2019.[79] Likewise, congestion in the non-RTO/ISO West caused by heavy flows of energy moving from the Northwest into load centers in California and the Southwest causes reliability concerns across the entire western system.[80] This congestion can cause increased costs for consumers in the West. For example, congestion on interfaces across all markets (day-ahead, 15-minute, and 5-minute) increased by 74% from $152 million in 2019 to $263 million in 2020, primarily due to increased congestion on the two major interfaces linking the California Independent System Operator Corp. (CAISO) with the Pacific Northwest, where total congestion charges tripled to $236 million in 2020 relative to 2019 as a result of increased import congestion frequency.[81] These congestion costs represent real costs to consumers—in other words, consumers have and are continuing to be adversely affected by the lack of interregional transfer capacity across the United States.

Looking at the assessment of expected future transmission needs in the 2023 Needs Study, the negative consequences for consumers of the lack of adequate transmission will only become more severe. Large relative growth in interregional transfer capacity compared with the 2020 system will be needed between the Delta and Plains (414% median increase), New England and New York (255%), Midwest and Plains (175%), and Mid-Atlantic and Midwest (156%)

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[73] *Id.* FPA section 216(k) excludes the area within ERCOT from FPA section 216(a). While this provision limits designation of a NIETC physically within ERCOT's footprint, a NIETC adjacent to ERCOT may contain projects that interconnect with or otherwise extend into ERCOT.

[74] 2023 Needs Study at 37, 51.

[75] *Id.* at 110.

[76] *Id.* at 76.

[77] *Id.* at 51, 76.

[78] *Id.* at 68-69.

[79] *Id.* at 69.

[80] *Id.* at 51.

[81] *Id.* at 71.

regions by 2035 to meet moderate load and high clean energy growth future scenarios.[82] Large interregional transfer capacity need is also found between the three interconnections to help provide electricity given the evolution of supply and demand nationwide and to maintain reliability given an increase in extreme events that stress the grid.[83] High load scenarios further increase the interregional transfer capacity need for all regional pairs. These changes in interregional transfer capacity need are significant, with anticipated 2035 need ranging from 25% (median California–Northwest transfer) to 3519% (median Plains–Texas transfer) relative growth from the 2020 system.[84] Again, cross-interconnection transfers show the largest relative growth in anticipated need. Scenarios which include high load growth are more in line with state and utility policy goals in some regions than the moderate load growth scenarios.[85]

There is significant need for increased interregional transfer capacity even under scenarios with moderate load and moderate clean energy growth, which includes many scenarios that modeled various changes in market forces to drive changes in generation and load, ignoring any existing or new power sector policies—including the enactment of the IIJA and IRA. This is noteworthy because this scenario group is an unlikely representation of future power sector need.[86] In these scenarios, the highest needs for additional interregional transfers are found between New England and New York (2035 median of 2.8 GW, 140% growth relative to 2020 system) and between the Midwest and Plains (2035 median of 3.1 GW, 26% relative growth).[87] In 2040, the median needed new transfer capacity between the Eastern and Western Interconnections through the Plains and Southwest is 1.5 GW, a small absolute number but a nearly 370% increase from the current transfer capacity.

Moving to scenarios with moderate load and high clean energy growth, which is the most likely power sector future given recently enacted laws, new transfer capacity continues to grow between New York and New England and between the Plains and Midwest.[88] In addition, higher clean energy generation growth creates the opportunity for cost-effective transfers between other regions to take advantage of the best quality and lowest cost resources. Median transfers between the Delta and the Plains grow fivefold from 2020 and 2035, adding 20 GW of new transfer capacity. The highest median transfer capacity is found between the Mid-Atlantic and the Midwest (34 GW in 2035), likely needed to move low-cost clean generation in the Plains and Midwest regions to the Mid-Atlantic. Cross-interconnection transfers between Texas and its eastern neighbors grow dramatically in this scenario group as well.[89] For scenarios with high load and high clean energy growth, which will not be realized nationwide without additional state and federal policies, estimated transfer capacity between all regions in the contiguous

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[82] *Id.* at viii, 136-38. The Moderate/High scenario group is the most likely power sector future given recently enacted laws, including the IIJA and IRA. *Id.* at 118, 137.

[83] *Id.* at ix, 136-38.

[84] *Id.* at 134, 138.

[85] The High/High scenario group will not be realized nationwide without additional state and federal policies, but certain regions have decarbonization and load growth policies more in line with this scenario group. For example, California, New England, and New York polices are more in line with the High/High scenario group assumptions. *Id.* at 135.

[86] *Id.* at 118.

[87] *Id.* at 134, 136.

[88] *Id.* at 134, 137.

[89] *Id.* at 134-35.

United States grows to 412% relative to the 2020 system, compared to only 114% in the previous scenario group (moderate load and high clean energy growth).[90] Transfer capacities between the Midwest, Plains, and their adjacent neighbors dominate, as increased access to low-cost generation in the middle of the country becomes more important to meet high demand. Increased transfers between the Eastern and Western Interconnections also grow considerably.

These findings of current and expected future need for increased interregional transfer capacity are the focus of DOE's preliminary finding here. But as noted above, DOE does not foreclose information submissions beyond these identified transmission needs in response to this Guidance issuance.

C. Four-Phase Process

The NIETC designation process in this Guidance consists of four phases, described in detail below. A representative timeline of this process is included in Appendix A.[91]

1. Phase 1: Geographic Boundaries, Need, and Discretionary Factors

The first phase in the NIETC designation process involves DOE's evaluation of the results of the most recent final Needs Study to begin identifying potential geographic areas for NIETC designation and concurrent opening of a Phase 1 information submission window. During this window, interested parties may submit information and recommendations on the narrow geographic boundaries of potential NIETCs, the present or expected transmission capacity constraints or congestion within those geographic boundaries, and the relevant discretionary factors from the list in FPA section 216(a)(4). Phase 1 also includes DOE making a threshold need determination on potential NIETCs[92] as well as identifying relevant discretionary factors to assist with prioritization of potential NIETCs that move to Phase 2.

a. DOE Evaluation of Needs Study and Opening of Phase 1 Information Submission Window

The NIETC designation process begins with DOE's preliminary evaluation of the results of the most recent final Needs Study (see Section IV.B. above) and concurrent opening of a Phase 1 information submission window. This Guidance serves to open the Phase 1 information submission window referenced above, which is open for 45 days, until February 2, 2024. During the Phase 1 information submission window, interested parties may submit information and recommendations to DOE based on the list provided below for Phase 1 (see Section V.B.1), consistent with the procedures for information submissions also provided below (see Section V.C). Although this window is only 45 days, the requested information is relatively limited in

[90] *Id.*

[91] *See* Comments from NextEra and ACP (requesting information on a timeline for NIETC designation).

[92] As defined above, the threshold need determination is the step in the NIETC designation process following the close of a Phase 1 information submission window whereby DOE preliminarily determines whether the narrow geographic area for potential NIETC designation has present or expected transmission capacity constraints or congestion that adversely affects consumers.

scope. The information requested in Phase 1 includes the geographic boundaries of potential NIETC geographic areas; information on the present or expected transmission capacity constraints or congestion that adversely affects consumers; and identification of relevant discretionary factors from the list in FPA section 216(a)(4).

DOE anticipates opening at least one Phase 1 information submission window following each issuance of the triennial Needs Study. Additional Phase 1 information submission windows will depend on ongoing consideration of changing transmission capacity constraints and congestion nationwide in the period between issuance of final triennial Needs Studies. At this time, DOE is not currently planning on considering information submitted outside of the specified submission windows[93] or committing to specific periodic reissuances of the Guidance,[94] but DOE may publicly request more information submissions as needed. Definitive windows are important for DOE to evaluate information submissions efficiently and effectively and to designate NIETCs on a more holistic basis by gathering information in particular time periods. This also facilitates the possibility of DOE combining all or portions of potential NIETCs to maximize net benefits and allow for competition among potential solutions within designated NIETCs.

b. Threshold Need Determination

After the close of a Phase 1 information submission window, DOE reviews all information and recommendations and makes a threshold need determination for potential NIETCs, whether identified via DOE's review of the final Needs Study and/or via DOE's review of information submissions. During the threshold need determination, DOE preliminarily determines whether the narrow geographic area for potential NIETC designation has present or expected transmission capacity constraints or congestion that adversely affects consumers. DOE only continues to assess potential NIETCs that pass this threshold need determination screening.

As explained above, DOE will consider the preliminary finding in this Guidance related to interregional transfer capacity, along with any additional information and recommendations provided in the Phase 1 information submission window related to local, regional, or interregional need. DOE may consider the following factors: the potential NIETC is within a geographic area that the 2023 Needs Study finds is experiencing or is expected to experience transmission capacity constraints or congestion that adversely affects consumers;[95] the potential NIETC is based on one or more transmission projects that have been selected by a regional transmission planning entity as more efficient or cost-effective solutions to transmission needs in

[93] *See* Comments from ACORE, APS, CEBA, Gallatin, Georgia Solar, Nature Conservancy/Audubon, NextEra, NJ Rate Counsel, NWF Coalition, PGE, and WIRES.

[94] *See* Comments from Colorado Energy and Public Interest Organizations.

[95] One of the primary ways that DOE determines whether there is present or expected transmission capacity constraints or congestion that adversely affects consumers is based on the Needs Study. *See* 16 U.S.C. 824p(a)(2); *see also* Comments from NextEra and KYPSC.

a FERC-approved regional transmission planning process;[96] and/or there is other information that signifies present or expected transmission capacity constraints or congestion that adversely affects consumers that supports a preliminary finding of need. Only one factor need be present for a potential NIETC to pass the screening, though more than one may be present in some instances. For the latter factor, DOE considers whether there is other information that signifies present or expected transmission capacity constraints or congestion that adversely affects consumers, whether submitted by interested parties or otherwise available to DOE (e.g., studies conducted by RTOs/ISOs, analysis performed by national labs or other independent entities, etc.). DOE performs a preliminary assessment of the validity of the information, including initial evaluation of the source of the data and the process used to gather and/or develop the data, as well as of the reasonableness of the conclusions drawn therefrom.

As explained above, to designate a NIETC, the statute provides that DOE must find that the geographic area is experiencing or is expected to experience transmission capacity constraints or congestion that adversely affects consumers.[97] Transmission congestion, as discussed in more detail in the 2023 Needs Study,[98] refers to the economic impacts on the users of electricity that result from operation of the system within the physical limits on the amount of electricity flow the system is allowed to carry to ensure safe and reliable operation. Transmission capacity constraints, in turn, refer to suboptimal limits of transfer of electric power on the grid, including those that reduce operational reliability of the power system; power transfer capability or capacity limits between neighboring regions that reduce resilience or increase production costs; and limits on the ability of cost-effective generation to be delivered to high-priced demand. To be clear, transmission capacity constraints and congestion include not only areas of the transmission system where limited transfer capability impacts reliability, resilience, and production costs. Transmission capacity constraints and congestion are also present where such limitations result in an inability to deliver clean generation needed to meet federal, state, and local policy goals as well as utility and other private-sector clean energy commitments.[99]

The required finding underlying NIETC designation does not stop at present or expected transmission capacity constraints or congestion. Under the statute, DOE must also find that such

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[96] This factor reflects the significant process involved in existing regional transmission planning processes, including robust planning studies, stakeholder input, consideration of alternatives, and evaluation of system impacts prior to selection in a FERC-approved regional transmission planning process. *See* Comments from CAISO, MISO TOs, National Grid, NJ Rate Counsel, NYTOs, PAPUC, PJM, SERTP Sponsors, State Farm Bureaus, LPSC/MSPSC, TAPS, and WIRES; *see also* FERC, *Order No. 1000 – Transmission Planning and Cost Allocation*, https://www.ferc.gov/electric-transmission/order-no-1000-transmission-planning-and-cost-allocation (last updated Nov. 9, 2021) (describing regional transmission planning reforms adopted in Order No. 1000 and providing links to relevant orders and a map of transmission planning regions).

[97] 16 U.S.C. 824p(a)(2).

[98] 2023 Needs Study at 10-12 (explaining transmission congestion, transmission constraints, and transmission capacity constraints, for purposes of the Needs Study).

[99] This is consistent with longstanding DOE interpretation. *See National Electric Transmission Congestion Report*, 72 FR at 57000 (interpreting section 216(a) to allow DOE to find "constraints" based on expectations of future congestion and based on the absence of a transmission line that "is demonstrably hindering the development of desirable generation").

transmission capacity constraints or congestion "adversely affects consumers." DOE does not attempt in this Guidance to define the bounds of adverse effects on consumers that may warrant NIETC designation,[100] but does clarify that such effects are not limited to economic impacts nor to a certain time horizon. While transmission capacity constraints or congestion that cause unnecessarily high costs clearly adversely affect consumers, so too do transmission capacity constraints or congestion that increase the vulnerability of the electric system to disruptive events, which risk high costs and service interruptions. Particularly in light of the growing consumer demand for clean energy,[101] transmission capacity constraints or congestion that do or will inhibit access to a diverse and clean energy supply also adversely affect consumers.

Several commenters suggest that greater reliance on existing transmission planning processes than was suggested in the NOI/RFI is needed in the NIETC designation process.[102] As an initial matter, DOE's goal is to facilitate greater development of needed transmission infrastructure for reliability, resilience, and decarbonization purposes. This requires an all-of-the-above approach to transmission, meaning continued reliance on existing transmission planning processes in concert with additional authorities granted by Congress to DOE to identify unmet transmission needs and catalyze further transmission development to meet those needs. In this way, the NIETC designation process is not meant to disrupt or supplant existing transmission planning processes but rather to complement them in several ways.

In particular, DOE can use the NIETC designation process to identify valuable areas for transmission development that these existing transmission planning processes may not be identifying. For example, existing transmission planning processes are largely constrained by their focus on regional or local needs, whereas the NIETC designation process can examine interregional needs, as discussed more in Section IV.B above. This includes considering whether a NIETC geographic area that spans more than one transmission planning region could result in transmission development that provides one type of benefits for one transmission planning region (e.g., reliability benefits) and a different type of benefits for another transmission planning region (e.g., public policy-based benefits). The ability to consider the potential for multi-value transmission development within a NIETC is distinct from many existing transmission planning processes, which may consider transmission needs, and associated solutions, on a more limited basis.[103] Thus, rather than interfering with existing transmission planning processes, NIETC

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[100] *See* Public Interest Organizations Comments.

[101] *See, e.g.*, Comments from Invenergy, MISO TOs, and NJ Rate Counsel; *see also* CEBA Comments (stating that demand from CEBA's members accounts for roughly 40% of all wind, solar, and battery capacity deployed since 2014 and that "CEBA's members and other corporate and industrial energy customers are projected to drive demand for at least an additional 85 GW by 2030").

[102] *See* Comments from CAISO, MISO TOs, National Grid, NJ Rate Counsel, NYTOs, PAPUC, PJM, SERTP Sponsors, State Farm Bureaus, LPSC/MSPSC, TAPS, and WIRES.

[103] *See* 2023 Needs Study at 3-4 (stating that "holistic, multivalue transmission expansion planning can allow for transmission solutions to meet multiple planning objectives and can lead to a more efficiently planned, cost-effective bulk power system" and that the 2023 Needs Study "recognizes and considers additional factors not traditionally captured by more narrowly focused transmission planning processes, including flexibility and

designation can work together with these processes to identify and meet a greater number of transmission needs.

To ensure that the NIETC designation process is able to work with—and not hinder—existing transmission planning processes, DOE requests information from interested parties on the inclusion of any potential transmission project that may be developed within a potential NIETC in local or regional transmission plans, including the extent of any discussions with relevant regulatory authorities, including siting authorities, and/or transmission planning entities. DOE also requests information on the submission of formal proposals to include any potential transmission project that may be developed within a potential NIETC in any local and/or regional transmission plans. Similarly, DOE requests information on participation of potential transmission developers within a potential NIETC in competitive transmission planning processes. For all these scenarios (inclusion, submission, participation), DOE requests the results (see Section V.B.1). DOE can use this information to inform its consideration of potential NIETC designations at the outset. This includes not only through including selection by a regional transmission planning entity of one or more transmission projects within a potential NIETC in a regional transmission planning process as a factor in making the threshold need determination, but also through significant engagement with transmission planning entities as the process described below further unfolds.

c. Identification of Relevant Discretionary Factors

With the potential NIETCs remaining, DOE then identifies the relevant discretionary factors set forth in FPA section 216(a)(4) for each potential NIETC—the final step in Phase 1. Similar to the threshold need determination step, at this point in the NIETC designation process, DOE performs a preliminary assessment of the validity of claims in information submissions that certain factors are relevant to a particular potential NIETC, including initial evaluation of the source of any pertinent data provided and the process used to gather and/or develop the data, as well as of the reasonableness of the conclusions drawn therefrom. In order to focus resources, DOE may rely on relevant discretionary factors to further narrow the list of potential NIETCs that move to Phase 2. However, DOE does not prioritize among the discretionary factors, meaning that DOE looks to all the factors that may be relevant to a particular NIETC designation rather than focusing on one or more particular factors, as discussed further below regarding the in-depth evaluation in Phase 3.

2. Phase 2: Preliminary List, Comment Period, and Additional Information on Geographic Boundaries and Permitting

Phase 2 of the NIETC designation process begins with DOE's issuance of a preliminary list of potential NIETC designations. This opens a comment period and a Phase 2 information

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optionality considerations"); *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 87 FR 26504, at 26509-26516 (May 4, 2022) (Notice of Proposed Rulemaking) (explaining existing regional transmission planning and interregional coordination processes).

submission window for submission of additional information on geographic boundaries and permitting. DOE prioritizes which potential NIETCs move to Phase 3 based on the available information on geographic boundaries and permitting and preliminary review of comments.

a. Issuance of Preliminary List of Potential NIETC Designations and Opening of Phase 2 Information Submission Window

At this point in the NIETC designation process (approximately 60 days following Phase 1 information submissions), DOE makes the first public announcement—the preliminary list of potential NIETC designations—and opens a Phase 2 information submission window (45-day window). In this issuance, DOE identifies which potential NIETCs it is continuing to consider, including the preliminary geographic boundaries of the potential NIETCs, the preliminary assessment of present or expected transmission capacity constraints or congestion that adversely affects consumers, and the list of factors in FPA section 216(a)(4) that DOE has preliminarily identified as relevant to the potential NIETCs. DOE invites comments from the public on those potential NIETCs, including recommendations and alternatives per FPA section 216(a)(2). This issuance provides high level explanation of why the potential NIETCs in the list are moving forward in the NIETC designation process. NIETCs proposed in Phase 1 information submissions that are not included in the preliminary list do not move forward in the ongoing process, though resubmissions are allowed in future Phase 1 information submission windows.

During the Phase 2 information submission window, interested parties may submit information and recommendations based on the list provided in this Guidance. The list of information for Phase 2 is designed to assist DOE in conducting a study of environmental impacts pursuant to NEPA and examining any requirements that may apply under other federal statutes, such as the NHPA and ESA, in designating one or more NIETCs. While the Phase 2 information submission window is only 45 days, interested parties have the full list of information that DOE requests during Phase 2 as of the issuance of this Guidance. This means that interested parties have approximately 150 days to prepare this submission prior to the Phase 2 information submission window closing (i.e., 45 days from the Phase 1 information submission window, approximately 60 days of DOE's preliminary assessment, and then the 45 days of the Phase 2 information submission window). Mechanisms for maintaining confidentiality of information included in information submissions, including Critical Electric Infrastructure Information (CEII), are discussed below (see Section V.C).

Although DOE sought comment on whether to establish separate tracks for potential NIETCs in which issuance of a FERC permit is the aim versus NIETCs in which only access to DOE commercial facilitation and finance tools is the aim, commenters present persuasive arguments as to why this is not likely to yield sufficient benefits to outweigh the burdens.[104] For one, no matter whether a NIETC designation results in the use of FERC's permitting authority

[104] *See, e.g.,* Comments from ACEG, Nature Conservancy/Audubon, NextEra, NRECA, NYTOs, Public Interest Organizations, and SEIA.

and/or DOE commercial facilitation and finance tools, or none of the above, DOE must comply with any NEPA obligations that are triggered by the designation. To this end, DOE intends to gather certain environmental information regardless of the benefits that may accrue within a NIETC to transmission developers, such that creating separate tracks may not result in any efficiency gains. Separate tracks would also limit DOE's flexibility to consider scoping the geographic boundaries of a NIETC based on more than one information submission, e.g., to combine potential NIETCs into a single NIETC where one or more transmission projects may be competing to meet the same identified need.

b. Technical Completeness Assessment and Preliminary Comment Review

Following the close of a Phase 2 information submission window, DOE conducts a technical completeness assessment based on the available information on geographic boundaries and permitting for potential NIETCs, including information included in Phase 2 information submissions. DOE ranks potential NIETCs based on relative completeness of information available. DOE also performs a preliminary review of public comments, including considering recommendations and alternatives from interested parties. As explained above, one of the primary advantages of the NIETC designation approach in this Guidance is the efficiency gained by relying on more complete and accurate environmental information to the greatest extent possible and streamlining the process of NIETC designation and environmental review. To that aim, DOE prioritizes potential NIETCs where there is sufficient information to facilitate DOE's environmental review to designate a NIETC as efficiently and effectively as possible.

3. Phase 3: In-Depth NIETC Evaluation and Preparation of Draft Environmental Document, As Needed

With the narrowed list of potential NIETCs following the technical completeness assessment and preliminary review of comments, DOE moves into Phase 3. At a high level, during this phase, DOE continues to independently assess the basis for NIETC designation, initiates the NEPA process, as needed, and conducts robust public engagement, culminating in release of one or more draft designation reports and draft environmental document, as needed, for public comment.

a. Developing Geographic Boundaries of Potential NIETCs

DOE begins this step by considering whether combining all or portions of potential NIETCs could achieve greater benefits, including increased opportunity for competition among potential solutions within designated NIETCs and/or coordinated NEPA for multiple solutions within a similar geographic area.[105] This requires careful balancing to take advantage of the

[105] *See* Comments from CPUC/CEC, PAPUC, PftP, and TAPS.

potential for greater benefits with a wider geographic scope while maximizing the value of the narrower NIETC designation process.

The geographic boundaries of any given NIETC are also informed by environmental and related assessments DOE conducts concurrently with evaluating NIETC designation under the provisions of the FPA. During this step, DOE initiates the NEPA process and makes an evaluation of environmental impacts from the proposed NIETC designation to determine an appropriate level of NEPA review, consistent with CEQ regulations.

For the purposes of this Guidance, DOE is using an EIS timeline throughout the document as an example; however, a final decision on the appropriate level of NEPA review will be made during Phase 2 of the NIETC designation process before initiating NEPA review in Phase 3. The NOI informs the public about the proposed action and identifies potential narrow geographic areas where one or more transmission projects could be located within an area preliminarily identified by DOE as having present or expected transmission capacity constraints or congestion that adversely affects consumers. The NOI also contains a list of potential environmental issues that DOE has tentatively identified for analysis and outlines a process for developing a draft EIS in accordance with NEPA, CEQ regulations,[106] and DOE's regulations developed pursuant to NEPA, to the extent an EIS is needed.[107] The NOI further discusses DOE's compliance with requirements under section 106 of the NHPA, section 7 of the ESA, and any other applicable federal environmental review laws and executive orders, as needed.[108] At the NOI stage, DOE has enough information to start the process under section 106 of the NHPA. With respect to section 7 of the ESA, DOE may submit a request to the U.S. Department of the Interior or any other appropriate federal agency to initiate ESA section 7 consultation prior to NOI issuance or at the close of scoping when issues are more settled and the proposed action has been more clearly identified.

For each potential NIETC, the NOI also announces DOE's plans to conduct future public scoping meetings and to open an opportunity to solicit public comments for consideration in establishing a full scope and intent of the draft EIS, as needed. The scoping process affords other interested parties, such as environmental groups, local governments, and the public, an opportunity to propose additional alternatives. During this step, DOE initiates alternatives development, establishes impact analysis for the proposed action, and each alternative that will estimate the nature, severity, and duration of impacts that might occur. DOE also plans to coordinate with cooperating agencies (federal, state, and local), as well as consult with affected Indian Tribes and local governments. If initiated, DOE continues consultations under section 106 of the NHPA and section 7 of the ESA, as appropriate. Mechanisms for maintaining

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[106] *See* 40 CFR 1500–1508.

[107] *See* 10 CFR 1021.

[108] *See, e.g.,* Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All,* 88 FR 25,251 (Apr. 26, 2023), https://www.govinfo.gov/content/pkg/FR-2023-04-26/pdf/2023-08955.pdf.

confidentiality of information included in information submissions, including CEII, are discussed below (see Section V.C).

b. In-Depth Evaluation of Need and Discretionary Factors

In addition to refining the geographic boundaries of the potential NIETCs, this phase involves DOE independently assessing the full basis for NIETC designation. This means that DOE further analyzes the present or expected transmission capacity constraints or congestion that adversely affects consumers in the potential NIETC geographic area. Although reliance on the findings in the 2023 Needs Study satisfy the threshold need determination screening, as explained above, at this point in the NIETC designation process, DOE seeks to verify that conditions have not changed so significantly since issuance of the 2023 Needs Study to upset the findings therein that otherwise support NIETC designation. DOE performs a similar verification where selection in a regional transmission planning process factored into the threshold need determination. DOE also independently verifies "other information" that forms the basis of the need in a potential NIETC geographic area. In addition, DOE considers whether identified needs within a potential NIETC geographic area are already being addressed through solutions that will advance faster than NIETC designation, thereby undercutting the value of NIETC designation.[109]

Likewise, DOE independently assesses the relevant factors in FPA section 216(a)(4). This includes verifying the relevance of the factors to the potential NIETC designation and the extent to which NIETC designation may further the aim of the factors. DOE does not prioritize among discretionary factors but rather assesses potential NIETC designations more comprehensively based on all the relevant discretionary factors. In other words, DOE looks to the full suite of benefits that may accrue as a result of a particular NIETC designation rather than focusing on one or more specific characteristics. This reflects the dynamic nature of the energy landscape and affords DOE the flexibility needed to target the likely most impactful NIETC designations as of the time of designation. Many commenters suggest prioritization for various reasons—many of which are valid and important considerations that DOE will assess in this step, even if DOE does not weight one particular factor over another.[110]

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[109] *See* Alliant Comments.

[110] *See* Comments from Con Edison, MISO/PJMCCC, NESCOE, and State Farm Bureaus (suggesting DOE prioritize NIETCs supported by key stakeholders, primarily siting authorities); Comments from ACORE, APPA, CAISO, Joint State Regulators, NRECA, PJM, SERTP Sponsors, and WIRES (suggesting DOE prioritize NIETCs where underlying project(s) have been approved in existing planning processes); Grid United Comments (suggesting DOE prioritize NIETCs outside RTOs/ISOs); Comments from LADWP, National Grid, NJ Rate Counsel, NV Energy, and SEIA (suggesting DOE prioritize NIETCs with reliability and resilience benefits, including mitigating for extreme weather events); Public Interest Organizations Comments (suggesting DOE prioritize NIETCs that improve diversification of supply); Comments from LADWP, National Grid, NV Energy, Public Interest Organizations, and Southern Public Interest (suggesting DOE prioritize NIETCs that promote the greatest reduction in greenhouse gas emissions); Comments from Con Edison and BlueGreen (suggesting DOE prioritize NIETCs that further offshore wind development); Comments from ACORE, BlueGreen, Colorado Energy, Con Edison, Gallatin, Joint State Regulators, MI-AG, MISO/PJMCCC, National Grid, Nature Conservancy/Audubon, NY State Entities,

c. Engagement, Consultation, and Coordination

During this phase in the NIETC designation process, DOE conducts robust public engagement, consistent with the FPA, NEPA, and other applicable federal statutes. DOE will develop a public engagement plan based on the potential NIETC(s) under consideration, which may include a series of virtual or in person public meetings near the proposed action, informal workshops, and dissemination of information via local newspaper and via other public engagement tools, all to ensure that public involvement is incorporated in a meaningful manner. DOE expects significant engagement with interested parties, including with key stakeholders such as affected landowners and communities of interest, siting authorities,[111] regional transmission planning entities,[112] and regional entities. This includes through the NEPA process but also on the non-NEPA-related aspects of potential NIETC designation, e.g., finding of transmission capacity constraints or congestion, adverse effects on consumers, and discretionary factors. DOE aims to maximize opportunities to combine outreach on all issues related to potential NIETC designation to the extent practicable to make meaningful participation on the full range of issues easier. This phase in the process involves, in particular, consultation with regional entities, as required by FPA section 216(a)(3), as well as with affected States, Indian Tribes, and local authorities responsible for transmission siting and/or permitting within potential NIETCs (i.e., siting authorities).

In addition, where developers of potential transmission projects within a NIETC indicate an intention to seek permits from FERC under FPA section 216(b), DOE will coordinate with

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NYTOs, Public Interest Organizations, SEIA, SERTP Sponsors, and WIRES (suggesting DOE prioritize NIETCs for interregional transmission development); Comments from BlueGreen, LADWP, MISO/PJMCCC, and SEIA (suggesting DOE prioritize NIETCs that result in greatest host community benefits); Comments from BlueGreen, LADWP, NASEO, and NECA (suggesting DOE prioritize NIETCs where developers commit to strong labor standards and workforce development); Comments from Colorado Energy, LADWP, MISO/PJMCCC, NWF Coalition, OSPA, Policy Integrity, Public Interest Organizations, SEIA, and State Farm Bureaus (suggesting DOE prioritize NIETCs that serve national environmental justice and equity goals and benefit disadvantaged communities and communities of interest more broadly); Comments from BlueGreen and LADWP (suggesting DOE prioritize NIETCs that promote the use of U.S.-made materials); Comments from APPA, LADWP, NRECA, and TAPS (suggesting DOE prioritize NIETCs based on use of joint ownership arrangements); Comments from Idaho Power, Land Trust, MISO/PJMCCC, NASEO, Nature Conservancy/Audubon, NWF Coalition, Public Interest Organizations, REC/NGH, and VEIR (suggesting DOE prioritize NIETCs that maximize the use of existing rights-of-way); Comments from AZ Game and Fish, Land Trust, Nature Conservancy/Audubon, NWF Coalition, Public Interest Organizations, and Trout Unlimited (suggesting DOE prioritize NIETCs that minimize potential impacts on sensitive environmental and cultural areas); Comments from APPA, NJ Rate Counsel, and NRECA (suggesting DOE prioritize NIETCs that lower costs to consumers); Comments from Hitachi and Nature Conservancy/Audubon (suggesting DOE prioritize NIETCs that encourage the use of HVDC or EHV technology); Comments from AES NET, AMP, ELPC/Audubon/Vote Solar, LineVision, VEIR, and WATT (suggesting DOE prioritize NIETCs that encourage the use of grid-enhancing technologies).

[111] *See* CPUC/CEC Comments.

[112] *See* Comments from Alliant, AMP, CAISO, CEBA, Joint State Regulators, MISO TOs, National Grid, NJ Rate Counsel, NYTOs, Public Interest Organizations, SERTP Sponsors, State Farm Bureaus, TAPS, and WIRES.

FERC to the maximum extent practicable to minimize redundancy and promote efficiency.[113] As mentioned previously, FERC has a pending notice of proposed rulemaking to update its regulations in response to the IIJA revisions to FPA section 216(b).[114] DOE has crafted the environmental information requests specified in this Guidance to facilitate, to the maximum extent practicable, the ability of FERC, other federal agencies, and developers of potential transmission projects to utilize this information in other permitting processes, including a future FERC permitting proceeding, to reduce duplication and improve efficiency and timeliness. However, upon FERC's issuance of a final rule, DOE may reexamine the specific environmental information requests specified in this Guidance, in order to facilitate a holistic approach regarding FPA section 216.[115] Further, DOE is not revisiting its previous delegation of its section 216(h) authority to FERC for transmission projects proposed pursuant to section 216(b).[116]

DOE recognizes the unique role of state and local governmental bodies in transmission development given their authority over siting and permitting transmission facilities in their jurisdictions and/or over state environmental and natural resources. DOE encourages robust engagement in the NIETC designation process by these entities because they are important stakeholders with clear interest in the outcome of the process and have valuable insights to improve the efficiency and effectiveness thereof.[117] In response to commenters asking specifically for consultation with Indian Tribes before NIETC designation,[118] DOE will consult with federally recognized Indian Tribes on a government-to-government basis when DOE has enough information to hold meaningful consultations. Additionally, FPA section 216(a)(2) requires an opportunity for comment from Indian Tribes in particular prior to NIETC designation.

d. Issuance of Draft Designation Report(s) and Draft Environmental Document, As Needed

DOE's in-depth independent analysis of the rationale underlying potential NIETC designations; development of a proposed action and alternatives; and robust engagement with interested parties leads to issuance of one or more draft designation reports and Notices of

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[113] *See* Comments from ACEG, ACORE, ACP, AZ Game and Fish, CEBA, Clean Air TF, CPUC/CEC, Invenergy, Nature Conservancy/Audubon, NECA, NextEra, NV Energy, PGE, Public Interest Organizations, and SEIA (recommending coordination with FERC to avoid duplicative environmental reviews and strain on resources).

[114] Notice of Proposed Rulemaking, 181 FERC ¶ 61,205. FERC's deadline for accepting comments on the section 216(b) proposed rulemaking was May 17, 2023.

[115] *See* Comments from ACP and AZ Game and Fish (recommending DOE request information that can be utilized by FERC).

[116] *See* DOE Delegation Order No. S1-DEL-FERC-2006, https://www.directives.doe.gov/delegations-documents/s1-del-ferc-2006/@@images/file; *see also* 2023 Memorandum of Understanding Regarding Facilitating Federal Authorizations for Electric Transmission Facilities (May 2023), https://www.whitehouse.gov/wp-content/uploads/2023/05/Final-Transmission-MOU-with-signatures-5-04-2023.pdf.

[117] *See* Comments from AZ Game and Fish, Joint State Regulators, NASEO, Nature Conservancy/Audubon, NESCOE, NJ Rate Counsel, NV Energy, NWF Coalition, NY State Entities, NYTOs, Public Interest Organizations, and State Farm Bureaus.

[118] *See* Comments from NWF Coalition and OSPA.

Availability of draft EISs, as needed, in the *Federal Register*, making any draft EISs available for public review and comment. The draft designation report includes background information; description of the process to identify NIETCs for designation, including engagement with interested parties, consideration of alternatives and recommendations, including from affected States and Indian Tribes, and required consultation under FPA section 216(a)(3) with regional entities; summary of comments and DOE's responses; explanation of the basis for the finding of present or expected transmission capacity constraints or congestion that adversely affects consumers; and consideration of relevant discretionary factors. Following issuance, interested parties have an opportunity to comment on both the draft designation report(s) and any draft EIS(s), as well as to participate in public meetings with DOE both to solicit comments and enhance public engagement. Concurrent with any draft EIS public comment period, any ongoing cultural or Tribal consultation and compliance with other applicable federal statutes will continue. It is DOE's intent to take public input on NHPA section 106 consultation during the NEPA process, to the extent that effective coordination is practicable. Following the close of the comment period on any draft EIS(s), DOE revises any draft EIS(s) as needed by incorporating any substantial comments received during the comment period. DOE also informs the consultation processes and prepares any final EIS(s) for issuance.

4. Phase 4: Issuance of Final Designation Report(s) and Environmental Document, As Needed

Phase 4 begins with DOE's issuance of any needed final EIS(s), which includes a summary that identifies all alternatives, information, comments, and analyses submitted by state, Tribal, and local governments and other interested parties for consideration by DOE in developing the final EIS(s). Notice of any final EIS(s) is published in the *Federal Register*. DOE's NEPA regulations require a period of 30 days before making a final decision on a proposed action. After the 30-day period concludes, DOE issues a NEPA Record of Decision (ROD) for each NIETC for which an EIS was prepared, summarizing the finding in the EIS and basis for decision. The ROD constitutes the complete federal decision for the NIETC designation with respect to environmental, historic, and cultural resources. Concurrent with the issuance of the NEPA ROD(s), to the extent they are needed, DOE issues the final designation report(s), consistent with FPA section 216(a)(2), which concludes the NIETC designation process for those NIETCs addressed.

D. Post-NIETC Designation

Review of any final order designating a NIETC is governed by section 313 of the FPA.[119] Orders issued under the FPA, after application for rehearing by an aggrieved party and denial thereof, are subject to direct review in the courts of appeals in any circuit "wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in

[119] 16 U.S.C. 825*l*.

the United States Court of Appeals for the District of Columbia."[120] Thus, only those persons who have obtained party status in the proceeding may file a request for rehearing of a final order with DOE. DOE will grant party status to anyone who files information or recommendations as described in Phase 1, as well as anyone who comments in response to the notice of the preliminary list of potential NIETC designations, in the manner and by the deadline indicated in the notice. Further, the filing of a rehearing request within 30 days of issuance of the final order is a jurisdictional prerequisite to judicial review. For purposes of this judicial review process, a final designation report is considered a "final order" under the FPA.[121]

Designation of a NIETC does not constitute selection of or a preference for a specific transmission project for DOE funding purposes. Developers of transmission facilities within a NIETC may apply for DOE funding opportunities and DOE will evaluate such applications based on the criteria for those funding opportunities. NIETC designation also does not equate to a route determination for any particular proposed transmission project nor is it an endorsement of one or more transmission solutions to identified present or expected transmission capacity constraints or congestion within the NIETC. For these reasons, changes to a transmission project(s) that may have informed the NIETC designation do not require DOE to revisit the scope of the NIETC designation.[122] The duration of each specific NIETC designation will be addressed in the NIETC designation report. Similarly, concerns about the NIETC designation process being used to short-circuit existing transmission planning processes, including interconnection processes and essential reliability assessments associated with those processes, are misguided. DOE's designation of a geographic area as a NIETC, even if based on one or more transmission projects under development, does not have any impact on the applicability of interconnection processes to those projects.

Entities wishing to develop transmission facilities within a NIETC may apply for DOE funding opportunities, such as the Transmission Facilitation Program or the Transmission Facility Financing Program described above,[123] and, if not already started, may seek a federal permit from FERC under certain circumstances provided in FPA section 216(b). In response to requests to allow interested parties to use the same materials for multiple DOE programs, e.g., for NIETC information submissions, interagency coordination under FPA section 216(h), Transmission Facility Financing, and the Transmission Facilitation Program,[124] eligible entities

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[120] 16 U.S.C. 825*l*(b) (FPA Section 313(b)); *see also* 5 U.S.C. 702; *Friends of Cowlitz v. FERC*, 253 F.3d 1161, 1165-66 (9th Cir. 2001), *as amended* 282 F.3d 609 (9th Cir. 2002) (noting jurisdiction under FPA section 313 and the Administrative Procedure Act (APA)). FPA section 313(b) refers to orders of the "Commission." After enacting this judicial review provision, Congress abolished the Federal Power Commission and divided its duties between DOE and FERC. Pub. L. No. 95-91, 91 Stat. 565 (1977). The term "Commission" in section 313(b) thus refers to both successor agencies. *See Cal. Save Our Streams Council, Inc. v. Yeutter*, 887 F.2d 908, 912 (9th Cir. 1989) ("FPA funnels all challenges to the courts of appeals.").

[121] *See* Public Interest Organizations Comments (requesting that DOE explain how the public might seek judicial review of NIETC designations).

[122] *See* Comments from Alliant and Invenergy.

[123] To learn more about these and other programs, please visit www.energy.gov/gdo/conductor or email transmission@hq.doe.gov.

[124] *See* ACORE Comments.

are not prohibited from using the same materials, but DOE does not at this time have a single mechanism to submit information to multiple programs in this way. DOE continues to explore ways to streamline access to resources and may develop mechanisms to submit materials to multiple programs in the future. Details about how to apply for a TFF loan are forthcoming at a later date, as well as information regarding public-private partnerships under the TFP program.

Similarly, in response to the suggestion that DOE provide funding and/or technical assistance for States and Indian Tribes to make information submissions,[125] DOE will consider this suggestion as existing and future program implementation proceeds. Making information submissions as contemplated by this Guidance is meant to assist with DOE's consideration as to whether to designate a particular geographic area as a NIETC. Interested parties that submit information and recommendations do not receive any preference for other DOE programs, including those tied to NIETC designation, in exchange for or as a result of making a submission proposing NIETC designation.[126]

V. Guidance on Information Submissions

A. Eligibility to Make Information Submissions

Interested parties, meaning any person or entity, including States and Indian Tribes, concerned with DOE's exercise of its discretion to designate a geographic area as a NIETC, are eligible to submit information and recommendations.[127]

In response to many requests from commenters to expand eligibility for making information submissions beyond transmission developers,[128] DOE opens eligibility to any interested party. DOE does not prioritize NIETC designation based on which interested party submits information and recommendations. By opening up eligibility beyond transmission developers, DOE seeks to broaden the sources from which it will receive information and recommendations needed to efficiently and effectively comply with its obligations under the FPA and other federal statutes applicable to NIETC designations. As commenters suggest, opening eligibility may spur collaborative transmission development among traditional developers, load serving entities (including public power entities and Indian Tribes), States and local governments, and others; encourage innovative public-private partnerships and sponsorship models to transmission development with generation developers; and, in general, recognize the

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[125] *See* ACORE Comments.

[126] In response to comments from NextEra, ACP, and others, information submissions cannot be used to access non-NIETC DOE funding, such as Grid Resilience and Innovation Partnerships Program funding.

[127] As described above, DOE will deem an entity that submits such information or recommendation a "party" under FPA section 313. DOE will also deem any other entity that later submits a comment to be a party for the purpose of FPA section 313.

[128] *See, e.g.*, Comments from ACEG, ACORE, ACP, AES NET, Alliant, CEBA, Colorado Energy, CETA, Clean Air TF, CPUC/CEC, Georgia Solar, Joint State Regulators, LADWP, MISO/PJMCCC, NASEO, Nature Conservancy/Audubon, NESCOE, NJ Rate Counsel, NWF Coalition, NY State Entities, OSPA, Puget, Public Interest Organizations, and SEIA.

value of more diverse perspectives in the NIETC designation process. Note that there is no prohibition on the number of information submissions from an interested party, though DOE encourages interested parties making multiple submissions to include an explanation of any relationship among those submissions.[129]

Although eligibility for making information submissions is broad, as explained above, DOE only moves from Phase 1 to Phase 2 with those potential NIETC designations that satisfy the threshold need determination and may also narrow the list of potential NIETC designations based on relevant discretionary factors in FPA section 216(a)(4). DOE also assesses potential NIETC designations in Phase 2 for technical completeness based on the available information on geographic boundaries and permitting. DOE prioritizes moving forward with potential NIETC designations where more specific and complete information is available in the immediate term. DOE acknowledges that a subset of interested parties are more likely to have access to the requested information, especially the level of information needed for DOE to comply with its obligations efficiently and effectively. DOE also expects that information submissions by interested parties where one or more specific transmission projects—whether new and/or upgraded transmission[130]—are under development, meaning that a transmission developer has progressed beyond the preliminary concept and has begun routing the project and engaging in outreach with affected landowners, conducting land surveys, and/or initiating environmental compliance work, are likely to have more useful information for DOE.

As discussed in greater detail above, DOE believes that the more targeted NIETC designation process set forth in this Guidance is a more efficient and effective way for DOE to exercise its discretion under the FPA, especially given the agency's experience with designating broader geographic areas as NIETCs. There are multiple opportunities for all interested parties to submit comments and recommendations during the NIETC designation process beyond the initial information submissions. DOE therefore does not request less information from non-transmission developers, as suggested by some commenters.[131] Importantly, DOE does not *require* any level of information; rather, DOE allows interested parties to help inform DOE's independent exercise of its discretion to designate NIETCs under FPA section 216(a)(2) through submitting information and recommendations. Similarly, DOE does not explicitly solicit information on geographic areas where there are transmission projects in the earliest stages of development and/or no transmission projects under development.[132] Proceeding through the NIETC designation process where less specific and complete information is available is a less efficient use of DOE's resources and a less effective exercise of DOE's discretion. Therefore, DOE does not prioritize these areas at this time. As more information becomes available,

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[129] *See* NextEra Comments.

[130] Note that information submissions are not limited to only those instances where new transmission is being developed, as opposed to upgrades to existing transmission. *See* Comments from AES NET and Grid United.

[131] *See* Comments from Colorado Energy, Clean Air TF, Nature Conservancy/Audubon, and Public Interest Organizations.

[132] *See* Comments from ACEG, AEU, CEBA, Clean Air TF, Con Edison, Gallatin, Georgia Solar, Grid United, Idaho Power, MI-AG, NJ Rate Counsel, PftP, OSPA, REC/NGH, and Southern Public Interest.

interested parties may make information submissions in subsequent information submission windows. In addition, interested parties may continue engaging with DOE at various stages of the NIETC designation process, and with each iteration thereof, to ensure a robust process that includes consideration of relevant information and recommendations from a diverse set of perspectives.

B. Contents of Information Submissions

DOE requests information and recommendations in two phases. For Phase 1 information submission windows, DOE requests that interested parties provide information on the geographic boundaries of the potential NIETC and on the identification of need and relevant discretionary factors set forth in FPA sections 216(a)(2) and (4). For Phase 2 information submission windows, DOE requests that interested parties provide additional information on geographic boundaries and permitting. The information requested is intended to assist DOE in fulfilling its statutory requirements for NIETC designation under the FPA, as detailed above, as well as conducting a study of environmental impacts pursuant to NEPA and other federal statutes, as efficiently and effectively as possible.

1. Phase 1 Information Submissions: Geographic Boundaries, Need, and Discretionary Factors

a. Geographic Boundaries of Potential NIETC

To assist DOE in determining the geographic boundaries of a potential NIETC, DOE requests that interested parties provide, to the extent any such information is available, in their Phase 1 information submissions the following:

1. A description of the geographic boundaries of a potential NIETC and location maps of the potential NIETC geographic area within those geographic boundaries.
2. A description of a geographic area for potential NIETC designation of sufficient scope and size to construct, maintain, and safely operate one or more transmission projects.
3. An explanation of which interconnection points for any potential transmission project(s) within the potential NIETC geographic area have been identified, secured, and/or assessed.
4. A description of known federal authorizations and the status of these federal authorizations or permits that may be needed for a transmission project located within the potential NIETC geographic area.
5. A statement as to whether any transmission developer within the potential NIETC geographic area has started any state and/or local siting and permitting processes, and the status thereof.
6. A statement as to whether any transmission developer within the potential NIETC geographic area intends to seek a federal permit pursuant to FPA section 216(b) from FERC, and if so, the status of any initiation of or participation in a FERC pre-filing process.

b. Identification of Need and Relevant Discretionary Factors

To assist DOE in determining whether the geographic area of the potential NIETC designation is experiencing or is expected to experience transmission capacity constraints or congestion that adversely affects consumers, DOE requests that interested parties provide in their Phase 1 information submissions the following:

Identification of Need

1. A description, with supporting documentation, of how the potential NIETC geographic area is experiencing or is expected to experience transmission capacity constraints or congestion and how that adversely affects consumers, whether those consumers are located within the NIETC geographic area or beyond its geographic boundaries. Interested parties may reference findings in the 2023 Needs Study, as well as DOE's preliminary finding regarding the use of NIETC designation to address the need for increased interregional transfer capacity described in Section IV.B above, and/or other information relating to transmission capacity constraints and congestion.[133]
2. A description, with supporting documentation, of the inclusion of any potential transmission project(s) that may be developed within a potential NIETC in local or regional transmission plans, including the extent of any discussions with relevant regulatory authorities, including siting authorities, and/or transmission planning entities, and the results thereof.
3. A description, with supporting documentation, of the submission of formal proposals to include any potential transmission project(s) that may be developed within a potential NIETC in any local and/or regional transmission plans, and the results thereof.
4. A description, with supporting documentation, of the participation of potential transmission developers within a potential NIETC in competitive transmission planning processes, and the results thereof.

To assist DOE in considering the additional factors in FPA section 216(a)(4), as relevant to a particular potential NIETC, DOE requests that interested parties also provide in their Phase 1 information submissions the following:

Identification of Relevant Discretionary Factors

1. **216(a)(4)(A)** = A description, with supporting documentation, of whether, and if so how, the economic vitality and development of the potential NIETC geographic area, or the

[133] *See, e.g.*, 2023 Needs Study at ii-xi (Executive Summary), 50-51 (Current Transmission Need Assessment through Historical Data, Conclusions), 108-12 (Conclusions and Summary of Transmission Needs and Benefits Identified Across the Reviewed Studies), 142-44 (Conclusions and Summary of Future Needs Identified through Capacity Expansion Model Analysis); DOE, *National Transmission Needs Study: Supplemental Material* (Oct. 2023), https://www.energy.gov/sites/default/files/2023-10/National_Transmission_Needs_Study_Supplemental_Material_2023.pdf.

end markets served by that geographic area, may be constrained by lack of adequate or reasonably priced electricity.

2. **216(a)(4)(B)** = A description, with supporting documentation, of whether, and if so how, economic growth in the potential NIETC geographic area, or the end markets served by that geographic area, may be jeopardized by reliance on limited sources of energy and a diversification of supply is warranted.
3. **216(a)(4)(C)** = A description, with supporting documentation, of whether, and if so how, the energy independence or energy security of the United States would be served by the potential NIETC designation.
4. **216(a)(4)(D)** = A description, with supporting documentation, of whether, and if so how, the potential NIETC designation would be in the interest of national energy policy.[134]
5. **216(a)(4)(E)** = A description, with supporting documentation, of whether, and if so how, the potential NIETC designation would enhance national defense and homeland security.
6. **216(a)(4)(F)** = A description, with supporting documentation, of whether, and if so how, the potential NIETC designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid.
7. **216(a)(4)(G)(i)** = A description, with supporting documentation, of whether, and if so how, the potential NIETC designation would maximize existing rights-of-way. This description may indicate the extent to which the potential NIETC geographic area could align with existing rights-of-way, including utility rights-of-way, rail rights-of-way, highway rights-of-way, and multi-function energy corridors established on federal lands under section 368 of the Energy Policy Act of 2005.[135]
8. **216(a)(4)(G)(ii)** = A description, with supporting documentation, of whether, and if so how, the potential NIETC designation would avoid and minimize, to the maximum extent practicable, and offset to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites. This description may include a discussion of existing or ongoing environmental review and documentation activities and participants within the potential NIETC geographic area. To the extent available, interested parties may submit information from the Phase 2 information submission list below, during Phase 1, to support this discretionary factor.

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[134] See Section II.D of this Guidance (discussing relevant national energy policy goals to consider in providing this information).

[135] Several agencies worked to establish multi-function (including transmission) energy corridors on federal lands in 11 western states (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming) under section 368 of the Energy Policy Act of 2005. 42 U.S.C. 15926. Section 368 directs several agencies, including DOE, to designate these multi-use corridors on federal lands. Section 368 also directs the agencies to, when designating such corridors, account for the need for upgraded and new infrastructure and to take actions to improve reliability, relieve congestion, and enhance the capability of the national grid to deliver energy. On April 20, 2022, the Bureau of Land Management, the U.S. Forest Service, and DOE released the Final Regional Review Report for the West-wide Energy Corridors, which designated 5,000 miles of energy corridors for potential placement of electricity transmission and distribution infrastructure, among other energy transport projects.

9. **216(a)(4)(H)** = A description, with supporting documentation, of whether, and if so how, the potential NIETC designation would result in a reduction in the cost to purchase electric energy for consumers.

2. Phase 2 Information Submissions: Additional Information on Geographic Boundaries and Permitting

As explained in the background section of this Guidance above, DOE intends to conduct a study of impacts on resources, as appropriate, as part of DOE's designation of a NIETC. To assist DOE in assessing the impacts of a potential NIETC designation, DOE requests that interested parties provide in their Phase 2 information submissions the following essential resource information: concise descriptions of any known or potential environmental and cumulative effects resulting from a potential NIETC designation, including visual, historic, cultural, economic, social, or health effects thereof. More specifically, DOE requests that interested parties provide the following data:

1. ***Resource Report 1—General description of geographic boundaries***. This report may describe facilities associated with the proposed action and any known special construction, operation, and maintenance procedures that may exist within the potential NIETC geographic area. Specifically, Report 1 may:
    a. Describe the geographic boundaries of the potential NIETC and provide location maps of the potential NIETC geographic area within those geographic boundaries. The size of the potential NIETC should be sufficient to allow for the evaluation of various potential alternative routes and route segments with differing environmental, engineering, and regulatory constraints.
    b. Explain how those geographic boundaries will:
        i. Allow for meaningful evaluation of the potential environmental impacts of one or more potential transmission projects within the geographic area;
        ii. Result in a geographic area of sufficient scope and size to construct, maintain, and safely operate one or more transmission projects within the potential NIETC geographic area in accordance with applicable regulatory requirements and reliability standards; and
        iii. Accommodate reasonable route changes that may occur when siting and permitting infrastructure within the potential NIETC geographic area, particularly those needed to address local community and/or resource concerns such as avoiding sensitive features, that can be achieved by relatively minor adjustments to the route.
    c. Provide any existing aerial images, topographic maps, or maps of equivalent detail, and geospatial data that outlines a proposed action, including the length and width of the potential NIETC geographic area. Provide any aerial images or photographs or photo-based alignment sheets showing any proposed transmission line route and location of transmission line towers, substations, and appurtenant facilities, covering at least a 0.5-mile-wide corridor, and including mileposts, if available, within the potential NIETC geographic area.
    d. List the entity(ies) that may construct, own, and operate any potential

transmission project(s) within the potential NIETC geographic area.

e. Provide an estimated timeline for development, construction, and in-service start for any potential transmission project(s) within the potential NIETC geographic area.
f. Regarding affected landowners:
    i. Summarize all affected landowners delineated by landowner category (i.e., public, private, land trust) potentially impacted by the proposed action;
    ii. Summarize engagements to date with potentially affected landowners (including those that may have indirect or cumulative impact), including a summary of any acquired or expanded property rights or other agreements in place or in development associated with the proposed action; and
    iii. Summarize engagements with any relevant land trusts for which their land may be affected by the proposed action.[136]

2. ***Resource Report 2—Water use and quality.*** This report may describe water quality and provide data sufficient to determine the expected impact of the potential NIETC designation and the effectiveness of mitigative, enhancement, or protective measures. Specifically, Report 2 may:
    a. Identify and describe waterbodies and municipal water supply or watershed areas, specially designated surface water protection areas and sensitive waterbodies, and wetlands that would be crossed by the potential NIETC designation. For each waterbody crossing, identify the approximate width, state water quality classifications, any known potential pollutants present in the water or sediments, and any potable water intake sources within three miles downstream.
    b. Describe typical staging area requirements at waterbody and wetland crossings associated with transmission development within the potential NIETC geographic area. Also, identify and describe waterbodies and wetlands where staging areas are likely to be more extensive.
    c. If available, provide National Wetland Inventory maps. Describe wetland crossings as determined by field delineations using the current federal methodology.
    d. Identify aquifers within the potential NIETC geographic area, including the depth of the aquifer, current and projected use, water quality, and known or suspected contamination problems.
    e. Discuss proposed mitigation measures to reduce the potential for adverse impacts to surface water, wetlands, or groundwater quality. Discuss the potential for blasting or contamination/spills to affect water wells, springs, and wetlands, and measures to be taken to detect and remedy such effects.
    f. Identify if any jurisdictional wetland delineation was done within the last 5 years where the U.S. Army Corps of Engineers issued a jurisdictional federal authorization.

[136] *See* Land Trust Comments.

3. ***Resource Report 3—Fish, wildlife, and vegetation***. This report may describe aquatic life, wildlife, and vegetation in the vicinity of the potential NIETC geographic area; expected impacts on these resources, including potential effects on biodiversity; and proposed mitigation, enhancement, or protection measures. Specifically, Report 3 may:
    a. Describe commercial and recreational warmwater, cold water, and saltwater fisheries in the affected area and associated significant habitats, such as spawning or rearing areas and estuaries.
    b. Describe terrestrial habitats, including wetlands, typical wildlife habitats, and rare, unique, or otherwise significant habitats that might be affected by the proposed action. Describe typical species that have commercial, recreational, or aesthetic value.
    c. Describe and provide the acreage of vegetation cover types that would be affected, including unique ecosystems or communities, such as remnant prairie, interior forest, or old-growth forest, or significant individual plants, such as old-growth specimen trees.
    d. Describe any potential impacts from future construction, operation, and maintenance within the potential NIETC geographic area on aquatic and terrestrial species and their habitats, including the possibility of a major alteration to ecosystems or biodiversity, and any potential impact on state-listed endangered or threatened species.
    e. Identify all federally listed or proposed threatened or endangered species and critical habitat that potentially occur in the vicinity of the proposed action.
    f. Describe proposed, site-specific mitigation measures to minimize impacts on fisheries, wildlife, and vegetation.
    g. Include copies of correspondence not provided containing recommendations from appropriate federal and state fish and wildlife agencies to avoid or limit impacts on wildlife, fisheries, and vegetation, and any response to the recommendations.

4. ***Resource Report 4—Cultural resources.*** This report may describe potential impacts to cultural resources, including but not limited to preliminary identification of the proposed area of potential effects, cultural resources within that area that may be eligible for listing on the National Register of Historic Places, and potential adverse effects. This information will inform DOE's required consultation responsibility. Report 4 may:
    a. Summarize any known and documented cultural and historic resources in the affected environment, including an explanation when the information was collected and how it was obtained, including but not limited to resources listed or eligible for listing on the National Register of Historic Places.
    b. Describe potential adverse effects to the resources identified in paragraph "a" of this Report.
    c. Document any initial communications and engagement, including preliminary outreach and coordination, with Indian Tribes, indigenous people, Tribal Historic Preservation Officers (THPOs), State Historic Preservation Officers (SHPOs), communities of interest, and other entities having knowledge of, interest regarding, or an understanding about the resources identified in paragraph "a" of

this Report and any written comments from those entities, as appropriate and available.

d. Recommend avoidance and minimization measures to address potential effects.
e. Recommend any additional surveys needed.
f. Describe any prior or ongoing survey work conducted under established survey protocols and/or formal consultation.
g. An interested party submitting information to DOE may request privileged treatment for all material filed with DOE containing location, character, and ownership information about cultural resources. The cover and relevant pages or portions of the information submission should be clearly labeled in bold lettering: "CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE." For guidance on the submission of specific site or location information for Tribal resources, see the notice opening the Phase 2 information submission window.

5. ***Resource Report 5—Socioeconomics.*** This report may identify and quantify the impacts of the proposed action and future construction, operation, and maintenance on factors affecting municipalities and counties in the vicinity of the potential NIETC geographic area. Report 5 may:
    a. Describe the socioeconomic impact area.
    b. Evaluate the impact of any substantial immigration of people on governmental facilities and services and plans to reduce the impact on the local infrastructure.
    c. Determine whether existing housing within the impact area is sufficient to meet the needs of the additional population.
    d. Describe the number and types of residences and businesses that will be displaced by the proposed action, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments.
    e. Include a fiscal impact analysis evaluating incremental local government expenditures in relation to incremental local government revenues that will result from the proposed action. Incremental expenditures include, but are not limited to, school operation, road maintenance and repair, public safety, and public utilities.

6. ***Resource Report 6—Tribal resources***. This report may describe Indian Tribes, Tribal lands, and Tribal interests that may be affected by the proposed action. Report 6 may:
    a. Identify the Indian Tribes, indigenous communities, and their respective interests, if any, that may be affected by the construction, operation, and maintenance activities within a potential NIETC geographic area, including those Indian Tribes and indigenous communities that may attach religious and cultural significance to historic properties within the geographic area as well as any underlying federal land management agencies. DOE will follow its Policy and Order on Tribal Consultation, as well as the Best Practices Guide For Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites,[137] to discern potential impacts of

[137] *See Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites* (released Dec. 5, 2023), https://www.bia.gov/sites/default/files/media_document/sacred_sites_guide_508_2023-1205.pdf.

construction, operation, and maintenance activities on Indian Tribes and Tribal interests. This includes impacts related to enumerated resources and areas identified in the other resource reports, and set forth available information on traditional cultural and religious resources that could be affected by the proposed action.

b. For guidance on the submission of specific site or location information for Tribal resources, see the notice opening the Phase 2 information submission window.

7. ***Resource Report 7—Communities of interest.*** This report may address the effects of the proposed action on communities of interest. Report 7 may:
    a. Identify communities of interest within the area of potential impacts using current guidance and data, including localized data, from the Environmental Protection Agency,[138] CEQ,[139] the Census Bureau, and other authoritative sources. Provide maps depicting identified communities of interest in relation to the proposed action using granular data.
    b. Describe the impacts of future construction, operation, and maintenance within the proposed action on communities of interest, including those related to impacts to the human environment. Identify any disproportionate and adverse impacts on communities of interest.
    c. Discuss any cumulative impacts on communities of interest, regarding resources affected by the proposed action, including whether any cumulative impacts would be disproportionate and adverse.
    d. Describe any proposed mitigation measures to avoid or minimize impacts on communities of interest, including any community input received on the proposed measures and how the input informed the proposed measures.

8. ***Resource Report 8—Geological resources.*** This report may describe geological resources and hazards in the area that might be directly or indirectly affected by the proposed action or that could place the proposed action at risk, the potential effects of those hazards on the proposed action, and methods proposed to reduce the effects or risks. Report 8 may:
    a. Describe any known mineral resources that are currently or potentially exploitable in the potential NIETC geographic area.
    b. Describe any existing and potential geological hazards and areas of nonroutine geotechnical concern, such as high seismicity areas, active faults, and areas susceptible to soil liquefaction; planned, active, and abandoned mines; karst terrain; and areas of potential ground failure, such as subsidence, slumping, and land sliding in the potential NIETC geographic area.
    c. Specify methods to be used to prevent proposed action-induced contamination from surface mines or from mine tailings within the potential NIETC geographic

[138] *See, e.g.*, U.S. Environmental Protection Agency, *EJScreen: Environmental Justice Screening and Mapping Tool* (last updated Nov. 14, 2023), https://www.epa.gov/ejscreen.

[139] *See* Council on Environmental Quality, *Climate and Economic Justice Screening Tool* (lasted updated Nov. 22, 2022), https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5.

area and whether the proposed action would hinder mine reclamation or expansion efforts.

9. ***Resource Report 9—Soils.*** This report may describe the soils that will be affected by the proposed action, the effect on those soils, and measures proposed to minimize or avoid impacts. Report 9 may:
    a. List the soil associations that would be crossed by the potential NIETC designation and describe the erosion potential, fertility, and drainage characteristics of each association.
    b. Identify potential impacts from: soil erosion due to water, wind, or loss of vegetation; soil compaction and damage to soil structure resulting from movement of construction vehicles; wet soils and soils with poor drainage that are especially prone to structural damage; damage to drainage tile systems due to movement of construction vehicles and trenching activities; and interference with the operation of agricultural equipment due to the possibility of large stones or blasted rock occurring on or near the surface as a result of construction.
    c. Identify cropland and residential areas where a proposed action may result in the loss of soil fertility, including any land classified as prime or unique farmland by the U.S. Department of Agriculture, Natural Resources Conservation Service.
    d. Describe any proposed mitigation measures to reduce the potential for adverse impacts to soils or agricultural productivity.

10. ***Resource Report 10—Land use, recreation, and aesthetics****.* This report may describe the existing uses of land in the vicinity and changes to those land uses that will occur if the potential NIETC is designated. The report may discuss proposed mitigation measures, including the protection and enhancement of existing land use. Report 10 may:
    a. Describe the width and acreage requirements of all future construction and permanent rights-of-way for construction, operation, and maintenance.
        i. List any locations where the proposed action would be adjacent to existing rights-of-way of any kind, including proposed land uses filed with federal land management agencies with jurisdiction over land that would be affected by the proposed action.
        ii. Identify, preferably by diagrams, existing rights-of-way that may be used for a portion of the proposed action, the overlap, and how much additional width will be necessary.
        iii. Identify the total amount of land that could be disturbed for future construction, operation, and maintenance once a NIETC is designated and transmission developers have all necessary federal authorizations and permits.
    b. Identify the existing use of lands crossed by, or adjacent to, the proposed action.
    c. Identify the length of crossing, the area of direct effect of each proposed action on any natural resources, including special use areas; designated natural, recreational, or scenic areas; registered natural landmarks; Native American religious sites and traditional cultural properties (to the extent they are known to the public at large) and reservations; unique farmlands; lands identified under the Special Area Management Plan of the Office of Coastal Zone Management, National Oceanic

and Atmospheric Administration; and lands owned or controlled by federal or state agencies or private preservation groups. Also identify if any of those areas are located within 0.25 miles of the proposed action.

d. Identify and describe buildings, electronic installations, airstrips, airports, and heliports within the potential NIETC geographic area. The facilities identified under this paragraph may be depicted on the maps and photographs in Report 1.
e. Describe the impact the proposed action will have on present uses of the affected areas as identified above, including commercial uses, mineral resources, recreational areas, public health and safety, and the aesthetic value of the land and its features. Describe any known temporary or permanent restrictions on land use resulting from the proposed action.
f. Describe proposed mitigation measures intended for all special use areas identified under this section.
g. Identify the area of potential visual effects from the proposed action. Describe the visual characteristics of the lands and waters affected by the proposed action, including any visually sensitive areas, visual classifications, and key viewpoints in the vicinity. Describe how future transmission line facilities developed within a potential NIETC geographic area will impact the visual character and scenic quality of the landscape and proposed mitigation measures to lessen these impacts. Provide visual aids to support the textual descriptions requested by this paragraph.
h. Demonstrate any submitted applications for rights-of-way authorizations or other proposed land uses filed with federal land management agencies with jurisdiction over land that would be affected by the proposed action.

11. ***Resource Report 11—Air quality and environmental noise.*** This report may estimate emissions from the proposed action and the corresponding impacts on air quality and the environment, estimate the impact of the proposed action on the noise environment, and describe proposed measures to mitigate the impacts. Report 11 may:
    a. Describe the existing air quality in the potential NIETC geographic area, indicate if the geographic area encompasses any designated nonattainment or maintenance area under the Clean Air Act (42 U.S.C. 7401 et seq.), and provide the distance from any proposed facilities within the potential NIETC geographic area to any Class I area in the vicinity.
    b. For future substations and appurtenant facilities that may be developed within the potential NIETC geographic area, quantitatively describe existing noise levels at nearby noise-sensitive areas, such as schools, hospitals, or residences.
    c. Estimate emissions from the proposed action and the corresponding impacts on air quality and the environment.
    d. Estimate the impact of the proposed action on the noise environment.
        i. Describe the impact of proposed construction activities, including any nighttime construction, on the noise environment. Estimate the impact of any horizontal directional drilling, pile driving, or blasting on noise levels at nearby noise-sensitive areas and include supporting assumptions and calculations.
        ii. Describe any proposed mitigation measures to reduce noise impacts

identified under this section.

12. ***Resource Report 12—Alternatives.*** This report may describe alternatives identified by the interested party during its initial analysis, which may inform the relevant federal entities' subsequent analysis of alternatives. The report may address alternative routes and alternative design methods and compare the potential environmental impacts and potential impacts to cultural and historic resources of such alternatives to those of the proposed action. This report may also include all the alternatives identified by the interested party, including those the interested party chose not to examine or not examine in greater detail. The interested party may provide an explanation for the choices regarding the identification and examination of alternatives. The discussion may demonstrate whether and how environmental benefits and costs were weighed against economic benefits and costs to the public, and technological and procedural constraints in developing the alternatives, as well as an explanation of the costs to construct, operate, and maintain each alternative and the potential for each alternative to meet project deadlines and the potential environmental impacts of each alternative. Report 12 may:
    a. Discuss the "no action" alternative and the potential for accomplishing the proposed objectives using alternative means.
    b. Provide an analysis of the potential relative environmental benefits and costs for each alternative.
    c. Describe alternative routes or locations considered for the proposed action and related facilities and include the analysis in the thirteen Resource Reports outlined in this Guidance document.
        i. Identify all the alternative routes or locations considered for the proposed action and related facilities but not recommended for further study and describe the environmental characteristics of each and the reasons why they were not examined further. The report may identify the location of such alternatives on maps of sufficient scale to depict their location and relationship to the proposed action, and the relationship of the proposed action to existing rights-of-way.
        ii. For alternative routes or locations recommended for more in-depth consideration, the report may describe the environmental characteristics of each and the reasons why they were examined in greater detail. The report may provide comparative tables showing the differences in environmental characteristics for the alternative and proposed action. The location of any alternatives in this paragraph may be provided on maps of sufficient scale to depict their location and relationship to the proposed action.

13. ***Resource Report 13—Reliability and safety***. This report may address the potential hazards to the public from failure of facility components resulting from, among other things, accidents or natural catastrophes; how these events would affect reliability; and proposed procedures and design features to reduce potential hazards. Report 13 may:
    a. Discuss hazards, environmental impacts, and service interruptions that could

reasonably ensue from failure of the proposed action facilities.

b. Describe proposed measures to protect the public from failure of the proposed action facilities (including coordination with local agencies).
c. Discuss proposed design and operational measures to avoid or reduce risk, including any measures to ensure that the proposed action facilities would be resilient against future climate change impacts in the potential NIETC geographic area.
d. Discuss proposed contingency plans for maintaining service or reducing downtime to ensure that the proposed action facilities would not adversely affect the bulk electric system in accordance with applicable NERC reliability standards.
e. Describe proposed measures to exclude the public from hazardous areas.
f. Provide a description of the electromagnetic fields to be generated by the future transmission lines within the potential NIETC geographic area, including their strength and extent. Discuss the potential for induced or conducted currents along the transmission right-of-way from electric and magnetic fields.

C. Procedures for Information Submissions

DOE requests information submissions—in both Phase 1 and Phase 2—be made by 5:00 pm ET on the due date (February 2, 2024, for Phase 1 information submissions). Interested parties may email information submissions to NIETC@hq.doe.gov. Receiving timely information submissions will facilitate DOE's exercise of its discretion to designate NIETCs in the most efficient and effective manner.

DOE requests information submissions be provided in Microsoft Word or PDF format, except for maps and geospatial submissions. There is no page limit on information submissions.[140] Interested parties are encouraged to organize information submissions in the manner presented in this Guidance, in Section V.B above, including any relevant numbering. DOE requests that information submissions include the name(s), phone number(s), and email address(es) for the principal point(s) of contact, as well as relevant institution and/or organization affiliation and postal address.

In response to commenters' concerns about maintaining the confidentiality of certain information, including commercially sensitive information, CEII, and proprietary information,[141] pursuant to 10 CFR 1004.11, any interested party submitting information as part of the NIETC designation process that the interested party believes to be confidential and potentially exempt by law from public disclosure should submit two well-marked copies, one marked "confidential" that includes all the information believed to be confidential, and one marked "non-confidential" with the information believed to be confidential deleted or redacted. DOE will make its own determination about the confidential status of the information and treat it according to its determination. The interested party may request confidential treatment for all material filed with

[140] *See* Comments from AZ Game and Fish, Keryn Newman, Nature Conservancy/Audubon, NWF Coalition, Public Interest Organizations, and SEIA.

[141] *See* Comments from Con Edison, Puget, and WIRES.

DOE containing location, character, and ownership information about cultural resources. Pursuant to 10 CFR 1004.13, any interested party submitting information that the interested party believes might contain CEII should submit a request for CEII designation of information. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The U.S. Federal Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

With regard to Tribal resources, including sacred sites, DOE will follow federal law, its Policy and Order on Tribal Consultation, as well as the Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites, to discern potential impacts of NIETC designation on Indian Tribes and Tribal interests, for instance, impacts to Indian Land, historic homelands from which Tribes were removed, cultural sites, sacred sites, burial sites, water rights, mineral and other subsurface rights, fishing rights, and hunting rights. This includes DOE determining whether formal consultation is needed with any Indian Tribes. Additional guidance on the submission of specific site or location information for Tribal resources, including information for which disclosure may create a risk of harm, theft, or destruction, or otherwise violate federal law, will be included in the notice opening the Phase 2 information submission window.[142]

VI. Guidance Development and Response to Procedural Comments

A. Guidance Development Background

As explained above, in 2021, Congress amended section 216 of the FPA in the IIJA. As relevant to DOE's responsibilities, the IIJA revised the scope of the requirement in section 216(a)(1) that DOE conduct a study of electric transmission congestion every three years to add study of electric transmission capacity constraints. In addition, the IIJA revised the NIETC designation requirements in section 216(a)(2) to: add a timing requirement for designation reports (i.e., issue at least once every three years); expand the options for finding a need for NIETC designation (i.e., allow NIETC designation based not only on the findings of the study in section 216(a)(1) but also on "other information relating to electric transmission capacity constraints and congestion"); and allow designation of a NIETC not only where a geographic area is experiencing transmission capacity constraints or congestion that adversely affects consumers but also where it is *expected* to experience such transmission capacity constraints or congestion. The IIJA also revised section 216(a)(4), which sets forth a list of factors that DOE *may* consider in determining whether to designate a NIETC, to add consideration of whether NIETC designation would: serve national energy security; enhance the ability of generators and

[142] Note that section 304 of the NHPA protects sensitive information about certain "historic properties" from disclosure, and section 9 of the Archaeological Resources Protection Act similarly protects information concerning the nature and location of certain "archaeological resources" and sites from disclosure. However, these protections do not cover all Tribal resources.

other transmission facilities to interconnect; maximize existing rights-of-way; avoid, minimize, and offset sensitive environmental areas and cultural heritage sites; and reduce consumer costs for purchasing electricity. Additionally, the IIJA revised section 216(a)(1) to require consultation with affected Indian Tribes in preparing the triennial study and revised section 216(a)(2) to require an opportunity for comment from affected Indian Tribes on alternatives and recommendations for NIETC designation.

As a result, DOE modified its preparation of the 2023 Needs Study to encompass the broader scope and consultation requirements,[143] and prepared this Guidance to reflect the revised provisions in section 216(a) and lessons learned from prior designations (as described in detail above). To develop this Guidance, DOE published the NOI/RFI on May 15, 2023. On May 17, 2023, DOE hosted a public webinar to explain the contents of the NOI/RFI. Briefly, the NOI/RFI identified certain key elements of a potential process through which interested parties could propose designation of a NIETC—i.e., "applicant-driven"—and the information that would aid in such a designation. The NOI/RFI sought comments to inform the development of this Guidance.

The initial comment period was set to expire June 29, 2023. In response to a request for extension, DOE extended the comment period to July 31, 2023. At the close of the comment period, DOE had received 112 total comment submissions from an array of interested parties, including States, regulatory bodies, transmission developers, environmental advocacy organizations, trade associations, public interest organizations, reliability entities, regional planning entities, consumer groups, load serving entities, public power entities, and individuals.[144] Appendix B contains a list of commenters and abbreviations used in reference to those commenters in this Guidance.

Commenters provided valuable input that meaningfully contributed to the development of the NIETC designation process described in this Guidance. Responses to substantive comments are included throughout this Guidance, particularly in footnotes. DOE appreciates the diverse viewpoints shared in the comments and the thoughtful contribution to DOE's thinking on how to implement its authority most efficiently and effectively. The result is a stronger process for the benefit of the Nation.

B. Response to Procedural Comments Resulting from NOI/RFI

In addition to the substantive comments that are addressed throughout this Guidance, DOE also received comments specific to procedural concerns, which are addressed in detail below. Some commenters[145] contend that the NIETC designation process outlined in the NOI/RFI would have been a nationally applicable, binding rule and therefore subject to the

[143] 2023 Needs Study at 1-2 (describing the expanded scope of the Needs Study).
[144] *See* https://www.regulations.gov/docket/DOE-HQ-2023-0039/comments.
[145] *See* Comments from EEI and National Grid. *Contra* ACP Comments.

"notice-and-comment" rulemaking requirements of the Administrative Procedure Act (APA).[146] One commenter argues that the process outlined in the NOI/RFI would have imposed mandatory obligations on parties interested in participating in the NIETC designation process and that DOE would therefore be required to promulgate the NOI/RFI process following APA procedures for issuing an informal rulemaking.[147]

DOE acknowledges that the NOI/RFI contained language that discussed an application process for NIETC designation in which applicants would have been required to provide certain information to DOE. However, after considering the comments received, DOE has determined that an application process is not necessary or appropriate and has chosen to utilize a voluntary process more consistent with statutory direction in which "interested parties" submit, and DOE considers, information and "recommendations" to assist DOE in making NIETC determinations.[148]

In light of these changes, this Guidance is not subject to notice-and-comment rulemaking procedures. To begin, nothing in the FPA requires rulemaking procedures in this circumstance. Congress explicitly included a rulemaking requirement in both section 216(c) (for FERC to implement its siting and permitting authority within a NIETC)[149] and section 216(h) (for DOE to implement its authority to coordinate federal authorizations and related environmental reviews for certain transmission facilities).[150] But Congress chose not to include a similar rulemaking requirement in section 216(a) for DOE to implement its authority to designate a geographic area as a NIETC.

Nor does the APA require rulemaking procedures in this circumstance. Section 553(b)(3)(A) of the APA provides that notice-and-comment procedures do not apply to "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice." The distinction between a "legislative rule" that must be issued using notice-and-comment procedures and an interpretive rule or policy statement that does not require those procedures depends largely on whether the agency action binds private parties or the agency itself with the force of law.[151]

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[146] 5 U.S.C. 553.

[147] *See* EEI Comments.

[148] *See* 16 U.S.C. 824p(a)(2).

[149] 16 U.S.C. 824p(c)(2) (requiring FERC to "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").

[150] 16 U.S.C. 824p(h)(7)(A) (requiring DOE to "issue any regulations necessary to implement this subsection").

[151] *See Ass'n of Flight Attendants-CWA, AFL-CIO v. Huerta*, 785 F.3d 710, 716 (D.C. Cir. 2015).

This Guidance is a nonbinding agency document that falls under section 553(b)(3)(A) and is not a legislative rule.[152] This Guidance does not have binding effect,[153] and DOE may modify or withdraw this Guidance at any time. To the extent this Guidance discusses legal rights and obligations, those statements are DOE's interpretation of existing law and do not establish any new rights or obligations. Any submittal of information from interested parties is voluntary. Likewise, this Guidance is not binding on DOE itself. DOE is granted broad discretion under section 216 to designate NIETCs based on the Needs Study as well as any other information relating to electric transmission capacity constraints or congestion, and DOE is directed to "consider[] alternatives and recommendations from interested parties."[154] The four-phase process described in this Guidance constitutes one, non-exclusive method by which DOE may gather information and exercise its discretion in making a NIETC designation but does not obligate DOE to use only this method when gathering that information and making a NIETC designation. The four-phase process is purely voluntary and is not required by law. Accordingly, nothing in this Guidance limits or forecloses a potential DOE decision to designate a geographic area that DOE determines meets the statutory requirements of section 216(a)(2)-(4) as a NIETC, notwithstanding the lack of a recommendation from an interested party or departure from the four-phase process described in this Guidance.

Even if the process outlined in this Guidance constituted a rule, it would be exempt from APA notice-and-comment procedures. Section 553(b)(3)(A) of the APA provides an exception to notice-and-comment procedures for a "[rule] of agency organization, procedure, or practice."[155] This Guidance is directed towards improving DOE's internal operations and procedures for determining NIETC designations. While this Guidance suggests structures for communication and presentation of viewpoints between DOE and interested parties, it does not alter the rights or interests of any of those parties. Furthermore, even if in the future DOE were integrate the NIETC designation process outlined in this Guidance with access to federal funding, it would not alter this result because section 553(a)(2) of the APA also provides an exemption from notice-and-comment procedures for "a matter relating to . . . public property, loans, grants, benefits, or contracts."[156]

Finally, DOE notes that it has endeavored to engage interested parties and the wider public in the development of this Guidance. As described above, DOE published the NOI/RFI on May 15, 2023, which included a detailed proposal and set of questions that suggested ways in which DOE might approach the final guidance, and extended the comment period to July 31,

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[152] While some of EEI's comments could be construed broadly as applicable to the designation process as well as the Guidance, these responses are limited to concerns regarding the non-binding Guidance, as that is the only issue before DOE.

[153] *Clarian Health West v. Hargan*, 878 F.3d 346, 380 (D.C. Cir. 2017) (emphasizing that whether an action has a "binding effect" is the "most important" factor in determining if the action constitutes a legislative rule or a general statement of policy).

[154] 16 U.S.C. 824p(a)(2).

[155] 5 U.S.C. 553(b)(A).

[156] *See* 5 U.S.C. 553(a)(2).

2023, to allow the public to provide feedback on the proposed form of this Guidance.[157] DOE incorporated into this Guidance direct responses to the key issues raised in the NOI/RFI comments, and held listening sessions with a number of commenters that requested to meet. Moreover, this Guidance itself allows for public participation in the NIETC designation process. As described in Section IV.C, under the NIETC designation process, DOE actively solicits information and recommendations and addresses stakeholder concerns at several milestones during the process, such as after the issuance of a draft designation report and draft EIS, as needed. Likewise, opening the NIETC designation process to information submissions and recommendations by any interested party ensures a meaningful opportunity for public participation and increased transparency.

VII. More Information

Questions regarding this Guidance and the NIETC program more generally can be directed to NIETC@hq.doe.gov. More information on NIETCs is also available at www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process.

[157] *See generally* NOI/RFI, 88 FR 30956.

Appendix A: NIETC Designation Process Representative (EIS) Timeline

Milestone	Task	Notes
Day 0	**Phase 1:** Phase 1 information submissions due to DOE; DOE evaluates and develops preliminary list of potential NIETC designations	During this timeframe, DOE reviews all Phase 1 information submissions and recommendations, makes a threshold need determination, and identifies relevant discretionary factors in FPA section 216(a)(4). DOE prioritizes moving forward with potential NIETCs based on these determinations.
Day 60	**Phase 2:** Issuance of preliminary list of potential NIETC designations/opening of Phase 2 information submission window	At this point, DOE issues a preliminary list of potential NIETC designations, invites public comment, and opens a Phase 2 information submission window, during which interested parties may submit additional information on geographic boundaries and permitting.
Day 105	**Phase 2:** Technical completeness assessment, preliminary review of public comments, and prioritization of potential NIETC designations	DOE conducts a technical completeness assessment based on the available information on geographic boundaries and permitting and preliminarily reviews public comments. DOE prioritizes moving forward where more specific and complete information is available.
TBD	**Phase 3:** Preparing of EIS NOI, as needed	In Phase 3, DOE commences the NEPA process, but before it can issue an NOI on each potential NIETC designation, DOE must gather necessary information. The timeline will vary based on the relative amount of information available for each potential NIETC designation at this stage. This representative timeline assumes preparation of an EIS, but DOE will determine the need for an environmental document—and the appropriate form—based on the details of each potential NIETC.
TBD (Day 0 of Standard 2-Year NEPA Schedule)	**Phase 3:** In-depth evaluation of potential NIETC designations and commencement of NEPA process and issuance of EIS NOI(s), as needed	The NOI issuance date is "day 0" of the standard two-year NEPA schedule. DOE in-depth evaluation of potential NIETC designations and preparation of one or more draft designation reports occurs in parallel with the NEPA process and preparation of draft EIS for each potential NIETC designation, as needed.
TBD	**Phase 3:** NEPA scoping and comment period	The shortest timeframe for NEPA scoping is 30 days. Scoping timelines will vary based on the nature of the federal authorization. For example, actions that may make a significant change in the land management plan require a 90-day scoping period. Scoping periods can be as short as 30 days and as long as 120 days. The standard DOE NEPA schedule identifies 60 days as a typical scoping period. This period for each potential NIETC designation may differ.
TBD	**Phase 3:** Publish draft designation report(s) and draft EIS(s), as needed	The standard DOE NEPA schedule identifies 10 months for preparation of the draft EIS following the close of the scoping and comment period given that during this time, scoping, alternatives development, and impacts analysis must be refined or revised in response to public comments, and the draft EIS must be completed in coordination

Milestone	Task	Notes
		with cooperating agencies. This timeline may be reduced based on the following elements: (a) completeness of environmental/baseline data collected; (b) extensiveness of environmental data gathered and completed prior to NOI publication; (c) use and consistency of existing rights of way; (d) robust government-to-government consultation with federally recognized Indian Tribes and consultation with potentially impacted parties; (e) size, length, and adequacy of routes; (f) development of proposed action and objectives to inform federal agencies' development of its purpose and need statement and preliminary alternatives; (g) identification of route constraints due to impacts on military test, training, and operational missions as well as any areas of special protection (e.g., parks, sanctuaries, national monuments); (h) availability of map data showing preliminary route area; (i) completion of initial outreach related to ESA, as appropriate (for instance, initial species list or preliminary action area); (j) activities that will help inform section 106 of the NHPA consultation process; and (k) established mitigation measures. This period for each potential NIETC designation may differ.
TBD	**Phase 4:** Publish Final EIS(s), as needed	The standard DOE NEPA schedule assumes approximately 9 months to complete and respond to a 60-day comment period on the draft EIS, revise the draft EIS, circulate the revised EIS to appropriate cooperating/participating agencies, finalize the EIS, and draft the ROD. This period for each potential NIETC designation may differ.
TBD	**Phase 4:** Publish final designation report(s) (conclusion of NIETC designation process) and NEPA ROD(s), as needed (conclusion of NEPA process)	The ROD cannot be issued before section 7 consultation under the ESA, compliance under section 106 of the NHPA, and any other environmental compliance steps outlined in applicable NEPA regulations have been completed. While NEPA only requires 30 days between the final EIS and the ROD, the standard DOE NEPA schedule allows 90 days to accommodate the pre-decisional objection periods or protest periods that some agencies require (see, e.g., 36 CFR Part 218). This period for each potential NIETC designation may differ.

Appendix B: Commenters and Abbreviations[158]

Commenter	Abbreviated Name
Acton Town Council	Acton
Adirondack Council	Adirondack
Advanced Energy United	AEU
Advancing Modern Powerlines Coalition	AMP
AES New Energy Technologies	AES NET
Alliant Energy (Interstate Power and Light Company and Wisconsin Power and Light Company)	Alliant
American Clean Power Association	ACP
American Council on Renewable Energy	ACORE
American Public Power Association	APPA
Americans for a Clean Energy Grid	ACEG
AngloGold Ashanti North America Inc.	AngloGold
Arizona Game and Fish Department	AZ Game and Fish
Arizona Public Service Company	APS
Bill Hicks	--
BlueGreen Alliance	BlueGreen
California Farm Bureau, Illinois Agricultural Association a/k/a Illinois Farm Bureau, Iowa Farm Bureau Federation, Kansas Farm Bureau, Missouri Farm Bureau Federation, Oklahoma Farm Bureau, and Texas Farm Bureau	State Farm Bureaus
California Independent System Operator Corporation	CAISO
California Public Utilities Commission and California Energy Commission	CPUC/CEC
Carol Ross	--
Charles Crawford	--
City of Kings Mountain, N.C.	Kings Mountain
Clean Air Task Force	Clean Air TF
Clean Energy Buyers Association	CEBA
Colorado Electric Transmission Authority	CETA
Colorado Energy Office	Colorado Energy
Con Edison Transmission, Inc.	Con Edison
Darren Reynolds	--
Data Center Coalition	DCC
EarthGrid	--
Edison Electric Institute	EEI
Electric Reliability Council of Texas, Inc.	ERCOT

[158] DOE received 112 total comment submissions during the public comment period; however, three sets of comment submissions contained duplicate or substantively similar comment attachments. Several comments were anonymous.

Commenter	Abbreviated Name
Environmental Law & Policy Center, National Audubon Society, and Vote Solar	ELPC/Audubon/Vote Solar
Gallatin Power Partners, LLC	Gallatin
Georgia Solar Utilities, Inc.	Georgia Solar
Grid United LLC	Grid United
G Henry Shultz	--
Hitachi Energy USA Inc.	Hitachi
Idaho Power Company	Idaho Power
Institute for Policy Integrity at New York University School of Law	Policy Integrity
Invenergy Transmission LLC	Invenergy
Isaac Alston-Voyticky	--
Jeff Sargent	--
Jim Herbert	--
Joe Vance	--
Kathy Curtis	--
Kentucky Public Service Commission	KYPSC
Keryn Newman	--
Kiera Jackson	--
Land Trust Alliance	Land Trust
Lila Dave Zastrow Hendrickson	--
LineVision	--
Lori Osbourn	--
Los Angeles Department of Water and Power	LADWP
Louisiana Public Service Commission and Mississippi Public Service Commission	LPSC/MSPSC
Marilyn O'Bannon	--
Maryellen McVicker	--
Melinda Hudson	--
Michigan Public Service Commission, New Jersey Board of Public Utilities, North Carolina Utilities Commission, and Virginia State Corporation Commission	Joint State Regulators
Michigan Attorney General Dana Nessel	MI-AG
MISO & PJM Cities and Communities Coalition	MISO/PJMCCC
MISO Transmission Owners	MISO TOs
National Association of Regulatory Utility Commissioners	NARUC
National Association of State Energy Officials	NASEO
National Electrical Contractors Association	NECA
National Grid	--
National Rural Electric Cooperative Association	NRECA
National Wildlife Federation, Environmental League of Massachusetts, Montana Wildlife Federation, Natural Resources Council of Maine, and Union of Concerned Scientists	NWF Coalition

Commenter	Abbreviated Name
Nature Conservancy and National Audubon Society	Nature Conservancy/Audubon
Natural Resources Defense Council, Sustainable FERC Project, Earthjustice, Southern Environmental Law Center, Environmental Defense Fund, and Sierra Club	Public Interest Organizations
New England States Committee on Electricity	NESCOE
New Jersey Division of Rate Counsel	NJ Rate Counsel
New Mexico Renewable Energy Transmission Authority	NM RETA
New York Transmission Owners	NYTOs
NextEra Energy, Inc.	NextEra
NV Energy	--
New York State Public Service Commission, New York State Energy Research and Development Authority, and New York State Department of State	NY State Entities
Oceti Sakowin Power Authority	OSPA
Patricia Stemme	--
Patty McBride	--
Pennsylvania Public Utility Commissions	PAPUC
Phil Brown	--
PJM Interconnection, L.L.C.	PJM
Portland General Electric	PGE
Power from the Prairie LLC	PftP
Public Utilities Commission of Nevada	PUCN
Puget Sound Energy, Inc.	Puget
Rail Electrification Council and NextGen Highways	REC/NGH
S Olsen	--
Solar Energy Industries Association	SEIA
Southern Environmental Law Center, Appalachian Voices, Energy Alabama, and North Carolina Sustainable Energy Association	Southeast Public Interest
Sponsors of the Southeastern Regional Transmission Planning Process	SERTP Sponsors
Sprouse Farms, Inc.	Sprouse
Susan Burns	--
Tina Reichert	--
Transmission Access Policy Study Group	TAPS
Trout Unlimited	--
VEIR Inc.	VEIR
WIRES	--
Working for Advanced Transmission Technologies Coalition	WATT