

**THE COUNCIL OF STATE GOVERNMENTS**  
**THE ELECTRIC TRANSMISSION LINE SITING COMPACT**

***LEGISLATIVE BRIEFING***

*Background and Summary*

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***Background and Need***

The siting of interstate transmission lines has long been a problem that has vexed both states and the federal government. With the expected growth in electricity demand, coupled with the need to bring renewable energy to market and the necessity to enhance and secure the nation's energy infrastructure, the need for added transmission capacity has never been more apparent. National need and parochial interests, however, often do not align and have led to an underdeveloped and overstressed electricity transmission system.

Under the Energy Policy Act of 2005, the Federal Energy Regulatory Commission was granted backstop authority to site transmission lines in certain National Interest Electric Transmission Corridors as designated by the Department of Energy. Thus, if DOE determined that a specific geographical region was experiencing heavy electric congestion and in need of relief—and subsequently designated as a national interest corridor—the act granted the regulatory commission authority to site transmission lines if a state or states in that region unnecessarily delayed or denied requests to site transmission lines.

This authority has been fiercely contested by the states, which see the siting of transmission lines as purely a state's right. In fact, in 2011 the Ninth Circuit Court of Appeals ruled in the case of *California Wilderness Coalition v. U.S. Department of Energy*<sup>1</sup> that it was unlawful for DOE to classify areas as national interest corridors and deem them eligible for fast-track approval without first consulting with the impacted states. Although the ruling does not expressly say that interstate transmission line siting is an issue that should be left solely in the hands of the states, it does imply that states must be involved in the siting process.

While states have contested the authority of the federal government to site transmission lines, they have also recognized the need for added transmission capacity. States have expressed the desire to find a politically satisfactory mechanism to facilitate the construction of infrastructure to transmit electricity across states from areas of excessive and inexpensive electric generation to areas of insufficient and costly electric demand.

One solution may be the formation of an interstate compact governing transmission line siting. The Energy Policy Act of 2005 granted states advance congressional consent to create regional interstate compacts. Since enactment, several attempts—notably in the central Midwest and the Pacific Northwest—have been made to create multistate consensus around the issue and drive toward an interstate compact; no such agreements have been adopted to date. Such agreements, if created,

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<sup>1</sup> United States Court of Appeals for the Ninth Circuit. *California Wilderness Coalition v. U.S. Department of Energy*. Retrieved from <http://www.ca9.uscourts.gov/datastore/opinions/2011/02/01/08-71074.pdf>

would limit federal siting authority with a few exceptions—such as if the parties to a compact are in disagreement—and are attractive solutions for states seeking to facilitate transmission but forestall federal involvement.

## **The Transmission Line Siting Compact**

With the consent of the 2005 Energy Policy Act serving as a starting point, The Council of State Governments, through The National Center for Interstate Compacts, is nearing completion of an interstate transmission line siting compact. This project was born at the request of CSG's legislative leadership and is the culmination of more than two years of work, beginning with an exploratory advisory phase and concluding with a yearlong drafting process.

The compact is intended to serve as a policy option for state policymakers and is designed to improve interstate transmission line siting. A team of state legislators, federal agency representatives and other key stakeholders drafted compact language with assistance from staff from CSG's compacts center.

Based on the initial recommendations of the advisory committee, the compact 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. Drafters considered a host of issues—including eminent domain, cost-benefit analysis, and right of way—for inclusion in the draft. But they settled on these four core content areas to be included in the compact:

- Application filing process;
- Application review process;
- Proposed line review and timeline; and
- The approval process.

Drafters believe a compact that addresses each of the four areas will 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, the compact language also addresses issues such as governance, finance, dispute resolution and various other components in the model agreement.

## **Next Steps**

With compact language nearing completion, the effort will move into the education and outreach phase, beginning with a legislative briefing held in conjunction with CSG's [2012 National Conference](#) in Austin, Texas. That session is intended to inform policymakers about the compact and the potential benefits it can offer states. Subject matter experts will highlight the need for the compact, the development process and the specific areas covered by the new interstate agreement. CSG staff also is planning to convene a series of education webinars highlighting the importance of the compact. Staff also will develop electronic resources to assist state policymakers as they consider the merits of the proposed agreement.