Opportunities to enable interstate coordination & cooperation in support of transmission infrastructure build-out in the Midwest

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Executive Summary

Transmission infrastructure development is fundamental to the successful build-out of large-scale renewable energy production and other sources of cleaner, advanced energy production in the Midwest. The level of transmission build-out needed to support deployment of cleaner energy will require multiple jurisdictions and authorities to coordinate and collaborate. A robust, reliable and cost-effective transmission system can be achieved through coordination and cooperation at the state, regional and federal levels and through engagement of key stakeholders to provide guidance on policy development and implementation.

Several prominent stakeholder groups have worked to encourage and achieve the build-out of interstate transmission lines yet significant challenges remain at the state, regional and federal levels. These groups provide broad-based support for taking action and a foundation for policy development and implementation. Stakeholders can build on completed work and efforts in progress and identify key policy drivers, such as a proposed multi-state project, to move from policy recommendations to policy implementation and ultimately infrastructure deployment.

Key actions and policy mechanisms for supporting interstate coordination and cooperation to achieve transmission infrastructure build-out may include:

- Development of state statutory authority to enable existing authorities to collaborate on an interstate and/or regional basis and consider the regional benefits of transmission projects.
- State participation in inter-jurisdictional stakeholder groups to coordinate and cooperate on an informal basis.
- Establish interstate Memorandums of Understanding (MOUs) to enable interstate cooperation and coordination and to establish harmonized rules and regulations.
- Establish interstate compacts between three or more states to provide a legally binding framework.
- Establish joint boards between states to address issues such as cost allocation and need determination.
- Establish or expand energy and/or infrastructure authorities to support project and infrastructure deployment.

Introduction

The development and expansion of the Midwestern transmission system is a critical component for the successful build-out of large-scale renewable energy and other forms of cleaner, more advanced energy production in the Midwest. Coordination, cooperation and planning among states and regions are a requirement for a robust and reliable 21st century transmission system. Planning and siting transmission infrastructure involves complex issues and becomes more difficult as larger transmission projects move across state and regional boundaries.[1] Transmission planning and decision-making that does not include consideration of interstate and regional benefits can result in projects that have reduced benefits, do not significantly improve reliability and end up with higher cost increases. States that are unable to collaborate on issues such as planning, siting and cost allocation may delay or prevent the build-out of critical transmission infrastructure. Significant work completed by multi-stakeholder groups,[2] governmental bodies and affiliated associations have identified and recommended mechanisms for states to facilitate interstate coordination and cooperation on transmission planning, permitting and siting. This paper will discuss several of these recommendations and outline pathways for stakeholders to enable and facilitate interstate coordination and cooperation on transmission deployment that is necessary to achieve deployment of large-scale, cleaner energy technologies and to provide a cost-effective and efficient energy market in the Midwest.

The regional nature of transmission development in the Midwest

The Midwestern region of the United States has one of the largest potential capacities for deployment of advanced, cleaner energy in the world. The transmission of cleaner energy (e.g., wind) within the Midwest often occurs over significant distances between the location of energy consumers and energy resources. This geographic distribution of energy resources and energy consumers necessitates transmission lines that cross local, state and regional boundaries (see Map 1 below). Furthermore, the interstate, regional and inter-regional nature of electricity markets and management of electric load[3] creates a system where decisions in an individual state can result in impacts far beyond one state's border. For example, states

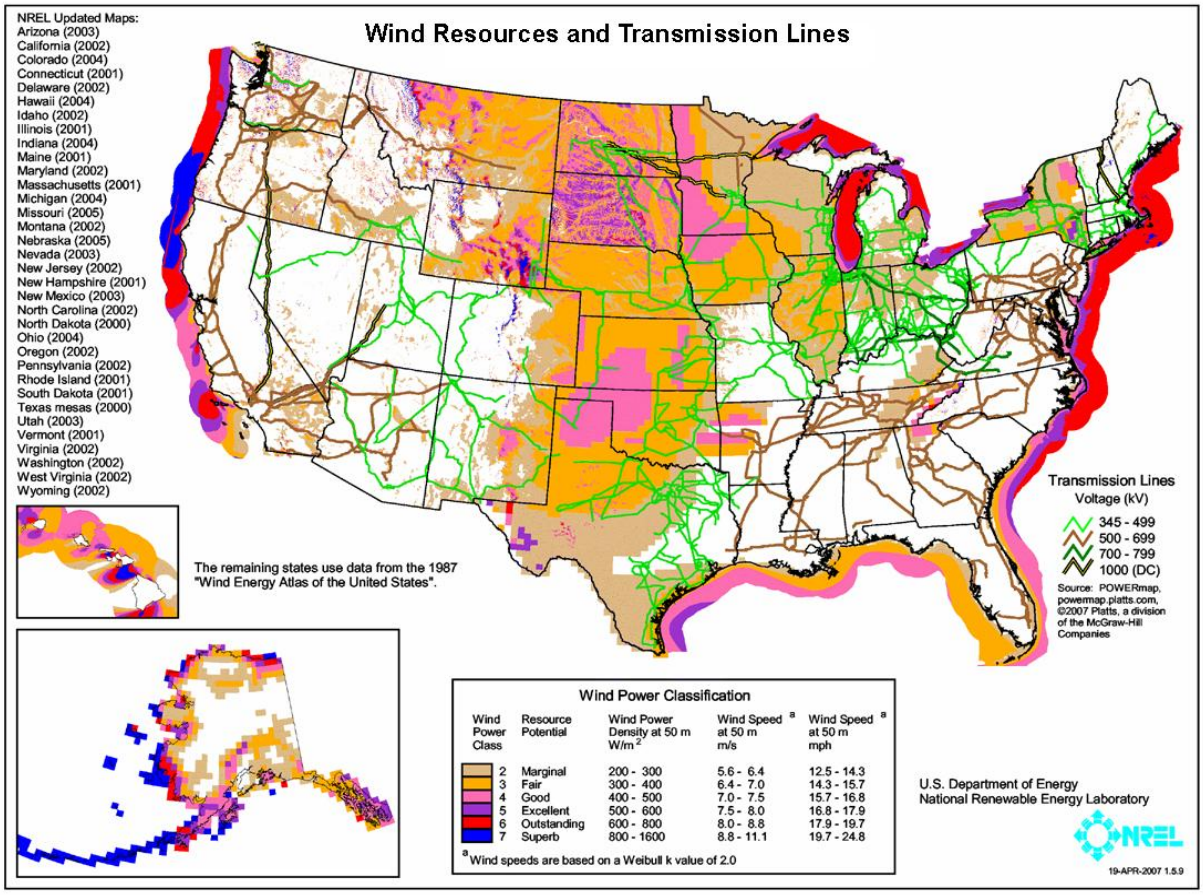
[1] To review two prominent examples of transmission projects that illustrate the complexities of interstate transmission build-out, see Meyer, David H. and Richard Sedano (March 2002), "Transmission Siting and Permitting," National Transmission Grid Study Issue Papers, US Department of Energy, available at http://certs.lbl.gov/ntgs/issue-5.pdf [accessed June 10, 2011].

[2] In the context of this paper, the term stakeholder refers to those who are actively engaged in collaborative groups that address transmission development issues. The term 'stakeholder' is commonly used in the context of energy policy and commonly signifies individuals who participate in groups that include a diverse range of participants with a range of affiliations, interests and roles such as state and federal regulators and regulatory staff, utility representatives, NGO representatives, project developers, etc.

[3] Asmus, Peter (November 2010), "Policy Brief: Sharing a Vision of Cooperation in the Midwest: Transmission Lines," published on the Great Plains Institute website, available at http://gpisd.net/vertical/Sites/%7B1510F0B9-E3E3-419B-AE3B-582B8097D492%7D/uploads/%7B19D9110E-6893-4A01-9A83-0CB7A8D1BF10%7D.PDF [accessed April 15, 2011].

that lack authority to coordinate with other states and to consider benefits beyond their border may not be able to approve extra high voltage (EHV) interstate transmission lines that could provide significant benefits for a region.[4]

Map 1: Wind Resources and Transmission Lines, US DOE/NREL



Differences between state statutory frameworks present challenges to the timely build-out of interstate transmission lines

State permitting and siting rules and regulations vary across the United States, including whether states may coordinate across jurisdictions to approve the need for and siting of transmission lines; whether they may consider the regional benefits of siting specific lines; and which entities have authority over planning, permitting and siting. Transmission planning, permitting and siting within one state alone involves addressing a large set of issues. Additional issues arise when transmission lines traverse state boundaries, including the distribution of cost and benefit across parties that may not be direct customers of transmission serving another state or jurisdiction. In some states, regulatory commissions

[4] As discussed in Midwestern Governors Association (June 5, 2009), "MGA Model Transmission Legislation: Discussion Draft," available at http://www.midwesterngovernors.org/Energy/Model_legislation_summary.pdf [accessed April 15, 2011)].

and other regulatory bodies may only approve new transmission lines if the party proposing the project can demonstrate 'need' for the transmission and benefits tied directly to customers in their jurisdiction. Several levels of government carry out the planning, permitting and siting of transmission lines, and several collaborative stakeholder groups at the state, regional and federal levels assist in providing guidance to these efforts. Stakeholders have identified the highly divided authority between different levels of government as one of the key challenges to transmission development.[5]

Stakeholder efforts to support interstate and regional coordination and cooperation on transmission issues

Several prominent stakeholder groups, described below, have come together to examine the issues that arise from the interstate and regional nature of the transmission system, to identify a pathway for states to coordinate efforts on transmission and to enable regulators to work with other states to address these issues. Many of these stakeholder groups have asserted the need for interstate and regional coordination, cooperation and planning, including efforts to encourage development of statutory pathways for interstate coordination and to enable consideration of the regional impacts of transmission in siting decisions. Several of these groups provide a venue for stakeholders to collaborate on an interstate, regional and inter-regional level. Some of the most prominent examples of these are the following:

- Council of State Governments/National Center for Interstate Compacts (NCIC)
- National Association of Regulatory Commissioners (NARUC) and regional affiliates
- National Commission on Electricity Policy (NCEP)
- National Conference of State Legislatures (NCSL)
- National Governors Association (NGA)
- Organization of MISO States (OMS)
- Regional governors associations (e.g., the Midwestern Governors Association)
- Regional transmission operators (RTOs)/independent system operators (ISOs)

These stakeholder groups have developed recommendations and resolutions to encourage coordination and cooperation among states. See Table 1 below for a summary of the key stakeholder efforts and outcomes that are most relevant to interstate transmission coordination and cooperation issues in the Midwest.

[5] Keystone Center (June 2005), "Regional Transmission Projects: Finding Solutions," available at http://keystone.org/files/file/about/publications/FINALREPORT6_2005Regional-Transmission-Projects.pdf [accessed May 08, 2011].

Table 1: Key stakeholder efforts to address interstate and regional coordination and cooperation issues for transmission

Year(s)	Organization	Outcome
2005	Keystone Center	Published a report that provides recommendations on how to coordinate and streamline the planning, cost allocation and siting between different and overlapping jurisdictional authorities.
2005	Midwestern Governors Association (MGA)	MGA released a protocol for interstate cooperation in transmission planning and siting.
2005	National Conference of State Legislatures (NCSL)/ National Governors Association (NGA)	Developed sample legislation for interstate cooperation in transmission planning and siting that can be adapted to a specific state.
2005	Organization of MISO States (OMS)	Adopted a resolution to encourage states to ensure they have statutory authority for effective interstate coordination and cooperation, and to consider state and regional needs and planning in the transmission project approval process.
2008	National Council on Electricity Policy (NCEP)	Developed a primer for state officials on state coordination related to interstate transmission siting issues and provided recommendations for state level action.
2008-2010	Upper Midwest Transmission Development Initiative (UMDTI)	UMTDI released a report that, in part, looks at the existing legal framework and how states may coordinate together and with the federal government. The report stressed the importance of harmonization of state regulatory frameworks in order to enable coordination on interstate projects.
2009	MGA Transmission Adequacy Initiative	Survey of Midwestern statutory framework to enable interstate coordination; provided model statutory language based on existing language in KS, MN and OH for Midwestern states to enable coordination and consider regional benefits.
2009-present	Council of State Governments (CSG)/ National Center for Interstate Compacts (NCIC)	Transmission Line Siting Compact Advisory Group: Effort to explore the option of interstate compacts for transmission line siting; goal to develop model legislation for interstate compacts.

In 2005, regional and national stakeholder efforts provided a foundation for interstate coordination and cooperation on transmission siting and permitting and provided tools for developing statutory authority. These efforts were prompted largely by the prospect of federal intervention in the absence of state action through the passage of the Energy Policy Act of 2005 (EPAct).[6] These stakeholder efforts provided broad support from entities representing governors, legislators, regulatory commissioners and other key parties for state action. Although these groups provided significant support for states in the Midwest and other regions to enact enabling legislation, the Midwest does not have consistent and/or harmonized statutes for transmission siting and coordination and cooperation with other states.

In 2005, the National Conference of State Legislatures (NCSL) developed sample legislation for electric transmission planning and siting. The NCSL encouraged states to use this sample legislation and adapt or modify the legislation according to each state's existing framework. The statement of purpose in the sample legislation reads:

> "The purposes of this Act are: a) to give the [*agency with jurisdiction over siting of electric transmission lines*] the authority to effectively coordinate and cooperate with agencies of similar jurisdiction in other states on siting activities regarding proposed electric transmission lines that cross state and national boundaries; and b) to give the [*agency with jurisdiction over siting of electric transmission lines*] the authority to consider both state and regional needs and planning when evaluating whether a proposed electric transmission line should be approved.[7]

Also in 2005, the Midwestern Governors Association signed a protocol to address regional transmission issues, stating that:

> "Each signatory to this Protocol will support legislation to give state permitting and siting authorities explicit authority: a) to effectively coordinate and cooperate with other governmental permitting and siting authorities on permitting and siting activities regarding proposed electric transmission lines that cross state and national boundaries; and b) to consider both state and regional needs and planning when evaluating whether a proposed electric transmission line should be approved."[8]

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[6] EPAct is discussed in further detail, starting on page 9. In addition, a summary of EPAct is available at http://www.ferc.gov/legal/fed-sta/epact-fact-sheet.pdf [accessed June 12, 2011].

[7] National Conference of State Legislatures (NCSL) (2005), "Electric Transmission Planning and Siting: Sample Legislation," prepared by NCSL staff Matthew H. Brown, Program Director, and Christie Rewey, Policy Specialist, available at http://www.ncsl.org/default.aspx?tabid=12955 [accessed March 10, 2011].

[8] Protocol among the Midwestern Governors regarding the permitting and siting of interstate electric transmission lines in the Midwestern United States and Manitoba, Canada, available at http://www.misostates.org/files/MGATransProtocolFinalDraft7-8.pdf [accessed March 10, 2011].

Acknowledging the MGA Protocol and NCSL sample legislation, the Board of Directors for the Organization of MISO[9] states (OMS)[10] adopted a resolution in 2005 that encourages each member state:

"1. to examine its own state statutes to determine whether:
   a) it has sufficient authority to effectively coordinate and cooperate with agencies of similar jurisdiction in other states on permitting and siting activities regarding proposed electric transmission lines that cross state and national boundaries; and
   b) it has the authority to consider both state and regional needs and planning when evaluating whether a proposed electric transmission line should be approved; and
2) if it does not have such sufficient authority, that it work with its Governor and state legislature to determine if legislation is needed to give it the explicit authority to do so."[11]

A review by the National Council on Electricity Policy (NCEP) in 2008 of state statutes that enable interstate coordination and cooperation concluded that only about 20% of states in the US lack any enabling statutory language for interstate coordination.[12] This report notes that states that do not have explicit statutory authority still often participate in bodies that coordinate on a regional or interstate basis, such as ISOs or RTOs. The report also proposes that the lack of explicit statutory authority to coordinate may provide some states more latitude than those that have statutory authority because statutory language may create explicit boundaries for such coordination and consideration of regional interests.[13] This would likely occur only if a statute is so narrow that it prevents a state from considering regional/multi-state interests and engaging in regional/multi-state coordination. Through a review of state statutes, the report highlights examples of state statutory language that provides limited or broad authority. Ultimately, the report recommends (among other recommendations), that "states may want to review their statutes to understand any language that may facilitate or prevent interstate transmission siting coordination."

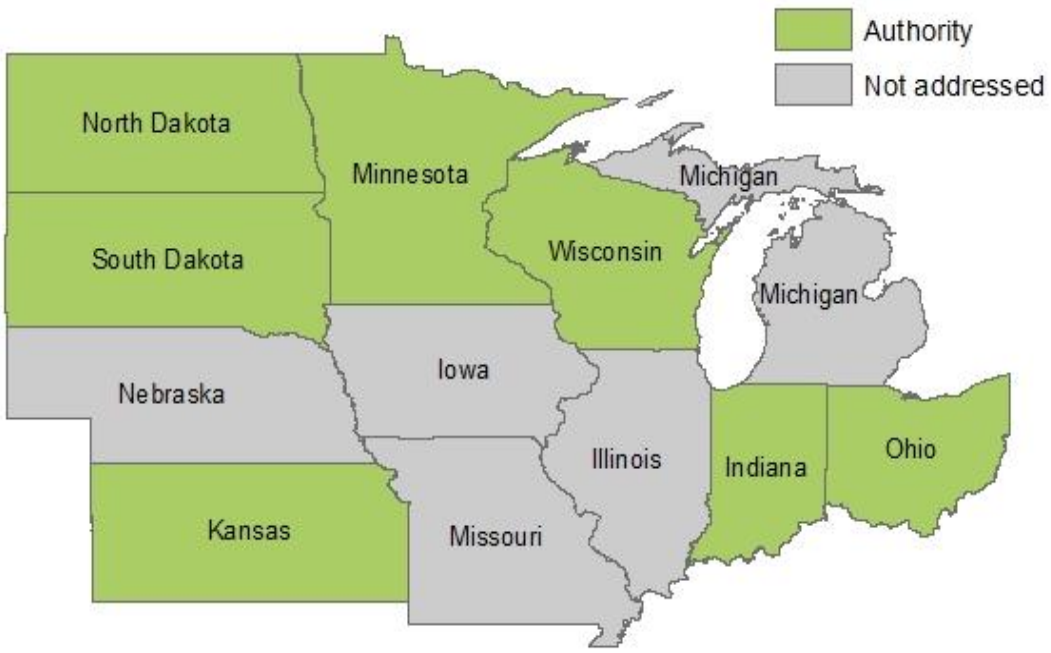
[9] MISO is the Midwest Independent Transmission System Operator.
[10] Many state regulatory commissions participate in Regional Transmission Operators (RTOs) or Independent System Operators (ISOs) that have affiliated committees or groups that play an advisory role on issues such as regional coordination and siting. In the Midwest, part of the Organization of MISO States' (OMS)[10] mission is to "coordinate regulatory oversight among states." This includes providing recommendations to entities such as MISO, state regulatory agencies, FERC and intervening in judicial proceedings. OMS Mission, available at http://www.misostates.org/index.php?option=com_content&view=article&id=80&Itemid=95 [accessed June 10, 2011].
[11] OMS (approved by the OMS Board, December 8, 2005), "Resolution of the Organization of MISO States Board of Directors," available at http://www.misostates.org/files/AnnualMtg2005OMSResolutionResitingStateLaws-approved.pdf [accessed June 22, 2011].
[12] States that do not have explicit language on coordination according to the NCEP review include Colorado, Iowa, Louisiana, Maine, Massachusetts, Nebraska, Oklahoma, Pennsylvania, Virginia and West Virginia. See National Council on Electricity Policy (NCEP) (2008), "Coordinating Interstate Electric Transmission Siting: An Introduction to the Debate," available at http://www.ncouncil.org/Documents/Transmission_Siting_FINAL_41.pdf [accessed May 25, 2011].
[13] Ibid.

Statutory options in the Midwest for regional cooperation and coordination

In 2009, the Midwestern Governors Association[14] completed a paper that outlined the existing statutory and regulatory framework in Midwestern states[15] and the province of Manitoba to address regional EHV transmission projects that span multiple jurisdictions.[16] The MGA conducted a survey[17] of state authority over transmission siting (see Appendix A for a map illustrating several of the responses), authority to coordinate with other states and the ability to consider the regional nature of transmission projects. The MGA then identified states that may lack statutory authority to consider the regional benefits of such projects (see Map 3 below).

Map 3

MGA Survey: Question #3 Does your commission have specific statutory authority to consider regional or inter-jurisdictional transmission projects, such as the benefits a regional transmission project may offer?



Please note: *Maps compiled from the MGA survey (2009) are based on an interpretation of the responses. These maps are not intended as legal guidance.*

The MGA's findings show that Kansas, Minnesota and Ohio have very similar statutory language that would likely enable their authorities to coordinate and cooperate on siting and to consider regional benefits. The MGA concluded that it is possible that existing statutes are

[14] The Midwestern Governors Association includes Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Ohio, South Dakota and Wisconsin. Information on the MGA is available at http://www.midwesterngovernors.org [accessed May 26, 2011].
[15] Midwestern states included in the MGA paper are as follows: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.
[16] Midwestern Governors Association (2009), "Summary of Reponses to Midwest Governors Association Survey on State Regulatory Authority Over Regional Transmission Projects," available at http://www.midwesterngovernors.org/Energy/summaryresponses.pdf [accessed May 26, 2011].
[17] Midwestern Governors Association (2009), "Transmission Survey: Compiled Response by State," available at http://www.midwesterngovernors.org/Energy/Compiled_response-by_state%20%282%29.pdf [accessed June 10, 2011].

broad enough in all MGA states but that additional statutory language may be prudent to provide certainty that states without explicit language do have such authority. For example, South Dakota stated in the survey that they have been able to consider the regional or inter-jurisdictional benefits of transmission projects in practice but did not state that they have explicit language to do so. The MGA put forth a "possible recommendation" to use the statutory language similar among Kansas, Minnesota, and Ohio as a model for other states in the region.

Based on the similar language between Kansas, Minnesota and Ohio, the MGA developed draft model legislation for states in the Midwest to consider, shown below:

> "The [commission/public service commission/public utilities commission], in the discharge of its duties pursuant to this [chapter/section/subsection], may:
>
> 1) Conduct joint investigations, hold joint hearings within or outside the state, and issue joint or concurrent orders in conjunction or concurrence with any state or federal official or agency, any regional transmission organization (RTO) or other planning or routing authority;
>
> 2) Negotiate and enter into agreements or compacts with agencies of other states and/or the federal government, pursuant to any consent of Congress, for cooperative efforts in certifying the construction, operation, and maintenance of electric transmission [lines/facilities];
>
> 3) Consider whether proposed electric transmission [lines/facilities] are consistent with regional plans for the expansion of the electric power grid and provide benefits to the region, including but not limited to reliability, economic efficiency, and increased access to renewable resources. (three is tied to one)"

The MGA model legislation could provide a starting point for states in the Midwest to harmonize statutes across state lines in order to establish explicit pathways for coordination and cooperation on transmission, including the ability to enter into interstate compacts.

Federal role in addressing state coordination issues

States have traditionally had authority over siting transmission lines. Yet, concern at the federal level grew over the last decade in regards to states' ability to enable the build-out of transmission lines. In 2002, the Federal Energy Regulatory Commission (FERC) published a

report[18] that identified the need to accelerate state siting and permitting of transmission lines. The report advised the following:

> "States should retain their present authority and play a more active role in managing review processes for energy infrastructure siting and permitting. As part of their reviews, states should ensure that regional considerations are taken into account in assessing the costs and benefits of new transmission. They should also coordinate their reviews with other regional and state planning, siting, and permitting processes."

The FERC provided several recommendations[19] in the 2002 report for a more coordinated, regional approach including the development of regional protocols for transmission siting. In 2005, the federal government stepped directly into this arena with the Energy Policy Act of 2005 (EPAct)[20] that provides for a federal backstop siting authority for the FERC within geographic areas that are designated as National Interest Transmission Corridors (NIETCs)[21] and under certain conditions. The NIETCs are currently designated by the US Department of Energy (DOE) and are based on congestion studies carried out by the DOE. Recent judicial proceedings have tested the FERC interpretation of the backstop authority and the DOE process for designating NIETCs. In *California Wilderness Coalition v. DOE*, the Ninth Circuit Court of Appeals vacated the existing NIETC designations and underlying congestion study. The DOE and the FERC are currently reviewing potential steps to address the issues raised by the Ninth Circuit regarding NIETC designation practices. The FERC is working with stakeholders to consider unification of federal authority under the FERC through DOE delegating to the FERC the authority to designate NIETCS and conduct the underlying congestion studies.[22] The FERC staff stated that this change could both address issues raised in judicial proceedings and help to address the transmission issues that EPAct 2005 was intended to address (e.g., congestion, reliability, access to cost-effective renewable energy).[23] In *Piedmont Environmental Council v. FERC,* the Fourth Circuit Court of Appeals ruled against the FERC interpretation of its backstop authority, stating that the FERC does not

[18] US Department of Energy (2002), "Issue Papers: National Transmission Grid Study," submitted by the Honorable Spencer Abraham, US Department of Energy, available at http://www.ferc.gov/industries/electric/indus-act/transmission-grid.pdf [accessed May 15, 2011].
[19] Ibid.
[20] Energy Policy Act of 2005 (EPAct), summary available at http://www.ferc.gov/legal/fed-sta/epact-fact-sheet.pdf [accessed December 12, 2010]. For a detailed discussion of EPAct and related judicial proceedings, see Levi J. Lyons (September 2010), "Breaking the Deadlock: Expediting Interstate Transmission Siting," prepared for the IEEE USA and published in the WISE Journal of Engineering & Public Policy, Vol. 15, available at http://www.wise-intern.org/journal/2010/LeviLyonWISE2010.pdf [accessed March 18, 2011].
[21] For public information on the congestion studies and NIETC designations, see US Department of Energy, "National Interest Electric Transmission Corridors and Congestion Study," available at http://nietc.anl.gov [accessed August 15, 2011].
[22] Federal Energy Regulatory Commission (FERC), "FERC Staff Preliminary and Conceptual Transmission Siting Proposal," available at http://bit.ly/ojEzf6 [accessed September 2, 2011].
[23] Ibid.

have authority to 'override' a state's rejection of a permit, as long as the state does so within a year as required by statute.[24]

EPAct directly encourages and provides a mechanism for state coordination through an amendment to Section 216(i) of the Federal Power Act that allows states to enter into interstate compacts to facilitate transmission siting. EPAct states:

> "The consent of Congress is given for 3 or more contiguous States to enter into an interstate compact, subject to approval by Congress, establishing regional transmission siting agencies to (A) facilitate siting of future electric energy transmission facilities within those states; and (B) carry out the electric energy transmission responsibilities of those States."[25]

Interstate compacts[26] may be a favorable structure for interstate coordination but the length of time that a compact may take to develop can be a significant barrier.[27] Yet, interstate compacts related to transmission present a unique case where Congress preemptively encouraged states to enter into such compacts.

Another avenue for joint action by states is Sec. 209 of the Federal Power Act (FPA),[28] which "authorizes the FERC to delegate any subject matter in its jurisdiction to a group of states."[29] A 2009 report by the Upper Midwest Transmission Development Initiative (UMTDI) highlighted the possible development of joint boards under Sec. 209 as an option for states that may be complementary to formation of an interstate compact. The UMTDI legal analysis states that these joint boards could address outstanding issues, such as cost allocation and need that may not be addressed under an interstate compact. In order to develop such a joint board, UMTDI noted that states would likely need to agree on several details before seeking authorization from the FERC.[30]

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[24] For a detailed discussion of judicial proceedings that altered FERC's existing interpretation of EPAct, see Nelson, Joe, Doug Smith and Dan Neilsen (February 23, 2009), "Court Rejects FERC's Expansive Interpretation of Backstop Transmission Siting Authority," Van Ness Feldman, available at http://www.vnf.com/news-alerts-337.html [accessed May 10, 2011].
[25] EPAct 2005, Section 1221, available at http://www.ferc.gov/industries/electric/indus-act/siting/section-1221.pdf [accessed June 5, 2011].
[26] For a list of compacts in existence as of 2001, see Council of State Governments, "Interstate Compacts, Information and Directories," available at http://ssl.csg.org/compactlaws/comlistlinks.html [accessed June 10, 2011].
[27] The Great Lakes Basin Compact took 13 years to complete. For a state and federal legislative history of the Great Lakes Basin Compact, see http://www.glc.org/about/pdf/Compact.pdf [accessed June 16, 2011].
[28] See Federal Power Act, §209, 18 U.S.C. § 824h, available at http://www.gpo.gov/fdsys/pkg/USCODE-2009-title16/pdf/USCODE-2009-title16-chap12-subchapII-sec824h.pdf [accessed July 10, 2011].
[29] UMTDI (August 6, 2009), "Report of the UMTDI Legal Framework Study Group: Executive Summary," available at http://www.misostates.org/files/UMTDILegalReportAugust62009.pdf [accessed June 16, 2011].
[30] Ibid.

In 2011, the FERC issued a rule, Order No. 1000[31] that amends previously established requirements for public utility providers in order to improve interstate and inter-regional transmission planning and cost allocation. Below are excerpts from a FERC summary of key provisions of Order No. 1000:[32]

Planning Reforms include:

- "Each public utility transmission provider must participate in a regional transmission planning process that satisfies the transmission planning principles of Order No. 890 and produces a regional transmission plan.
- Local and regional transmission planning processes must consider transmission needs driven by public policy requirements established by state or federal laws or regulations. Each public utility transmission provider must establish procedures to identify transmission needs driven by public policy requirements and evaluate proposed solutions to those transmission needs.
- Public utility transmission providers in each pair of neighboring transmission planning regions must coordinate to determine if there are more efficient or cost-effective solutions to their mutual transmission needs."

Cost Allocation Reforms include:

- "Each public utility transmission provider must participate in a regional transmission planning process that has a regional cost allocation method for new transmission facilities selected in the regional transmission plan for purposes of cost allocation. The method must satisfy six regional cost allocation principles.
- Public utility transmission providers in neighboring transmission planning regions must have a common interregional cost allocation method for new interregional transmission facilities that the regions determine to be efficient or cost-effective. The method must satisfy six similar interregional cost allocation principles.
- Participant-funding of new transmission facilities is permitted, but is not allowed as the regional or interregional cost allocation method."

While this rule addresses several issues, many details that are not explicitly addressed will need to be addressed at the regional and inter-regional level. For example, some regions that do not have a defined Regional Transmission Organization (RTO) will have to be defined and government-owned utilities and cooperatives are not required to join the regional planning and cost-allocation processes.[33]

Additional legislation related to interstate transmission introduced in Congress in recent years would place more authority at the federal level.[34] The federal government has historically taken on authority in areas where ineffective or absent state frameworks result in barriers to development of key energy facilities and infrastructure. States have the opportunity to

[31] FERC Facts (July 21, 2011), Order No. 1000, available at http://www.ferc.gov/media/news-releases/2011/2011-3/07-21-11-E-6-factsheet.pdf [accessed August 5, 2011].
[32] Ibid.
[33] For a discussion of FERC Order No. 1000 provisions, see Reese, Evan, Doug Smith and Jeffery Winmill (July 25, 2011), "FERC Issues Final Rule on Transmission Planning and Cost Allocation," Van Ness Feldman, available at http://www.vnf.com/news-alerts-614.html [accessed August 1, 2011].
[34] Lyons (2010).

maintain existing authority over the build-out of many types of energy facilities and infrastructure through providing a statutory and regulatory structure that effectively enables the build-out, operation and management of energy facilities and infrastructure.

Status of interstate compact development to address transmission issues

Several studies and recommendations from stakeholder efforts have identified interstate compacts as one of the potential frameworks for multi-state transmission line siting and development.[35] At a 2009 National Renewable Energy Laboratory (NREL) Conference on multi-state transmission issues, one speaker noted that, "A congressionally approved compact generally shields the states from certain kinds of federal preemption, which is a major concern in renewable energy projects right now."[36] It was also observed at the same NREL conference that, "If states don't want to form a interstate compact, others [at the conference] said they must be careful not to create a transmission agreement that tries to act like a compact, but sidesteps the approval process. It's that additional legislative scrutiny that reinforces the compact's binding nature and reduces risk." Memorandums of Understanding (MOUs) with a non-binding structure are also suggested as a mechanism for interstate coordination and harmonization. An advantage of interstate compacts is that they are legally binding and thus provide more certainty than an MOU.[37] A state that does not adhere to compact rules can be compelled by Congress to meet the requirements of the compact.[38] While some states have looked at developing such a compact, no interstate compact has been passed into law to address transmission.[39] MOUs can provide a favorable alternative to a compact in some circumstances as it is probable that development of an MOU can occur in a shorter timeframe than development of an interstate compact.

Since 2009, the Council of State Governments' (CSG) National Center for Interstate Compacts (NCIC) has had an on-going process to explore the development of interstate compacts for transmission line siting.[40] The CSG/NCIC interstate compact group includes an Interstate

[35] CSG/NCIC (2010); Keystone Center (June 2005); NCEP (2008); NCSL (2005); National Renewable Energy Laboratory (NREL) (2010), Conference on Multistate Decision Making for Renewable Energy and Transmission, available at http://www.nrel.gov/features/20091002_transmission.html; UMTDI (September 29, 2010), "Executive Committee Final Report," available at http://www.misostates.org/files/UMTDISummaryReportFinal.pdf [accessed June 5, 2011].

[36] Craig, Robin, speaking at the NREL Conference on Multistate Decision Making for Renewable Energy and Transmission (2009). Robin Craig is an associate dean for environmental programs at the Florida State University College of Law and a featured speaker at the NREL conference.

[37] MOUs can be legally binding, but in the case of an MOU to facilitate interstate transmission, the MOU would likely be non-binding in order to avoid the creation of a quasi-interstate compact.

[38] Keystone Center (June 2005).

[39] A bill (HB 1038) to enter into an interstate compact for transmission was introduced in Washington state, available at http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/House%20Bills/1038.pdf [accessed June 5, 2011].

[40] Council of State Governments'(CSG) National Center for Interstate Compacts (NCIC) (2011), "Transmission Line Siting Compact," available at http://www.csg.org/programs/policyprograms/NCIC/TransmissionLineSitingCompact.aspx [accessed June 10, 2011].

Transmission Line Siting National Advisory Panel that is co-chaired by Kansas State Rep. Tom Sloan (R-45th District) and North Dakota State Rep. Kim Koppelman (R-13th District) with other panelists from Kentucky, Pennsylvania, Utah and Washington. The effort included a series of discussions and produced a white paper on interstate compacts as a policy option.[41] The white paper states, "….a compact can provide states a durable tool that allows collaboration across state lines and partnerships with federal agencies to ensure stakeholders' best interests are met."[42] The white paper outlines the following four beneficial policies that could be part of an interstate compact:

- Consider benefits beyond a state or local area in the determination of 'need'.
- Increased communication between states through Regional Transmission Siting Authority Boards (RTSAs).[43]
- Coordination of route changes by the RTSAs and authority to site and route lines.
- Interstate compact partnerships with federal agencies to address federally or tribally owned lands.

Currently, the Advisory Panel is in the process of developing model legislation and aims to have the legislation ready for the 2012 legislative sessions.[44]

State authorities to support energy production and infrastructure development

Many states have established authorities to promote and support energy projects and infrastructure. The Midwest has existing authorities in Illinois, Kansas, Michigan, North Dakota and South Dakota and a siting board in Ohio.[45] These authorities are often enabled to work with other states in order to achieve their objectives (e.g., export of power to other states). These authorities may have objectives to achieve specific policy goals such as renewable energy deployment, economic development, and improvement of transmission infrastructure and often support projects through financing mechanisms. These authorities provide another potential mechanism to support project deployment and to enable states to work together.

Policy Options

There are several potential pathways for states to increase cooperation and coordination on key issues to ensure the build-out of a transmission system that can support renewable and

[41] NCIC (November 8, 2011), "White paper draft: Interstate Compacts as a Policy Option to Enhance the Electric Transmission Line Siting Process," available at http://www.csg.org/programs/policyprograms/NCIC/documents/CSGTransmissionCompactWhitepaperDraft11-08-10.pdf [accessed June 10, 2011].

[42] Ibid.

[43] Regional Transmission Siting Agencies are authorized through EPAct through the formation of interstate compacts between three or more states.

[44] CSG (April 20, 2011), "CSG Continues Discussions About Transmission Line Siting Compact," prepared by Crady deGolian, available at http://knowledgecenter.csg.org/drupal/content/csg-continues-discussions-about-tranmission-line-siting-compact [accessed July 15, 2011].

[45] Midwestern states with infrastructure authorities include Kansas, North Dakota and South Dakota and Ohio has an Energy Facility Siting Board that provides a 'one-stop shop' for siting.

other cleaner, advanced energy technologies and production. Many potential models exist that can be implemented but a strong enough policy driver (e.g., a proposed project, reliability issues, legislative targets) must exist to build sufficient support to achieve implementation. In the Midwest, the process to develop Multi Value Projects (MVPs)[46] will be an opportunity to bring stakeholders together to support the development of projects in a cost-effective manner that benefits the region. MVPs are transmission projects intended to provide benefits to the region, with cost distributed across jurisdictions in the region. In 2010, the FERC approved the cost allocation proposal by MISO for the MVP projects. This may present a significant opportunity to put one or more of the below options in place in order to better position Midwestern states to achieve successful build-out of the MVP projects.

Below is a summary of options and outline of next steps:

Option	Next Steps
Harmonize state statutory authority	Develop legislation at the state-level to enable authorities to cooperate and coordinate on an interstate and/or regional basis and consider the regional benefits of transmission projects.[47] Significant support has been shown by a wide range of stakeholders for states to develop enabling legislation. The 2009 MGA Survey and UMTDI legal analysis[48] provides a state-by-state look at the status of statutory authority, existing gaps and areas of similarity. Stakeholders can look at statutes that currently exist in Midwestern states (e.g., Kansas, Minnesota and Ohio have similar statutes) in order to harmonize the efforts within the Midwest. The 2009 MGA model statute, the OMS resolution, and the NCSL sample legislation[49] provide a starting point for development of such legislation.
Multi-stakeholder groups	States may participate in multi-jurisdictional stakeholder groups such as CSG/NCIC, MGA, NCSL and OMS and to coordinate and collaborate on an informal basis. Stakeholders may identify and recommend how these existing groups could operate more effectively to address the barriers to transmission development.[50]

[46] MISO, "Proposed Multi Value Project Portfolio," MISO Board of Directors System Planning Committee, available at http://bit.ly/nifXO9 [accessed August 14, 2011].
[47] See NCSL Sample Legislation for model legislation and see MGA report for legislation that is similar between Midwestern states.
[48] UMTDI (August 6, 2009).
[49] See Appendix C.
[50] For an extensive discussion of such organizations, see NCSL and National Governors Association's (NGA) Center for Best Practices (2006), "Connecting the Grid: A Review of State and Regional Transmission Practices," prepared by Christie Rewey and Chloe Cromarty, available at http://bit.ly/nBNwUS [accessed June 10, 2011].

Memorandums of Understanding (MOUs)	States may enter into MOUs to enable interstate cooperation and coordination and to establish harmonized rules and regulations that can help facilitate interstate transmission build-out. MOUs can have a non-binding structure, thus development will likely occur in a short timeframe relative to an interstate compact. Stakeholders may identify states with existing, shared policy drivers (e.g., a pending interstate project) to support development of such MOUs.
Establish an interstate compact(s)	The FPA authorizes three or more states to enter into interstate compacts. States may choose to pass legislation that allows entry into such compacts. Stakeholders may review existing statutes in Midwestern states to identify which states currently allow entry into interstate compacts, and under what conditions. Stakeholders may also identify ways to engage the on-going CSG/NCIC effort to develop model legislation for interstate compacts for transmission line siting.
Establish joint boards	The FPA authorizes FERC to establish joint boards between states that could address issues such as cost allocation and need determination. This could be pursued by stakeholders along with an interstate compact.
Establish or expand state energy or infrastructure authorities	Infrastructure or energy-related authorities, which have various functions in different states, commonly can facilitate, finance and support development of projects (including transmission) and may have the authority to coordinate with other states.[51] These authorities are often enabled to work with other states to promote the development of infrastructure. Stakeholders may look at examples of existing authorities[52] and identify states where such authorities would be useful. Kansas, North Dakota and South Dakota provide instructive examples of existing authorities in the Midwest.

[51] Midwestern states with infrastructure authorities include Kansas, North Dakota and South Dakota and Ohio has an Energy Facility Siting Board that provides a 'one-stop shop' for siting.
[52] See Appendix B for a complete list of states with authorities for power, energy and/or infrastructure.

Resources for further reading:

Asmus, Peter (November 2010). "Policy Brief: Sharing a Vision of Cooperation in the Midwest: Transmission Lines." Great Plains Institute. http://gpisd.net/vertical/Sites/%7B1510F0B9-E3E3-419B-AE3B-582B8097D492%7D/uploads/%7B19D9110E-6893-4A01-9A83-0CB7A8D1BF10%7D.PDF.

Brown, Ashley C. and Jim Rossi (Summer 2010). "Siting Transmission Lines in a Changed Milieu: Evolving Notions of the "Pubic Interest" in Balancing State and Regional Considerations." *University of Colorado Law Review*, Volume 81, Issue 3.

Council of State Governments' National Center for Interstate Compacts (November 8, 2010). "White paper draft: Interstate Compacts as Policy Option to Enhance the Electric Transmission Line Siting Process," available at http://www.csg.org/programs/policyprograms/NCIC/documents/CSGTransmissionCompactWhitepaperDraft11-08-10.pdf.

Keystone Center (June 2005). "Regional Transmission Projects: Finding Solutions." http://keystone.org/files/file/about/publications/FINALREPORT6_2005Regional-Transmission-Projects.pdf.

Lyons, Levi J. (September 2010). "Breaking the Deadlock: Expediting Interstate Transmission Siting." Prepared for the IEEE USA, *WISE Journal of Engineering & Public Policy*, Vol. 15. http://www.wiseintern.org/journal/2010/LeviLyonWISE2010.pdf.

Midwestern Governors Association (June 5, 2009). "MGA Model Transmission Legislation: Discussion Draft." http://www.midwesterngovernors.org/Energy/Model_legislation_summary.pdf.

Midwestern Governors Association (2009). "Summary of Responses to Midwest Governors Association Survey on State Regulatory Authority Over Regional Transmission Projects." http://www.midwesterngovernors.org/Energy/summaryresponses.pdf.

Midwestern Governors Association (2005). "Protocol among the Midwestern Governors regarding the permitting and siting of interstate electric transmission lines in the Midwestern United States and Manitoba, Canada." http://www.misostates.org/MGATransProtocolFinalDraft7-8.pdf.

National Council on Electricity Policy (2008). "Coordinating Interstate Electric Transmission Siting: An Introduction to the Debate." http://www.oe.energy.gov/DocumentsandMedia/Transmission_Siting_FINAL_41.pdf.

National Conference of State Legislatures (2005). "Electric Transmission Planning and Siting: Sample Legislation." Prepared by Matthew H. Brown, Program Director, and Christie Rewey, Policy Specialist, NCSL. http://www.ncsl.org/default.aspx?tabid=12955.

National Conference of State Legislatures and National Governors Association (2006). "Connecting the Grid: A Review of State and Regional Transmission Practices." Prepared by Christie Rewey and Chloe Cromarty. http://www.nga.org/files/live/sites/NGA/files/pdf/0610CONNECTINGGRID.PDF;jsessionid=95A25CB44F4D1BB3922AE1EF30FDE3D7.

Smith, William H., Jr. (2007). "Formation and Nurture of a Regional State Committee." *Energy Law Journal*, Vol. 28, No. 1:185-205. http://www.felj.org/docs/elj281/185-205.pdf.

Upper Midwest Transmission Development Initiative (June 9, 2009). "Report of the UMTDI Legal Framework Study Group: Executive Summary." http://www.misostates.org/files/UMTDILegalReportAugust62009.pdf.

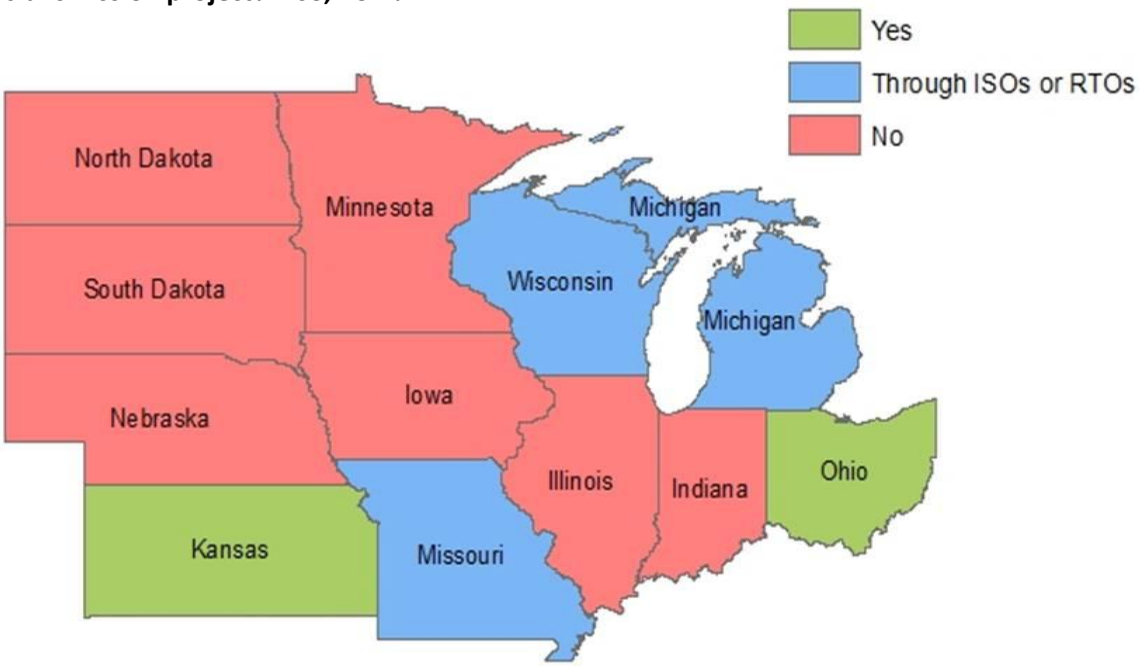
Appendix A. Maps depicting the responses to the 2009 Midwestern Governors Association Survey of State Regulatory Authority Over Regional Transmission Projects

[Note: Maps were developed through interpretation of the responses from the 2009 MGA survey. These maps are not intended as legal guidance]

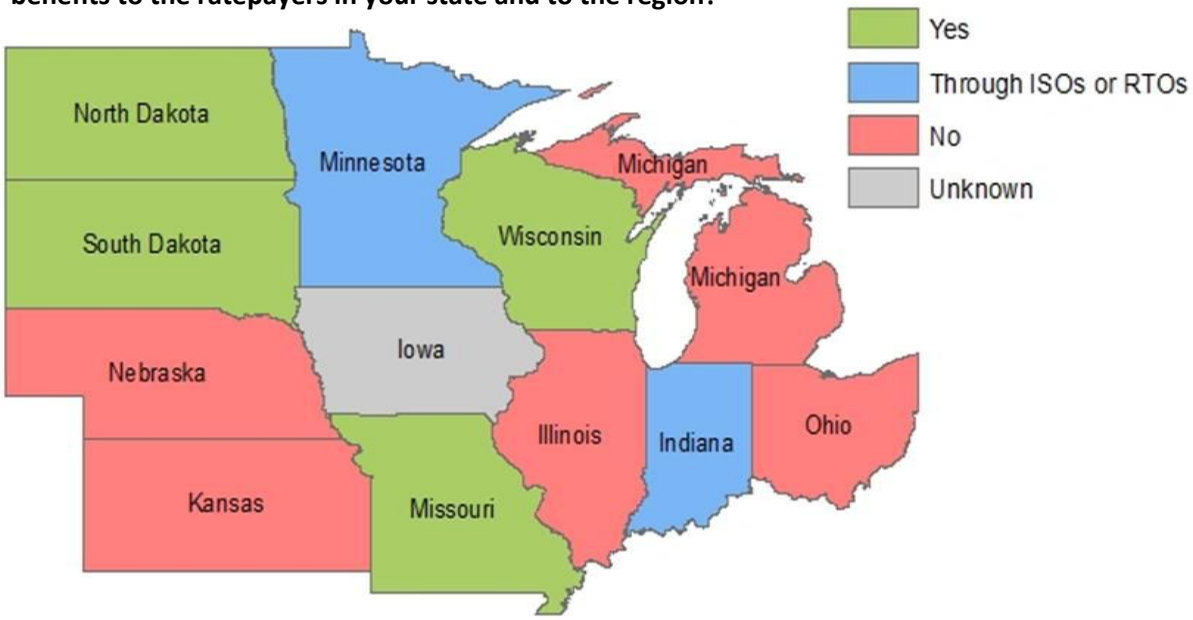
Question #1: Does your commission or regulatory body have specific statutory authority for transmission siting in your jurisdiction?

Question #4: Does a state statute specifically authorize your commission to coordinate with other state or jurisdictional agencies or commissions on any aspect of the approval of regional or inter-jurisdictional transmission projects? Alternatively, does a statute specifically prohibit your commission from such coordination? Please share the citation and language of any relevant statutes.

Question #7: In practice, has your commission coordinated with the agencies or commissions in other states or provinces in a decision-making process on a regional or inter-jurisdictional transmission project? If so, how?



Question #8: Does your commission have authority to authorize cost recovery for a transmission project to be built outside your jurisdiction, if that transmission project is shown to provide net benefits to the ratepayers in your state and to the region?



Appendix B. List of State Infrastructure, Energy or Power Authorities and Siting Boards

AK	Alaska Energy Authority, Alaska Industrial Development and Export Authority	The AEA's original mission was to construct, acquire, finance, and operate power projects and facilities that utilize Alaska's natural resources to produce electricity and heat. In 1993, oversight of the existing state hydroelectric projects and Alaska Intertie was transferred to the Alaska Industrial Development and Export Authority.
AZ	Arizona Power Authority	The APA was formed as a result of federal legislation and delegated to be the responsible entity for acquiring and marketing Arizona's share of Hoover power by the state of Arizona's Legislature in 1944.
CA	California Alternative Energy & Advanced Transportation Financing Authority	CAEATFA provides financing for facilities that use alternative energy sources and technologies and for facilities needed to develop and commercialize advanced transportation technologies that conserve energy, reduce air pollution, and promote economic development and jobs.
CO	Colorado Clean Energy Development Authority	CEDA was established by the legislature in 2007 to help facilitate development of renewable energy and transmission projects.
CT	Connecticut Clean Energy Finance and Investment Authority	CEFIA's mission is to promote, develop, and invest in clean energy and energy efficiency projects in order to strengthen Connecticut's economy, protect community health, improve the environment, and promote a secure energy supply for the state.
GA	Georgia Environmental Finance Authority	GEFA is a state agency that administers a wide variety of programs that provide financial assistance and other support services to improve Georgia's environment.
ID	Idaho Energy Resources Authority	IERA's mission is to diversify and expand the state's economy through improvements in Idaho's electric generation and transmission infrastructure to allow the development or expansion of electric facilities in Idaho or the import of low-cost energy from other parts of the region.
IL	Illinois Finance Authority	IFA offers broad expertise in a range of energy market segments and their related financing structures, including clean coal, syngas, biodiesel, ethanol, wind, biomass, and other energy projects and works closely with other agencies and partners to identify critical market needs and assist with client projects where affordable access to capital makes the difference in financial feasibility.
KS	Kansas Electric Transmission Authority	KETA's mission is to ensure reliable operation of the electrical transmission system, diversify and expand the Kansas economy, and facilitate consumption of Kansas energy through improvements in the state's electric transmission infrastructure.
KY	Kentucky Infrastructure Authority	KIA was created in 1988 to provide the mechanism for funding construction of local public works projects.
MA	MassDevelopment	MassDevelopment works with businesses, nonprofits, and local, state, and federal officials and agencies to strengthen the Massachusetts economy by addressing limiting factors such as transportation, energy, and other infrastructure deficiencies.

MI	Michigan NextEnergy Authority	MNEA promotes the development of alternative energy technologies and provides tax incentives for business activities and property related to the research, development, and manufacturing of those technologies.
MS	Mississippi Development Authority - Energy Division	The MDA Energy Division offers projects and services that accelerate the deployment of energy efficiency and renewable energy technology, facilitate the acceptance of emerging and under-utilized efficiency and renewable technologies, and increase the response of publically funded technology efforts to private sector needs.
NV	Nevada Renewable Energy & Energy Efficiency Authority	The Renewable Energy and Energy Efficiency Authority's mission is to facilitate and develop Nevada's renewable energy resources and its transmission grid infrastructure and reduce the state's energy demand.
NJ	New Jersey Economic Development Authority Clean Energy Solutions	The EDA created Clean Energy Solutions (CES) to promote a green economy through a suite of financing programs that includes interest-free loans and grants to ensure that commercial, industrial, and institutional entities have the resources they need to grow and prosper while simultaneously reducing New Jersey's carbon footprint.
NM	New Mexico Renewable Energy Transmission Authority	NMRETA focuses on developing new transmission projects to promote renewable energy through stimulating clean energy production and creating high paying jobs, capital investment, and greater economic development in rural areas.
NY	New York Power Authority	NYPA is the country's largest state public power organization and is a national leader in promoting energy efficiency and the use of renewable-fuel and clean-energy technologies.
ND	North Dakota Industrial Commission	NDIC conducts and manages certain utilities, industries, enterprises, and business projects including the Pipeline Authority, Renewable Energy Program, and Transmission Authority.
OH	Ohio Power Siting Board	OPSB's mission is to support sound energy policies that provide for the installation of energy capacity and transmission infrastructure for the benefit of the Ohio citizens, promoting the state's economic interests, and protecting the environment and land use.
OR	Oregon Infrastructure Finance Authority	The IFA assists communities to build infrastructure capacity to address public health safety and compliance issues as well as support their ability to attract, retain, and expand businesses.
PA	Pennsylvania Energy Development Authority	The Authority's mission is to finance clean, advanced energy projects in Pennsylvania, including solar energy, wind, low-impact hydropower, geothermal, biomass, landfill gas, fuel cells, IGCC, waste coal, coal-mine methane, and demand management measures through grants, loans, and loan guarantees.
RI	Energy Facility Siting Board	The Board is the licensing and permitting authority for all licenses that would be required for siting, construction, or alteration of a major energy facility in Rhode Island.
SD	South Dakota Energy Infrastructure Authority	The Infrastructure Authority's goal is to diversify and expand the state's economy by helping develop energy production facilities in

		South Dakota and providing financing for new and expanding facilities.
VT	Vermont Public Power Supply Authority	VPPSA is a private authority of the State of Vermont with broad authority to contract to buy and sell wholesale power within Vermont and wholesale and retail power outside Vermont, as well as to issue tax-free debt on behalf of municipal and cooperative electric utilities within Vermont.
WV	West Virginia Public Energy Authority	The West Virginia Public Energy Authority promotes reliable and dependable markets for the state's coal, natural gas, and other natural resources.
WY	Wyoming Infrastructure Authority	WIA's mission is to diversify and expand the state's economy through improvements in Wyoming's electric transmission infrastructure to facilitate the consumption of Wyoming energy in the form of wind, natural gas, coal and nuclear, where applicable. The Authority can participate in planning, financing, constructing, developing, acquiring, maintaining and operating electric transmission facilities and their supporting infrastructure.

Appendix C. Excerpt from the National Conference of State Legislatures, "Electric Transmission Planning and Siting: Sample Legislation"[53]

Excerpted explanatory note (full text can be found on the NCSL website):
"State policies vary widely regarding electricity transmission and jurisdiction over planning. The authority to site transmission lines does not rest with the same agency in every state. Thus, not every provision in this sample legislative language is applicable in every state. NCSL recommends that states' legislators and staff select those provisions in the sample language that would be most applicable and helpful in each case."

Sample State Statute
Regional Coordination in Planning and Siting of Electric Transmission Lines

[Title, enacting clause, etc.]

Section 1. [Short Title.] This Act is known and may be cited as the "Regional Coordination in Planning and Siting of Electric Transmission Lines Act."

Section 2. Statement of Purpose. 1
The purposes of this Act are: a) to give the [agency with jurisdiction over siting of electric transmission lines] the authority to effectively coordinate and cooperate with agencies of similar jurisdiction in other states on siting activities regarding proposed electric transmission lines that cross state and national boundaries; and b) to give the [agency with jurisdiction over siting of electric transmission lines] the authority to consider both state and regional needs and planning when evaluating whether a proposed electric transmission line should be approved.

Section 3. Definitions. In this Act:
A. "Electric transmission line" means a set of conductors, insulators, supporting structures and associated equipment used to transmit electric energy at high voltage, usually over long distances between a generating or receiving point and major substations or delivery points.

B. "Electric transmission route" means the geographic course that an electric transmission line follows.

C. "Energy demand" means the requirement for energy as an input to provide products and/or services.

D. "Intervention" means on-the-record participation by an interested party in a contested case or other formal activity undertaken by a state utility regulatory agency.

E. "Load management" means an energy conservation measure or a measure to shift electricity demand to times of lower use of the electricity system.

F. "Planning" means the process of determining when and where electric transmission lines will need to be built to serve demand for electricity.

G. "Regional" means an area encompassing all or part of more than one state.

[53] National Conference of State Legislatures (NCSL) (2005), "Electric Transmission Planning and Siting: Sample Legislation," prepared by NCSL staff Matthew H. Brown, Program Director, and Christie Rewey, Policy Specialist, available at http://www.ncsl.org/default.aspx?tabid=12955 [accessed March 10, 2010].

H. “Regional organizations” mean formal or informal multi-state groups of electric transmission line siting or planning entities formed for the purpose of coordinating planning or siting of electric transmission lines. In most cases, member states are contiguous.

I. “Siting” means the process of evaluating whether a request for approval of the necessary certifications to build, maintain and operate a proposed electric transmission line should be granted and, if the request is granted, the process of issuing the necessary certifications.

Section 4. [Legislative authorization to enter into multi-state coordination.]
A. The [agency with jurisdiction over siting of electric transmission lines (hereinafter “agency”)][2] may present the concerns and interests of the state to other states, regional organizations, and the federal government[3] on the location, construction, and operation of any electric transmission line that may affect the environment, health or safety of the citizens of the state.

B. The [agency] is authorized to participate in a regional transmission organization.[4]

1. The [agency] representative to any regional transmission organization recognized by the Federal Energy Regulatory Commission of which one or more [State] electric public utilities is a member is hereby authorized to participate fully in all decision-making bodies of such regional transmission organization, whether the decision of such bodies are advisory to or binding on the regional transmission authorization.

2. Nothing in this provision shall limit the [agency]’s regulatory jurisdiction or authority to appeal to the federal energy regulatory commission any decision by a regional transmission organization or relieves the [agency] of its obligation and authority to ensure that electric public utilities provide efficient and sufficient service.

C. The [agency] shall recognize the value to consumers of regional coordination and collaboration in transmission planning.

D. In considering planning and siting of electric transmission lines that cross state boundaries, national boundaries or tribal lands, the [agency] shall:

1. Consider the needs and planning of [State] and regional needs and planning when evaluating whether a proposed electrical transmission line should be approved.

2. Attempt to reach agreement with affected states and tribes on the points at which electric transmission lines enter and exit each state prior to designating an electric transmission route. In such a case, the [agency] shall hold joint hearings with agencies of similar jurisdiction in other affected states and with affected tribes on electric transmission planning and siting, with at least one such hearing to be held within the state.

3. Coordinate with other affected states the evaluation of the need for a proposed electric transmission line.[5] In evaluating need, the [agencies] may consider the following factors:

a. Whether the proposed transmission line is necessary to serve a public use.
b. Whether the proposed transmission line is needed to improve the reliability of the electric utility system.
c. Whether the proposed transmission line is needed to provide market access to electric generation.

d. The relationship of the proposed transmission line to comprehensive electric utility planning that has included, but was not limited to, an evaluation of various generation and transmission line options, alternative technologies, distributed generation, and targeted energy efficiency.
e. Whether the proposed transmission line will substantially improve the ability to provide wholesale electric power to meet customer needs in a cost-effective manner.
f. Any factors required to be evaluated by the laws of this state.
g. Any other relevant factors.

E. In coordination with other states and tribal governments, the [agency] may also consider the following for electric transmission lines that cross state boundaries, national boundaries or tribal lands:

1. Setting joint schedules for various activities related to siting of electric transmission lines.

2. Determining completeness of applications for proposed electric transmission lines.

3. Requiring applicants to use application forms that jointly satisfy state and federal application requirements.

4. Reviewing and processing applications and conducting any necessary hearings or investigations, after agreeing that they are required.

5. Deciding whether a hearing or hearings regarding proposed electric transmission lines are required.

6. Taking judicial notice of related evidence in other states.

7. Coordinating prehearing procedures, including whether and when prehearing conferences will be held; making determinations of issues to be decided during hearings and criteria for evaluation.

8. Making joint investigations regarding electric transmission line siting. Such investigations could include, but are not limited to, investigations on the determination of the location where the electric transmission lines will cross each state boundary and determination of need for the electric transmission lines.

9. Negotiating and entering into agreements or compacts with other state siting authorities to develop cooperative efforts in siting and permitting the construction of electric transmission lines and enforcing respective state laws.

10. Coordinating procedures for notifying the public of electric transmission lines being considered and soliciting public input.

11. Coordinating procedures regarding requests for intervention in regulatory processes related to siting of electric transmission lines.

12. Determining issues and coordinating activities related to eminent domain, if needed.

13. Drafting and issuing joint or concurrent orders with agencies of similar jurisdiction in other states or with agencies of the United States that have jurisdiction over part or all of the proposed electric transmission line.

14. Drafting and issuing decisions regarding proposals for new electric transmission lines.

Notes

1. This is optional language for states that favor purpose statements.

2. Siting, permitting and transmission planning agencies take different forms and different responsibilities throughout the states. "Agency with jurisdiction over siting of electricity transmission lines" refers to the state public service commission, siting council or other entity that holds jurisdiction over permitting or planning for electricity transmission lines.

3. Those states that border Canada or Mexico may wish to include neighboring provinces or nations here.

4. This is optional language for states that are involved in regional transmission organizations.

5. Not every state has a requirement for demonstration of need for an electric transmission line. This is optional language for states that require demonstration of need.

The sponsoring organizations and contributors offer this legislative language as a sample option to consider. They do not formally endorse it as model language.

Appendix D. Excerpt from the Protocol among the Midwestern Governors Association regarding the permitting and siting of interstate electric transmission lines in the Midwestern United States and Manitoba, Canada[54]

"C. Existing Work To Coordinate And Cooperate On Regional Transmission Planning And Siting Activities

1. Regional transmission organizations, such as the Midwest Independent Transmission System Operator (MISO), the PJM Interconnection, and the Southwest Power Pool, have begun to plan and operate regional electric transmission systems. Other regional organizations, both existing and in development, also coordinate regional planning and reliability.

2. The Organization of MISO States (OMS), a regional organization of state utility regulators from 14 Midwestern states and Manitoba, is an example of governments working to better coordinate and cooperate on permitting and siting activities related to proposed transmission projects that cross state and national boundaries.

3. Some of these activities include learning about each other's permitting and siting requirements and exploring ways that state and provincial regulators can better coordinate their respective permitting and siting activities when applications for transmission lines crossing state and provincial boundaries are filed.

4. The National Conference of State Legislators (NCSL) has issued sample legislation to give state permitting and siting authorities explicit authority: a) to effectively coordinate and cooperate with other states on permitting and siting activities regarding proposed electric transmission lines that cross state and national boundaries; and b) to consider both state and regional needs and planning when evaluating whether a proposed electric transmission line should be approved.

D. Signatory Commitments

1. Each signatory to this Protocol recognizes the need for a robust, reliable electric transmission system.

2. Each signatory to this Protocol supports additional investment in the electric transmission grid when such investment is needed and in the public interest.

3. To the extent possible under his or her respective state laws and considering the rights of all potential parties to electric transmission line proceedings, each signatory to this Protocol will support efforts to improve coordination of and cooperation on the evaluation and processing of applications for electric transmission projects that cross state and national boundaries."

[54] Protocol among the Midwestern Governors regarding the permitting and siting of interstate electric transmission lines in the Midwestern United States and Manitoba, Canada, available at http://www.misostates.org/files/MGATransProtocolFinalDraft7-8.pdf [accessed March 10, 2011].