

February 2, 2024

Hon. Jennifer Granholm
Secretary
U.S. Department of Energy
1000 Independence Ave. SW
Washington, DC 20585

Maria Robinson, Director
Grid Deployment Office
U.S. Department of Energy
1000 Independence Ave., SW
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RE: Request For Priority Consideration of Existing Rights-of-Way in NIETC Determinations

Dear Madam Secretary and Director Robinson

Several industry and public interest groups identified below, identified here as Right of Way Advocates (“RWA”),¹ hereby petition you and the Department of Energy’s (“the Department” or “DOE”) Grid Deployment Office to take a fresh look at the important role that existing transportation and energy rights-of-way (“ROWS”) should play in several current efforts to strengthen the nation’s electric transmission grid. This request pertains to the Department of Energy’s Request for Information on the Designation of National Interest Electric Transmission Corridors Docket No. DOE-HQ-2023-0039 and the December 19, 2023, *Guidance on Implementing Section 216(a) of the Federal Power Act to Designate National Interest Electric Transmission Corridors* (“Guidance”). RWA’s submittal of the following recommended enhancements to the *Guidance* and proposals for further action by DOE fit within the broad scope of the Phase 1 comment procedure.²

First and foremost, the RWA applaud the Department’s hard work and determination to implement Congress’ mandate of Section 216 to strengthen the Nation’s transmission grid in the interest of reducing grid congestion and capacity shortfalls that adversely affect access to clean energy resources, grid resilience and service reliability, national security, consumer

¹ RWA consists of The Rail Electrification Coalition (“REC”), NextGen Highways (“NGH”), the Environmental Defense Fund, and VEIR. Each organization is described in the attached Appendix.

² Our recommendations also fit within the overall framework that the Department provides for in the *Guidance* which encourages interest parties to engage with DOE within all stages of the NIETC designation process including the submission of “relevant information and recommendations.” *Guidance* at 45. We believe that these recommendations and proposals are actionable under the *Guidance* framework at this time. Development within existing rights-of-way inherently entails a high degree of impact avoidance and predictability, whereas aspects of the phased approach constitute second guessing the location of potential project developments and will lead to avoidable delay. RWA therefore wishes to comment immediately before results created by the single-track evaluation process of the *Guidance* forecloses such unique options.

benefits, and climate change mitigation. The *Guidance* advances those goals methodically and its commitment to public engagement and transparency in the corridor designation process helps ensure responsible infrastructure development and citizen participation where impacts of development on previously undisturbed geography are likely.

That said, the *Guidance* document does not address the single-most important opportunity for impact avoidance, climate mitigation, and expedition in the corridor designation process. In short, transmission development within previously disturbed land, such as existing rights-of-way,³ can advance many of the goals the Department has skillfully articulated. Historical, linear interstate and interregional rights-of-way established for transportation operations are ubiquitous in the United States and cut across state and bulk power market boundaries, providing direct or proximate access to high-yield wind and solar resources, as well as direct links to load centers.⁴ RWA's request is consistent with Congress' purpose in adopting and revising FPA Section 216 as well as the Administration's desire to produce results more quickly than typically happens under current regulation.⁵

The findings in the Department's Transmission Needs Study, supported by Congress' repeated directive to the Department to find ways to get interstate and interregional transmission built faster, as well as repeated delays and cancellations of projects attempting to build interstate and interregional transmission at the scale necessary to meet our growing capacity and resilience needs, demonstrate the importance of developing a NIETC process that will drive transmission development in the most efficient and expeditious manner possible, while limiting any avoidable adverse impacts.

Many of the commenters on the Department's NIETC RFI recognized that existing rights-of-way that have been developed or disturbed are ideal locations for the development of electric transmission infrastructure. These existing linear rights-of-way are, by definition,

³ For purposes of the designations and NIETC procedures recommended, RWA note that the geographic boundaries of existing rights-of-way are already known and need only the recognition and any refinements the Department sees as appropriate according to its Needs Study, the factors set forth in Section 216, or in subsequent studies or reviews of specific project proposals. Existing rights-of-way are a separate class of corridor. They can be considered for project development under the factors of Section 216 without the searching exploration that "greenfield" development might entail at the NIETC designations stage.

⁴ Many commenters recognize that rights-of-way vary by the purpose for which they were granted and by the nature of the grant, including as to their width, length, and ownership interest. Despite this variation, all rights-of-way are of value for the purposes of siting electric transmission, as some may be best suited for above ground high-tension lines while others might be better suited for HVDC undergrounded lines, or still others may be best suited for ancillary electric grid infrastructure.

⁵ In 2005, Congress devised the NIETC designation process cognizant of the significant challenges to the siting and permitting of electric transmission, particularly interstate and interregional transmission. In 2021, recognizing that these challenges persist, and that the NIETC process is still a pathway towards resolving these matters, Congress amended the FPA to direct renewed attention to and strengthen the NIETC process. On October 30, 2023, the DOE issued its "Needs Study" starting the path that leads to the NIETC process. The Needs Study found significant need for grid expansion across the United States.

already impacted by development. If designated as transmission corridors, they will continue to be available for transmission co-location in the future to the extent developers, property owners (railroads), or regulators (highways or pipelines) determine their feasibility for specific projects.

Use of previously disturbed land for electric transmission is also consistent with the Department's obligation to develop "programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts."⁶ Many organizations have recognized this benefit, encouraging the robust consideration of environmental justice communities in agency decision-making, while advocating for use of existing rights-of-way for infrastructure siting.⁷ Native American tribes and advocates have also long argued for agencies to consider routes that site part if not all of a transmission line within an existing right-of-way in order to avoid impacts of historical, cultural or religious property.⁸ RWA appreciate the DOE's decision to specifically designate narrow, linear geographic areas as NIETCs, rather than the large swaths of land designated in the prior NIETC process. The four-phase evaluative process articulated in the *Guidance* is a sound method for better ensuring that transmission projects in early stage development can be built within a NIETC, enabling developers to unlock tools that can reduce the time that it takes to get shovels in the ground and get new lines in up and running to serve current and near-term load.

In the short term, this approach should create more favorable conditions for transmission projects currently in development that may have stalled stay on course. It should also allow transmission projects in the development pipeline to begin construction sooner. But this process will not help the projects that are in pre-development, or that will start development in the next year or two. The routes of these projects, unless another party proposes the same route within this first application period, will not be designated as a NIETC. As a result, those projects will have to wait until the next NIETC designation cycle to access tools that would allow them to better their investment position and expedite the development timeline. With demand growing and climate goals approaching, procedures that can lead to unnecessary pauses in developing a pipeline of transmission projects should be avoided. *Guidance* Footnote 50, makes clear that a more creative designation approach, such as a general or "programmatic" designation of existing rights-of-way, is a mere "possibility." While commenters appreciate that such a process is not foreclosed, this is an inadequate response

⁶ See E.O. 14008 § 219 (2021). See also E.O. 13985 (2023) and E.O. 14096 (2023).

⁷ *Principles for Accelerating Clean Energy Deployment Through Transmission Buildout in an Equitable Clean Energy Future* (2022), https://earthjustice.org/wp-content/uploads/transmission_principles_12.15.22.pdf; *Pursuing a Just and Renewable Energy System* (May 2023), <https://www.biologicaldiversity.org/programs/energy-justice/pdfs/Policy-Brief-for-Positive-Vision.pdf>.

⁸ See Comp. for Decl. J. and Inj. Relief, ¶ 71, *Tohono O'odham Nation v. DOI*, No. 4:24-cv-00034-JGZ (Dist. Ct. 2d Cir. Ct. Tucson Div., Az.) (Asking BLM to evaluate siting a portion of the Sun Zia electric transmission line project within "existing transportation corridors with less harmful effects" instead of through undeveloped portions of the San Pedro Valley).

from the DOE given the mandate to develop a process that minimizes delays, recognizing the dire need to solve the transmission siting and permitting problem.

DOE should instead engage in a parallel NIETC designation process, separate from the four-phase process outlined in the *Guidance*, generically designating existing rights-of-way as NIETCs. Such a process does not stray from the clear intent of the *Guidance* – to designate only narrow, defined, linear areas as NIETCs.⁹ Further, some RWA have offered in the NIETC proceeding¹⁰ that all or specific portions of existing rights of way can be found generically or programmatically to conform to the criteria of Section 216, given their fixed nature and ubiquity. Such a designation will augment the four-phase process, which favors near-term projects, by providing future-in-time developers with direction as to where to locate projects that are in the National Interest.

Consequently, RWA respectfully request that DOE move quickly to:

- (1) Prioritize consideration of existing rights-of-way as candidates for NIETC designation within the first Phase, including designation of existing rights-of-way that intersect with areas identified in the Needs Study and/or with the factors listed in Section 216; and
- (2) Immediately begin a rulemaking process to generically designate as NIETCs existing disturbed and developed rights of way, such as transportation rights-of-way, waterways, pipelines, or existing transmission rights-of-way, subject to review when specific projects are proposed within them;¹¹ or
- (3) Begin a rulemaking process to designate all or relevant parts of existing rights-of-way as NIETC, if supported by a categorical exclusion from NEPA or an environmental assessment of potential collateral impacts from project development, subject to review of future specific project proposals.

RWA appreciate the Department's explicit commitment to engage with interested parties throughout the NIETC designation process to better ensure that relevant information and recommendations are duly considered (*Guidance* at 45). This open dialogue between

⁹ *Guidance* at 21 (describing NIETCs as “of a linear nature, drawn such that development of one or more transmission projects could proceed entirely within the geographic boundaries of the NIETC.”).

¹⁰ REC/NGH comments to DOE on NIETC RFI (July 17, 2023), https://www.nema.org/docs/default-source/council-documents-library/documents/rec-and-nextgen-highways-rfi-response-doe-nietcs-final.pdf?sfvrsn=3ed9e9c5_3.

¹¹ RWA recognizes the requirement that the Department must undergo NEPA review for any NIETC designation. A designation offered by RWA undoubtedly would need to undergo a programmatic review, with tiering for individual right-of-way designations. Such a process has not only been accomplished by DOE in the past, but has been successful. See DOE, *Programmatic EIS Posed Many Challenges, Offers Immediate and Lasting Benefits* (Sept. 1, 2015), <https://www.energy.gov/nepa/articles/programmatic-eis-posed-many-challenges-offers-immediate-and-lasting-benefits>. To further streamline these efforts, the Department may also consider separating categories of rights-of-way into individual generic designations. For example, all railroad rights-of-way would be in a single designation, while highway rights-of-way would be issued as its own generic NIETC. Issuing NIETCs by individual categories of rights-of-way may have several benefits, not limited to streamlining the NEPA review for the designation.

interested parties and the Department should help warrant that complex matters are fully considered, and that expert knowledge can be drawn out in support of designating NIETCs that are truly in the National Interest. Were DOE to move forward with a parallel process for the general designation of existing rights-of-way, RWA organizations anticipate robust future engagement to better support DOE's efforts.

With a projected 500% increase in electric generation necessary to meet 2050 projected demand, alongside a net-zero emissions goal in the same time frame, the electric grid must undoubtedly go through an enormous transformation. How that transformation occurs, and whether it is successful in equitably reaching those benchmarks will be determined in large part by the decisions made within the Department over the next few years, including the issuance of this *Guidance*. Commenters therefore encourage you, Mdme Secretary, and the Grid Deployment Office to be ambitious in your efforts, and to look for solutions that might not fit into a single convenient process.

Given the diverse set of stakeholders that will be involved in building out our future electric grid, it is important for the Department to speak clearly. Reserving the possibility of a future-in-time programmatic NIETC designation does little to provide certainty to those interested parties, and stakeholders will be required to invest time and resources towards planning and building the grid. The Department should therefore clearly articulate how it will proceed regarding programmatic or generic NIETC designations.

The *Guidance* thus far is a case of seeking perfect procedure to the exclusion of at least one good option that, while not a "silver bullet," offers a pathway to moving project plans and proposals to the project development stage more quickly. We appreciate the opportunity to submit these comments and would welcome an opportunity to discuss and elaborate on feasible approaches to encouraging use of underutilized assets such as existing rights-of-way to achieve efficient, low-impact siting for transmission.

Respectfully submitted,

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Director Shalanda Baker, Office of Energy Justice, Department of Energy

APPENDIX – List of Right-of-Way Advocates

- A. [Rail Electrification Coalition](#) is a diverse non-profit coalition of electrical manufacturers, technology companies, transportation companies, renewable energy providers, and other stakeholders that seek to enhance the strength and efficiency of two of our most critical infrastructure networks – the North American high voltage electric transmission grid and the international, national, and regional networks of North American railroads.
- B. [NextGen Highways](#) brings together organizations that support and promote the use of highways as corridors where electric, communications, and transportation infrastructure are strategically and safely co-located in existing rights-of-way. NGH seeks to reduce the political, environmental, and permitting hurdles that stymie transmission and communications infrastructure development.
- C. The [Environmental Defense Fund](#) (“EDF”) is a membership organization whose mission is to build a vital Earth for everyone by stabilizing the climate, strengthening the ability of people and nature to thrive, and supporting people's health. EDF is a leading authority on the use of science, economics, and law to protect and restore the quality of our air and climate, transform energy systems, and ensure healthy and safe communities. Guided by science and economics, EDF seeks practical solutions to solve environmental problems. EDF advocates for policies, regulations, and market designs that will speed the transition to clean energy resources, and consistent with its organizational purpose is engaged in activities supporting investments to modernize the electric grid to meet the needs of a decarbonizing energy system.
- D. [VEIR, Inc.](#) (“VEIR”) is developing the next generation of superconducting transmission lines that operate with 5-10 times the transfer capacity of conventional lines at a given voltage level. More capacity at a given voltage means that VEIR lines can greatly increase the transfer capacities in existing transmission corridors and greatly reduce the space required for new corridors. VEIR enables the deployment of superconducting power lines that are scalable to short- and long-distance overhead, on-ground, underground, and subsea transmission applications. Whereas previous generations of superconducting power line projects rely on complex cooling systems that constrain those projects to short-distance underground applications, VEIR uses a passive, distributed evaporative open loop cooling system that delivers 20 times the cooling power per kilogram of liquid nitrogen coolant and greatly decreases the complexity, weight, and cost of superconducting power lines.