Interstate Compacts as a Policy Option to Enhance the Electric Transmission Line Siting Process

Background
Siting electric transmission lines across state borders has long been a challenge for the states, the federal government and utility transmission companies. Too often, the diverse interests of various stakeholders, combined with the absence of a mechanism capable of bringing different entities together, makes siting interstate electric transmission lines a difficult proposition. The multiyear application review process and separate evaluations by multiple jurisdictions constitutes a growing burden for transmission companies and frustrates state and federal policymakers seeking to move renewable energy and lower-cost electricity to markets.

A more collaborative and efficient approval process holds considerable promise for moving energy from where it is produced to where it is needed. This becomes even more evident when considering that the demand for electricity has grown and is projected to continue growing across the nation. Additionally, low-cost electricity that is environmentally responsible will be particularly attractive to consumers and businesses. A more robust and modern transmission system will allow both objectives to be accomplished by improving system reliability and providing additional consumer benefits.

Congress recognized the growing demand for lower-cost, responsible electricity delivered through a more reliable transmission grid system in the Energy Policy Act of 2005. Congress incentivized utilities to expand transmission, and it granted the Federal Energy Regulatory Commission so-called backstop authority to site transmission lines in heavily congested areas, as defined by the Department of Energy, when the states do not site lines within a limited timeframe. The regulatory commission, however, has been hesitant to exercise backstop authority because of concerns regarding federal pre-emption and the traditional role of states in the siting process. Thus, the impasse over developing a more robust interstate transmission grid continues.

In perhaps an acknowledgement of this tense dynamic, in the Energy Policy Act of 2005, Congress took the unusual step of granting states advanced congressional consent to create interstate compacts to administer the siting of interstate transmission lines in three or more contiguous states. The compact option potentially provides a compromise that allows state policymakers and federal officials to work collaboratively to site lines in a timeframe that would be beneficial to all parties. If implemented, a compact can provide states a durable tool that allows collaboration across state lines and partnerships with federal agencies to ensure stakeholders’ interests are met.

The Council of State Governments, at the request of its legislative leadership, and through The National Center for Interstate Compacts, has been working to facilitate the development of an interstate compact designed to address the causes of transmission siting gridlock and inefficiency. Participants in the compact development process have included legislative leadership from each of CSG’s regions, key stakeholder groups within the electric transmission industry, transmission operators, and federal, regional and state regulators.

To date, CSG has convened two advisory committee meetings that explored the existing challenges in
siting transmission lines and identified key components to be included in a compact. With the assistance of a drafting team comprised of subject matter and interstate compact experts, CSG has begun the drafting process.

Challenges and Inefficiencies with the Current System

Stakeholders in the interstate transmission line siting process have, for several years, recognized that the existing system for siting electric transmission lines across state borders is often too narrowly focused. By considering transmission planning on a regional or even national scale, as a compact would permit, the siting process could be more systematic, cooperative and open to public participation, thereby serving to create a more robust transmission system. During the initial phases of CSG’s effort, stakeholders identified several key barriers to increased siting efficiency. They include:

Lack of Regional Planning Structure

In some regions, the lack of a strong coordinated regional planning structure, or conversely, the overlapping of regional planning groups, have been identified as key problems because of multijurisdictional decision making. Multijurisdictional planning/siting philosophies result in competing proposals without a means of resolving them. Such ambiguity in the siting process hampers achieving agreement due to a lack of either a strong centralized decision-making authority or consensus among the various independent siting authorities on timelines, decision-making criteria and other factors.

Differences in Siting Requirements between States

Each state possesses unique requirements for siting transmission lines. In the majority of states, authority rests with the public utilities commission. In other states, as many as three or four agencies may have jurisdiction, including each county or local government making an independent determination. Six states have no standard procedure for siting. Each state and local decision-making body develops its own siting guidelines or criteria—thereby creating difficulties for transmission proposals that will cross jurisdictional lines.

In addition, state and local requirements differ from procedures used by federal land management agencies. Differences in siting guidelines allow for confusion, conflicts over priorities between state and federal agencies, and often, the exclusion of key stakeholders from the process. Opponents to a project often seize on these differences to stymie or frustrate the project evaluation and decision-making process. Accordingly, siting lines across state boundaries in a timely and efficient manner is difficult at best and frequently next to impossible.

Lack of Consensus among Stakeholder Groups

The siting process involves two decisions, both of which are usually contentious. There is often disagreement about whether a line is needed in the first place, or whether its benefits exceed its cost, again based on competing interests. There is also often a lack of agreement about where to put a line. These disputes often boil down to a conflict between those seeking local control of their energy production/consumption patterns and those perceiving a need to bring lower cost energy or renewable energy from generation sources many miles distant from the load center. Such disputes frequently lead to stalemates and make siting a line nearly impossible.

Aligning Regional Needs and Local Interests

Another stumbling block to siting transmission is that states consider their local interests, not those of the regions in which they are located. In turn, regions often fail to consider the needs of other regions, and the nation as a whole, in maintaining reliability and bringing new energy to market. In some cases, the transmission siting process requires the state in which a line is sited to be able to assess complex issues of engineering, economics, societal benefits and land use considerations that have already been decided by the regional planning entity. If the utility belongs to a regional transmission organization or an independent systems operator and the need for the line has been approved through a stakeholder process, states that require/permit regulators to revisit the needs and other issues that have been already vetted complicate
the siting decision-making process. The issue is the appropriate levels and timing at which all stakeholders—including states and federal officials—should be actively involved during the transmission planning/decision-making process.

State-Federal Cooperation
Finally, for some proposed projects, a key question in siting interstate transmission lines often involves the federal government. Myriad federal agencies, depending on circumstances, are involved in the siting process, including the Federal Energy Regulatory Commission, the Department of Energy, the Department of the Interior, and/or other regulatory and land management agencies. Poor coordination, the lack of a true “one stop” authorizing process and poor communication among federal agencies, or between state and federal entities often impedes progress and hinders the existing system for siting lines.

Interstate Compacts: One Potential Solution
While it would be simplistic to suggest that each of the issues identified above encompasses every challenge associated with interstate transmission line siting, opportunities exist to improve cooperation and efficiencies within the siting process. As energy demands continue to grow nationwide and the emphasis on renewable energy sources increases, the need for cooperation between states, the federal government, regulators and stakeholders has never been greater. One possible way to promote increased cooperation is the formation of an electric transmission line siting compact. Dating back to colonial America and rooted in contract law, interstate compacts provide a durable, sustainable and enforceable mechanism to facilitate interstate cooperation.

The History of Interstate Compacts
Interstate compacts are contracts between two or more states creating an agreement on a variety of issues, such as specific policy challenges, regulatory matters and boundary settlements. They require legislative passage and a governor’s signature before a state can join and they carry the effect of law. States have used interstate compacts to address a variety of issues, including:
- Establishing a legal relationship to resolve a specific dispute, such as rights for use of water resources;
- Creating independent, multistate agencies that can more effectively address specific policy problems, such as the Port Authority of New York and New Jersey; and
- Establishing uniform guidelines and standards for member states to follow.

In addition, compacts allow states to maintain their sovereignty by allowing them to act collectively outside the confines of federal legislation or regulation. When used effectively, compacts provide regional or national policy solutions, while providing opportunities for cooperation with the federal government. Compacts also let states develop a dynamic, self-regulatory system that remains flexible enough to address changing needs.

Interstate compacts are not new. They date back to the country’s founding and more than 215 active interstate compacts are in existence, with most states belonging to more than 20 different agreements on average. Since 1789, compacts have grown beyond bi-state agreements into national and regional creations with both advisory and regulatory responsibilities. What has changed in the past century is the increased sophistication and use of interstate compacts to create administrative agencies to solve ongoing state problems.

Developing an Interstate Compact
The Council of State Governments, through its National Center for Interstate Compacts, has been involved in the development of several national regulatory interstate compacts. Each project begins with an advisory committee, usually comprised of about 20 interested stakeholders. The advisory committee typically is asked to consider the merits of an interstate compact and to discuss what should and should not be included in model legislation.

After the advisory phase, a drafting team is convened. The drafting team is comprised of a subset
of the advisory group, usually six to eight people, who draft the compact legislation based on the advisory committee’s recommendations.7 Once the drafting team completes its work, the full advisory committee reviews and approves compact legislation before vetting the language with a variety of interested stakeholders and eventually sending it to interested state legislatures for consideration. During this phase, CSG staff and other experts are available to answer questions and assist states that are considering the legislation.

Although an interstate compact can operate with as few as two member states, most regulatory compacts establish a higher minimum threshold before the compact takes effect. This ensures involvement from a significant number of states before the compact’s commission establishes bylaws, passes rules and forms committees. But it also means the time-frame from passage to implementation may extend over several years.

Once passed by the required number of states, most regulatory compacts are governed by a commission comprised of appointed officials from each of the member states. These commissioners represent each member state and vote on the states’ behalf during all official commission business. Depending on the compact, the commission may also be tasked with establishing a national office to assist the commission in carrying out its mission.

The Electric Transmission Line Siting Compact

Drafting of the Interstate Electric Transmission Line Siting Compact began in October 2010 when the drafting team met for the first time at the headquarters of the Federal Energy Regulatory Commission. To date, the drafters have met in person twice and have nearly completed an initial working draft. Although the draft is still very much a work in progress and is subject to change considerably between now and the time it is sent to state legislatures for consideration and adoption, the drafters have developed a framework for a national transmission line siting compact designed to improve efficiencies during the siting process. Such an agreement, and its requirements, would be triggered on an ad hoc basis and pertain only to those states that are both members of the compact and affected by the proposed line. The drafters are attempting to create uniformity within the following areas included in the compact:

• Application filing process;
• Application review process;
• Proposed line review and timeline; and
• Approval process.

The model language addresses each of the four areas and is designed to reduce redundancies and create economies of scale within the siting process that will benefit both consumers and producers.

In addition to the four core content areas identified, the drafters also have addressed issues such as governance, finance, dispute resolution and various other components for inclusion in the model agreement. With a clearly defined governance structure, mechanisms in place to resolve disputes should they arise and a committee structure capable of allowing the compact to evolve over time, the goal of the drafters is to create a level of cooperation and sustainability not previously obtained.

The drafting team likely will need to meet at least once, perhaps twice, more, depending on how quickly the drafting process moves. The team’s goal is to have a final draft completed by early summer of 2012. Once the draft language is finalized, it will be circulated to the advisory committee and interested stakeholders for review and comment to ensure that the developed framework is practical and workable. If the advisory committee and stakeholders approve the draft language will be sent to state legislature for consideration and adoption. The earliest that will occur is the 2013 state legislative sessions.

For more information about CSG’s ongoing effort to develop an electric transmission line siting compact, contact Crady deGolian at cdegolian@csg.org.