

**UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY**

**Electric Transmission  
Congestion Study for 2009**

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**FR Doc. E8-12434**

**COMMENTS OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

The National Association of Regulatory Utility Commissioners (“NARUC”) appreciates the opportunity to provide comments to the United States Department of Energy (“DOE” or the “Department”) in response to its June 4, 2008 notice<sup>1</sup> requesting comments on the planned 2009 National Electric Transmission Congestion Study (“2009 Congestion Study”). All pleadings, correspondence, and other communications related to this proceeding should be addressed to:

***James Bradford Ramsay***  
**GENERAL COUNSEL**  
**National Association of Regulatory Utility Commissioners**  
**1101 Vermont Avenue, N.W., Suite 200**  
**Washington, D.C. 20005**  
**Phone: 202.898.2207**  
**Fax: 202.898.2213**  
**Email: [jramsav@naruc.org](mailto:jramsav@naruc.org)**

**BACKGROUND**

Section 1221 of the Energy Policy Act of 2005 added several new provisions to the Federal Power Act (“FPA”), including FPA Section 216. Section 216(a) requires the Secretary of Energy to conduct a study of electric transmission congestion within a year of the date of enactment and every three years thereafter. The 2006 Congestion Study looked at congestion

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<sup>1</sup> *Electric Transmission Congestion Study*, Department of Energy Request for Written Comment and Notice of Technical Workshop, 73 Federal Register 31846 (June 4, 2008) (*Notice*) (Available online at: [http://www.congestion09.anl.gov/documents/docs/FR\\_Notice\\_4\\_June\\_08.pdf](http://www.congestion09.anl.gov/documents/docs/FR_Notice_4_June_08.pdf))

nationwide except for the portion of Texas covered by the Electricity Reliability Council of Texas (excluded by the legislation).<sup>2</sup> The 2009 Congestion Study will take the same approach.<sup>3</sup>

FPA Section 216(a) requires that the congestion study be conducted in consultation with affected States, along with regional electric reliability organizations. As the national organization of the State agencies responsible for economic and safety regulation of utilities, NARUC participated in a process that produced the 2006 study. We will also participate in this effort. Our members have the obligation under State law to ensure that energy services required by the public convenience and necessity are established and maintained at just and reasonable rates. NARUC's members are among those DOE is *required* to engage in this process. Members include agencies in all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the rates and conditions of service associated with the intrastate operations of electric and gas utilities. Both Congress<sup>4</sup> and the federal courts<sup>5</sup> have long recognized NARUC as the proper party to represent the collective interests of these State regulatory commissions.

## **SUMMARY**

The Department is now initiating preparations for the 2009 Congestion Study, and seeks comments on what publicly-available data and information should be considered and what type

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<sup>2</sup> *National Electric Transmission Congestion Study, August 2006*. Available online in Adobe format at <[http://nietc.anl.gov/documents/docs/Congestion\\_Study\\_2006-9MB.pdf](http://nietc.anl.gov/documents/docs/Congestion_Study_2006-9MB.pdf)>. An Executive Summary of the study, also in Adobe format, is at <[http://nietc.anl.gov/documents/docs/NIETC\\_ExSum\\_8Aug08.pdf](http://nietc.anl.gov/documents/docs/NIETC_ExSum_8Aug08.pdf)>.

<sup>3</sup> *Notice* at page 31846.

<sup>4</sup> See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Boards to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns); Cf., 47 U.S.C. § 254 (1996). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "... Carriers, to get the cards, applied to ... [NARUC], an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the 'bingo card' system").

<sup>5</sup> See *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985).

of analysis should be performed, to identify and understand the significance and character of transmission congestion.<sup>6</sup>

NARUC thanks DOE for the opportunity to provide comments on the preparation of the *2009 Congestion Study*. NARUC's member commissions have the responsibility and unique expertise on issues critical to the success and accuracy of any final DOE study. They've earned that experience through decades of assuring transmission system reliability, relieving congestion, and overseeing construction and siting of major infrastructure links to the grid. NARUC's members continually invest significant financial and human resources to maintain that expertise and resolve critical issues using existing mechanisms. Any DOE action should efficiently leverage – and certainly not undermine – those continuing State efforts. DOE should pay particular attention to these comments as well as the comments filed by individual NARUC member commissions.

This first set of NARUC comments contends that:

- DOE should sponsor a series of technical metrics workshops to get consensus on appropriate methodology to evaluate congestion for the *2009 Congestion Study*;
- At a minimum, the Study's evaluation methodology should focus only on congestion that affects interstate reliability, not on localized congestion;
- A properly designed evaluation methodology will assure that a NIETC designation cannot be based solely on future congestion;
- DOE should defer, when considering designations based on the final study, to mature regional planning processes to correct transmission deficiencies; and
- Any NIETC designation should not undermine State solutions that reduce congestion through a non-wires approach.

NARUC anticipates submitting additional comments before the announced December 21, 2008, closing of the record and August 2009 release of the completed Study for comment.

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<sup>6</sup> Id.

## COMMENTS

***DOE should sponsor a series of technical metrics workshops to get consensus on appropriate methodology to evaluate congestion for the 2009 Congestion Study.***

We commend DOE for focusing the 2009 Congestion Study only on recent or current congestion.<sup>7</sup> In preparing the 2006 Congestion Study, the Department gathered historical congestion data from existing studies prepared by regional reliability councils, regional transmission organizations (“RTOs”) and independent system operators (“ISOs”), and regional planning groups.<sup>8</sup> The Department also sponsored modeling to simulate future congestion for years 2008 and 2011 in the Eastern Interconnection and years 2008 and 2015 in the Western Interconnection.<sup>9</sup>

However, the deficiencies of the 2006 Study were obvious and highlighted in NARUC’s October 2006 comments on the Study.<sup>10</sup> One crucial flaw, which DOE should avoid repeating in the current effort, was the 2006 Study’s reliance on an oversimplified DC model to designate congestion areas. While DC modeling provides quick results, it is only a preliminary step in the process of identifying areas of concern. Before considering a NIETC designation, detailed AC modeling, which accounts for non-linear variations and establishes validated power-flow cases suitable for simulating and evaluating alternative system scenarios, is also needed. Moreover, before identifying congestion areas, DOE should compare and reconcile previously-available data and analyses. Even in areas where conflicting studies do not exist, a detailed review of the underlying data and modeling assumptions for the purpose of verifying that the amount and

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<sup>7</sup> Transcript - *DOE Pre-Congestion Study Regional Workshops for the 2009 National Electric Congestion Study* (San Francisco, CA June 11, 2008) at 2. David Meyer “This Study will focus only on recent or current congestion. And as in 2006, DOE will review the eastern and western interconnections separately.” Available online at: <[http://congestion09.anl.gov/documents/docs/Transcript\\_Pre\\_2009\\_Congestion\\_Study\\_San\\_Francisco.pdf](http://congestion09.anl.gov/documents/docs/Transcript_Pre_2009_Congestion_Study_San_Francisco.pdf)>.

<sup>8</sup> *Notice* at page 31846.

<sup>9</sup> Id.

<sup>10</sup> *Comments of the National Association of Regulatory Utility Commissioners*, filed October 10, 2006. See: <[http://www.nietc.anl.gov/involve/searchcomment/dsp\\_commentlist.cfm?organization=National%20Association%20of%20Regulatory%20Utility%20Commissioners%20\(NARUC\)](http://www.nietc.anl.gov/involve/searchcomment/dsp_commentlist.cfm?organization=National%20Association%20of%20Regulatory%20Utility%20Commissioners%20(NARUC))>.

location of congestion has been accurately identified is a prerequisite to final action. All inputs, as well as the specific techniques used for analysis, must be released for comment to assure that the record can support any DOE congestion findings. Moreover, such transparency – and the associated “peer review” – will, as such review does for any scientific analysis – significantly increase the odds that erroneous inputs, as well as flaws in the analytical method applied, will be discovered and corrected.

To develop consistent criteria to identify and quantify congestion, DOE should hold technical metrics workshops to seek consensus on an appropriate methodology. The goal should be to have a simple, measurable definition of congestion and a coherent, consistent method for applying it.

***At a minimum, the Study’s evaluation methodology should focus only on congestion that affects interstate reliability, not on localized congestion.***

NARUC has consistently supported federal legislation that provides FERC authority to enforce mandatory reliability standards for the bulk electric system on all market participants. If properly designed and conducted congestion studies highlight interstate reliability concerns, those concerns should be addressed. However, some reliability problems cannot be constructively addressed by federal action because they are localized, already recognized and addressed by existing processes, and/or reflective of some specific technical or siting issues. Such localized, intrastate congestion should be left to the State to address. State siting committees and State commissions are best suited to determine when and how to address congestion that rests entirely within a State’s borders.

***A properly designed evaluation methodology will assure that a NIETC designation cannot be based solely on future congestion.***

The *2006 Congestion Study* identified several U.S. areas experiencing significant transmission congestion based on the historical data and the above-referenced “future” modeling results.<sup>11</sup> Projections of future congestion do not provide a proper basis for DOE action. Indeed, in the *2006 Congestion Study*, DOE correctly declined to take action on so-called “Conditional Areas of Concern” based solely on projections of future congestion. It appears DOE will take the same approach with the *2009 Congestion Study*, focusing on 2007 data<sup>12</sup> – though, if time permits, also examining 2006 and 2008 data.<sup>13</sup>

However, the agency continues to express interest in future congestion projections. Id. Should DOE change its current focus and choose to base possible corridor designations on future congestion only, the federal Administrative Procedures Act (“APA”), 5 U.S.C.A. §500 et seq., requires – as a matter of fundamental fairness – that agencies give adequate notice and an opportunity to comment to interested persons before taking action on proposed rules.<sup>14</sup> Although a final rule need not be identical to an original proposed rule, “(i)f the final rule deviates too sharply from the proposal, affected parties will be deprived of notice and opportunity to respond to the proposal.”<sup>15</sup> In deciding whether additional comment is required before the agency issues

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<sup>11</sup> *Notice* at page 31846. For example, a number of “Conditional Congestion Areas Congestion Areas” were identified, including: Montana-Wyoming; Dakotas-Minnesota; Kansas-Oklahoma; Illinois, Indiana and upper Appalachia; and the Southeast. DOE identified these as “areas where future congestion would result if large amounts of new generation were to be developed without simultaneous development of associated transmission capacity”. Id.

<sup>12</sup> Transcript - *U.S. Department of Energy Pre-Congestion Study Regional Workshops for the 2009 National Electric Congestion Study* (Oklahoma City, OK June 18, 2008) at 26. Available online, in Adobe format, at: <[http://congestion09.anl.gov/documents/docs/Transcript\\_Pre\\_2009\\_Congestion\\_Study\\_Oklahoma\\_City.pdf](http://congestion09.anl.gov/documents/docs/Transcript_Pre_2009_Congestion_Study_Oklahoma_City.pdf)>.

<sup>13</sup> Id.

<sup>14</sup> The APA allows agencies to adopt regulations *only* after reasonable public notice and opportunity for comment by interested persons. See, *AFL-CIO v. Donovan*, 757 F.2d 330, 338 (D.C. Cir. 1985) (citation omitted); accord *Chocolate Mfrs. Assoc. v. Block*, 775 F.2d 1098, 1104 (4th Cir. 1985) (“An interested party must have been alerted by the notice to the possibility of the changes eventually adopted from the comments.”).

<sup>15</sup> See, *American Water Works Ass'n v. EPA*, 40 F.3d 1266, 1274 (D.C. Cir. 1994); *AFL-CIO*, 757 F.2d at 338; *Chocolate Mfrs.*, 755 F.2d at 1105 (citing cases from several circuits).

a final rule differing from a proposed action based on comments received, the courts look to see if the final rule promulgated by the agency is "a logical outgrowth" of the original proposed rule. There is no "logical outgrowth" if the final rule materially alters the issues involved in the rulemaking or substantially departs from the terms or substance of the proposed rule. *Id.* So far, both DOE's past actions, and its spokespersons' statements in this proceeding, indicate it will not base corridor designations on future projections only – but will rather only examine recent data for 2007 and perhaps 2008. If this focus shifts, before acting, DOE would need to clarify both its rationale and authority in a federal register notice providing an opportunity for comment by interested parties.

***DOE should defer, when considering designations based on the final study, to mature regional planning processes to correct transmission deficiencies.***

While we understand that DOE's current focus is on the 2009 Congestion Study, NARUC wishes to comment on issues that will arise once it is complete and the agency considers proposed NIETC designations.

It is inefficient to disrupt existing regional planning procedures which consistently include cost-benefit analyses of proposed transmission upgrades. DOE should support, not undermine, such efforts. Where such processes are in place, planners determine, with input from States and stakeholders, when there is a specific need that can be met by a transmission project or other resource. Some regions require transmission owners to act on the projects so identified. Regional planning procedures, in tandem with such transmission owner construction requirements – which are contained in several RTO agreements – effectively eliminate the risk that needed construction will not occur. If a project has not already been designated by a regional entity, it is likely that the project is not needed or that a transmission project to reduce congestion is not the most economic solution.

***Any NIETC designation should not undermine State solutions that reduce congestion through a non-wires approach.***

States and regions continue to actively explore non-wires alternatives to reduce congestion. There are at least four possible alternatives that, depending on specific circumstances, can meet the same reliability and incremental load-serving requirements as new transmission: (1) new central-station generation; (2) distributed generation; (3) demand response; and (4) energy efficiency programs. DOE should not interfere with State processes that generate such solutions. DOE actions could inadvertently neutralize such programs. For example, a premature DOE NIETC designation could alter the real-time price signals to which customers in demand response programs respond. If the DOE proceeds to designate a series of NIETCs without regard to total costs, there is a high probability that such decisions will unfairly skew the playing field in favor of transmission solutions and could well direct scarce investment capital into solutions that are uneconomical and inefficient.

**CONCLUSION**

NARUC respectfully requests DOE carefully consider the foregoing comments.

Respectfully submitted,

***James Bradford Ramsay***  
***GENERAL COUNSEL***

By: \_\_\_\_\_/s/\_\_\_\_\_  
**James Bradford Ramsay**

**National Association of Regulatory Utility Commissioners**  
**1101 Vermont Avenue, N.W., Suite 200**  
**Washington, D.C. 20005**

**202.898.2207**

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