

July 6, 2007

By Electronic Submission and First-Class Mail

The Honorable Samuel W. Bodman
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0001

**Re: *Comments of the Governor and Attorney General of Virginia*
Draft National Interest Electric Transmission Corridor Designations
Attn: Docket No. 2007-OE-01, Mid-Atlantic Area National Corridor**

Dear Mr. Bodman:

Pursuant to the Department of Energy's April 26, 2007, Notice and Opportunity for Written and Oral Comment on Draft National Interest Electric Transmission Corridor Designations, Governor Timothy M. Kaine and Attorney General Robert F. McDonnell provide these comments on behalf of the Commonwealth of Virginia. These are in addition to preliminary comments provided by Governor Kaine's letters of October 10, 2006, and May 15, 2007, and Attorney General McDonnell's letter of November 15, 2006.

As expressed in our previous correspondence to you, we have significant concerns with DOE's draft designation of a National Corridor through parts of the Shenandoah Valley and Piedmont region of Virginia. Inclusion in a designated corridor carries with it the specter of federal preemption of transmission siting decisions. Such decisions have, heretofore, been made by the States, where concerns for historic, environmental and cultural assets, economic development and citizens' quality of life are important considerations. The federal law creating federal backstop authority for transmission siting in designated corridors, instead, ignores these legitimate state interests entirely and would permit decisions based solely on the energy needs of a region. The potential local impacts of siting decisions should discourage the establishment of federal authority in any but the most extreme circumstances. Though we acknowledge the need to ensure sufficient electric transmission infrastructure in the Mid-Atlantic, the unique qualities of this region of the Commonwealth, and the Commonwealth's own established and well-

managed practices and process for siting transmission have not been given sufficient consideration and weight in the development of this draft.

INTRODUCTION

At the outset, we must note again that § 1221(a) of the Energy Policy Act of 2005 requires that any National Corridor designation be based on a study of electric transmission congestion, and *such study* is to be conducted *in consultation with affected States*. As stated in Attorney General McDonell's November 15, 2006, correspondence to you, the August 2006 transmission congestion study, upon which this Draft Designation is based, was completed without consultation with the Commonwealth. Indeed, as far as we have been able to ascertain, it was conducted without consultation with *any* "affected state," contrary to the express language of the law. In its April 26 notice of draft designations the Department cited to "practical difficulties in conducting the level of consultation that some may prefer in the context of a study of this magnitude . . ." It is troubling that the Department views "practical difficulties" as an adequate excuse for ignoring clear federal statutory requirements. While the Department has made a minimal effort to consult with the States *subsequent to* the congestion study, and we offer these written comments in response, we do not waive the Commonwealth's rights to object and seek legal redress of the Department's failure to comply with the statute.

COMMENTS

I. Virginia Should Not Be Included in a National Corridor.

Virginia should not be included in DOE's designation of National Transmission Corridors. As a policy matter, Virginia has long understood the importance of ensuring reliable electric service at a reasonable cost. The Commonwealth has in place law, policy, and practices to effectively address the state's energy needs. Virginia's laws, policies, and practices do not conflict with, but inure to the benefit of, the energy needs of the citizens of the Mid-Atlantic region.

In 2006 the Virginia General Assembly set out energy policies and objectives and directed the development of a comprehensive, ten-year energy plan. Among its stated objectives are "ensuring the availability of reliable energy at costs that are reasonable and in quantities that will support the Commonwealth's economy" and "establishing sufficient supply and delivery infrastructure to maintain reliable energy availability in the event of a disruption..." *Va. Code § 67-101*. The Virginia Energy Plan must include an "analysis of the adequacy of electricity generation, transmission, and distribution resources in the Commonwealth for the ... electric industry[y], and how regional generation, transmission, and distribution resources affect the Commonwealth." *Va. Code § 67-201*. Thus, Virginia is committed to taking the necessary steps to support sufficient electric infrastructure, and our Energy Plan expressly recognized the importance of regional considerations.

Even more recently, the Commonwealth enacted legislation to facilitate both the implementation of energy efficiency and conservation, with the goal of reducing electric use by 10 percent by 2022, and the construction of needed transmission and generation infrastructure. This new law -- Virginia's "re-regulation" of electricity -- provides for the timely and current recovery of costs for transmission services and facilities. Similarly, the law provides for timely and current recovery of costs for new generation projects, and allows for an enhanced rate of return for construction of certain types of facilities. *See Va. Code § 56-585.1 A*. These statutory measures, consistent with the Energy Plan described above, evidence a clear understanding of the priority that must be placed on expanding energy infrastructure and establish real tools for accomplishing Virginia's energy goals.

The benefits of new electric infrastructure planned and supported in Virginia will not stop at our borders. New generation and transmission already approved or under consideration by our State Corporation Commission will serve reliability across the region. Moreover, Virginia's State Corporation Commission not only has the authority to consider the interstate benefits of proposed transmission facilities in the Commonwealth, it has exercised that authority in the past. *See Rappahannock League for Env. Protect. v. Va. Elec. and Power Co.*, 216 Va. 774, 222 S.E.2d 802 (1976).

II. The Draft Designation Improperly Favors Transmission Solutions Over Other Alternatives.

The Department has stated that designation of a National Corridor is not an assertion that additional transmission is the only, or preferred, solution to resolve congestion identified thereby, and that the federal government is not dictating *how* the States should meet their energy needs. However, the very existence of a National Corridor, with its attendant preemptive approval and federal condemnation authority, expresses a policy preference and, as a practical matter, elevates transmission over non-transmission remedies as a federal priority. This bias in favor of transmission will likely advantage those states that have not adequately met their demands for electricity, in reliance on out-of-state solutions, and would prejudice Virginia and other states that have taken the steps necessary to encourage and facilitate the development of an array of transmission and non-transmission solutions to meet critical energy needs. It is consideration of precisely these relative investments and demands that should have been discussed with the affected states, had the congestion study been conducted as required by federal law. Indeed these matters should form an important piece of the foundation for any congestion corridor designation.

III. Availability of Federal Jurisdiction Will Likely Cause Delay.

Federal proceedings for siting in a National Corridor could have the adverse effect of delaying construction of transmission in Virginia, contrary to the intended purposes of § 1221(a) of the Act. Two state proceedings for approval of transmission projects are

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currently underway before the Virginia State Corporation Commission. If they are not complete within one year, the availability of a FERC proceeding under the federal statute would raise a number of questions likely to delay, rather than expedite, any decision on the projects. While many state siting proceedings are concluded within one year, there are instances when the process requires more time for a thorough and careful review of the myriad issues implicated. A state commission building an evidentiary record and deliberating on an application might be justified in terminating its proceeding prematurely should it find itself exceeding the one year time-frame. Moreover, any effort to engage federal preemption may be expected to result in additional litigation on a variety of related issues that would result in further delay far beyond the time a state would take to complete its proceeding. In addition, the possibility of parallel state and federal proceedings would present many logistical problems, causing unnecessary confusion and uncertainty. Thus, the inclusion of Virginia in a designation of National Corridors -- while two important transmission siting cases are pending before the Commonwealth's State Corporation Commission -- will likely undermine the goals of the federal legislation by creating questions and issues for review and decision that otherwise would not exist.

In conclusion, we must reiterate Virginia's objection to DOE's failure to act in this matter in accordance with federal law. Had it conformed its conduct to the statutory directive, it would have been readily apparent that, as summarized above, no portion of the Commonwealth should be included in the DOE's designation of NIETCs. We thank you for your careful consideration of these comments and would be pleased to have the opportunity to meet with you to present the Commonwealth's position in person.

Yours truly,

Timothy M. Kaine
Governor

Robert F. McDonnell
Attorney General

cc: Kevin M. Kolevar, Director
DOE Office of Electricity Delivery and
Energy Reliability
The Honorable John Warner
The Honorable James Webb

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The Honorable Jo Ann Davis
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The Honorable Frank Wolf
The Honorable Tom Davis