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South Dakota

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Via email to NIETC@hq.doe.gov

Grid Deployment Office
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Re: South Dakota Public Utility Commission's Comments on the Tribal Energy Access Corridor and Phase 3 Information Submission

The South Dakota Public Utilities Commission (SD PUC) submits these comments in opposition to the corridor designation process in South Dakota. Within South Dakota, the SD PUC is tasked with, among other things, rates and service quality regulation of investor-owned utilities, participation in Regional Transmission Organizations, and siting of energy infrastructure. Transmission permitting in South Dakota is subject to the jurisdiction of the SD PUC through an efficient, effective, and robust permitting process.¹

On May 8, 2024, the Department of Energy's (DOE) Grid Deployment Office released a preliminary list of potential National Interest Electric Transmission Corridors (NIETC). Included within the potential NIETCs, which DOE has labeled as the Northern Plains, is a significant portion of South Dakota.² The SD PUC submitted comments in opposition to the preliminary designation within South Dakota.

¹ See South Dakota Codified Law (S.D. Codified Laws) § 49-41B and South Dakota Administrative Rule (S.D. Admin. R. 20:10:01:01 and 20:10:22.

² See Preliminary NIETC List, at 60, accessible at: <https://www.energy.gov/sites/default/files/2024-05/PreliminaryListPotentialNIETCsPublicRelease.pdf>.

Despite the concerns of the SD PUC, the DOE moved forward with designation of a NIETC throughout South Dakota. This was deemed the Tribal Energy Access Corridor.

Having thoroughly reviewed the available information and NIETC maps, the SD PUC respectfully submits these comments in opposition of NIETC designation for the proposed South Dakota corridor.

COMMENTS OF THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

South Dakota has a track record of supporting electric transmission. The SD PUC's process is fair and efficient and has worked well for decades. Duplicating South Dakota's siting process would be an unnecessary use of resources that could be better allocated elsewhere. It makes little sense to create a "backstop" process for permit denials in a state that has not denied a transmission line siting permit in over four decades.³

Nothing in the nearly 300-page National Transmission Needs Study (Needs Study) actually points to the Northern Plains Region, and more specifically within the area identified by the proposed NIETC in South Dakota. Thus, it is unclear based upon that study how the DOE came to the conclusion the NIETC designation in South Dakota was necessary, especially given recent Southwest Power Pool (SPP) plans to address transmission needs in North Dakota, South Dakota, and Nebraska.⁴ It is unclear how new transmission in the proposed NIETC throughout South Dakota would mesh with the SPP plans or why it is necessary given those announced plans.

Further, the Needs Study is incomplete. It appears that the Needs Study either failed to analyze or failed to articulate whether there are transmission constraints downstream that would prevent any benefit from being realized even if additional transmission was constructed in South

³ See, 1981 S.D. PUC Docket No. F-3371 (Order entered January 14, 1981).

⁴ Southwest Power Pool's 2024 Integrated Transmission Plan

Dakota. Without a complete study to justify the extreme remedy of creating federal preemption, the designation of the NIETC in South Dakota is arbitrary and confusing at best.

Nothing in the narrowing of the corridor in Phase 2 and creation of the Tribal Energy Access Corridor addressed or alleviated the fact that the Needs Study at the heart of the selection of the corridor was lacking. Therefore, the SD PUC emphasizes and reiterates its concerns.

I. South Dakota law sets forth a fair and efficient siting process.

This public comment period seeks, among other things, comment on “the unique public engagement and governmental consultation factors that DOE should account for in each potential NIETC.”⁵ In this context, it is important to acknowledge South Dakota’s siting regime and the fact that it explicitly provides for public engagement and fosters the best opportunity for members of the public and other governmental entities to participate in the siting process.

Regarding impacts on the community, the designation of the NIETC in South Dakota will not advance landowner and public involvement. South Dakota’s permitting process mandates a process of public involvement that is more robust than the process touted by FERC in its recent adoption of FERC Order 1977. Pursuant to South Dakota law, when an application for a siting permit is received, the SD PUC must hold public input meetings in the project area,⁶ must accept written comments from members of the public and must allow for formal intervention⁷ by interested persons, including local governments, Native American Tribes, and landowners. In the National Transmission Needs Study, DOE touted the need for meaningful engagement with landowners, communities, stakeholders, and Tribes.⁸ However, federal preemption in South Dakota would negatively impact those goals. The SD PUC is in the best position to consider

⁵ See, January 14, 2025 presentation.

⁶ See S.D. Codified Laws §49-41B-16.

⁷ See S.D. Codified Laws § 49-41B-17.

⁸ National Transmission Needs Study (October 2023), at 131.

input from those interested persons and entities, has mechanisms in law to do so, and has significant experience in accomplishing that goal.

The designation of this NIETC will take away the ability of the state to work with landowners.

II. The South Dakota PUC is actively engaged with regional transmission organizations.

As discussed in the SD PUC's previously submitted comments, not only is the SD PUC in the best position to know and understand the geography, environment, and needs of this state, the SD PUC has, in fact, been very involved in advocating for grid reliability and transmission planning. The three SD PUC commissioners are heavily involved in the regional transmission organizations with a presence in this state, namely, the Southwest Power Pool (SPP) and Mid-Continent Independent System Operator (MISO), dedicating significant time and resources to ensuring that the utilities that operate here remain reliable. Moreover, South Dakota law requires as part of the siting process that information be provided on the facility's contribution to the power grid, as well as the consequences of delay or termination of the facility.⁹

Thus, it is inaccurate to insinuate that the SD PUC would not understand and fully consider within its siting process the reliability of the electric grid both in and beyond this state.

III. Transparency in coordination should be a priority.

The Federal Power Act mandates consultation and coordination with regional entities in accordance with Section 216(a)(3). In the DOE's Notice of Early Public and Governmental Engagement for Potential Designation of Tribal Energy Access, Southwestern Grid Connector, and Lake Erie-Canada National Interest Electric Transmission Corridors, the DOE noted it will consult with regional entities during Phase 3. The SD PUC requests that this process be open and transparent for all stakeholders.

⁹ S.D. Admin. R.20:10:22:10.

IV. A NIETC designation should not last in perpetuity.

Nothing in the information provided throughout this process has indicated that there would be a deadline related to a NIETC designation. In order to provide certainty to the process and to ensure efficient use of funds, no NIETC designation should last in perpetuity. Rather, deadlines should be established by which transmission must be constructed to address the perceived need in that corridor. If those deadlines are not met, then the NIETC designation should sunset.

CONCLUSION

The State of South Dakota has an efficient and transparent process that is fair for all stakeholders. The state is in the best position to understand the needs of the region and work with local landowners. There has been no showing that preemption is necessary. Therefore, the drastic remedy of federal preemption is not merited.

The State of South Dakota, through the SD PUC, and the RTOs in this region are actively engaged in transmission planning to meet the generation and load needs of the state and region. This planning has been effective in expanding generation opportunities throughout the state including on tribal lands without duplicating facilities and driving up costs for consumers. Federal preemption of the current process will not serve landowners, utilities, project developers, or utility consumers effectively or efficiently.

The SD PUC respectfully requests this NIETC not be designated.

Respectfully submitted,



Gary Hanson
Chairperson



Chris Nelson
Commissioner



Kristie Fiegen
Commissioner