



July 6, 2007

Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
Forrestal Building  
1000 Independence Ave., SW  
Washington DC 20585

Re: Docket No. 2007-OE-01  
Designation of the Mid-Atlantic NIETC

The Pennsylvania Land Trust Association submits these comments on behalf of our 80 member organizations, their more than 89,000 contributors and members, and the landowners whose lands are under conservation easement with these member organizations.

The Pennsylvania Land Trust Association incorporates herein by this reference the comments of the following commenters: the Energy Conservation Council of Pennsylvania, the Piedmont Environmental Council, The Wilderness Society, the National Resources Defense Council, Environmental Defense, the Southern Environmental Law Center, The National Trust for Historic Preservation, the West Virginia Environmental Council (WVEC), the Pennsylvania Chapter of the Sierra Club and national Sierra Club, as well as any comments by any additional commenters that also incorporate by reference in their submittals any of the above organizations' comments.

The Association is gravely concerned about the recent designation of the Mid-Atlantic National Interest Electric Transmission Corridor (NIETC) by the U.S. Department of Energy (DOE). Designation of the Mid-Atlantic Corridor will initiate a legal mechanism for giving federal eminent domain authority to power companies, enabling the facility siting process to supersede property rights and public benefits considerations across fifty-two counties in Pennsylvania. This corridor designation will affect two-thirds of the land area in the Commonwealth, creating an immense and immediate threat to the land conservation missions of our members.

Designation of the Corridor will enable the condemnation of potentially hundreds of miles of lands, regardless of their status as protected resources. The use of eminent domain as a tool for imposing new land uses is an option that has been consistently rejected by the public and should be considered only as a last resort.

Our member organizations rely heavily on the generosity of private landowners who voluntarily choose to donate their land or place conservation easements (enforceable restrictive covenants) on their land for the public benefit. While these landowners have always had to accept that their generous contributions to conservation could be undone by eminent domain, that concern was tempered with

**Voting Members**

Allegheny Land Trust  
Allegheny Valley Conservancy  
Allegheny Valley Land Trust  
Armstrong Cty. Cons. Charitable Trust  
Bedminster Land Conservancy  
Berks County Conservancy  
Bradford Woods Conservancy  
Brandywine Conservancy  
Buck Hill Conservation Foundation  
Central Pennsylvania Conservancy  
Centre County Farmland Trust  
Chartiers Nature Conservancy  
Chesapeake Bay Foundation  
Chestnut Hill Historical Society  
ClearWater Conservancy  
Conservancy of Montgomery County  
Conservation Fund, Pa. Office  
Cooks Creek Conservancy  
Countryside Conservancy  
Delaware Highlands Conservancy  
Earth Conservancy  
East Nantmeal Land Trust  
Eden Hill Conservancy  
Edward L. Rose Conservancy  
Evergreen Conservancy  
Farm & Natural Lands Trust of York Cty.  
Fox Chapel Area Land Trust  
French & Pickering Creeks Cons. Trust  
French Creek Valley Conservancy  
Hawk Mountain Sanctuary Association  
Heritage Conservancy  
Hollow Oak Land Trust  
Independence Conservancy  
Kennett Township Land Trust  
Keystone Conservation Trust  
Keystone Trail Association  
Lacawac Sanctuary Foundation  
Lancaster County Conservancy  
Lancaster Farmland Trust  
Land Conservancy of Adams County  
Lebanon Valley Conservancy  
Lower Merion Conservancy  
Manada Conservancy  
Merrill W. Linn Land & Waterways Cons.  
Mid-Atlantic Karst Conservancy  
Mokoma Conservancy  
Montgomery County Lands Trust  
Montour Trail Council  
Mount Nittany Conservancy  
Natural Lands Trust  
The Nature Conservancy, Pa. Chapter  
Neighborhood Gardens Association  
North American Land Trust  
North Branch Land Trust  
Northcentral Pa. Conservancy  
Open Land Conservancy of Chester Cty.  
Pennsbury Land Trust  
Pa. Recreation and Park Society  
Pennypack Ecological Restoration Trust  
Pine Creek Land Conservation Trust  
Pine Creek Valley Watershed Assn.  
Pocono Heritage Land Trust  
The Radnor Conservancy  
Rails-to-Trails Conservancy  
Regional Trail Corporation  
Schuylkill County Conservancy  
Solebury Twnshp. Land Preserv. Comm.  
Somerset County Conservancy  
Tinicum Conservancy  
Tri-County Rails-to-Trails  
The Trust for Public Land  
The Wallace Trust  
Western Pennsylvania Conservancy  
West Pikeland Land Trust  
Wild Waterways Conservancy  
Wildlands Conservancy  
Willistown Conservation Trust  
Wissahickon Valley Watershed Assn.

the knowledge that the state-level decision-making regarding eminent domain would give ample opportunity to consider and address local concerns. The threat of a fast-tracked federal process for utilities to secure eminent domain authority will discourage landowners from committing to conservation, making land trust conservation goals substantially more challenging and expensive to advance.

Putting the power of federal eminent domain in the hands of a narrow set of business interests provides an unfair advantage to one set of energy business interests to the detriment of other businesses. As a *de facto* lead approach to addressing regional energy needs, it is unwarranted. Such an approach threatens to devastate our natural and historic resources, trample the rights and interests of our communities, and permanently despoil the landscape across Pennsylvania.

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

- 1,156,773 acres of state forest lands
- 216,165 acres of State Parks
- 55 Important Bird Areas encompassing more than 2 million acres
- 8 Pennsylvania-designated heritage areas

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

- 44,813 acres of lands owned and managed by land trusts
- 151,484 acres of land under conservation easement with land trusts
- 360,620 acres of farmland making up 3,223 farms protected under Pennsylvania's agricultural conservation easement purchase program
- 240,791 acres acquired by land trusts then conveyed to governmental bodies for conservation purposes
- 42 sites listed on the National Register of Historic Places

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

Our conserved lands, forests, parks and scenic areas are not just blank slates on which to site massive new infrastructure. Pennsylvania's public parks, private preserves and conservation easements were meant to protect cherished places in our communities in perpetuity. These public resources were not preserved so that they might someday be liquidated via condemnation to benefit a narrow set of interests. They were not protected so that they might someday become the designated sites for high voltage transmission lines which tower above the treetops, scarring the landscape for hundreds of miles and forever altering the integrity of our environment.

At a bare minimum, DOE's NIETC designation process should have established exclusion provisions which would have exempted these resources from the threat of conversion to transmission routes. DOE's failure to provide any protections against eminent domain abuse for these resources when specifying the Corridor boundaries sets the stage for an unjust fast-tracking process which discounts important competing public interests. These lands, including lands under easement, having been protected through public and private resources, must be exempted from conversion to the private use of the energy industry.

Regarding the eminent domain provisions of the Energy Policy Act (EPAct), we note that the designation of the Mid-Atlantic Corridor will impose new federal rules inconsistent with recent state policy decisions which have rejected the use of eminent domain. In its last session, the Pennsylvania General Assembly passed a new law designed to limit the use of eminent domain by municipalities in the Commonwealth (Act 35 of 2006). This act reflected the concerns of our legislature with the potential for governmental abuse of eminent domain power over the interests of the private individual. The federal eminent domain authority to be granted to electrical utilities in 52 Pennsylvania counties presents a far greater threat to private property rights, and is clearly out of step with public and political sentiment.

The targeting of protected lands by interstate transmission projects in the mid-Atlantic testifies to the threat NIETC designation carries to conservation values, community heritage, and public concerns. Recent transmission proposals have targeted thousands of acres of conserved lands, historic sites and other community assets. Singularly important heritage sites, endangered species habitats, as well as federally designated wild and scenic corridors all are targeted, prompting "Most Threatened" designations from leading national conservation and preservation organizations.<sup>i</sup>

The disregard for community values and environmental impacts in these pending applications well illustrates the reality and the severity of this threat within the area of the Mid-Atlantic NIETC. It also forcefully demonstrates the need for a muscular oversight process with the means to balance all competing considerations and to safeguard the public interest - the very type of oversight provided today by the

Pennsylvania Public Utilities Commission and which the Mid-Atlantic Corridor designation would both constrain and override.

Opening the door to the use of eminent domain for acquisition of rights of way, to the exclusion of other considerations, is a matter of serious concern in and of itself. Coupled with the greatly accelerated decision timeline under the “backstop” siting process, there is now the new and serious potential for transmission applications to ride roughshod over our communities. The expedited regulatory timelines set forth under the Energy Policy Act (EPAAct) are insufficient for projects of this magnitude which cross multiple jurisdictional areas. Limiting the period of state authority to one year before backstop siting authority may be requested undercuts the capacity of the PUC to exercise careful and measured consideration of adverse impacts and alternative options.

The siting of transmission routes has historically been a state responsibility. The Energy Policy Act of 2005 has established a means for bypassing state regulation and effectively strips state regulators of the authority to deny proposed transmission projects. The Act is fundamentally flawed in this negation of state oversight. It is incredibly flawed in enabling this federalization of electric transmission siting authority to proceed without regard for the merits of the decisions made at the state level.

By designating much of Pennsylvania within the Mid-Atlantic Corridor, your ruling will pave the way for transmission applicants to circumvent state and local opposition, trampling over long-existing processes and safeguards that have ensured that concerns regarding our communities, our residents, and our irreplaceable resources are carefully considered. It is simply unacceptable that the NIETC designation should threaten the entirety of fifty-two counties across our Commonwealth, when more tempered measures were available.

Section 1221 of EPAAct was not designed to change requirements of existing law, such as the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) but the manner in which the corridor designations have been made appears to flaunt existing law. As specified in Section 1221 (j)(1) of EPAAct, “Nothing in this section shall be construed to affect any requirement of the environmental laws of the United States, including, but not limited to, the National Environmental Policy Act of 1969.” To date, DOE has not undertaken any of the assessments specified under those statutes; instead DOE contends that the required impact assessments will fall to the Federal Energy Regulatory Commission (FERC) to implement.

DOE contends that the designation of the corridor does not, in and of itself, constitute a major federal action affecting the quality of the human environment and, therefore, does not necessitate an Environmental Impact Study (EIS) under NEPA prior to corridor designation. To the contrary, the law does direct that an EIS must be prepared in cases where federal action instituting a policy may lead to

future activities which will significantly affect the quality of the human environment. The designation of the Mid-Atlantic Corridor would be such a case, as it affects the majority of the land in the Commonwealth, facilitates land takings using eminent domain and construction projects transecting hundreds of miles of land, undermines the Commonwealth's ability to control land use policies, and alters the existing regulatory mechanisms which protect the environment and the consumers of Pennsylvania. As such, the corridor designation is a major federal action and must be preceded by a programmatic EIS. This EIS must, in turn, examine the impacts to both public and private conserved lands in Pennsylvania and all the states affected by the corridor designation.

Furthermore, Section 1221 required that DOE consult with the affected states in completing the Congestion Study upon which this corridor designation is predicated. Again, DOE has failed to comply with this requirement. That this is the case is evident in the several and significant steps taken in opposition to the draft corridor designation:

- Pennsylvania Public Utilities Commission comments opposing the corridor provided on June 13, 2007, April 25, 2007, and October 10, 2006<sup>ii</sup>
- Resolution 297 opposing the Mid-Atlantic NIETC designation passed by the Pennsylvania House on June 12, 2007<sup>iii</sup>
- Resolution 129 opposing the Mid-Atlantic NIETC designation passed by the Pennsylvania Senate on June 29, 2007<sup>iv</sup>
- Comments from the Governor of Pennsylvania to the Secretary Bodman on June 8, 2007 urging the withdrawal of the Mid-Atlantic Corridor<sup>v</sup> designation
- Act 35 passed by the PA General Assembly in 2006 opposing the use of eminent domain in land use decisions

To review the above, the governor expressed multiple concerns to Secretary Bodman, including:

*the way in which the corridor was designated does not advance national interests and ignores state policies which further energy independence goals; a reasonable transmission siting process may necessitate longer than one year at the state level in order to establish all of the facts and the backstop siting process will, consequently, undercut legitimate state regulatory processes; and, the federal corridor and its attendant processes may force sub-optimal solutions and an unwarranted burden upon the Commonwealth of Pennsylvania.*

That the state legislature was strongly aligned on its opposition to the Corridor designation is clear from the voting record. The Senate resolution passed

unanimously and the House resolution passed by a 188-11 margin, signaling the strongest of opposition from our legislators on this matter. We note the conclusion of each resolution—which:

*oppose[s] the provisions of EPAct which preempt the authority of the Commonwealth of Pennsylvania and its political subdivisions to determine land use policies and which usurp the traditional and fundamental authority of the Pennsylvania Public Utility Commission to review and approve applications for the location and construction of transmission lines in the Commonwealth.*

The Pennsylvania Public Utilities Commission (PaPUC) has also expressed strong concerns. In his April testimony before Congress, PaPUC Chairman Wendell Holland indicated that “the intrusion of Federal administrative agencies into distinctively local siting issues is a matter of concern” and “Neither the Federal agencies nor the Federal Courts are currently equipped to serve as appellate bodies from state siting processes.” Earlier, in its October 2006 comments to DOE, the PaPUC made it clear that the requisite consultation with the Commonwealth had not occurred:

*While the PaPUC regularly interfaces with PJM, its management and stakeholder committees, PJM has taken certain positions before your Department with regard to EPAct Section 1221 NIETC designations that have not been previously discussed with or agreed to by the PaPUC or any other State Commission. PJM has neither consulted with or solicited the views of the state commissions or its own stakeholders prior to making its recommendations to your Department.*

It is clear from the above responses from the executive, legislative, or regulatory branches of our government, that DOE’s action has failed to consult with Pennsylvania as required by the Energy Policy Act of 1221. Before a corridor can be designated across the Commonwealth of Pennsylvania, DOE must consult with our officials, taking into consideration and resolving the significant policy and legal issues that have been raised.

The Pennsylvania Land Trust Association fully recognizes the importance of meeting future electricity needs. We see plenty of evidence that needs can be addressed in a variety of ways that do not require the use of federal eminent domain. However, we do not see evidence that these alternatives are being given the consideration necessary to support informed, balanced energy planning decisions for our region. DOE wrote in its 2006 National Electric Congestion Study that:

*congestion solutions will be based upon a thorough review of generation, transmission, distribution and demand-side options, and that such options will be evaluated against a range of scenarios concerning load growth,*

*energy prices, and resource development patterns to ensure the robustness of the proposed solutions.*

To date, no such analysis has been forthcoming from the DOE.

Yet, empirical data from other sources indicate that non-transmission solutions are viable options deserving equal consideration and systematic review, especially given the potential to deliver energy resources faster, more economically, with lesser environmental degradation and with greater public acceptance. The 2006 National Action Plan for Energy Efficiency<sup>vi</sup> notes that proven demand-side programs are capable of delivering energy resources at a scale comparable to that provided by constructing new power plants and at a cost far below that of any generation option available today.

California provides the strongest example of what can be accomplished: while the electrical use of the rest of the nation rose steadily in the last two decades, that of California held flat due to the serious and aggressive advancement of demand side resources. Looking forward, the most recent planning efforts of other states such as Texas and Florida suggest that efficiency options can be deployed rapidly enough and at a scale sufficient to more than offset all incremental load growth over the next fifteen year planning horizon. Regional analyses corroborate the conclusion that demand side options are meaningful: a 2007 study prepared for PJM Interconnect and MidAtlantic Distributed Resources Initiative estimates that demand response programs alone could provide annual benefits in the range of \$200 million in reduced congestion costs in the PJM system in the coming years.<sup>vii</sup>

These and other sources all indicate that demand-side options provide substantive alternatives capable of delivering energy resources on a scale commensurate with the needs of our society's growing demands for power. Energy efficiency programs, renewable resources, and capacity additions near load centers all would provide additional and substantial benefits. A meaningful, comprehensive and systematic integrated resource planning process would provide the missing framework for even-handed and responsible planning of our energy resource mix. Before new transmission projects are approved and eminent domain is imposed, it is imperative that these other options be given equal consideration. The ramifications for the people and natural resources of Pennsylvania and the nation are too great to do otherwise.

Furthermore we note that the federally imposed backstop siting processes which will operate in the NIETC appear to stand in opposition to state energy policies and needs. Our Governor has expressed concerns that designation of the Mid-Atlantic Corridor will facilitate projects which are not the best choices for Pennsylvania, posing an "unwarranted burden" on the Commonwealth, ignoring the state's renewables strategy, adequate generation capacity, and carefully deliberated regulatory decisions.

In summary, PALTA is concerned that designation of the Mid-Atlantic Corridor, with its provisions for implementing the “backstop” siting process established under EPLA in 2005, threatens to:

- Put at risk decades of important land conservation achievements across much of Pennsylvania;
- Destroy the integrity of communities and scenic, historic and natural landscapes including parks, battlefields, important bird habitats and protected open spaces;
- Undercut existing federal law such as the National Environmental Policy Act and the National Historic Preservation Act by imposing new processes and procedures inconsistent with those laws;
- Impose on Pennsylvania an unprecedented use of federal eminent domain;
- Strip the General Assembly and the PUC of any meaningful control over the abuse of eminent domain and consideration of legitimate local concerns;
- Negate state environmental and energy policy decisions;
- Work at cross purposes to efforts to responsibly address the threats of global warming;
- Fail to deliver on the promise of increasing national security, and worse, harm national security by creating highly visible, highly vulnerable targets for terrorists and making a large portion of the population dependent on this insecure centralized system;
- Deter efforts to develop alternative energy resources including energy efficiency and de-centralized generation—efforts that can enhance national security by diversifying our energy base and eliminating vulnerability to terrorism;
- Promote increased coal-burning and associated emissions by older, dirtier plants to our west, putting the health of everyone but especially our children at greater risk;
- Impose on Pennsylvania ratepayers the burden of taking private property and much of the cost of building transmission lines, without significant offsetting benefits; and
- Commit our region to a course of action which fails to adequately consider lower cost, non-polluting solutions and lower impact non-transmission alternatives.

Pennsylvania Land Trust Association  
Letter to U.S. Department of Energy  
July 6, 2007  
p. 9 of 9

Establishing the Mid-Atlantic Corridor will present a grave threat to the resource lands in communities across fifty-two Pennsylvania counties. Because of the enormous threat which this poses to the conservation mission of our organization and our members, because of DOE's failure to consult with state officials in Pennsylvania, its additional failure to comply with the requirements of the National Environmental Protection Act, and because there is a need for further examination of alternative energy options, the Pennsylvania Land Trust Association opposes the designation of the Mid-Atlantic National Interest Electric Transmission Corridor.

Respectfully submitted,

Andrew M. Loza  
Executive Director

cc: Board of Directors  
Member Organizations

<sup>i</sup> American Rivers' designation of the Upper Delaware as one of the most endangered rivers in 2007 due to the transmission threat there

[http://www.americanrivers.org/site/PageServer?pagename=AR7\\_MER2007\\_UpperDelaware;](http://www.americanrivers.org/site/PageServer?pagename=AR7_MER2007_UpperDelaware)  
National Trust for Historic Preservation's 2007 designation  
<http://www.nationaltrust.org/11most/05.html>

<sup>ii</sup> PaPUC comments: [http://conserveland.org/pp/Transmission/PUC\\_holland.PDF](http://conserveland.org/pp/Transmission/PUC_holland.PDF)  
[http://conserveland.org/pp/Transmission/PUC\\_levin.PDF](http://conserveland.org/pp/Transmission/PUC_levin.PDF)  
and [http://conserveland.org/pp/Transmission/PUC\\_levinhafner.PDF](http://conserveland.org/pp/Transmission/PUC_levinhafner.PDF)

<sup>iii</sup> PA House Resolution 297, passed June 2007:  
<http://conserveland.org/pp/Transmission/HR297of2007.pdf>

<sup>iv</sup> PA Senate Resolution 129, passed June 2007:  
<http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2007&sessInd=0&billBody=S&billTyp=R&billNbr=0129&pn=1161>

<sup>v</sup> Letter from Governor Rendell to Secretary Bodman, June 2007:

[http://conserveland.org/pp/Transmission/nietc\\_rendell.pdf](http://conserveland.org/pp/Transmission/nietc_rendell.pdf)

<sup>vi</sup> National Action plan for Energy Efficiency,  
<http://www.epa.gov/cleanrgy/actionplan/eeactionplan.htm>

<sup>vii</sup> study for PJM Interconnection and Mid-Atlantic Demand Resources Initiative  
<http://conserveland.org/pp/Transmission/BrattleGroupReport.pdf>

**Officers**

Jackie S. Kramer  
*Farm & Natural Lands Trust*  
President

Molly Morrison  
*Natural Lands Trust*  
Vice-President

Reneé Carey  
*Northcentral PA Conservancy*  
Treasurer

Jennifer W. Shuey  
*ClearWater Conservancy*  
Secretary

John Conner  
*Manada Conservancy*  
Assistant Treasurer

Andrew M. Loza  
Assistant Secretary

**Directors**

Sherri Evans-Stanton  
*Brandywine Conservancy*

Chris Kocher  
*Wildlands Conservancy*

Bill Kunze  
*The Nature Conservancy*

Karen Martynick  
*Lancaster Farmland Trust*

Patricia L. Pregmon, Esq.  
*Pregmon Law Offices*

Steven Schiffman, Esq.  
*Serratelli Schiffman  
Brown & Calhoun, PC*

*Directors and officers serve as individuals. Affiliations are listed only for identification purposes.*

**Staff**

Andrew M. Loza  
*Executive Director*

Nicole Faraguna  
*Director of Outreach & Events*

Ed Boito  
*Projects & Administrative  
Coordinator*