UNITED STATES DEPARTMENT OF ENERGY
GRID DEPLOYMENT OFFICE

COMMENTS OF PUBLIC INTEREST ORGANIZATIONS IN SUPPORT OF THE NORTHERN PLAINS NIETC

In response to the Department of Energy's ("DOE") May 8, 2024 preliminary list of potential National Interest Electric Transmission Corridors ("NIETC" or "Corridor"),[1] Earthjustice, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, and Sustainable FERC Project (together "Public Interest Organizations" or "PIOs") submit these comments to express support for the potential Northern Plains NIETC and to explain why DOE should prioritize this NIETC as the agency moves through its four-phase designation process.[2] While many of DOE's potential NIETCs would promote the public interest by facilitating the development of transmission projects necessary to relieve congestion and constraints and facilitate the transition to a clean energy grid,[3] the Northern Plains NIETC has the greatest potential to promote equity by facilitating the goals of Indian Tribes to develop clean energy resources on Tribal lands. Additionally, the Northern Plains NIETC would serve an area that faces significant energy burdens both on and off of Tribal lands. Moreover, many of the statutory factors that the Federal Power Act ("FPA") authorizes DOE to consider when designating NIETCs weigh in favor of the Northern Plains NIETC. This NIETC is also well-configured to avoid and minimize adverse environmental impacts, because it follows the path of existing transmission infrastructure and avoids many sensitive areas such as national parks or wildlife

[1] *See* DOE, *Initiation of Phase 2 of National Interest Electric Transmission Corridor (NIETC) Designation Process: Preliminary List of Potential NIETCs Issued Pursuant to Section 216(a) of the Federal Power Act* (May 8, 2024), https://www.energy.gov/sites/default/files/2024-05/PreliminaryListPotentialNIETCsPublicRelease.pdf ("Preliminary NIETC List")

[2] The Northern Plains NIETC should not be confused with the North Plains Connector, a proposed transmission project between Montana and North Dakota. *See* Grid United, *North Plains Connector: Developing Next-Generation Energy Infrastructure To Power Our Future*, https://northplainsconnector.com/.

[3] Many of the undersigned organizations are also submitting comments in support of other potential NIETCs.

refuges. Accordingly, designating the Northern Plains NIETC provides DOE an exceptional opportunity to achieve the FPA's directives and the Biden Administration's objectives of equitable clean energy development.

BACKGROUND

As PIOs have expressed, DOE's designation of NIETCs is an important step toward developing transmission projects that are essential to mitigate climate change, meet the nation's climate and clean energy goals, reduce congestion, increase reliability and resilience, protect consumers, communities, and the environment, and promote equitable energy development.[4] PIOs appreciate DOE's consideration of, and response to, public input in designing its four-phase NIETC designation process. PIOs believe DOE's phased process strikes an appropriate balance between several important factors, including: obtaining input from developers who may have the most detailed information about potential transmission projects; providing meaningful, ongoing opportunities for public input, especially from affected communities; and ensuring that DOE exercises meaningful oversight and independent judgment in evaluating whether NIETCs are in the public interest. These comments focus on the Northern Plains NIETC and explain PIOs' belief that this NIETC is in the public interest and merits prioritization.

Most importantly, the Northern Plains NIETC presents an opportunity to promote equitable outcomes from the development of transmission infrastructure. Historically, the construction of energy infrastructure in the United States has not focused on equity, and the result is that disadvantaged communities now bear the heaviest burdens of pollution from the

[4] Comments of Public Interest Organizations ("PIO Comments on NIETC Process") at 1–2, Docket No. DOE-HQ-2023-0039-0001 , available at https://www.regulations.gov/document/DOE-HQ-2023-0039-0017/comment

generation of electricity and often experience the least reliable electric service.[5] The inequitable design of our current electric system both perpetuates ongoing harms with deep, historic roots and presents significant obstacles to communities that are attempting to preserve or improve local environments and pursue economic development.[6] PIOs believe that as the United States transitions to a clean energy system, the nation must not only avoid repeating inequitable historic practices, but must also work to empower disadvantaged communities and redress historic and ongoing harms. The policies of the Biden Administration reflect these goals by requiring rigorous analysis of environmental justice during federal permitting and by aiming to ensure that at least 40 percent of the benefits from certain federal investments flow to disadvantaged communities.[7] The Northern Plains NIETC would allow DOE to advance these goals.

Situated in North Dakota, South Dakota, and Nebraska, the Northern Plains NIETC would traverse the reservations and ancestral lands of at least seven Indian Tribes: the Cheyenne River Sioux Tribe, the Crow Creek Sioux Tribe, the Flandreau Santee Sioux Tribe, the Oglala

---

[5] *See*, *e.g.*, DOE, Tribal Electricity Access and Reliability ("DOE Tribal Electricity Report"), (Aug. 2018) at 53, https://www.energy.gov/sites/default/files/2024-01/EXEC-2023-000952%20-%20Tribal%20Electricity%20Access%20Reliability%20Report%20to%20Congress%20%28Final%20Draft%20-%20Clean%29-signed%20by%20S1.pdf (noting that "Black, Hispanic, Native American, and older adult households, as well as families residing in low-income multifamily housing, manufactured housing, and older buildings experience disproportionally high energy burdens nationally, regionally, and in metro areas"); Cushing, L.J., Li, S., Steiger, B.B. et al., *Historical red-lining is associated with fossil fuel power plant siting and present-day inequalities in air pollutant emissions*, 8 Nat Energy, 52–61 (2023), https://doi.org/10.1038/s41560-022-01162-y; Kathiann M. Kowalski, Energy News Network, *Racial disparities persist in electric service. Is 'willful blindness' to blame?* (July 1, 2020), https://energynews.us/2020/07/01/racial-disparities-persist-in-electric-service-is-willful-blindness-to-blame/.

[6] *See*, *e.g.*, DOE Tribal Electricity Report, *supra* note 5, at 3 (noting that "Federal Indian policy has also created extreme differences in land status and jurisdiction across the country" and that the resulting "complexities and confusion associated with land ownership, legal constraints, and authority thwart effective land management and access to financing").

[7] *See*, *e.g.*, DOE, *Coordination of Federal Authorizations for Electric Transmission Facilities*, 89 Fed. Reg. 35,312, 35,341–43 (discussing DOE's decision to require developers to consult with "communities of interest," including "communities with environmental justice concerns" and Indian Tribes, and "affirm[ing] the sovereignty of Indian Tribes" by "establish[ing] an expectation that project proponents engage with and consider the impacts of proposed projects on Tribal communities"); *see also* The White House, *Justice40: A Whole-of-Government Initiative*, https://www.whitehouse.gov/environmentaljustice/justice40/ (describing the "goal that 40 percent of the overall benefits of certain Federal climate, clean energy, affordable and sustainable housing, and other investments flow to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution").

Sioux Tribe, the Rosebud Sioux Tribe, the Standing Rock Sioux Tribe, and the Yankton Sioux Tribe.[8] Historically, the United States has waged war on Sioux Tribes, stolen land, violated treaties, and attempted to coerce Tribal members to abandon traditional cultures.[9] Today, these Tribes' reservations represent only a small fraction of their ancestral lands.[10] In part because the United States has failed to invest in infrastructure to serve these areas,[11] these Tribes face extreme poverty and tremendous obstacles to energy and broader economic development. For example, in 2019, the President of the Oglala Sioux Tribe testified to Congress about how the lack of essential infrastructure "impedes economic development, job creation, and a good quality of life" on the Pine Ridge Indian Reservation.[12] As that testimony noted, Oglala Lakota County, which is entirely within the Reservation, "is among the poorest counties in United States with over 51.9% below the poverty line, per capita income around $8,768, unemployment in the 80% range, and a high school dropout rate of over 60%."[13] The testimony further noted that "modernized infrastructure would significantly improve these conditions, help revitalize [the Oglala Tribe's] economy and expand opportunities for [the Oglala Tribe's] people, and improve

[8] *See* DOE Preliminary NIETC List, *supra* note 1, at 6 (depicting the Northern Plains NIETC's crossings of Tribal lands).
[9] *See*, *e.g.*, *United States v. Sioux Nation of Indians*, 448 U.S. 371, 422–24 (1980) (describing a history "in many respects tragic" in which after establishing treaties to end wars with Sioux Tribes, "the United States unlawfully abrogated" treaty obligations, and in which the acts of the United States enforced a "lifestyle Congress had chosen" for Sioux Tribes that "depriv[ed] them of their chosen way of life," and concluding that the United States had "effected a taking of tribal property" without compensation).
[10] *See*, *e.g.*, *id.* at 422–23 (describing how the actions of the United States repeatedly and unlawfully removed lands from Reservations promised to Sioux Tribes).
[11] Racheal M. White Hawk, "Community-scale Solar: Watt's in it for Indian Country?" 40 ENVIRONS 1 (2016) at 8, https://environs.law.ucdavis.edu/sites/g/files/dgvnsk15356/files/media/documents/ENV-40-1-articles-Hawk.pdf ("tribes are often left out of significant discussions among federal, state, and regional organizations when planning transmission line corridors, resulting in Indian land being excluded from transmission routing altogether"). *See also* Tracy LeBeau, "The Green Road Ahead: Renewable Energy Takes a Stumble But Is on the Right Path, Possibly Right Through Indian Country," The Federal Lawyer Magazine (2009) at 43, https://www.fedbar.org/wp-content/uploads/2009/03/coverstorymarapr2009-pdf-1.pdf.
[12] Written Testimony of Julian Bear Runner, President of the Oglala Sioux Tribe, to the Subcommittee for Indigenous Peoples of the United States, House Natural Resources Committee at 1 (July 11, 2019), available at https://www.congress.gov/116/meeting/house/109756/documents/HHRG-116-II24-20190711-SD004.pdf.
[13] *Id.*

the quality of life on [the Oglala Tribe's] reservation."[14] DOE should prioritize working directly with Tribes to facilitate development of the infrastructure the Tribes have been calling for.

PIOs believe that the Northern Plains NIETC presents an opportunity for DOE to work with Sioux Tribes to facilitate the modernization of electric infrastructure and Tribal economic development. In 2015, these seven Sioux Tribes established the Oceti Sakowin Power Authority ("OSPA"), a non-profit organization wholly owned and directed by the Tribes, which aims to facilitate the Tribes' goals of developing utility-scale and community-scale clean power projects on Tribal lands for the benefit of the Tribes.[15] The Tribes have some of the strongest on-land wind resources in the United States.[16] OSPA's preliminary work on two wind energy projects—the Ta'teh Topah wind farm on the Cheyenne River Reservation and the Pass Creek wind farm on the Oglala Pine Ridge Reservation—demonstrates a net capacity factor of 50%, which is very high for wind energy projects.[17] However, these projects faced extreme obstacles when seeking interconnection to the power grid in the Southwest Power Pool ("SPP"). The badly clogged state of SPP's interconnection queue meant that these projects languished for roughly five years before SPP informed OSPA that the projects would have to pay roughly $230 million to connect to the grid—including a security deposit of $48 million that would be due in an extremely short period.[18] These interconnection costs were so high due to a lack of transmission capacity; the region that includes the Tribes' reservations is served principally by transmission lines at or

---

[14] *Id.*
[15] OSPA, *About Us*, https://www.ospower.org/about-us/; *see also* Oceti Sakowin Power Authority, *Member Tribes*, https://www.ospower.org/member-tribes/.
[16] OSPA, *Member Tribes*, https://www.ospower.org/member-tribes/ (depicting the wind resources on the lands of OSPA's member Tribes).
[17] OSPA, *Comments of the Oceti Sakowin Power Authority in Response to U.S. Department of Interior's Request for Information: Designation of National Interest Electric Transmission Corridors* ("OSPA RFI Comments") at 3 (July 31, 2023), https://www.ospower.org/wp-content/uploads/2023/10/OSPA-NIETC-COMMENTS-7.31.23.pdf; *see also* DOE, Office of Energy Efficiency & Renewable Energy, *Land-Based Wind Market Report: 2021 Edition* at ix (noting that the average capacity factor for wind projects built between 2014 and 2019 was 41.4%).
[18] OSPA RFI Comments, *supra* note 17, at 4.

below 230 kilovolt (kV) capacity.[19] In comparison, areas where interconnection costs are lower, and where clean energy development is cheaper, quicker, and more successful, generally have access to transmission lines at or above 345 kV capacity.[20] The lack of transmission capacity in the Northern Plains region stymies clean energy development; prohibitive interconnection costs forced OSPA's two utility-scale wind projects, as well as a utility-scale solar project, to withdraw from SPP's interconnection queue.[21]

The Northern Plains NIETC would help remedy the lack of transmission that currently prevents OSPA's member Tribes from achieving their clean energy and economic development goals. By facilitating the financing and permitting of transmission infrastructure, the vast majority of which will be sited within existing rights-of-way, this NIETC would help develop a backbone of high-capacity transmission that can allow swifter and lower-cost interconnection of Tribes' clean energy projects. The designation of this NIETC would thus reflect a form of federal support for modernizing infrastructure that can empower Tribes to pursue their own clean energy and economic development goals. And the impacts could be profound: as co-developers and co-owners of large-scale clean energy projects, the Tribes would stand to earn substantial sums directly from the sales of clean energy. Additionally, Tribal governments could reap millions of dollars in tax revenue, while Tribal members who own land where the projects are located could earn steady income from rent. Development of these clean energy projects would likely also generate thousands of jobs during construction, as well as a more limited number of long-term operation and maintenance positions.[22]

---

[19] *Id.*
[20] *See*, *e.g. infra* § I(A) (including a map that depicts how wind energy in the Southwest Power Pool has clustered around high-capacity transmission).
[21] OSPA RFI comments, *supra* note 17, at 4.
[22] *See id.* at 15–16 (describing how "Indian Energy projects are uniquely beneficial to their host communities" and listing such benefits).

Moreover, in addition to empowering Tribes to pursue clean energy and economic development, the transmission facilitated by designation of the Northern Plains NIETC would also have regional benefits for other disadvantaged communities, including numerous Energy Disadvantaged communities identified by the federal Climate and Economic Justice Screening Tool.[23] Providing a transmission backbone for the region could reduce energy costs and enable development of clean energy that could provide sources of income for these communities.

For these reasons, PIOs believe that the Northern Plains NIETC is uniquely well suited to promote equitable clean energy development, particularly for Indian Tribes. However, PIOs also note that DOE cannot promote equity without direct engagement with affected communities. In the context of the Northern Plains NIETC, achieving equitable outcomes will require direct, proactive engagement with the affected Sioux Tribes and the Power Authority these Tribes have established to achieve their development goals. PIOs make our recommendations based on our assessment of materials produced by Tribes, but we do not represent a tribal perspective, let alone the diverse views of the many Indian Tribes and Indigenous peoples DOE must consider. Hence, PIOs strongly encourage DOE to begin proactive outreach to affected communities as promptly as possible. Below, PIOs explain our view that the Northern Plains NIETC meets all the relevant requirements and discretionary factors in the Federal Power Act, and why its designation would be a prudent and fruitful use of DOE's resources.

[23] DOE, Preliminary NIETC List, *supra* note 1, at 62.

DISCUSSION

I. In addition to the needs DOE has already identified, the Northern Plains NIETC would promote reliability and resiliency.

In its Preliminary NIETC List, DOE correctly states that the Northern Plains region faces "significant need for new transmission, especially extra high-voltage transmission, to relieve system congestion, lower consumer costs, meet future generation and demand growth, increase clean energy integration, and improve energy justice among Tribal communities."[24] PIOs believe that because this area is currently experiencing, and will continue to experience, transmission constraints or congestion that adversely affects consumers, this NIETC easily meets the threshold criteria in FPA section 216(a)(2).[25] In a May 16, 2024 webinar, DOE elaborated on its threshold need determinations for various preliminary NIETCs, explaining that the agency breaks down the need determination into six categories: reliability, resilience, congestion, consumer costs, future generation and demand growth, and clean energy.[26] PIOs agree with DOE that the Northern Plains NIETC satisfies these criteria.[27] Additionally, PIOs believe that the Northern Plains NIETC would promote both resilience and reliability.

[24] DOE Preliminary NIETC List, *supra* note 1, at 23.
[25] 16 U.S.C. § 824p(a)(2).
[26] DOE Grid Deployment Office, *The Department of Energy's Preliminary List of Potential National Interest Electric Transmission Corridors + Transmission Facility Financing* at 17 (May 16, 2024), available at https://www.energy.gov/sites/default/files/2024-05/2024-05-16%20NIETC%20Designation%20Phase%202%20Webinar%20Presentation%20Slides%20508C.pdf ("DOE NIETC Phase 2 Webinar").
[27] *Id.*

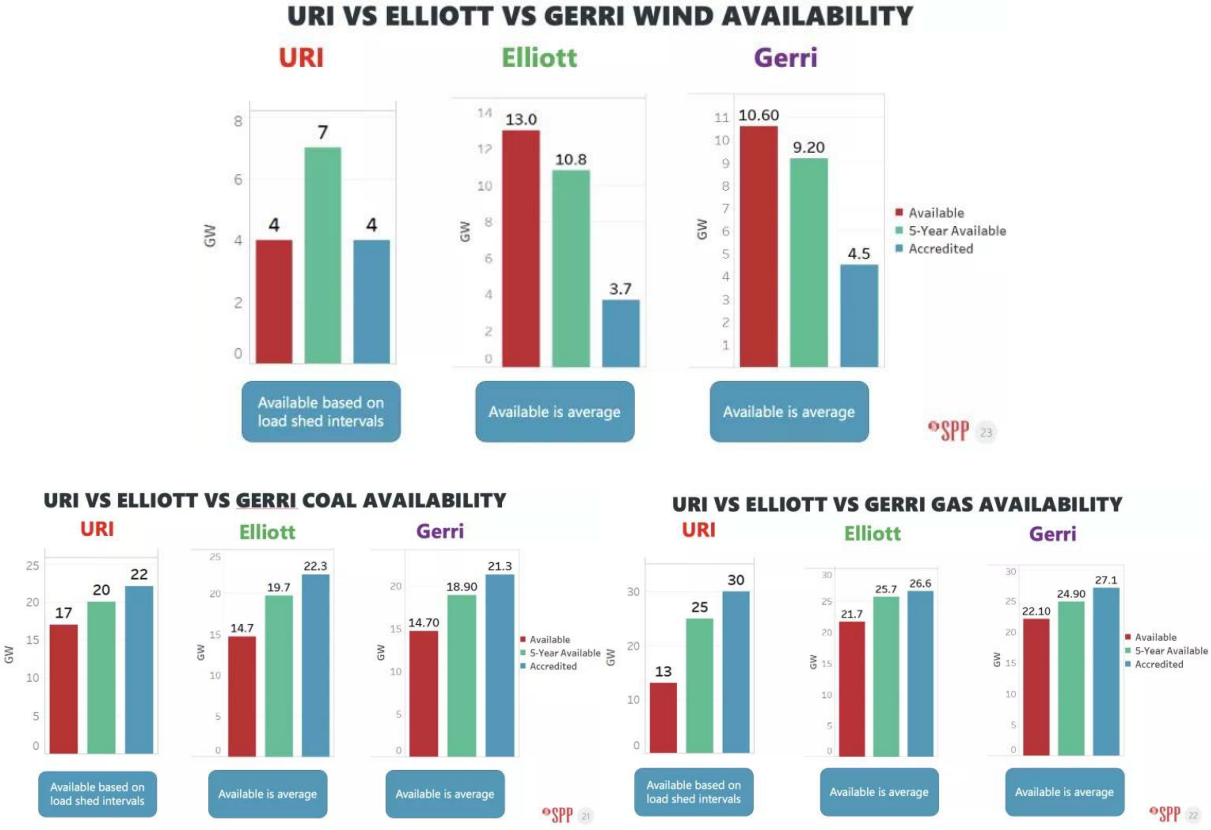
A. Upgrading SPP's grid in the Northern Plain NIETC would increase resilience to extreme winter weather by incorporating diverse wind resources and laying the groundwork for future transmission ties to the west.

One of transmission's great benefits is its ability to integrate diverse generating resources that can perform well in different types of weather, thus increasing resilience[28] within DOE's definition as the ability to "withstand and/or recover from system disruptions or unanticipated failure of system elements, particularly extreme weather events."[29] Resilience of this nature was demonstrated in the Northern Plains during Winter Storm Uri, when MISO was able to import energy from the east, as well as deliver some energy to SPP and even the West.[30] And yet, significant untapped potential for transmission to firm up the grid during extreme cold events remains. Analysis shows that additional transmission in MISO and SPP could have saved customers in both footprints millions of dollars by expanding access to low-cost wind.[31] With existing resources, the benefit of 1 GW of transmission expansion between Western SPP and SPP South during just a few days during Winter Storm Elliot would have been $6 million.[32]

The Northern Plains NIETC could greatly expand these savings and extreme weather resilience by facilitating the interconnection of untapped wind resources. Empirically, wind generation in SPP outperforms its erroneously low accreditation values, particularly in extreme cold weather events; during the recent Winter Storms Uri, Elliot, and Gerry, wind resource

[28] The Brattle Group and Grid Strategies, *Transmission Planning for the 21st Century: Proven Practices that Increase Value and Reduce Cost* ("Transmission Planning for the 21st Century"), at 41 (Oct. 2021), https://acore.org/resources/transmission-planning-for-the-21st-century/.
[29] DOE NIETC Phase 2 Webinar, *supra* note 26, at 17.
[30] Brattle, Transmission Planning for the 21st Century, *supra* note 28, at 42.
[31] Michael Goggins and Zach Zimmerman, *The Value of Transmission During Winter Storm Elliot*, at 3 (Feb. 2023) https://acore.org/wp-content/uploads/2023/02/The-Value-of-Transmission-During-Winter-Storm-Elliott-ACORE.pdf
[32] *Id.* at 7.

availability significantly *exceeded* SPP's accreditation values while coal and gas availability both demonstrated significant shortfalls compared to their accredited values, as demonstrated below.[33]

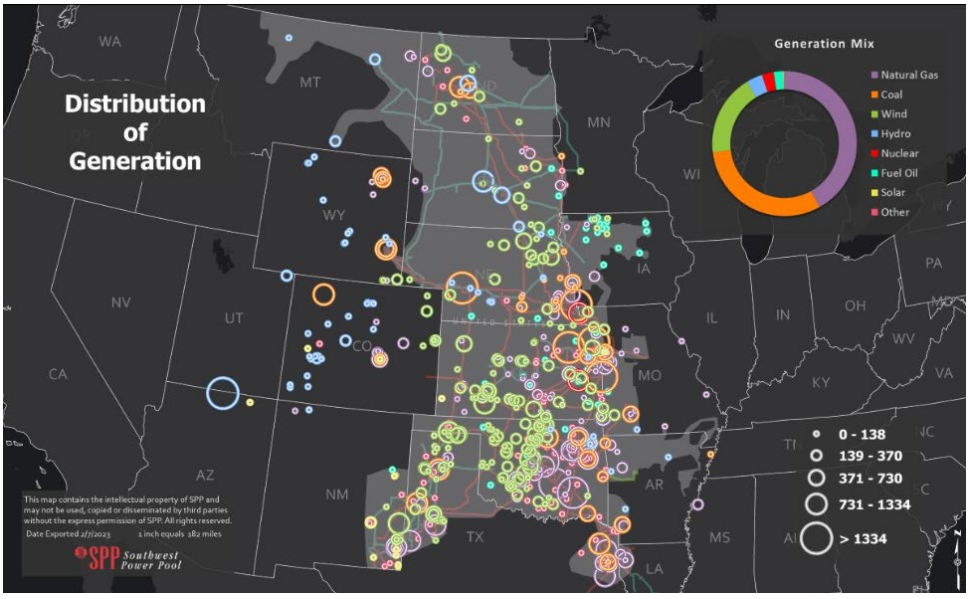


The Northern Plains NIETC would be especially valuable in promoting regional resilience because it would add significant geographic diversity to the wind portfolio within SPP. As illustrated in the map below, the majority of interconnected wind resources in SPP are currently in the southern portion of the grid operator's footprint, and the wind resources in the northern portion of the footprint are skewed to the eastern part of the Plains due to the lack of transmission capacity in the area that would be served by the Northern Plains NIETC.[34]

[33] Garrett Crowson, System Operations, January 2024 Winter Storm Gerri, Operating Reliability Working Group presentation (Feb. 8, 2024), available in meeting materials folder dated Feb. 8, 2024 at https://www.spp.org/spp-documents-filings/?id=19845.

[34] Southwest Power Pool 2022 Annual Report, "2022 By the Numbers." https://storymaps.arcgis.com/stories/18725105e46943b5bfe7c77202a4737d .

Developing transmission within the Northern Plains NIETC would thus offer significant diversity benefit among wind resources and increase reliability during extreme weather.



Finally, a forward-looking perspective reveals additional significant resilience benefits. As the plague of high interconnection costs for resources in transmission-sparse areas demonstrates, infrastructure development can either beget or hinder future infrastructure development. Although the proposed NIETC would not directly connect SPP with western markets, its path along the westernmost edge of the Eastern Interconnect would enable the more cost-effective development of such transmission ties in the future, as discussed in greater detail in Section III, Part C. This expanded connectivity would further promote reliability in extreme winter events by allowing SPP to wheel power from both east and west, much as MISO did during Winter Storm Uri.

B. The Northern Plains NIETC would enhance reliability and resiliency on Tribal Lands.

Electric reliability and resilience to extreme weather is a persistent, serious issue in much of Indian Country, and specifically for OSPA's member Tribes. In polling conducted for DOE's

2023 Tribal Electricity Access and Reliability Report ("DOE Tribal Electricity Report"), the Office of Indian Energy Policy and Programs found that one third of Tribal participants reported at least monthly power outages.[35] Although the causes of these outages ranges, almost a quarter of these respondents reported not having access to the central grid, only localized infrastructure.[36] In addition to experiencing power outages at higher rates, the negative impacts of these outages can be felt more strongly in Native communities. Native Americans are nearly five times more likely than the average American to live in inadequate housing.[37] And in rural areas like those of the OSPA member Tribes' reservations, road clearing during winter storms may take significantly longer and impede the flow of supplies and emergency responders.[38] The overlap of infrastructure outages and inadequate housing can be—and in the Winter Storm Elliot *was*—tragically fatal.[39]

As OSPA makes clear in its comments, energy sovereignty promises a number of key benefits to Tribes. These benefits include improving the electric reliability issues that persist on many Indian reservations and addressing the associated system resiliency issues during extreme weather events. The lack of transmission on and near Tribal Lands is a barrier to this sort of

[35] DOE, *Tribal Electricity Access and Reliability* ("DOE Tribal Electricity Report") at 53 (Aug. 2018), https://www.energy.gov/sites/default/files/2024-01/EXEC-2023-000952%20-%20Tribal%20Electricity%20Access%20Reliability%20Report%20to%20Congress%20%28Final%20Draft%20-%20Clean%29-signed%20by%20S1.pdf.

[36] DOE, *National Transmission Needs Study* at 84 (October 2023), https://www.energy.gov/sites/default/files/2023-12/National%20Transmission%20Needs%20Study%20-%20Final_2023.12.1.pdf.

[37] *See* U.S. Dept. of Housing and Urban Development, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, at xvii–xxii (2017) (describing significant disparities in housing conditions between Tribal areas and the rest of the United States).

[38] *See, e.g.,* Amanda Su, ABC News, *South Dakota tribes fight to recover from massive winter storm with some members still stranded*, (Dec. 27, 2022), https://abcnews.go.com/US/south-dakota-tribes-fight-recover-massive-winter-storm/story?id=95833857.

[39] *See* Associated Press, MPR News, *South Dakota Tribe: Storm deaths 'could have been prevented*, (Jan. 23, 2023), https://www.mprnews.org/story/2023/01/23/south-dakota-tribe-storm-deaths-could-have-been-prevented (describing six deaths in the Rosebud Sioux Tribe, one of which included a person who froze to death inside their home, and all of which the Tribe stated could have been prevented had it not been for "systemic" failures).

energy sovereignty. Indeed, the DOE Tribal Electricity Report identifies transmission infrastructure—and the lack thereof—as a critical barrier to energy development on Tribal Lands, second to only financing.[40] Moreover, these problems are mutually reinforcing, since distance to existing infrastructure is a key factor driving up the cost of new energy development. The lack of transmission in the Northern Plains NIETC area is a prime example of this barrier. As the DOE Tribal Electricity Report concludes, federal programs must account for barriers and costs that are unique to Tribes, including "those required to build necessary infrastructure, those associated with geographic remoteness, and those required for training and technical assistance."[41] Designation of the Northern Plains NIETC would help address the challenges described in DOE's Tribal Electricity Report.

Additionally, the Northern Plains NIETC will bolster reliability in the sense that it will promote the ability to "operate transmission system elements within equipment and electric system thermal, voltage, and stability limits."[42] When considering this aspect of reliability, DOE must consider current and expected reliability issues.[43] High interconnection costs are an indicator of expected reliability problems. The high costs reflect the cost of upgrading the transmission network, which is necessary because the addition of new generation can cause reliability violations in the absence of upgrades. Developing new transmission within the Northern Plains NIETC would reduce the likelihood that the interconnection of new generation

[40] DOE Tribal Electricity Report, *supra* note 5, at 68 (citing Jones, T.E. & Necefer, L.E., Sandia National Laboratories, *Identifying Barriers and Pathways for Success for Renewable Energy Development on American Indian Lands* (2016)).
[41] *Id.* at 75 (quoting U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (2018)).
[42] DOE NIETC Phase 2 Webinar, *supra* note 26, at 17.
[43] *See* 16 U.S.C. § 824(a)(2) (noting that NIETCs include geographic areas that are expected to experience transmission constraints and congestion).

would cause reliability violations, such as violations of system thermal, voltage, and stability limits. Hence, the Northern Plains NIETC would promote reliability in this sense as well.

II. Discretionary factors in FPA section 216(a) support the Northern Plains NIETC.

Under section 216 of the FPA, DOE "may consider" eight discretionary factors when determining whether to designate a NIETC.[44] DOE's Preliminary NIETC List specifically requests comment on how these factors apply to the proposed NIETCs.[45] These discretionary factors strongly indicate that the Northern Plains NIETC would promote the public interest.

A. Economic vitality and development in the Northern Plains NIETC area is constrained by lack of adequate or reasonably priced electricity.

When considering a potential NIETC designation, the FPA authorizes DOE to consider whether "economic growth in the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity."[46] As noted above, the area served by the Northern Plains NIETC includes Sioux Tribes that experience extreme poverty due, in significant part, to underinvestment in essential infrastructure by the United States, as well as other communities that the federal Climate and Economic Justice Screening Tool (CEJST) identifies as Energy Disadvantaged.[47] An Energy Disadvantaged community is one that is at or above the 90th percentile for energy cost or for certain particulate pollution and that is at or above the 65th percentile for low income.[48] The federal CEJST mapping tool provides greater detail.[49] For example, the CEJST mapping tool reveals that some of the areas served by the

---

[44] 16 U.S.C. § 824p(a)(4).
[45] DOE Preliminary NIETC List, *supra* note 1, at 8.
[46] 16 U.S.C. § 824p(a)(4)(A).
[47] *See* DOE Preliminary NIETC List, *supra* note 1, at 62 (depicting Energy Disadvantaged communities in and around the Northern Plains NIETC).
[48] Climate and Economic Justice Screening Tool, *Methodology*, https://screeningtool.geoplatform.gov/en/methodology#3/33.47/-97.5.
[49] *See* Climate and Economic Justice Screening Tool, *Explore the Map*, *https://screeningtool.geoplatform.gov/en/* (allowing users to select counties to determine various types of disadvantages that communities in those counties face).

Northern Plains NIETC, experience both extremely high energy cost (calculated as average annual energy costs divided by household income) and have high concentrations of low-income households. For example, the mapping tool notes that Jackson County, South Dakota, is in the 98th percentile for energy cost and the 96th percentile for low-income households.[50] Similarly, Ziebach County, South Dakota, is in the 97th percentile for energy cost and the 95th percentile for low-income households.[51] Sheridan County, Nebraska, is in the 94th percentile for energy cost and the 83rd percentile for low-income households.[52] In sum, the CEJST mapping tool demonstrates that the Northern Plains NIETC would serve areas where economic vitality and development is more constrained by a lack of reasonably priced electricity than almost any other location in the United States. Hence, this factor strongly supports the designation of the Northern Plains NIETC.

B. Economic growth in the Northern Plains NIETC may be jeopardized by reliance on limited sources of energy.

The FPA authorizes DOE to consider whether "(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."[53] As described above, the Northern Plains NIETC would facilitate development of high-capacity transmission in an area that is currently served only by low-capacity transmission lines. The existing low-capacity transmission lines were built principally to deliver electricity from existing power plants rather than to enable the development of new electricity generation that would facilitate local economic

[50] *Id.* (select Jackson County, South Dakota).
[51] *Id.* (select Ziebach County, South Dakota).
[52] *Id.* (select Sheridan County, Nebraska).
[53] 16 U.S.C. § 824p(a)(4)(B).

development.[54] OSPA's experience of having to withdraw otherwise viable, utility-scale wind energy projects from the SPP interconnection queue due to prohibitively high network upgrade costs illustrates how the current transmission system—built to accommodate limited, existing sources of energy—is currently stifling economic development in this area, and will likely continue to do so absent DOE's intervention to facilitate transmission upgrades.[55] Hence, economic growth in the Northern Plains NIETC is presently constrained by reliance on limited sources of energy. Moreover, a diversification of supply is warranted because facilitating development of wind energy would have benefits for the communities in and around the Northern Plains NIETC, as well as for regional and interregional reliability and resilience (as discussed above). Hence, this factor also supports designation of the Northern Plains NIETC.

C. The Northern Plains NIETC would support the energy independence of the United States.

The Northern Plains NIETC would also serve "the energy independence [and] energy security of the United States."[56] As described above, the NIETC would facilitate development of some of the strongest on-land wind resources in the United States, including projects with demonstrated net capacity factors of 50%. These projects would advance energy independence and security by efficiently producing affordable energy with effectively no fuel costs. Critically, wind projects do not rely on fuel inputs that—even if produced domestically—are vulnerable to volatile prices based on global events. By contrast, recent years have seen dramatic swings in

[54] *See* Western Area Power Administration, *Serving the West: Western Area Power Administration's First 25 Years as a Power Marketing Agency*, at 29–35 (2002), available at https://www.wapa.gov/wp-content/uploads/2023/04/25yr-history_2.pdf (describing the early development of transmission in the region).
[55] *See supra* at Background.
[56] 16 U.S.C. § 824*p*(a)(4)(C).

natural gas prices stemming from Russia's invasion of Ukraine, as well as global economic trends.[57]

In addition to these energy independence and security advantages of wind generally, the Northern Plains NIETC would confer particular benefits by expanding the geographic diversity of available wind resources within the region. Greater geographic diversity allows grid operators to take advantage of varying weather conditions across a wider footprint to maintain a reliable and resilient grid, including in instances of extreme weather, while reducing dependence on imported or fossil fuel sources.[58] As shown above, the Northern Plains NIETC would promote wind projects in a sizable area in which wind resources are significantly underdeveloped, particularly given the strength of the wind potential there.[59] Developing strong wind resources in this area, paired with much-needed transmission capacity, can make an important contribution to energy security within the region and for the United States.

Finally, the Northern Plains NIETC will enhance energy security for the many Energy Disadvantaged communities within the area.[60] Ensuring that all communities have access to reliable and affordable electricity is an essential component of the nation's energy security.[61]

---

[57] *See* Erik Van Nostrand & Arik Levinson, *The Inflation Reduction Act: Pro-Growth Climate Policy* (Nov. 13, 2023), https://home.treasury.gov/news/featured-stories/the-inflation-reduction-act-pro-growth-climate-policy#_edn29.

[58] *See* Nat'l Renewable Energy Lab'y, *Explained: Maintaining a Reliable Future Grid with More Wind and Solar* at 4 (Jan. 2024), https://www.nrel.gov/docs/fy24osti/87298.pdf (explaining how transmission development can create "reliability benefits . . . provided largely by geographic and resource diversity").

[59] *See supra* § I(A) (including a depiction of existing wind energy development in the region).

[60] *See supra* § II(A).

[61] *See, e.g.*, DOE, *Biden-Harris Administration Announces $78 Million to Further Drive Down Energy Costs and Enhance Energy Security in Rural and Remote Communities Across America* (Apr. 30, 2024), https://www.energy.gov/articles/biden-harris-administration-announces-78-million-further-drive-down-energy-costs-and.

D. The Northern Plains NIETC would support national energy policy.

The FPA authorizes DOE to consider whether a NIETC is "in the interest of national energy policy."[62] Designating the Northern Plains NIETC would be consistent with multiple pillars of U.S. energy policy, as identified in DOE's NIETC Guidance.[63] As discussed above, this NIETC would promote grid reliability and resilience.[64] The Northern Plains NIETC would also support national policies to reduce greenhouse gas emissions and transition to a decarbonized grid, as reflected in the Biden-Harris Administration's goals and Congress's historic investments through the Infrastructure Investment and Jobs Act and Inflation Reduction Act.[65]

Most significantly, designating the Northern Plains NIETC would advance national energy policies to prioritize energy justice and redress historic and current inequities.[66] As described above, the current gaps in transmission infrastructure within the Northern Plains NIETC area stem from a larger pattern of historic injustice and underinvestment. And the lack of modernized transmission infrastructure and capacity has, in turn, thwarted the OSPA member Tribes' ability to develop their strong wind resources and deprived them of a promising avenue to address economic disadvantages that are a legacy of these historic injustices. Designating the Northern Plains NIETC thus presents a powerful opportunity for DOE to help break this cycle,

---

[62] 16 U.S.C. § 824p(a)(4)(D).
[63] DOE, *Guidance on Implementing Section 216(a) of the Federal Power Act to Designate National Interest Electric Transmission Corridors* at 11–13 (Dec. 19, 2023), https://www.energy.gov/sites/default/files/2023-12/2023-12-15%20GDO%20NIETC%20Final%20Guidance%20Document.pdf ("NIETC Guidance").
[64] *See supra* §I(A); NIETC Guidance, *supra* note 63, at 11.
[65] *See* NIETC Guidance, *supra* note 63, at 12–13.
[66] *See, e.g.*, DOE, *Justice40 Initiative*, https://www.energy.gov/justice/justice40-initiative; Revitalizing Our Nation's Commitment to Environmental Justice for All, Exec. Order No. 14096, § 1, 88 Fed. Reg. 25,251, 25,251 (Apr. 21, 2023) ("Advancing environmental justice will require investing in and supporting culturally vibrant, sustainable, and resilient communities in which every person has safe, clean, and affordable options for housing, energy, and transportation."); *id.*, § 3(iii), 88 Fed. Reg. at 25,253–54 (directing agencies to "identify, analyze, and address historical inequities, systemic barriers, or actions related to any Federal regulation, policy, or practice that impair the ability of communities with environmental justice concerns to achieve or maintain a healthy and sustainable environment").

acting in partnership with the Tribes to eliminate these systemic barriers and enable the Tribes to achieve their own clean energy and economic development goals. Indeed, as DOE notes and as PIOs discuss below, the Northern Plains NIETC may be unique among DOE's preliminary list in its ability to promote energy justice for Tribes.[67]

E. The Northern Plains NIETC would enhance national defense and homeland security.

DOE may also consider whether a NIETC "would enhance national defense and homeland security."[68] This factor supports designation of the Northern Plains NIETC, which would help address climate change by facilitating development of large-scale clean energy resources. Climate change presents a widely recognized security threat,[69] acting as a "threat multiplier" and exacerbating other security risks.[70] Indeed, the White House's National Security Strategy explains, "[o]f all of the shared problems we face, climate change is the greatest and potentially existential for all nations."[71] The development of an abundant supply of domestic clean energy is a critical step to mitigating the national security threat from climate change. By unlocking clean energy development in an area of the United States with some of the greatest on-land wind resources, the Northern Plains NIETC can thus contribute to national security.

---

[67] *See* DOE NIETC Phase 2 Webinar, *supra* note 26, at 24.
[68] 16 U.S.C. § 824p(a)(4)(E).
[69] *See, e.g.*, Dep't of Homeland Sec., *Addressing Climate Change*, https://www.dhs.gov/climate-change (last visited June 18, 2024) ("The climate crisis threatens homeland security in the United States."); Dep't of Def., *Tackling the Climate Crisis*, *available at* https://www.defense.gov/spotlights/tackling-the-climate-crisis/ (last visited June 18, 2024) ("DOD is elevating climate change as a national security priority, integrating climate considerations into policies, strategies, and partner engagements"); Gov't Accountability Off., *Climate Change Risks to National Security* (Sept. 2022), https://www.gao.gov/assets/gao-22-105830.pdf.
[70] *See, e.g.*, Renée Cho, Columbia Climate School, *Why Climate Change Is a National Security Risk* (Oct. 11, 2023), https://news.climate.columbia.edu/2023/10/11/why-climate-change-is-a-national-security-risk/.
[71] White House, *National Security Strategy* 9 (Oct. 2022), https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf.

F. The Northern Plains NIETC would enhance interconnection of energy supply.

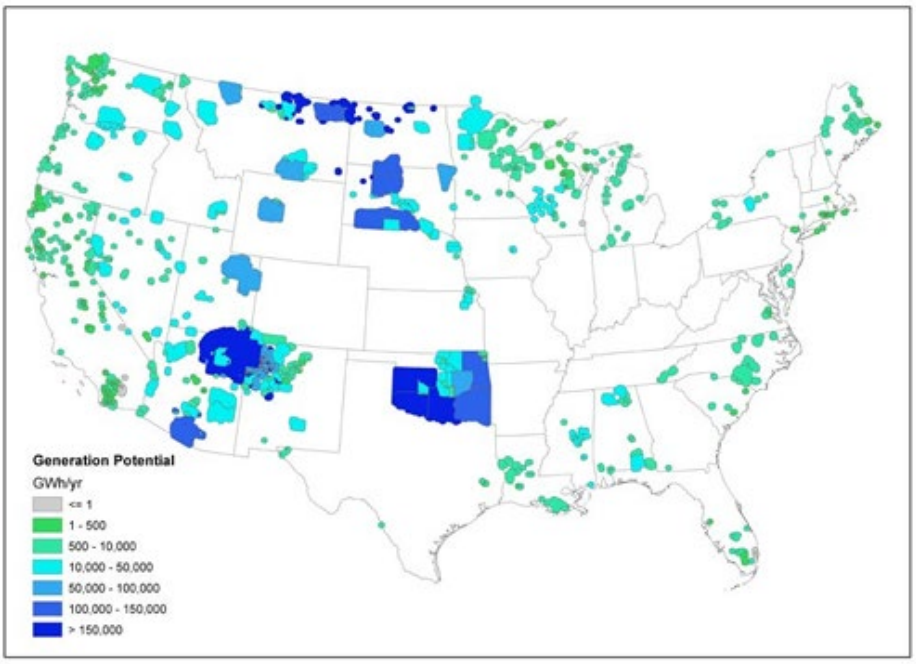
When considering a NIETC designation, the FPA authorizes DOE to consider whether "the designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid."[72] There is significant potential for energy development in the area around the Northern Plains NIETC, but astronomic interconnection costs and backlogs in SPP hamper the achievement of this potential.[73] Indeed, over the past nearly two decades, SPP's interconnection queue has had only a 14 percent capacity-rated completion rate,[74] with wind projects tending to take the longest time to get through the study queue.[75] While FERC's landmark interconnection Order No. 2023 promises to help alleviate this problem, designating a Northern Plains NIETC would address concrete cost barriers from the lack of transmission capacity that Order No. 2023's process reforms will not solve.

The Pass Creek and Ta'teh Topah wind projects—which were ultimately forced to withdraw from the SPP queue after years of waiting due to cost barriers—are two concrete examples of the energy supply that a Northern Plains NIETC designation would enable. Indeed, the vast majority of prohibitively high fees assessed to these projects were for developing transmission.[76] And these projects are just the beginning; there is significant potential to develop more Tribally owned energy projects if the transmission capacity barrier to interconnection is solved. Based on NREL analysis of technical potential for renewable energy development on tribal lands, the Cheyenne River, Oglala, and Standing Rock Sioux Tribes have some of the

[72] 16 U.S.C. § 824p(a)(4)(F).
[73] *See, e.g.,* Rand et al, LBNL, "Queued Up: 2024 Edition," at 9 (reporting 145 GW of active projects in the SPP interconnection queue), https://emp.lbl.gov/sites/default/files/2024-04/Queued%20Up%202024%20Edition_R2.pdf.
[74] *Id*. at 29.
[75] *Id.* at 37.
[76] OSPA RFI Comments, *supra* note 17, at 4–5.

highest potential for wind (ranging from 85 – 100 million MWh)[77] and solar development (exceeding 300 million MWh each), as depicted below.[78]

Figure 2. Wind generation potential by reservation



[77] Milbrandt, Heimiller, and Schwabe, NREL, *Techno-Economic Renewable Energy Potential on Tribal Lands*, at 7 Tbl. 3 (July 2018), https://www.nrel.gov/docs/fy18osti/70807.pdf. The Pine River Indian Reservation is home to the Oglala Sioux Tribe.

[78] *Id*. at 11 Tbl. 6.

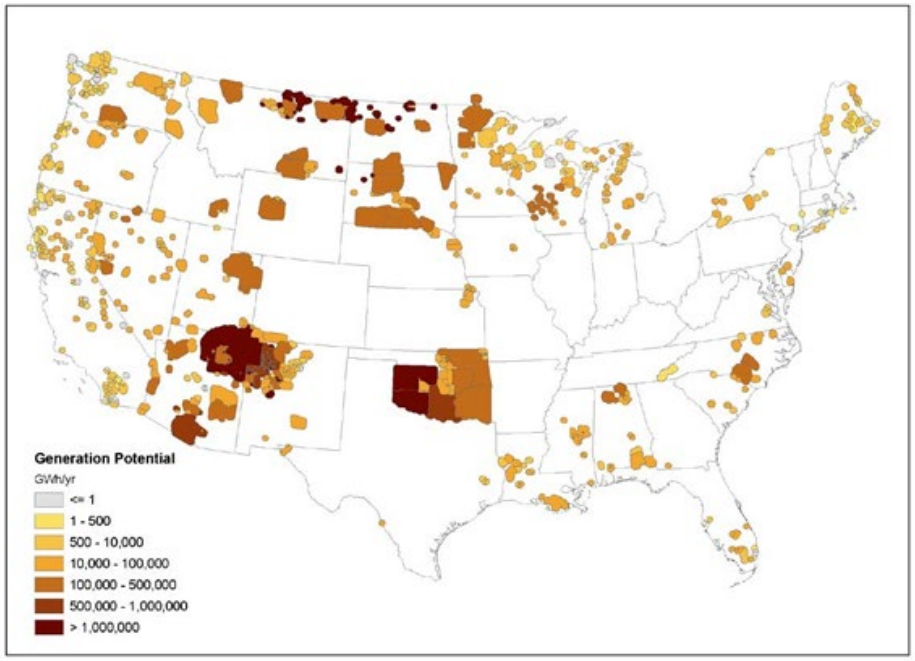


Figure 5. Photovoltaic generation potential by reservation (including extended areas of 10 miles adjacent to the tribal land boundaries)

The Northern Plains NIETC designation would also pair well with the interconnection-related provisions of FERC's Order No. 1920 to support interconnection of supply. Specifically, Order No. 1920 requires transmission providers to evaluate transmission facilities that would address needs that have been repeatedly identified in the interconnection process, but never completed due to the disproportionately high cost that interconnection would impose on individual interconnection customers.[79] Pass Creek and Ta'teh Topah are prime examples of the withdrawal problem that Order No. 1920 aims to solve. With these changes forthcoming in SPP's compliance with this rule, DOE's efforts to designate a Northern Plains NIETC would be supported by and complementary to the SPP planning process.

[79] Building for the Future Through Electric Regional Transmission Planning and Cost Allocation ("Order No. 1920"), 187 FERC ¶ 61,068 at PP 1106 – 1108 (2024).

G. The Northern Plains NIETC maximizes the use of existing rights of way and avoids and offsets impacts to environmentally sensitive areas and cultural heritage sites to the extent practicable.

The FPA authorizes DOE to consider whether a potential NIETC "(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."[80] The Northern Plains NIETC is well-designed to meet these discretionary criteria. First, the NIETC's route follows existing transmission rights of way.[81] Although the NIETC, as proposed, is wider than existing transmission infrastructure rights of way, that width would appropriately allow for the relocation of existing infrastructure to nearby pathways if relocation would help avoid or mitigate adverse impacts associated with the existing infrastructure.

Second, the Northern Plains NIETC is well-designed to avoid sensitive environmental areas. As DOE describes, the NIETC "avoid[s] large areas where transmission is less likely to be built,"[82] including broad swaths of lands where transmission development might have more adverse impacts. For example, the NIETC avoids the Badlands National Park. Likewise, the NIETC avoids large concentrations of National Wildlife Refuges in North Dakota, and appears to skirt around National Wildlife Refuges in Nebraska.[83]

The Northern Plains NIETC does traverse areas with significant cultural resources, including Tribal cultural resources. However, it may be impracticable for the NIETC to achieve the goal of empowering Tribes to achieve their own clean energy development goals while

---

[80] 16 U.S.C. § 824p(a)(4)(G).
[81] DOE, Preliminary NIETC List, *supra* note 1, at 23.
[82] *Id.*.
[83] *See* U.S. Fish & Wildlife Service, *Map of the National Wildlife Refuge System*, https://www.fws.gov/media/map-national-wildlife-refuge-system. While the resolution of this map and of the available maps of the potential NIETCs makes them difficult to compare, the NIETC's shape appears to avoid the largest concentrations of Refuges in North Dakota and Nebraska.

avoiding Tribal cultural resources altogether. For this reason, PIOs encourage DOE to engage directly with Tribes to determine the best means to assess, minimize, and offset adverse impacts to Tribal cultural resources. For example, where the NIETC crosses areas with significant Tribal cultural resources, the designation of the NIETC and the development of transmission upgrades would provide opportunities to collaborate with Tribes on cultural resource studies that may not have been completed when existing transmission infrastructure was built. Similarly, to the extent those studies identify adverse impacts to Tribal cultural resources, the width of the NIETC could provide opportunities for minor relocations of existing infrastructure to avoid or mitigate ongoing adverse impacts. Finally, to the extent that the NIETC designation, and subsequent transmission upgrades, empower Tribes to pursue their own clean energy and economic development goals, the NIETC designation may enable Tribes to determine how best to offset adverse impacts. As discussed below, the potential impacts to important cultural resources also reinforce the need for robust, government-to-government consultation with Tribes.

For all these reasons, this factor supports the designation of the Northern Plains NIETC.

H. The Northern Plains NIETC would reduce consumers' energy costs.

The FPA authorizes DOE to consider whether a NIETC "designation would result in a reduction in the cost to purchase electric energy for consumers."[84] The Northern Plains NIETC would do so in two ways. First, as DOE notes, the area served by the NIETC experiences "low wholesale electricity prices in the northern region and high prices to the south," and "high congestion values [that] have been increasing year after year since 2015."[85] Indeed, SPP has the highest load-weighted congestion costs of all the multi-state ISOs.[86] These facts support DOE's

[84] 16 U.S.C. § 824p(a)(4)(H).
[85] DOE, Preliminary NIETC List, *supra* note 1, at 23–24.
[86] DOE, *National Transmission Needs Study*, *supra* note 36, at 65.

initial finding that "additional transmission between the areas would reduce system congestion and constraints *and reduce costs to consumers*."[87] Second, the Northern Plains NIETC, and the transmission upgrades it would facilitate, would very likely lead to the development of new, low-cost wind energy generation, such as OSPA's utility-scale wind energy projects. The development of low-cost wind energy would also contribute to a reduction in consumer energy costs. Hence, this factor strongly supports designating the Northern Plains NIETC.

III. DOE should prioritize the designation of the Northern Plains NIETC.

The Northern Plains NIETC merits prioritization for several reasons. First, it is unique in its potential to yield equitable outcomes that empower Tribes to pursue clean energy and economic development and promote energy justice. Second, this NIETC's focus on upgrading existing transmission infrastructure significantly limits its adverse environmental impacts and will likely enable the NIETC to provide a net climate benefit. Third, this NIETC would abut high-capacity transmission infrastructure to the west and east, thus setting the stage for increased interregional transmission capacity. And fourth, designation of this NIETC affords DOE a valuable opportunity to collaborate with affected communities, especially Indian Tribes, to ensure that the NIETC confers meaningful local benefits while avoiding adverse impacts to cultural resources. For all these reasons, PIOs believe that designation of the Northern Plains NIETC would be a prudent use of DOE's resources.

A. The Northern Plains NIETC is unique in promoting tribal economic development while enabling a clean energy transition.

As the Needs Study finds, transmission development is key to unlocking the vast clean energy resources on Tribal Lands, and in turn, removing barriers to energy sovereignty and

[87] DOE, Preliminary NIETC List, *supra* note 1, at 24 (emphasis added).

climate resilience in Indigenous communities.[88] PIOs note that the Northern Plains NIETC is the only preliminary NIETC under consideration that appears to be directly responsive to Tribal needs and enabling this transition. In addition to the statutory factors for consideration in designating NIETCs, DOE must consider how its trust obligations to Tribes apply in this context. As DOE's Tribal Electricity Report concludes, ensuring basic infrastructure on Tribal Lands is part of the trust obligation.[89]

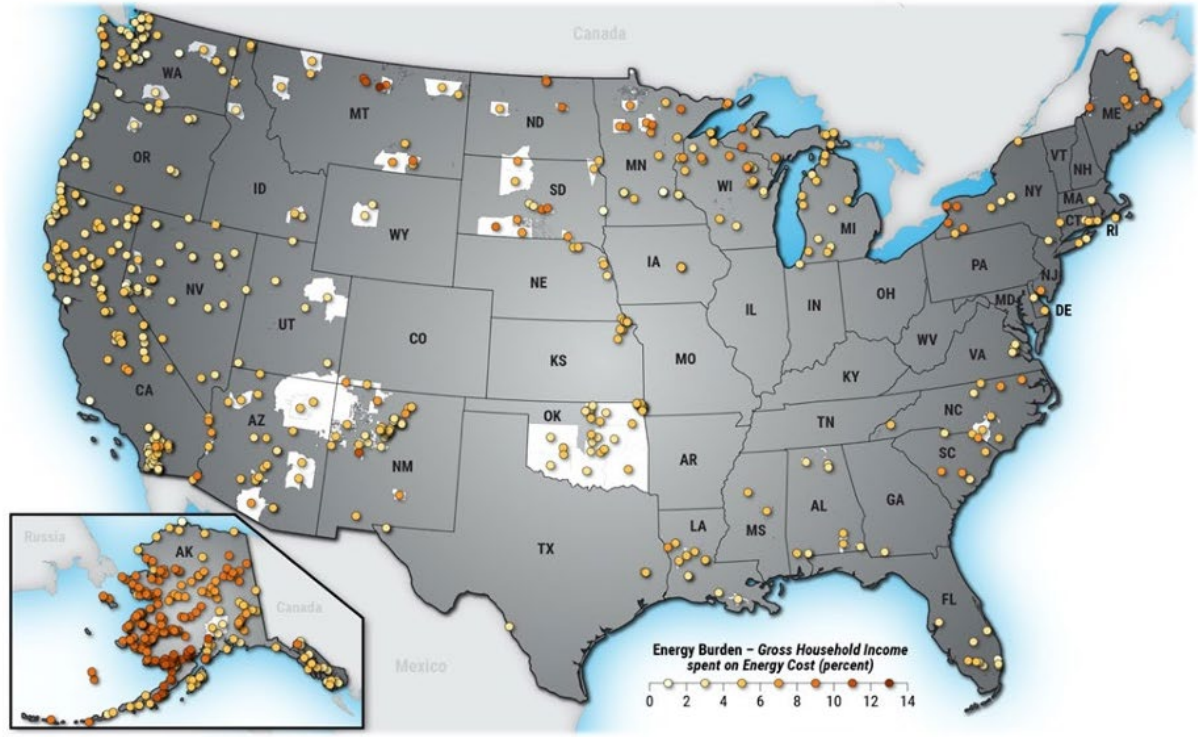
While energy sovereignty can take many forms—including microgrids, distributed energy resources, community energy projects, and utility-scale projects—the ability for a Tribe to pursue *any and all* of these options is a requirement of true energy sovereignty. And yet, over 70 percent of those polled by DOE reported that their Tribe owned *none* of its own electric infrastructure.[90] The prohibitively high interconnection costs that OSPA faced for the Pass Creek and Ta'teh Topah projects are a perfect example of how historical, structural inequities such as the lack of backbone transmission lines create barriers to energy sovereignty, and the precise type of factors that DOE has an obligation to account for under its trust duty.

In addition to the reliability, resilience, and congestion relief benefits that the Northern Plains designation would bring to the whole region, the NIETC designation would also bring unique benefits to the Tribes. At a baseline, transmission development would feature significant job creation.[91] Beyond that, the wholesale revenues that Tribes could attain from becoming market participants in SPP would empower them to pursue other components of energy sovereignty and injustice that may be felt by Tribal members, including other more localized

[88] DOE, *National Transmission Needs Study*, *supra* note 36, at 84.
[89] DOE Tribal Electricity Report, *supra* note 5, at 75-76 (citing U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (2018)).
[90] DOE Tribal Electricity Report, *supra* note 5, at 53.
[91] OSPA RFI Comments, *supra* note 17, at 15.

causes of power outages as well as lowering rates. The ability to do so could be significant, as the energy burden of the average Tribal land resident is 28.3 percent higher than the average U.S. citizen.[92] As evidenced below, many of the Tribes in the region of the proposed NIETC suffer particularly high household energy burdens.

Figure 17: Energy Burden - Gross Household Income Spent on Energy Costs (Courtesy of NREL)



Finally, and as discussed in greater detail in Section I, Part B, the direct implications of a more reliable and resilient power system can moderate the negative impacts of extreme weather and ultimately save lives during extreme weather events.

B. The Northern Plains NIETC will likely have a positive climate impact, while adverse environmental impacts are likely possible to avoid, minimize, or mitigate.

As noted above, the Northern Plains NIETC will facilitate transmission upgrades that can unlock significant wind energy development in a part of the country with some of the strongest

[92] DOE Tribal Electricity Report, *supra* note 5, at 41.

on-land wind resources. Developing these wind resources, as well as the transmission necessary to move clean energy across significant distances, will contribute significantly to the United States' transition to a clean energy economy and thus to mitigating the climate crisis. In other words, the Northern Plains NIETC can serve as part of the solution to one of the most important environmental problems of the modern era. For this reason, PIOs believe that when DOE takes the hard look at the environmental impacts of this NIETC designation required under the National Environmental Policy Act ("NEPA"), it will find a net environmental benefit.

PIOs commend the process that DOE describes for NEPA review of NIETC designations.[93] Providing an opportunity for public input about the geographic scope of proposed NIETCs, and about potential environmental impacts, during Phase 2 of the NIETC designation process will help ensure that DOE has all the information that it needs in order to timely and thoroughly conduct the necessary NEPA review. Similarly, PIOs believe that DOE's provision of regular, meaningful opportunities for public comment will help build support for potential NIETCs and reduce the prospect of subsequent legal challenges.

One reason that the Northern Plains NIETC will likely yield a net environmental benefit is that the NIETC minimizes impacts to undisturbed habitats and resources by following existing rights of way. By avoiding environmentally sensitive areas such as National Parks or large concentrations of National Wildlife Refuges, this NIETC would limit its impacts to areas that are already impacted by infrastructure development. Additionally, where existing infrastructure is causing unnecessary or undue environmental damage, the width of this NIETC could allow existing infrastructure to be relocated to less harmful locations.

[93] DOE, Preliminary NIETC List, *supra* note 1, at 39–40.

Additionally, PIOs believe that existing NEPA analyses of transmission projects and other energy infrastructure may facilitate DOE's environmental review for this NIETC. For example, federal agencies including DOE have studied transmission projects under NEPA many times, meaning that many of their general environmental impacts are well-understood.[94] Similarly, some NEPA analyses already exist for transmission or clean energy projects within the Northern Plains NIETC or the area it will serve.[95] PIOs encourage DOE to use any available, relevant NEPA analyses as a foundation for the analysis of impacts associated with designation of the Northern Plains NIETC. More generally, PIOs continue to believe that DOE should use such materials to formulate a Programmatic NEPA analysis, which would serve DOE well by considering the environmental impacts of NIETC designations at a broad scale and facilitating preparation of NIETC-specific NEPA analyses.[96]

Regardless of the level of NEPA review that DOE pursues, there are important environmental resources in the Northern Plains NIETC area that will require analysis under NEPA, the Endangered Species Act, and the Migratory Bird Treaty Act. For example, the region includes important migratory pathways for many bird species, including the endangered Whooping Crane and the Sandhill Crane, and DOE must assess the impacts on these species from the NIETC's designation.[97] Similarly, some areas in this NIETC in Nebraska and South

---

[94] *See*, *e.g.*, DOE, *EIS-0474: Southline Transmission Project; Arizona and New Mexico*, https://www.energy.gov/nepa/eis-0474-southline-transmission-line-project-arizona-and-new-mexico; DOE, *EIS-0499: Great Northern Transmission Line Project, Minnesota*, https://www.energy.gov/nepa/eis-0499-great-northern-transmission-line-project-minnesota.

[95] *See* DOE, *EIS-0025: Final Environmental Impact Statement for the Miles City-New Underwood 230-kV Electrical Transmission Line*, https://www.energy.gov/nepa/listings/eis-0025-documents-available-download; Western Area Power Administration, *Programmatic Wind EIS*, https://www.wapa.gov/about-wapa/regions/ugp/environment/programmaticwindeis/ (providing programmatic analysis of wind energy development in the Northern Plains); U.S. Fish & Wildlife Service, *R-Project Transmission Line*, https://www.fws.gov/project/r-project-transmission-line (including a prior Environmental Impact Statement and notice of a Supplemental Environmental Impact Statement for a transmission project in Nebraska).

[96] *See* PIO Comments on NIETC Process, *supra* note 4, at 47.

[97] *See* U.S. Fish & Wildlife Service, *Whooping Crane*, https://www.fws.gov/species/whooping-crane-grus-americana.

Dakota include habitat for the threatened American Burying Beetle, and DOE must consider the impacts on this species as well.[98] Where best practices already exist to reduce impacts to wildlife, such as methods to reduce avian collisions with transmission lines by using bird diverters or a horizontal configuration of transmission lines rather than a vertical configuration,[99] PIOs strongly encourage DOE to analyze how these best practices can minimize or mitigate potential impacts from the NIETC designation.

Similarly, the Northern Plains NIETC region crosses or abuts rare and important ecosystems. For example, the Nebraska Sandhills are some of the largest and best-preserved sand dunes in the United States and provide habitat to a wide array of wildlife, including animals and plants protected under the Endangered Species Act.[100] Similarly, the Prairie Pothole region, which extends into North Dakota and South Dakota, provides important bird habitat, including more than 50 percent of North American migratory waterfowl.[101] While DOE should consider how designation of the Northern Plains NIETC will impact these important ecosystems, it will likely find that the decision to focus this NIETC on the rights of way of existing transmission infrastructure significantly reduces any adverse impacts.

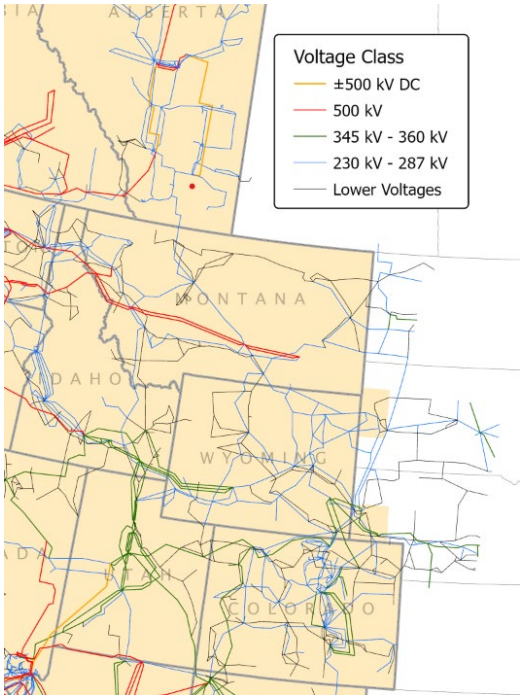
C. The Northern Plains NIETC sets the stage for subsequent interregional transmission development.

PIOs support DOE's emphasis on promoting interregional transmission development, which is necessary to improve resilience and reliability and to enable the movement of clean

---

[98] *See* U.S. Fish & Wildlife Service, *American Burying Beetle (Nicrophorus americanus)*, https://ecos.fws.gov/ecp/species/66.
[99] *See* National Audubon Society, *Birds and Transmission: Building the Grid Birds Need* at 18 (2023), available at https://media.audubon.org/2023-08/BirdsAndTransmissionReport.pdf (listing methods to minimize adverse impacts to birds).
[100] *See* National Park Service, *Nebraska Sand Hills*, https://www.nps.gov/subjects/nnlandmarks/site.htm?Site=NESA-NE; U.S. Dep't of Agric., Natural Resources Conservation Service, *Sandhills*, https://www.nrcs.usda.gov/programs-initiatives/working-lands-for-wildlife/sandhills.
[101] U.S. Environmental Protection Agency, *Prairie Potholes*, https://www.epa.gov/wetlands/prairie-potholes.

energy across significant distances. While the Northern Plains NIETC is situated within SPP, it would abut, or come close to, seams with the Western Interconnection and the Midcontinent Independent System Operator ("MISO"), meaning that successful transmission upgrades within the Northern Plains NIETC could facilitate future development of interregional transfer capacity. For example, the southwestern edge of the Northern Plains NIETC appears to abut an existing network of 345 kV transmission lines at the border of Wyoming, Nebraska, and Colorado, which could allow interregional transmission into the Southwest. Similarly, the northwestern edge of the Northern Plains NIETC would approach a 500 kV line running through Montana, meaning that upgrades of a limited stretch of 230 kV transmission lines just beyond the Northern Plains NIETC would allow for interregional transmission into the Northwest. These potential connections are depicted below in a map drawn from the Western Interconnection.[102]



[102] *See* Western Interconnection, *State of the Interconnection*, https://www.wecc.org/epubs/StateOfTheInterconnection/Pages/Western-Interconnection.aspx.

Additionally, on its eastern side, the Northern Plains NIETC would also approach an existing network of 345 kV transmission lines in Nebraska, South Dakota, and North Dakota, as DOE depicts.[103] Increased connectivity within the eastern portion of SPP may increase SPP's existing ability to transfer energy to its neighbors; as DOE explains, "within-region congestion can itself impact interregional transfer capacity" because "within-region congestion may limit the ability to maximize existing import and export capabilities across regional seams."[104] Additionally, improved connectivity associated with the Northern Plains NIETC may also improve the likelihood that proposed MISO/SPP Joint Targeted Interconnection Queue upgrades will successfully increase interregional transfer capacity.[105]

Fundamentally, the Northern Plains NIETC would facilitate the construction of a high-capacity transmission backbone in a central part of the United States where transmission constraints and congestion are impairing, and will impair, the potential to move electricity west and east across regions. In doing so, this NIETC would not only directly facilitate interregional transfer on existing infrastructure but could provide a valuable foundation for future work to further improve interregional transmission capacity.

D. DOE must prioritize robust government-to-government consultation with Tribes as an essential element of this NIETC designation.

The geographic area of the Northern Plains NIETC area includes important historic and cultural resources that require analysis under NEPA and the National Historic Preservation Act (NHPA). For example, the area includes Tribal reservations, ancestral lands, and cultural

[103] DOE, Preliminary NIETC List, *supra* note 1, at 61 (depicting existing electrical infrastructure in and around the Northern Plains NIETC).
[104] DOE, *U.S. Department of Energy Grid Deployment Office Guidance on Implementing Section 216(a) of the Federal Power Act to Designate National Interest Electric Transmission Corridors* ("DOE NIETC Guidance") at 24 (December 2023), https://www.energy.gov/sites/default/files/2023-12/2023-12-15%20GDO%20NIETC%20Final%20Guidance%20Document.pdf.
[105] *See* SPP, *SPP-MISO Joint Targeted Interconnection Queue (JTIQ) Study,* https://www.spp.org/engineering/spp-miso-jtiq/.

resources. Additionally, the NIETC area includes historic resources from the westward expansion of the United States, such as historic trails, which require analysis under the NHPA.

PIOs stress the need for robust consultation with Tribes as part of the process of designating this NIETC. As described above, the Northern Plains NIETC is unique in the list of DOE's potential NIETCs in its focus on promoting energy justice for Tribes and facilitating Tribal goals for clean energy development and economic development. To ensure that the NIETC addresses Tribes' needs and avoids, minimizes, and mitigates impacts to Tribal resources, direct communication between DOE and affected Tribes, as well as the Tribes' Power Authority, is essential. PIOs believe that process must also proactively seek out Tribal feedback on methods that Tribes support to avoid, minimize, and mitigate adverse impacts. PIOs note that DOE has stated an intention to engage in robust consultation with Tribes regarding potential impacts to these resources, and we encourage the agency to begin that process as promptly as possible.[106]

CONCLUSION

PIOs appreciate the opportunity to provide input on DOE's NIETC designations and encourage DOE to promptly advance the Northern Plains NIETC to phase three of the designation process, including by engaging directly with the communities that the NIETC will affect.

DATED: June 24, 2024

Respectfully submitted,

[106] DOE, Preliminary NIETC List, *supra* note 1, at 41 (describing DOE's commitment to Tribal consultation).

/s/ Nick Lawton Nick Lawton Senior Attorney Clean Energy Program Earthjustice 1001 G St. NW, Suite 1000 Washington, DC 20001 (202) 780-4835 nlawton@earthjustice.org	/s/ Alex Tom Alex Tom Associate Attorney Clean Energy Program Earthjustice 50 California St., Suite 500 San Francisco, CA, 94111 (415) 217-2111 atom@earthjustice.org
/s/ Ada Statler Ada Statler Associate Attorney Clean Energy Program Earthjustice 50 California St., Suite 500 San Francisco, CA, 94111 (415) 217-2091 astatler@earthjustice.org	/s/ Cullen Howe Cullen Howe Senior Attorney Natural Resources Defense Council 40 West 20th Street New York, NY 10011 chowe@nrdc.org
/s/ John Moore John Moore Director Sustainable FERC Project 1125 15th Street NW Washington DC 20005 Moore.fercproject@gmail.com	/s/ Gregory E. Wannier Gregory E. Wannier Senior Attorney Sierra Club Environmental Law Program 2101 Webster St., Suite 1300 Oakland, CA 94612 415.977.5646 greg.wannier@sierraclub.org
/s/ Ted Kelly Ted Kelly Director and Lead Counsel, US Clean Energy Adam Kurland Attorney, Federal Energy Environmental Defense Fund 555 12th Street NW Suite 400 Washington, D.C. 20004 tekelly@edf.org akurland@edf.org	