



September 15, 2008

Dear Pennsylvania Senators and Representatives:

The Pennsylvania Land Trust Association urges you to ensure that no undue influence is placed on the PUC regarding the transmission line application of Trans-Allegheny Regional Interconnect Line Company (TrAILCo). We applaud the PUC Administrative Law Judges for their thoughtful review of the application. Their Recommended Decision for denial of the TrAILCo transmission application, issued in August, details the applicant's disregard for state law and regulations. The decision of the PUC regarding this application carries important implications for transmission line proposals across our Commonwealth.

On October 2, 2007, the U.S. Department of Energy imposed the Mid-Atlantic "National Interest" Electric Transmission Corridor (NIETC) on 52 of Pennsylvania's 67 counties and seven neighboring states. This action largely preempts state-level protections against unwarranted taking of land and imposition of unjustified transmission costs on citizens. It strips Pennsylvania's landowners and communities of the reasonable expectation that eminent domain will not be used absent a consideration of non-transmission alternatives and absent a legitimate and pressing public purpose. The NIETC creates a vehicle for TrAILCo to circumvent Pennsylvania law, a vehicle we expect TrAILCo to pursue.

The Pennsylvania Land Trust Association thanks Pennsylvania's Senators for unanimously opposing the NIETC (S.R. 129 of 2007) as well as the 188 Representatives who opposed it (H.R. 297). Current events now present an opportunity for legislators to ensure that the PUC makes an independent and impartial decision regarding TrAILCo and to strengthen Pennsylvania's case against federal preemption of the PUC and state law.

TrAILCo's lack of concern for Pennsylvania law and for the public interest is clear in its application:

- **The PUC Administrative Law Judges' review concluded that profit motives, not need, were the real impetus for the request for building new transmission.** In their concluding comments, the Judges stated that the proposed projects are "*a grandiose answer to a minor or even non-existent problem*" and that "granting approval ... at this juncture rewards a lack of foresight and proper maintenance, and has policy implications ... that should be carefully considered before any further action is taken."
- **The PUC Administrative Law Judges concluded that the applicant failed to meet Pennsylvania standards nearly universally.** Specifically, the transmission company failed to satisfy its burden of proof that the project would avoid creating an unreasonable risk of danger to public health and safety. It also failed to

**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
- Charters 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.

demonstrate compliance with applicable statutes on protection of natural resources and minimizing adverse environmental impacts, as well as compliance with siting regulations. They concluded that the need for the project had NOT been proven.

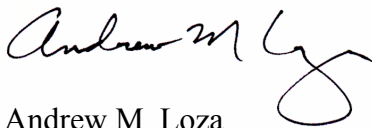
- The Administrative Law Judges found that the methods used for the justification of TrAILCo were biased, **systematically producing misinformation that suggests future reliability problems, where none would have been found using a comprehensive analysis** of regional energy resources.
- The PUC's Office of Trial Staff concluded that "taken together, the facts in this case seem to indicate a **certain level of indifference**" **towards compliance with the statutory requirements** of the Commonwealth. Why the indifference? If the deficiency of the application caused a delay in ruling by the PUC, this, in itself, is a trigger allowing the applicant to request federal pre-emption of the state oversight process. Thus, one strategy for seeking (vastly more favorable) federal review is to deliberately submit an inadequate application to the Pennsylvania PUC.

It is time to stop the power grab. Across the state, more transmission projects are under consideration as corporations try to take advantage of the NIETC with its fast-track eminent domain process and lack of consideration of non-transmission alternatives. It is important that corporations be held accountable to provide accurate, truthful, and complete information so that proper decisions can be responsibly made. The pending PUC decision will set a critical precedent for a new age of energy infrastructure development in Pennsylvania.

We ask you to keep a watchful eye on the TrAILCo application to ensure an impartial decision by the PUC regarding its Administrative Law Judges' recommendation and to affirm the regulatory requirements that now safeguard the citizens, communities, cultural assets and natural resources of our Commonwealth. We encourage you to also express your concerns to members of Congress. (Attached is a copy of the Pennsylvania Land Trust Association's July testimony to the U.S. Senate Energy and Natural Resources Committee regarding these issues.)

Thank you for your consideration.

Sincerely ,



Andrew M. Loza  
Executive Director



## Summary of NIETC's Harm

Within the Mid-Atlantic NIETC, DOE can usurp traditional state control to fast-track transmission siting decisions. The new and likely unnecessary high-voltage power lines resulting from the usurpation will have many negative impacts on the Mid-Atlantic:

- *Loss of reasonable process:* Landowners will lose the reasonable expectation that non-transmission alternatives will be considered before their land is taken.
- *Loss of community character:* Towering above the region's tree-lines, the new lines will scar our scenic landscapes.
- *Disincentives for alternative energy:* New transmission lines will skew energy markets in the Mid-Atlantic, favoring coal-fired electricity at the expense of other technologies.
- *Loss of conservation resources:* County and municipal parks as well as county agricultural conservation easements can be lost to federal condemnation.
- *Air pollution:* The motive for building new power lines is to transport electricity from ancient coal-fired power plants in the Ohio Valley to the East Coast. These heavily polluting plants were grandfathered out of Clean Air Act protections, and since Pennsylvania and other Mid-Atlantic states are downwind, our air and health will be damaged by higher mercury emissions and other pollutants.
- *Global warming:* Increased production from old coal-fired plants will substantially increase electricity-related carbon emissions and undermine government and private initiatives to reduce emissions.
- *Higher utility rates:* Ratepayers will have to pay the billions of dollars in expenses associated with condemning the land and building the lines when less expensive and every bit as reliable energy alternatives were left unconsidered by DOE.

## Condemnation for Transmission: Why the Tool of First Resort?

The occasional well-considered condemnation may be necessary for the public good. Reliable electricity is important, and now and again, there will be a compelling public interest in condemning properties to ensure reliability. However, whether for transmission lines or any other public purpose, there should be a high bar in considering use of condemnation. Perversely, DOE has made federal eminent domain the tool of choice for addressing energy interests in the Mid-Atlantic region.

Federal condemnation supporters protest that they are simply trying to stop rolling blackouts. However, there are many approaches to meet future energy demands that don't require new interstate transmission lines. These include energy efficiency, demand-response technologies, and local generation options.

## **Energy Alternatives in Brief**

New local generation – via natural gas, wind, solar, etc. – is expanding and has enormous growth potential. Local generation does not require new transmission lines because the power is generated close to where it is needed.

Looking beyond generation, the untapped energy resources available through demand-side management are huge. The 2006 National Action Plan for Energy Efficiency 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. Recent planning efforts for states such as Texas and Florida suggest that these efficiency options can be deployed rapidly enough and at a scale sufficient to more than offset all incremental load growth over the next fifteen years.

The Green Energy Economics Group's study, "Building Pennsylvania's Energy Future: Efficiency Means Real Gains for Security, the Economy, and the Environment," found that "robust efficiency programs could preclude all electricity and demand growth and save the commonwealth between \$9 and \$12 billion in avoided generation and T & D [transmission and distribution] costs."

The Brattle Group study commissioned by PJM, "Quantifying Demand Response Benefits in PJM" (2007), estimated that implementing programs to reduce loads by just 3% during PJM's 100 super-peak hours "would have substantial energy and capacity market benefits." In short, it would benefit the PJM system \$65-\$203 million annually, not including the "several potentially large benefits of DR [demand response], including enhanced market competitiveness, reduced price volatility, insurance against extreme events, ..."

*Non-transmission solutions deserve equal consideration and systematic review in the energy planning process.* These tools have the potential to deliver energy resources faster and more economically, with lesser

environmental degradation and greater public acceptance than new transmission lines. Actual energy market behavior in 2007 and 2008 bears this out with new local generation and demand-response efforts meeting all projected energy needs.

## **Energy Markets Deliver Contrary to Projections that Justified the NIETC**

The market behavior of 2007 and 2008 differed tremendously from the forecasts used by the DOE to justify the designation of the Mid-Atlantic NIETC.

The DOE's *National Electric Transmission Congestion Study* (2006) projected a shortfall in new power supplies in the eastern mid-Atlantic region. These forecasts, which anticipated no increase in energy resources within the growing eastern market, led to the conclusion that the region would face a shortfall, creating congestion costs and reliability issues.

The forecasts were wrong. The regional grid operator, PJM, has conducted four energy resource auctions since early 2007 to attract new supply-side and demand-side resources to meet the region's energy needs. These auctions are producing the necessary resources to meet the system's needs. Rather than facing a gap between supply and demand, as forecast in the Congestion Study, PJM is finding that the energy market is producing all the resources needed to meet today's projections of customer demand.

This challenges the very premise of the Mid-Atlantic Corridor. Not only are resources coming in to the queue, the auctions are eliciting response in those parts of the market where the need for new resources is greatest.

Even though transmission resources can bid in to this process, the success to date comes entirely from non-transmission resources. Contributions from generation and demand-side resources are on a growth curve and likely to continue to meet system needs in future auctions as well.

In view of the energy market behaving entirely contrary to the projections of the study that justified designation of the Mid-Atlantic NIETC, a reassessment of the Corridor's necessity appears to be in order.

(A fifth RPM auction occurred too recently to fully analyze for this testimony. However, the results appear to be consistent with the previous four auctions.)

## **National Interest?**

The words “National Interest” preface “Electric Transmission Corridor” in NIETC, but the use is specious. Rather, it is a Special Interest Electric Transmission Corridor – the result of special interests seeking to reshape the electricity regulatory structure to enrich their bottom-lines. In the words of PJM Interconnection, the regional electrical grid operator, it is a transmission “super-highway” to expand use of coal-fired resources. (*See PJM testimony to the Federal Energy Regulatory Commission, 5/13/05.*)

The NIETC assumes a need that has not been independently verified but rather is based on models prepared by entities that have a great deal to gain from expanded transmission. Comments submitted to the DOE by many experts indicate that there are a range of highly cost-effective and sound alternatives including energy efficiency and conservation measures, demand/response technologies, and local generation. *DOE did not consider any of these alternatives before designating the NIETC.*

## **National Security?**

Ironically, the federal “national interest” corridor designation weakens national security: Stringing hundreds of miles of high-voltage lines from towers that stand high above the tree-line make an easy target for attack. Making the population dependent on their integrity is the antithesis of good security planning. It doesn’t make sense to force the populations of New Jersey and New York to be dependent on electricity generated in Ohio.

If we want to minimize our vulnerability to terrorism, we should look at decentralizing our electricity generation – generating power close to where it is needed, not generating it in the Ohio Valley and transporting it hundreds of miles to the East Coast. Sensible efficiency measures coupled with a diversified network of small, state-of-the-art generation sources would result in a secure energy system invulnerable to large-scale disruption.

## **Where Things Stand**

The Federal Energy Regulatory Commission (FERC) is prepared to accept requests from utilities to enter their transmission proposals into the fast-track federal process. It appears that FERC will review requests, not in terms of whether a transmission line is needed, but rather in terms of optimal siting of the power line. It is a small comfort that a line might be well-sited if the basic question of whether the line is truly needed is ignored.

In Pennsylvania, Governor Rendell's administration opposes the Mid-Atlantic NIETC as does the Public Utilities Commission and the Office of the Consumer Advocate. The Pennsylvania Senate opposed the NIETC in a unanimous vote and the House in a 188-11 vote. Scores of other government entities and private organizations have joined in the opposition.

New transmission lines and National Interest Electric Transmission Corridor designations have the potential to serve national interests depending on the particular context. However, the DOE's execution of NIETC-designation powers in the Mid-Atlantic demonstrates that the present statutory-regulatory construct is gravely deficient.

In the Mid-Atlantic region, local generation, demand-response and energy efficiency can meet our energy needs without harming communities. These alternatives were not considered in the process of designating the Mid-Atlantic NIETC. Congress should not let this situation stand. Our country needs energy strategies that address our 21st century challenges and utilize 21st century technologies.