



The U.S. Department of Energy (DOE) published a combined [Notice of Intent and Request for Information](#) (NOI) on May 9, 2023, that proposes a new applicant-driven, route-specific process to designate National Interest Electric Transmission Corridors (NIETCs)—areas where DOE determines that electric grid limitations, congestion, or capacity constraints are adversely affecting electricity consumers and communities.

Areas designated as NIETCs enjoy certain permitting advantages and unlock funding opportunities for federal investment under the \$2.5 billion [Transmission Facilitation Program](#),^[1] pursuant to the Infrastructure Investment and Jobs Act (IIJA), and the \$2 billion [Transmission Facility Financing Loan Program](#),^[2] pursuant to the Inflation Reduction Act (IRA). In addition, sponsors of projects in a designated NIETC can apply to become FAST-41 covered projects, entitling them to permitting timetable management, interagency coordination, transparency, and other benefits.

By adopting an applicant-driven, route-specific process, DOE hopes to overcome the gating consultation and environmental review issues it previously encountered when designating NIETCs of much broader geographic scope. DOE also seeks to streamline and coordinate its NIETC designation process with processes across the federal government for transmission planning, federal funding, and backstop siting. However, DOE is seeking public comment on the details of its proposal before final guidance is issued, likely concurrent with the issuance of the final [National Transmission Needs Study](#) (Needs Study). There are many open questions that developers hoping to avail themselves of FERC backstop siting authority or federal funding may wish to weigh in on, including who can apply for NIETC designations, whether DOE accepts proposals on an annual or rolling basis, and whether DOE should create separate tracks (with associated information and timing requirements) for different kinds of applications.

Underlying Statutory Authority and Proposed Process

Section 216(a) of the Federal Power Act (FPA) authorizes DOE to "designate as a [NIETC] 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."[\[3\]](#) Under the process proposed by the department, applicants can apply to DOE to designate as a NIETC a specific route where one or more potential transmission projects could be sited.

The potential route must be within a geographic area where DOE has identified present or expected transmission capacity constraints or congestion that adversely affects consumers. DOE is in the midst of finalizing its Needs Study, anticipated to be released in late summer of 2023, which will catalog both historical and anticipated electric transmission needs and identify high-priority national transmission needs.[\[4\]](#) In February 2023, DOE released a draft of the Needs Study for public comment with a comment deadline of April 20, 2023. The results of the Needs Study will thus be a prerequisite to the designation of NIETCs.

DOE expects that proposed routes for NIETC designation may be associated with specific transmission projects under "active development," by which DOE means projects that have progressed beyond the preliminary design phase to active routing, siting, and community outreach activities. This will allow DOE to designate NIETCs that are "route-specific" and relatively narrow in geographic scope, potentially streamlining the environmental review process compared to broader NIETCs. DOE anticipates that applicants submitting NIETCs for designation will have to demonstrate that their proposed route balances (1) the need to define the proposed route with enough specificity to allow for meaningful evaluation of impacts; (2) the need for sufficient size to construct, maintain, and safely operate one or more transmission projects; and (3) the need to accommodate routine route changes that often occur when siting and permitting infrastructure. Interested parties are invited to comment on the appropriate application requirements to achieve this balance.

DOE also anticipates that most applicants will be transmission developers but is considering keeping the door open for other potential applicants such as tribal authorities, states, nontransmission-owning utilities (such as transmission-dependent utilities), generation developers, and others. State laws in some regions may make it more difficult for nonincumbent transmission developers to propose NIETCs for transmission projects through rights of first refusal and similar limitations on who can receive a certificate to site transmission. However, the ability to apply for a NIETC designation may be of particular interest to generation developers seeking to site long gen-tie lines. In particular, solar developers and both onshore and offshore wind developers may wish to submit comments supporting DOE opening the applicant pool to include generation developers.

Application Requirements and NEPA Review

DOE proposes that applicants be required to provide information not only to satisfy the statutory criteria under Section 216 of the FPA but also to provide environmental and other information necessary for DOE to complete a full review under the National Environmental Policy Act (NEPA) prior to designating a NIETC. Although DOE has had the power to designate NIETCs for 18 years under Section 216(a) of the FPA, early efforts stalled when the U.S. Court of Appeals for the Ninth Circuit vacated DOE's prior designations in 2011, finding that DOE failed to comply with NEPA and violated Section 216(a) by failing to consult with affected states.^[5] Now, before DOE can designate any NIETC, it must comply with NEPA, the National Historic Preservation Act (NHPA), the Endangered Species Act, and any other applicable federal environmental laws, as well as consult with states to satisfy Section 216(a).

DOE seeks to make its environmental review of NIETCs under NEPA as efficient as possible. For example, DOE notes that NIETCs encompass areas where multiple transmission projects could be located, providing an opportunity to coordinate environmental reviews and improve the efficiency and timeliness of permitting for these projects. Moreover, where applicants indicate an intent to use FERC's backstop siting process, as described below, DOE intends to coordinate with FERC to the maximum extent practicable to avoid redundancy and promote efficiency in their respective environmental reviews.

Under Section 216(b) of the FPA, as amended by the IIJA, the designation of a NIETC unlocks access to FERC's backstop siting authority for transmission facilities. Once DOE designates a NETC, an applicant can seek a permit from FERC to construct or modify electric transmission facilities within the NIETC. However, FERC can only grant the permit if state siting authorities have not acted on a state-level construction permit application within a year (assuming such a permit is required under state law), have denied such an application, or have conditioned their approval such that the proposed project will not significantly reduce transmission capacity constraints or congestion in interstate commerce or is not economically feasible. Where applicants expect to seek permits from FERC under its backstop siting authority, DOE may require NIETC applicants to "provide, to the extent practicable, environmental information at the same scope and level of detail and in the same general form as what FERC would require pursuant to its responsibilities."

The efficacy of this approach likely depends on FERC finalizing revisions to its regulations that allow developers to start FERC's pre-filing review much earlier than is currently allowed. In December 2022, FERC issued a [Notice of Proposed Rulemaking](#) in which it proposed to update its prior regulations to implement revisions to its backstop siting authority and also proposed to eliminate the one-year waiting period before applicants could commence FERC's pre-filing process after filing their state siting applications.^[6] Eliminating the waiting period would maximize applicants' ability to submit the same scope and detail of environmental information in both the DOE NIETC designation process and the FERC siting process.

Separate Tracks for Siting Corridors vs. Financing Corridors

Recognizing that some applicants may plan to seek both FERC backstop siting and federal financing for their projects (siting corridors) while other applicants may only plan to pursue federal financing (financing corridors), DOE seeks comment on whether it should identify separate tracks and requirements for siting corridors and financing corridors. In particular, DOE wants input as to how the environmental and other review processes might differ between the two types of NIETC applications, "relative timing and urgency for siting corridors versus financing corridors," differences regarding the point in the development cycle when applicants of each type might apply for NIETC designation, and how applicants might switch between tracks.

Coordination With Tribal Authorities and Transmission Planning Entities

The NOI prioritizes tribal consultation and social justice, citing [DOE Order 144.1](#) and the [Justice40 Initiative](#).^[7] Under the Justice40 Initiative, DOE is required to ensure that disadvantaged communities receive the benefits of new and existing federal investments in electric infrastructure. DOE Order 144.1 sets forth DOE's tribal consultation procedures. Although the federal government is statutorily obligated to consult with tribes under NEPA, the NHPA, and other statutes—and must engage with tribes on a government-to-government basis under Executive Branch directives—developers should anticipate working closely with tribes in selecting routes. Long-distance electric transmission facilities often cross tribal lands or otherwise affect tribal, cultural, and religious resources.^[8]

The NOI also seeks input as to the extent of DOE's coordination with transmission planning authorities (i.e., regional transmission organizations (RTOs), independent system operators (ISOs), and transmission-owning utilities outside RTOs/ISOs, [collectively, Grid Operators]). Since the large regional and interregional transmission projects that DOE hopes to facilitate with NIETCs must be included in the regional transmission expansion plans of the relevant Grid Operators, this kind of coordination would be prudent to ensure the NIETC designation process aligns with the outcomes in these regional transmission planning processes.

Other Information Requested

DOE seeks comments from all interested stakeholders on a variety of other issues that could inform the development of future application guidance and procedures for entities seeking to propose a route as a NIETC, including:

- Whether the information DOE proposes to require with applications is overly burdensome, or alternatively, whether additional information needs to be included.
- The metrics and methods that are available for evaluating how that information meets the statutory requirements for a NIETC.
- How DOE should evaluate and weigh the impact that a proposed corridor and any associated potential project may have when considering the merits of corridor designation applications.
- Whether DOE should accept proposals or recommendations for NIETCs on an annual basis, on some other defined frequency, or on a rolling basis, and how long defined request periods should be open.

- Whether DOE should explicitly seek NIETC corridor proposals that facilitate the development of certain kinds of transmission projects or that meet specific identified transmission needs, such as interregional transmission projects.
- Other potential applicants that should be considered when developing final guidance or whose specific needs should be considered when developing this process.
- Whether there are post-designation procedures not discussed in the NOI that should be included.

DOE plans to issue final application guidance concurrent with the finalization of its Needs Study, anticipated to be released in late summer of 2023.

Questions about the NOI can be sent to NIETC@hq.doe.gov. A public webinar will be held on May 17, 2023, at 1:00 p.m. ET. [Registration](#) is required. Written comments on the NOI are due on or before June 29, 2023, and should be submitted [here](#).

Endnotes

[1] IIJA Section 40106.

[2] IRA Section 50151.

[3] 16 U.S.C. 824p(a)(2). Further, DOE "may consider additional factors in designating NIETCs, including: (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; (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."

[4] See our prior Update discussing the draft Needs Study [here](#).

[5] *California Wilderness v. DOE*, 631 F.3d 1072 (9th Cir. 2011).

[6] 1 87 Fed. Reg. 2770 (Jan. 17, 2023).

[7] The NOI is consistent with the directives in [Executive Order 13175](#), *Consultation and Coordination With Indian Tribal Governments* (Nov. 9, 2020) and the subsequent Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (Jan. 26, 2021).

[8] As detailed in a recent client [Update](#), on May 10, 2023, the Biden administration announced the release of an updated [Memorandum of Understanding](#) (MOU) to facilitate the timely, responsible, and equitable permitting of electric transmission infrastructure, including an update to the Integrated Interagency Pre-Application Process (IIP) in the regulations implementing section 216(h) of the Act. In the MOU, consistent with this NOI, the administration directed DOE to update the IIP process to require applicants to conduct robust engagement with all tribes and communities that would be affected by any qualifying project (high voltage electric transmission lines and their attendant facilities that are expected to require the preparation of an environmental impact statement to inform an agency decision on a federal authorization.)

Authors



Jane Rueger

Partner

JRueger@perkinscoie.com [202.661.5834](tel:202.661.5834)



Laura Smith Morton

Partner

LMorton@perkinscoie.com [202.654.6283](tel:202.654.6283)



Jena A. MacLean

Partner

JMaclean@perkinscoie.com [202.434.1648](tel:202.434.1648)

Explore more in

[Environment, Energy & Resources](#) [Energy & Natural Resources](#) [Energy Infrastructure & Clean Technology](#)

Related insights

Update

FERC Meeting Agenda Summaries for October 2024

Update

New White House Requirements for Government Procurement of AI Technologies: Key Considerations for Contractors