

ILLINOIS

INDIANA

IOWA

KANSAS

MANITOBA

MICHIGAN

MINNESOTA

MISSOURI

NEBRASKA

NORTH DAKOTA

OHIO

SOUTH DAKOTA

WISCONSIN

(CLICK STATE TO ACCESS SURVEY RESPONSE)

ILLINOIS

Mr. Daniel Stenberg
Midwestern Governors Association
444 North Capitol Street, NW
Suite 401
Washington, DC 20001

Mr. Stenberg:

Attached is a response to Mr. Heier's November 21, 2008 letter, which inquired about the Illinois Commerce Commission's transmission siting authority. This information is not being provided as definitive interpretations of the legal authority granted the Illinois Commerce Commission but is information, to the best of our knowledge. This information is provided without input from Illinois Commerce Commission Staff or the Office of General Counsel.

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

Answer: Yes, the Illinois Commerce Commission has specific authority for the siting of transmission lines built by any public utility in Illinois. However, this authority does not extend to public utilities owned by a municipal corporation, electric cooperatives, cogeneration facilities, small power production facilities and qualifying facilities defined in the Public Utility Regulatory Policies Act [16 USCA §2601 et seq.]

2. If not, which agency does, if any?

Answer: Not applicable.

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? Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

Answer: No, the Illinois Commerce Commission does not have specific authority to consider regional or inter-jurisdictional projects, nor is it specifically prohibited by statute from considering such projects.

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.

Answer: No, a state statute does not specifically authorize the Illinois Commerce Commission to coordinate with other state or jurisdictional agencies or commissions on any aspect of the approval of regional or inter-jurisdictional

transmission projects, nor does a statute specifically prohibit it from such coordination.

5. Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law?

Answer: We are not aware of any other relevant sources of law that would inform the Illinois Commerce Commission's authority to consider regional transmission projects or to coordinate with other jurisdictions.

6. In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records.

Answer: The Illinois Commerce Commission has not made it a practice of considering the regional nature of transmission projects as part of its approval process. We note that 220 ILCS 5/8-406(b) requires a public utility, that is building a transmission line, to demonstrate, among other criteria:

that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

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?

Answer: No, the Illinois Commerce Commission has not made a 'practice' of coordinating with agencies or commissions of other states or provinces on specific regional or inter-jurisdictional transmission projects.

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?

Answer: No, the Illinois Commerce Commission does not have authority to authorize cost recovery from Illinois residents for a transmission project built outside of Illinois, if that transmission project is shown to provide net benefits to the ratepayers in your state and to the region.

If you have any questions, please feel free to contact one of my assistants Sean Brady, at 312-814-9490, or Sheila Griffin, at 312-793-8822.

Sincerely yours,

Robert F. Lieberman

**Responses to the Midwestern Governors Association
Prepared by the Indiana Utility Regulatory Commission**

Questions 1 and 2.

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

Response: The Indiana Utility Regulatory Commission does not have authority over the siting of transmission facilities.

Question 2: If not, which agency does, if any?

Response: In some instances, the Indiana Department of Environmental Management and Indiana Department of Natural Resources might have some authority in examples where transmission might affect wetlands or disturb antiquities.

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? Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

Response: The Indiana Commission has explicit authority to consider regional and inter-jurisdictional transmission projects to evaluate the benefits a regional transmission projects as part of a comprehensive assessment of various resource alternatives. Additionally, to foster comprehensive regional planning with a regional perspective, the statute created a permanent Forecasting Group (located at Purdue) to conduct statewide planning and to expressly consider the regional perspective. The following is Indiana's statutory language.

IC 8-1-8.5-3

Analysis of needs; plans; hearings; report

Sec. 3. (a) The commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity.

(b) This analysis must include an estimate of:

(1) the probable future growth of the use of electricity;

(2) the probable needed generating reserves;

(3) in the judgment of the commission, the optimal extent, size, mix, and general location of generating plants;

(4) in the judgment of the commission, the optimal arrangements for statewide or regional pooling of power and arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of Indiana; and

(5) the comparative costs of meeting future growth by other means of providing reliable, efficient, and economic electric service, including purchase of power, joint ownership of facilities, refurbishment of existing facilities, conservation, load management, and cogeneration.

(c) The commission shall consider the analysis in acting upon any petition by any utility for construction.

(d) In developing the analysis, the commission:

(1) shall confer and consult with:

(A) the public utilities in Indiana;

(B) the utility commissions or comparable agencies of neighboring states;

(C) the Federal Energy Regulatory Commission; and

(D) other agencies having relevant information; and

(2) may participate as it considers useful in any joint boards investigating generating plant sites or the probable needs for future generating facilities.

(e) In addition to such reports as public utilities may be required by statute or rule of the commission to file with the commission, a utility may submit to the commission its utility specific proposals as to the future needs for electricity to serve the people of the state or the area served by the utility.

(f) Insofar as practicable, each utility, the utility consumer counselor, and any intervenor may attend or be represented at any formal conference conducted by the commission in developing a plan for the future requirements of electricity for Indiana or this region.

(g) In the course of making the analysis and developing the plan required by this section, the commission shall conduct one (1) or more public hearings.

(h) Each year, the commission shall submit to the governor and to the appropriate committees of the general assembly a report of its analysis and plan, the progress to date in carrying out such plan, and the program of the commission for the ensuing year in connection with such plan.

As added by P.L.43-1983, SEC.12. Amended by P.L.88-1985, SEC.7; P.L.53-1992, SEC.2.

IC 8-1-8.5-3.5

Forecasting group

Sec. 3.5. (a) To arrive at estimates of the probable future growth of the use of electricity required by section 3(b)(1) of this chapter, the commission shall establish a permanent forecasting group to be located at a state supported college or university within Indiana. The commission shall financially support the group, which shall consist of a director and such staff as mutually agreed upon by the commission and college or university, from funds appropriated to the commission.

(b) **The forecasting group shall develop and keep current a methodology for forecasting the probable future growth of the use of electricity within Indiana and within this region of the nation.** To do this, the group shall solicit the input of residential, commercial, and industrial consumers and the electric industry.

(c) The commission shall use the methodology that the forecasting group devises as the commission's primary methodology in developing and keeping current the commission's:

(1) analysis of the long range needs for expansion of facilities for the generation of electricity required by section 3(a) of this chapter; and (2) plan for meeting the future requirements of electricity required by sections 3(e), 3(f), and 3(g) of this chapter.

As added by P.L.88-1985, SEC.8. Amended by P.L.53-1992, SEC.3.

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.

Response: *Yes, for the reasons discussed in question 3 the Indiana Commission does have authority to coordinate with other states.*

Question 5.

Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law?

Response: *No. As stated in responses to questions 3 and 4 and as part of this Commission's broad investigatory authorities over Indiana utilities, the IURC believes that it has authorities to consider regional transmission projects.*

Question 6.

In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records.

Response: *The Commission has not yet considered a formally docketed case involving transmission projects that have regional implications. However, we expect to be considering whether the affiliate of*

Duke and AEP that are developing the Pioneer 765 kV project should be granted “utility” status with the right of eminent domain and granted other privileges and responsibilities of a public utility under Indiana law.

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?

Response: *The Indiana Commission anticipates being active in the Regional Transmission Organizations (Midwest ISO and the PJM) transmission planning processes and have advocated that state commissions take a leadership role in considering a comprehensive portfolio of resource options –including transmission, generation, demand response, and energy efficiency. As mentioned in response to question 6, however, the Indiana Commission has not yet considered a formal case. While the Commission has had discussions with Kentucky in an attempt to determine the feasibility of coordination, no formalized agreement was completed and no cases have been at issue.*

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?

Response: *Since the determination of transmission rates is subject to regulation by the Federal Energy Regulatory Commission, case law (e.g., Mobile Sierra Doctrine) is clear that states are obliged to allow FERC approved costs to be passed through to retail customers. While the IURC does have influence with Indiana’s jurisdictional utilities concerning the projects that they consider, the IURC believes its ability to influence the allocation of costs from projects throughout the Midwest ISO and the PJM as well as any remedies that may result from an allocation of costs that the IURC deems to be unjust or unduly discriminatory are limited to participation in the Regional Transmission Organizations stakeholder processes, the right to file with the FERC, and the right to appeal decisions of the FERC to the federal courts.*

IOWA

February 10, 2009

Mr. Jesse Heier
Washington Director
Midwest Governors Association
444 North Capitol Street, N.W., Suite 401
Washington, D.C. 20001

Dear Mr. Heier;

Thank you for your letter of November 21, 2008. I apologize for the delay in responding to your requests. I have outlined below the questions posed regarding our jurisdiction and regulatory authority with regards to approving cost recovery for regional transmission projects.

1. *Does your commission or regulatory body have specific statutory authority for transmission siting in your jurisdiction?*

The Board generally has transmission-siting jurisdiction over any transmission line capable of operating at 69 kV or above that is located outside of cities. This jurisdiction extends to any person constructing or operating such a line, and therefore extends not only to traditional vertically integrated utilities but also to such entities as independent transmission companies. The Board's statutory authority is contained in Iowa Code chapter 478.

2. *If not, which agency does, if any?*

See response to question 1 above.

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? Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.*

In order to obtain a transmission line franchise, one of the items that must be established is that the proposed line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code section 478.3(3) specifically provides that for

Page 2

Mr. Heier

February 10, 2009

purposes of this section, the term "public" shall not be interpreted to be limited to consumers in this state. Although this section doesn't specifically provide for coordination with other states with respect to regional transmission projects, it does allow the Board to consider public interest more broadly than a focus solely on Iowa consumers and would allow the Board to consider the regional benefits of a proposed transmission line.

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.

See response to question 4 above. We are aware of no statutes specifically prohibiting or authorizing such coordination.

5. *Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law?*

We are aware of no such case law or rules dealing with coordination of transmission siting.

6. *In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records.*

There has not been a case in Iowa that has presented the opportunity for specific consideration of such benefits.

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?*

There has not been a case in Iowa that has presented the need for such coordination.

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?*

There is no such specific authority and it has not been an issue in a rate case so it is unknown if the Board's general authority in Iowa Code chapter 476 would allow the Board to authorize recovery from Iowa ratepayers for such a project.

Much work has been done on issues such as those raised above. In particular, please see the website for the Organization of MISO States, www.misostates.org. There, you can find information on the NW Subgroup's Multi-State coordination, including a public memorandum and completed tasks. This contains detailed information regarding five states' (Iowa, Minnesota, Wisconsin, North Dakota, and South Dakota) electric transmission siting processes, including their ability to coordinate and information regarding the other questions you have asked.

I hope I have covered all topics. Should you have further questions or concerns, please don't hesitate to contact us.

Sincerely,

John Norris
Chairman

JRN/jab

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

This authority is granted in K.S.A. 66-1,177 et seq., Transmission Line Siting Act. The provisions of this act were summarized in the Direct Testimony of Mark Doljac in Docket No. 99-SWPE-764-MIS as follows:

The Electric Transmission Siting Act, K.S.A. 66-1,177 et seq. (the Siting Act), contains requirements that apply particularly to electric transmission lines, meaning lines that are at least five miles in length which are used for the bulk transfer of electric power at a voltage level of 230-kV or more. A company that proposes to build an electric transmission line must meet statutory requirements which call for the company to apply for and acquire a siting permit from the Commission before it may begin site preparation for or construction of an electric transmission line, or exercise the right of eminent domain to acquire any interest in land for the purpose of construction. The Commission will then hold a hearing on the application to determine the necessity for and the reasonableness of the location of the proposed electric transmission line. The Commission must then either issue or withhold the permit based on its decision with respect to the necessity for and the reasonableness of the location of the proposed electric transmission line. Because electric transmission lines are a subset of electric supply lines, an applicant proposing to build an electric transmission line, as defined by the Siting Act, must meet the requirements set forth in both the Wire-Stringing Rules [K.A.R. 82-12-4 et seq.] and the Siting Act.

2. If not, which agency does, if any?

In addition to Commission authority with respect to transmission line siting (project necessity and reasonableness of the route), transmission project approval is also contingent upon the findings of other state agencies, including but not limited to:

- Kansas Department of Health and Environment
- Kansas Department of Transportation
- Kansas Department of Wildlife and Parks
- Kansas Department of Agriculture
- Kansas Biological Survey
- Kansas State Historical Society

3. (a) 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?

Statutory authority in this regard rests in K.S.A. 74-633 and K.S.A. 66-106 as follow:

K.S.A. 74-633. Representative to regional transmission organization, authority.

(a) The state corporation commission representative to any regional transmission organization recognized by the federal energy regulatory commission of which one or more Kansas 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.

(b) Nothing in this section shall limit the state corporation commission's regulatory jurisdiction or authority to appeal to the federal energy regulatory commission any decision by a regional transmission organization or relieves the commission of its obligation and authority to ensure electric public utilities provide efficient and sufficient service.

K.S.A. 66-106. Rules and regulations; assessment of costs; conferral with other authorities; agreements; contributions and grants; joint investigations, hearings, orders; duties of attorney general.

(a) The state corporation commission shall have power to adopt reasonable and proper rules and regulations to govern its proceedings, including the assessment and taxation of costs on any complaint provided for in K.S.A. 66-133 and amendments thereto, and to regulate the mode and manner of all investigations, tests, audits, inspections and hearings not specifically provided for herein, except that no person desiring to be present at any investigation or hearing by the commission shall be denied admission.

(b) The state corporation commission may:

(1) Confer with officers of other states and officers of the United States on any matter pertaining to the state corporation commission's official duties; and

(2)

(A) enter into and establish fair and equitable cooperative agreements or contracts with or act as an agent or licensee for the United States, or any official, agency or instrumentality thereof, or any railroad, public utility or similar commission of another state, for the purpose of carrying out the state corporation commission's duties;

(B) to that end receive and disburse any contributions, grants or other financial assistance as a result of or pursuant to such agreements or contracts; and

(C) make joint investigations, hold joint hearings within or outside the state and issue joint or concurrent orders in conjunction or concurrence with such official, agency, instrumentality or commission.

(c) The attorney general, when requested, shall give the state corporation commission or the attorney for the commission such counsel and advice as the commission or the attorney for the commission may from time to time require. It is hereby made the duty of the attorney general to aid and assist the commission and the attorney for the commission in all hearings, suits and proceedings in which the commission or attorney for the commission requests the attorney general's assistance.

3. (b) Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

Staff is unaware of any specific Kansas statutory prohibitions in this regard.

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.

See responses to 3(a) and 3(b) above.

5. Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law?

There is no case law directly on this point, but courts have found that the KCC has broad general authority.

6. In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records.

Yes. The Commission has considered the regional nature of transmission projects involving regulated utilities in the following dockets:

Docket No. 99-SWPE-764-MIS, *In the Matter of the Application of Southwestern Public Service Company for a Siting Permit for the Construction of a 345 kV Transmission Line in Hamilton, Kearny, Finney, Grant, and Stevens Counties, Kansas*; Direct Testimony of Mark F. Doljac.

Docket No. 07-WSEE-715-MIS, *In the Matter of the Application of Westar Energy, Inc. and Kansas Gas and Electric Company (collectively "Westar") for a Siting Permit for the Construction of a 345 kV Transmission Line in Sedgwick, Harvey, Reno, McPherson and Saline Counties, Kansas*; Direct Testimonies of Mark F. Doljac and Thomas B. DeBaun.

Docket No. 08-ITCE-544-COC, *In the Matter of the Application of ITC Great Plains, LLC to Amend its Certificate of Public Convenience and Authority To Transact the Business of an Electric Public Utility in the State of Kansas.* [Spearville-Knoll-Axtell Project] (Regional nature only; not siting or determination of necessity.)

Docket No. 08-WSEE-609-MIS, *In the Matter of the Application of Westar Energy, Inc. and Kansas Gas and Electric Company (Collectively "Westar") for a Siting Permit for the Construction of a 345 kV Transmission Line in Butler, Sumner and Cowley Counties, Kansas* [Rose Hill to Sooner]; Direct Testimonies of Mark F. Doljac and Thomas B. DeBaun.

The Commission has also considered the regional nature (not siting or determination of necessity) of one transmission project for a non-regulated utility:

Docket No. 08-KMOE-028-COC, *In the Matter of the Application of KAMO Electric Cooperative, Inc. for a Limited Certificate of Public Convenience to Transact the Business of an Electric Public Utility in the State of Kansas*; Order Approving Unanimous Settlement Agreement.

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?

Yes. Through its member-representative to the Southwest Power Pool Regional State Committee (SPP RSC) the Commission has coordinated with the agencies or commissions of other states in this regard. Commission staff participates in various working groups within the SPP.

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?

The Commission does not have authority to independently authorize cost recovery for a transmission project to be built outside its jurisdiction. However, through its member- representative to the SPP RSC and statutory authority cited above, the Commission does have limited authority to participate in a regional process that determines cost recovery for regional projects outside its jurisdiction.

It should be noted that, under the Southwest Power Pool Regional State Committee By-laws, Article VIII, “No vote of, or resolution passed by, the SPP RSC Board of Directors has any binding effect upon any member state regulatory agency, or any associate member, in the exercise of that entity’s powers.”

Manitoba

The following questions were addressed to our chairman, Graham Lane. I will respond as best I can, but first let me give you an overview of the regulatory environment in Manitoba vis-à-vis Manitoba Hydro. The Manitoba Public Utilities Board only has jurisdiction over rates for power. Our knowledge of the matters mentioned below is that acquired for the rate setting process. Manitoba Hydro is a self-regulated Crown corporation, reporting directly to Government, with the Manitoba Department of Science, Technology, Energy and Mines having oversight responsibilities. The Senior bureaucrat on this file in that department is J. Dan McInnis, Assistant Deputy Minister, and I have taken the liberty of copying him in this response.

1. Does your commission or regulatory body have specific statutory authority for transmission siting in your jurisdiction? **No**

2. If not, which agency does, if any? **Manitoba Hydro in consultation with the Government**

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? **No, only to review rate implication post-construction** Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes. **No prohibition as such, more a lack of enablement and mandate.**

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. **Same as answers to 3 above**

5. Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law? **None**

6. In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records. **See answers to 3 above**

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? **See answers to 3 above**

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? **While we have no role in approving the cost recovery, we do consider it as a source of revenue in determining revenue requirements for rate setting purposes**

Michigan Public Service Commission Response
December 22, 2008

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

The Michigan Public Service Commission (MPSC, Michigan Commission) has statutory authority for siting transmission lines in the State of Michigan pursuant to the Electric Transmission Line Certification Act, 1995 PA 30, MCL 460.561.

2. If not, which agency does, if any? n/a

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? Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

The MPSC does not have specific statutory authority to consider regional or inter-jurisdictional transmission projects, such as the benefits that a regional transmission project may offer. Nor is the Michigan Commission specifically prohibited by statute from considering the regional nature or regional benefits of such transmission projects.

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.

No state statute specifically authorizes the Michigan Commission to coordinate with other state or jurisdictional agencies or commissions on any aspect of the approval of regional or inter-jurisdictional transmission projects, nor does any statute prohibit such coordination. The MPSC and its Staff are active participants in the regional state committees for our RTOs and in the RTO regional planning processes. The following is a general description of the requirements of Michigan's Electric Transmission Line Certification Act:

The Electric Transmission Line Certification Act was enacted in 1995. Prior to 1995, the State's role in regulating high voltage transmission lines was limited to issuing or denying "environmental permits, and ruling on the utility's request to recover its costs through rates charged to customers."¹ The Electric Transmission Line Certification Act centralized, under the Michigan Public Service Commission,² the authority to issue certificates of public convenience and necessity.

¹ Senate Fiscal Agency Analysis, SB 408, March 28, 1995.

² Senate Fiscal Agency Analysis, SB 408, March 28, 1995.

Under the Act, an independent transmission company must seek from the Commission a certificate of public convenience and necessity to construct a transmission line of five miles or more in length "through which electricity is transferred at system bulk supply voltage of 345 kilovolts (kV) or more."³ Before applying for a certificate, the independent transmission company must: (1) submit a construction plan to the Commission and to "each municipality in which construction of the planned major transmission line is intended";⁴ (2)"schedule and hold a public meeting in each municipality through which a portion of the major transmission" would pass;⁵ and (3)"offer in writing to meet with the chief elected official of each affected municipality" to discuss the proposed major transmission line and to explore routes to be considered.⁶

The Electric Transmission Line Certification Act requires that the applicant include the following data in its application in support of its request for a certificate of public convenience and necessity⁷:

- (a) The planned date for beginning construction.
- (b) A detailed description of the proposed major transmission line, its route, and its expected configuration and use.
- (c) A description and evaluation of one or more alternative major transmission line routes and a statement of why the proposed route was selected.
- (d) If a zoning ordinance prohibits or regulates the location or development of any portion of a proposed route, a description of the location and manner in which that zoning ordinance prohibits or regulated the location or construction of the proposed route.
- (e) The estimated overall cost of the proposed major transmission line.
- (f) Information supporting the need for the proposed major transmission line, including identification of known future wholesale users of the proposed major transmission line.
- (g) Estimated quantifiable and nonquantifiable public benefits of the proposed major transmission line.
- (h) Estimated private benefits of the proposed major transmission line on any legal entity that is affiliated with the applicant.
- (i) Information addressing potential effects of the proposed major transmission line on public health and safety.
- (j) A summary of all comments received at each public meeting and the applicant's response to those comments.

³ MCL 460.562(g), MCL 460.567(1).

⁴ MCL 460.564(2).

⁵ MCL 460.566(1).

⁶ MCL 460.566(2).

⁷ MCL 460.567(2)(a)-(1).

- (k) Information indicating that the proposed major transmission line will comply with all applicable state and federal environmental standards, laws, and rules.
- (l) Other information reasonably required by the commission pursuant to rule.

Upon applying for a certificate, the applicant shall publish a notice regarding the proposed transmission line in a newspaper of general circulation in the area to be affected and shall send a notice to each "affected municipality and each affected landowner on whose property a portion of the proposed major transmission line will be constructed."⁸ Upon receipt of an application for a certificate of public convenience and necessity, the Commission shall commence a contested case proceeding.⁹ "[E]ach affected municipality and each affected landowner shall be granted full intervenor status as of right in Commission proceedings concerning the proposed major transmission line."¹⁰

After a hearing, the Commission shall grant an application for a certificate if the Commission determines all of the following¹¹:

- (a) The quantifiable and nonquantifiable public benefits of the proposed major transmission line justify its construction.
- (b) The proposed or alternative route is feasible and reasonable.
- (c) The proposed major transmission line does not present an unreasonable threat to public health or safety.
- (d) The applicant has accepted the conditions contained in a conditional grant.

"The Commission may condition its approval upon the applicant taking additional action to assure the public convenience, health, and safety and reliability of the proposed transmission line."¹² The certificate shall also "identify the major transmission line's route and shall contain an estimated cost of the transmission line."¹³ The Commission has one year from the date of applicant's filing to grant or deny the application for a certificate.¹⁴

If the Commission grants a certificate of public convenience and necessity, it preempts certain local ordinances or laws¹⁵: If the commission grants a certificate under this act, that certificate shall take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of a transmission line for which the commission has issued a certificate.

⁸ MCL 460.568(1).

⁹ MCL 460.568(2).

¹⁰ MCL 460.568(2).

¹¹ MCL 460.568(5).

¹² MCL 460.568(4).

¹³ MCL 460.568(6).

¹⁴ MCL 460.568(4).

¹⁵ MCL 460.570(1).

Zoning ordinances enacted after an application for a certificate of public convenience is filed "shall not limit or impair the transmission line's construction, operation, or maintenance."¹⁶ A certificate issued under the Electric Transmission Line Certification Act is conclusive and binding as to the public convenience and necessity in an eminent domain or related proceeding¹⁷:

In an eminent domain or other related proceeding arising out of or related to a transmission line for which a certificate is issued, a certificate issued under this act is conclusive and binding as to the public convenience and necessity for that transmission line and its compatibility with the public health and safety or any zoning or land use requirements in effect when the application was filed.

Finally, in a civil action in a circuit court under the Uniform Condemnation Procedures Act,¹⁸ an alleged lack of public convenience and necessity may not be used as a reason for denying a limited license for entry onto private property to conduct preconstruction activity related to a proposed major transmission line.¹⁹

5. Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law?

We are aware of no other relevant sources of law that inform our Commission's authority to consider regional transmission projects or to coordinate with other jurisdictions.

6. In practice has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records.

In the two applications for issuance of a certificate for a transmission lines filed since the statute's passage in 1995, MPSC Case No. U-14933 and Case No. U-14861, neither the applicant, International Transmission Company, nor other parties to the case, raised any regional, i.e., multi-state, concerns.

MPSC Case No. U-14861 can be found at:

<http://efile.mpsc.cis.state.mi.us/efile/viewcase.php?casenum=14861>.

MPSC Case No. U-14933 can be found at:

<http://efile.mpsc.cis.state.mi.us/efile/viewcase.php?casenum=14933>.

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?

¹⁶ MCL 460.570(2).

¹⁷ MCL 460.570(3).

¹⁸ MCL 213.54 *et seq.*

¹⁹ MCL 460.571(a)-(d).

The Michigan Commission does work with other states in the regional state committee processes for our RTOs, and is active in our RTOs' stakeholder transmission planning processes and Federal Energy Regulatory Commission (FERC) dockets on our own and with our regional state committees. MISO has no decision-making authority to determine whether a transmission project is sited.

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?

The Michigan Commission does not have authority to authorize cost recovery of a transmission project outside our jurisdiction because the transmission companies in Michigan are regulated by the FERC, not the MPSC.

Minnesota

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

A: Yes. Construction of extra high voltage transmission lines in Minnesota requires two major approvals from the MPUC: a Certificate of Need and a Route Permit. Both permits are often referred to as 'siting' approvals.

Certificate of Need: Minn. Stat. § 216B.243, Minn. Rules 7849.0010

Route Permit: Minn. Stat. § 216E, Minn. Rules 7849.5010

Authority and administrative rules for these two approvals have separate statutory tracks. The Certificate of Need jurisdiction has been with the MPUC for many years. The Route Permit jurisdiction resided at the Minnesota Environmental Quality Board from 1973 to 2005, when it was transferred to the MPUC. Though not designed to be administered jointly, the MPUC has had success in developing joint records and managing the two required proceedings simultaneously when both applications are filed together.

Q: 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? Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

A: Yes. The Minnesota Public Utilities Commission (MPUC) has specific statutory authority to consider regional or inter-jurisdictional transmission projects under both siting authorities.

Certificate of Need: Minn. Stat. § 216C.243k, Subd. 3. Showing required for construction.

(3) the relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report prepared under section [216C.18](#), or, in the case of a high-voltage transmission line, the relationship of the proposed line to regional energy needs, as presented in the transmission plan submitted under section [216B.2425](#);

(7) the policies, rules, and regulations of other state and federal agencies and local governments;

(9) with respect to a high-voltage transmission line, the benefits of enhanced regional reliability, access, or deliverability to the extent these factors improve the robustness of the transmission system or lower costs for electric consumers in Minnesota;

Route Permit: Minn. Stat. § 216E.02, Subd. 3. Interstate routes.

If a route is proposed in two or more states, the commission shall attempt to reach agreement with affected states on the entry and exit points prior to designating a route. The commission, in discharge of its duties pursuant to this chapter may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States. The commission may negotiate and

enter into any agreements or compacts with agencies of other states, pursuant to any consent of Congress, for cooperative efforts in certifying the construction, operation, and maintenance of large electric power facilities in accord with the purposes of this chapter and for the enforcement of the respective state laws regarding such facilities.

Q: 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.

A: Yes. See answer to previous question.

Q: Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law?

A: Minn. Stat. Section 216A.05, subd. 6. Operation with regard to federal law.

The commission is authorized:

(1) to cooperate with all federal agencies for the purpose of harmonizing state and federal regulations within the state to the extent and in the manner deemed advisable;

(2) to conduct joint hearings with any federal agency or commission within or without the state and participate in any proceedings before any federal agency or commission when it considers such participation advisable and in the interest of the people of this state;

(3) to nominate members to any joint board as provided by federal acts.

Q: In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records.

A: Yes, but limited.

Big Stone Transmission Project

(Need 05-619) (Route 05-1275); SD border

CAPX Transmission Projects (3)

(Need 06-1115); SD, ND, WI borders

Southwest Minn. Transmission Projects (2of4)

(Need 01-1958) (Route EQB # 03-73-TR-XCEL); SD border

Arrowhead-Weston Transmission Project

(Need NA) (Route EQB # MP-HVTL-EA-1-99); WI border

Chisago Transmission Project

(Need NA)(Route EQB # NSP-TR-4); WI border

Q: 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?

A: No. In the Big Stone II proceeding, the MPUC expressed interest in joint hearings with the South Dakota Public Utilities Commission. However, the SDPUC did not share that interest and no hearings were ever conducted.

Also: Once, in the early 1980's, EQB (route) held joint contested case hearings with PSCW (route and need) for NSP proposed 345kV crossing of Mississippi River at Prairie Island. Dual ALJ's at all hearings. Coordinated environmental review.

Ultimately Wisconsin PSC acted first, denying application and requiring lower kV solution. Minnesota application was withdrawn.

Q: 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?

A: The Midwest ISO addresses this. The Upper Midwest Transmission Development Initiative (UMTDI) expects to also address this. Historically this has been addressed in coordination agreements for cross-border allocations where native utilities have multi-state jurisdictions.

Unsolicited Comment: The federal environmental review process has significantly delayed recent major projects under review by the MPUC. Further, federal agency policies have seriously affected both timing and consequences of siting efforts, most notably that of the Federal Highway Administration disallowing accommodation of transmission facilities on the interstate highway system. Certainly the state has had its timing challenges, but the federal policies and coordination practices are currently major limitations to expedited state review. Perhaps state backstop siting authority is needed.

**MISSOURI PUBLIC SERVICE COMMISSION'S RESPONSE
TO MIDWEST GOVERNORS ASSOCIATION REGARDING
REGULATORY AUTHORITY FOR COST RECOVERY
FOR REGIONAL TRANSMISSION PROJECTS**

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

The Missouri Public Service Commission (MoPSC) has statutory authority, as interpreted by appellate decisions, for the granting of certificates of public convenience and necessity for the construction of electric plant, including transmission lines

2. If not, which agency does, if any?

The MoPSC does not necessarily have the sole authority.

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? Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

The MoPSC does not have specific statutory authority to consider regional or interjurisdictional transmission projects, nor is the MoPSC specifically prohibited by statute from considering the regional nature of transmission projects.

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.

A state statute does not specifically authorize the MoPSC to coordinate with other state or jurisdictional agencies or commissions on any aspect of the approval of regional or interjurisdictional transmission projects, nor does a state statute specifically prohibit the MoPSC from such coordination.

5. Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law?

Regarding the authority of the MoPSC to hold joint investigations, hold joint hearings, and issue joint or current orders in conjunction or concurrence with any similar commission of other states or the United States, see Section 386.210.7, RSMo Cum. Supp. 2008.

6. In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records.

Respondent for the MoPSC can think of no such instance at this time.

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?

To the extent that MoPSC Commissioners and staff have actively participated and continue to actively participate in the Midwest Independent Transmission System, the Organization of MISO States, the Southwest Power Pool, and the Southwest Power Pool Regional State Committee.

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?

The MoPSC has authority to authorize cost recovery for a transmission project to be built outside Missouri (once the project is fully operational and used for service), if that transmission project is shown to provide net benefits to Missouri retail ratepayers of an electric utility regulated by the MoPSC.

NEBRASKA

Thank you for forwarding a copy of the survey previously sent to Power Review Board member Gene Bade. Mr. Bade does not recall receiving it previously. After reviewing the letter, Mr. Bade asked me to prepare the responses on behalf of himself and the Power Review Board. Below are the responses. I hope these responses provide you with the information you were seeking. Please let me know if you or Mr. Heier have any follow-up questions.

1. Does your Commission or regulatory body have specific statutory authority for transmission siting in your jurisdiction?

The Nebraska Power Review Board (NPRB) must approve all transmission lines over 700 volts that are to be built outside a power supplier's service area boundary. Pursuant to Neb. Rev. Stat. section 70-1014, the Board's approval criteria is based on public convenience and necessity, that the applicant can most economically and feasibly supply the electric service resulting from the project, and that the project does not unnecessarily duplicate existing facilities or operations. The NPRB does not have the authority to require that a proposed transmission line follow (or avoid) any specific route.

2. If not, which agency does, if any?

See answer to question 1.

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? Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

The NPRB does not have specific statutory authority to consider regional or inter-jurisdictional transmission projects and their potential benefits. Neither is the NPRB specifically prohibited from considering the regional nature of projects. However, under Nebraska caselaw, the absence of statutory authority to consider regional projects and their benefits likely makes a specific prohibition unnecessary. The NPRB's authority to review transmission projects is derived from Neb. Rev. Stat. sections [70-1012](#) and [70-1014](#). (These links should take you directly to the statutes).

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.

The NPRB does not have specific authority to coordinate with other state or jurisdictional agencies or commissions concerning the approval of regional or inter-jurisdictional transmission projects. Neither is there any statute specifically prohibiting such coordination.

5. Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law?

We are not aware of any other sources of law that would provide the NPRB with authority to consider the benefits of regional transmission projects.

6. In practice, has your commission considered the regional nature of transmission projects in the past decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records.

When considering applications for transmission lines, the NPRB does take into account the increased safety and reliability a line can bring to an area beyond its immediate customers and area to be served, as a part of the public convenience and necessity. Although we do not have specific examples, it is possible the NPRB could take into account such factors if asked to approve a line that provides increased safety and reliability to Nebraska's electric customers.

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

The NPRB has not previously coordinated with agencies or commissions in other states in a decision-making process on a regional or inter-jurisdictional transmission project.

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?

Nebraska has a unique electric industry, in that all electric power suppliers are consumer-owned. They are either political subdivisions of the state (public power districts or municipalities) or cooperatives. Thus, the elected members of each electric utility's governing body are allowed to determine their own policy regarding cost recovery for transmission lines. The NPRB does not have direct jurisdiction over matters relating to rates or cost recovery.

Response of ND Public Service Commission to Midwestern Governors Association Regulatory Jurisdictional Inquiry

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

Yes, the North Dakota PSC has specific statutory authority for transmission siting under chapter 49-22 of the North Dakota Century Code.

2. If not, which agency does, if any?

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? Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

North Dakota Administrative Code section 69-06-08-02(4) provides:

4. Policy criteria. The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits... (emphasis added)

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.

North Dakota Century Code section 49-22-14.1 provides:

49-22-14.1. Cooperation with state and federal agencies. The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common data base, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein.

5. Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law?

None identified.

6. In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records.

Yes. A certificate of Public Convenience and Necessity must be obtained by jurisdictional (investor-owned) electric utilities prior to constructing transmission lines in North Dakota. Regional needs are a factor that would be considered by the Commission in determining whether to issue a PC&N. An example would be the Harvey ND to Glenboro Manitoba 230 kV transmission line (Case Nos. PU-400-03-688 and PU-2805-03-667) where the enhancement of transmission

capability in Southern Manitoba was a factor in the Commission's decision to grant certificates.

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?

No. However, there has been some informal contact between ND and MN staff regarding a border crossing point yet to be determined for the proposed Monticello to Fargo 345 kV Cap-X transmission line.

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?

Yes. In addition to rate case authority, North Dakota Century Code section 49-05-04.3 provides:

49-05-04.3. Rate adjustment - Transmission facility costs.

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06 which provides for an adjustment of rates to recover jurisdictional capital and operating costs incurred by a public utility for new or modified electric transmission facilities. For purposes of this section, an electric transmission facility includes an electric transmission line as defined in chapter 49-21.1 and other transmission line equipment, including substations, transformers, and other equipment constructed to improve the power delivery capability or reliability of the electric transmission system; and operating costs include federally regulated costs charged to or incurred by the public utility to increase regional transmission capacity or reliability. The tariff must:

- a. Allow the public utility to recover on a timely basis its investment and associated costs for new or modified electric transmission facilities not reflected in the utility's general rate schedule;
- b. Allow a return on the public utility's investment made for new or modified electric transmission facilities at the level approved in the utility's most recent general rate case;
- c. Provide a current return on construction work in progress for new or modified electric transmission facilities, provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means; and
- d. Terminate cost recovery after the public utility's costs for new or modified electric transmission facilities have been recovered fully or have been reflected in the utility's general rate tariffs.

2. Rate adjustments filed under the tariff must be accompanied by:

- a. A description and quantification of the costs incurred by the public utility for new or modified electric transmission facilities which are subject to recovery;
- b. A schedule for implementation of the applicable transmission facility projects; and
- c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff.

3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs for new or

modified electric transmission facilities are not reasonable and prudent. The commission may order the public utility to pay the expenses of investigating rate adjustments for recovery of transmission facility costs under this section in accordance with section 49-02-02.

Midwestern Governors Association
Cost Recovery for Regional Transmission Projects
State of Ohio

1.) Does your commission or regulatory body have specific statutory authority for transmission siting in your jurisdiction?

Yes. The Ohio Power Siting Board (OPSB) is responsible for siting:

- A generating plant of 50 MW or more;
- An electric transmission line of 125 kilovolts (kV) or more; and
- A gas or natural gas transmission line capable of transporting gas at more than 125 pounds per square inch of pressure.

The chairman of the Public Utilities Commission of Ohio (PUCO) serves as the chairman of the OPSB.

The OPSB is comprised of 11 members. The seven voting members are the:

- Director of the Ohio Environmental Protection Agency;
- Director of the Ohio Department of Agriculture;
- Director of the Ohio Department of Development;
- Director of the Ohio Department of Health;
- Director of the Ohio Department of Natural Resources;
- Chairman of the Public Utilities Commission of Ohio; and
- A member of the public.

2.) If not, which agency does, if any?

N/A

3.) Does your commission have specific statutory to consider regional or inter-jurisdictional transmission projects, such as the benefits a regional transmission project may offer? Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

Yes. The Ohio Revised Code (ORC) specifically authorizes the OPSB to consider the needs of the region.

“In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and inter-connected utility systems and that the facility will serve the interests of electric system economy and reliability.” ORC 4906.10

4.) Does a state statute specifically authorize your commission to cooperate 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.

Yes, the ORC does specifically authorize the OPSB to cooperate with other state and federal entities.

“The power siting board, in the discharge of its duties under Chapter 4906. of the Revised Code, may make joint investigations, hold joint hearings within or without the state, and issue

joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States, whether in the holding of such investigations or hearings, or in the making of such orders, the board is functioning under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce, or as an agency of the United States, or otherwise. The board, in the discharge of its duties under Chapter 4906. of the Revised Code, may negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of congress, for cooperative efforts in certificating the construction, operation, and maintenance of major utility facilities in accord with the purposes of such sections and for the enforcement of the respective state laws regarding such facilities.” ORC 4906.14

- 5.) Are there other relevant sources of law that would inform your commission’s authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for the sources of law? [ORC 4906.10\(A\)\(4\) requires that siting applications for transmission or generating facility be consistence with plans for expansion of the electric power grid.](#)
- 6.) In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)? Please share citations to do dockets or other relevant records. [The need for a facility is reviewed for each application. A part of the review includes looking at the impact the proposed facility will have on the regional transmission grid as required under ORC 4906.10.](#)
- 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? [Yes. The OPSB processed an application for a transmission line that went from Ohio into Kentucky \(Case No. 03-0132-EL-BTX\).](#)
- 8.) Does your commission have authority to authorize cost recovery for a transmission project to be built outside of your jurisdiction, if that transmission project is shown to provide net benefits to the ratepayers in your state and to the region? [The OPSB does not have authority to authorize cost recovery. Although neither the OPSB or the OPUC has authority to authorize the cost recovery for transmission projects outside their jurisdiction, both OPSB and the OPUC strongly support a project cost recovery based upon beneficiary pays methodology.](#)

SOUTH DAKOTA

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

Yes. Our authority generally includes health, safety, and public interest concerns, and not need authority.

2. If not, which agency does, if any?

We are the primary jurisdictional agency, although as is true with most states other agencies and local government may have some degree of jurisdiction as well.

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?

We have made such determinations in the past as it applies to rate-basing projects completed in other states by multi-state utilities. We expect that would include projects such as those mentioned within the question.

Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

No.

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?

Doesn't specifically address.

Alternatively, does a statute specifically prohibit your commission from such coordination? Please share the citation and language of any relevant statutes.

No.

5. Are there other relevant sources of law that would inform your commission's authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions?

None that I am aware of or which has been cited in prior matters.

If so, could you share citations for those sources of law? N/A

6. In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting, determinations of need, etc.)?

Not specifically, although when reviewing projects completed by a multi-state utility there would be some form of implied consideration. But such approval is related to an interconnected system and not necessarily related to a "regional" project.

If so, how?

Please share citations to dockets or other relevant records.

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?

No.

If so, how?

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?

The scenario described is a bit unclear as to whether the facilities perform some role in providing jurisdictional service, a fact which would help in making such a decision. Nonetheless, this commission has authorized payment on projects such as research that is perceived to benefit customers even though the benefit may not be direct. To the extent customer benefit can be shown, likely the commission could review and possibly approve cost recovery.

Midwestern Governors Association

Survey Response of the Public Service Commission of Wisconsin

December 18, 2008

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

Answer:

Yes, public utilities and “any person” are subject to Wis. Stat. §§ 196.49 and 196.491,²⁰ respectively, for purposes of transmission siting.

Wis. Stat. § 196.49(3)(b) provides that no public utility construction project may proceed “until the commission has certified that public convenience and necessity require the project.” Supporting that certification authorization (CA) power, the Public Service Commission of Wisconsin (PSCW) may require of the public utility “plans, specifications, and estimated costs of any proposed project which the commission finds will materially affect the public interest.” Wis. Stat. § 196.49(3)(a). The PSCW “may attach to the issuance of its certificate such terms and conditions as will ensure that the project meets the requirements of this section.” Wis. Stat. § 196.49(3)(c).

Wis. Admin. Code ch. PSC 112 interprets and implements the above statutory requirement by identifying the types of electric generation and transmission facilities that require a CA, and specifying the contents of CA application. With respect to transmission facilities, a transmission line project requires a CA if the line’s design capacity is 40 kV or higher, per Wis. Admin. Code § PSC 112.02(8), and exceeds 10 miles in length certain cost thresholds, per Wis. Admin. Code § PSC 112.05(1m). Wis. Admin. Code § PSC 112.05(3) defines the cost thresholds. If the electric utility seeking to build had operating revenues of less than \$5 million in the prior year, then a CA is required if the cost exceeds \$100,000. The threshold is 2 percent of the prior year’s operating revenues if the electric utility’s prior year revenues were between \$5 million and \$250 million. If the electric utility’s prior year revenues exceeded \$250 million, then any project whose cost would exceed \$5 million would require a CA. Since 2000, as provided by the rule, these thresholds have been adjusted for inflation in the cost of electric utility construction, as calculated under the “Handy-Whitman Index.”

Wis. Stat. § 196.491 applies to defined large “facilities,” specifically “large electric generating facilities” and “high-voltage transmission lines” having a transmission capacity of 100kV or higher. Wis. Stat. § 196.491(3)(a) states that “no person” may commence the construction of a defined “facility,” which includes a high-voltage transmission line, “unless the person has applied for and received a certificate of public convenience and necessity [CPCN] under this section.” The PSCW may only grant the certificate if it determines, among several criteria, that the “design and location or route is in the public interest considering alternative . . . locations or routes, individual hardships, engineering, economic, safety, reliability, and environmental factors, . . .” Wis. Stat. § 196.491(3)(d)3.

In addition, specific CPCN criteria apply to larger transmission line projects that affect regional importation of electricity into Wisconsin or seek to promote economic benefits in a line at

²⁰ Current Wisconsin Statutes and administrative regulations may be accessed at <http://www.legis.state.wi.us/rsb/stats.html>.

least 345 kV in nominal voltage. Subdivision pars. 3r. and 3t. in Wis. Stat. § 196.491(3)(d) provide:

3r. For a high-voltage transmission line that is proposed to increase the transmission import capability into this state, existing rights-of-way are used to the extent practicable and the routing and design of the high-voltage transmission line minimizes environmental impacts in a manner that is consistent with achieving reasonable electric rates.

3t. For a high-voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more, the high-voltage transmission line provides usage, service or increased regional reliability benefits to the wholesale and retail customers or members in this state and the benefits of the high-voltage transmission line are reasonable in relation to the cost of the high-voltage transmission line.

Wisconsin law also provides that any corporation engaged in providing electric services (or other public utility-type services), subject to reasonable local regulations, may “construct and maintain such [transmission] lines or systems with all necessary appurtenances in, across or beneath any public highway or bridge *or any stream or body of water, . . .*” Wis. Stat. § 182.017(1) (emphasis added).

2. If not, which agency does, if any?

Answer:

Not applicable.

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? Alternatively, is your commission specifically prohibited by statute from considering the regional nature of transmission projects? Please share the citation and language of any applicable statutes.

Answer:

The PSCW has both general and specific statutory authority.

Wis. Stat. § 196.49, regarding the requirement that a public utility seeking to extend its facilities must be approved in a CA, contains no geographical limitation to the state of Wisconsin. The PSCW may review an out-of-state project if it has consequences in Wisconsin, and has done so in the past. In addition, the PSCW, as contemplated by its broad intervention power in Wis. Stat. § 196.02(12), may participate as a party in a proceeding before another state commission. However, the power to intervene before another state commission has rarely been exercised.

Wis. Admin. Code § PSC 112.05(2) is the PSCW’s rule governing electric utility out-of-state construction that requires PSCW authorization:

(2) A Wisconsin electric utility proposing to construct, install or place in operation any of the utility facilities listed in sub. (1) in another state in which it serves shall notify the commission at least 60 days before beginning construction. The notification shall include a description of the project, its

location, the estimated cost, a discussion of need, permits or approvals required by the other state or local governments, and the approximate jurisdictional allocation of the cost between Wisconsin and the other state. Notwithstanding sub. (3), if a significant portion of the cost of the project will be allocated to Wisconsin for ratemaking purposes, the commission may require that the utility submit an application under s. PSC 112.06, for commission authorization prior to construction, installation or operation.

Under Wis. Stat. § 196.491, as noted in the answer to Question 1, a CPCN may consider regional and inter-jurisdictional high-voltage transmission projects insofar as they affect the Wisconsin's import capability, Wis. Stat. § 196.491(3)(d)3r., or provides "usage, service or increased regional reliability benefits to the wholesale and retail customers or members in this state . . ." Wis. Stat. § 196.491(3)(d)3t.

The PSCW also has the authority to affirmatively order construction of transmission facilities if the construction is necessary to relieve a constraint on a transmission system and will materially benefit the wholesale market buyers of electricity. Wis. Stat. § 196.494(3). In addition, sub. (5) in Wis. Stat. § 196.494 provides the Wisconsin governor power to enter interstate transmission line compacts. Wis. Stat. § 196.494(3) and (5) provide as follows:

(3) The commission shall, under this subsection, issue an order requiring the transmission company, as defined in s. 196.485 (1) (ge), or an electric utility to construct or procure, on a competitive basis, the construction of transmission facilities specified by the commission in its order if the commission determines that such construction is necessary to relieve a constraint on a transmission system and the construction will materially benefit the customers of the transmission company or electric utility or other electric utilities or of an independent system operator, as defined in s. 196.485 (1) (d), or independent transmission owner, as defined in s. 196.485 (1) (dm).

* * *

(5) The governor may, on behalf of this state, enter into an interstate compact that establishes a joint process for the states in the upper Midwest region of the United States to determine the need for and siting of regional electric transmission facilities that may affect electric service in this state. The governor may not enter into a compact under this subsection unless the compact includes requirements and procedures for establishing each of the following:

- (a) Compliance with each state's environmental and siting standards for transmission facilities.
- (b) A regional need determination for transmission facilities.
- (c) A mechanism for resolving conflicts between the states

4. Does a state statute specifically authorize your commission to coordinate with other states 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.

Answer:

The PSCW has the authority to coordinate with other state commissions or jurisdictional agencies regarding large, region-wide transmission projects under the PSCW's general powers. Wis. Stat. § 196.02(1) provides that the PSCW "has jurisdiction to supervise and regulate every

public utility in this state and to do all things necessary and convenient to its jurisdiction.” Wis. Stat. § 196.02(12) authorizes the PSCW to sue and be sued and to “confer with or participate in any proceedings before any regulatory agency of any other state or of the federal government.”

The PSCW’s successful coordination on a regional or inter-jurisdictional transmission project, however, depends upon the other involved state commission(s) or agency(ies) exercising power in tandem with the PSCW such that final, individual agency approvals, rendered within their respective jurisdictions, create a coordinated overall result.

For a PSCW approval to have binding effect on non-residents requires interstate compacts subject to Wis. Stat. § 14.76(2)-(4):

(2) Any state agency may agree by compact with other states to apply existing standards for residents to nonresidents if the laws or regulations of the states with which such compacts are made are similarly applied to Wisconsin residents. The compact shall be effective when approved by joint resolution adopted by the legislature.

(3) Any state agency may negotiate compacts with similar agencies in other states relating to the treatment of nonresidents on subjects within its delegated powers but on which no legislation providing standards has been enacted. Such compacts shall be submitted to the legislature and shall be effective when approved as are bills.

(4) Each compact shall as nearly as possible set forth:

(a) The statutory authority for the delegated power under which the agency is proceeding.

(b) The legal effect of the compact as shown by the amendments to statutes and rules in the applicable states required to accomplish the objectives of the compact.

(c) The objectives of the compact.

(d) The precise reasons for the compact.

(e) The standards established by the compact.

(f) The procedures contemplated by the compact.

(g) The effective date of the compact.

(h) The effect of the compact upon:

1. Public finances.

2. Public policy.

5. Are there other relevant sources of law that would inform your commission’s authority to consider regional transmission projects or to coordinate with other jurisdictions, such as case law, administrative rules or administrative opinions? If so, could you share citations for those sources of law?

Answer:

None.

6. In practice, has your commission considered the regional nature of transmission projects in the past in decisions related to transmission project approval (e.g., siting determinations of need, etc.)? If so, how? Please share citations to dockets or other relevant records.

ANSWER:

Yes. The PSCW offers three examples of construction certification decisions that have had justifications grounded in part in regional strengthening of the electric grid:

(1) *Joint Application of Minnesota Power Company and Wisconsin Public Service Corporation*, Final Decision, PSCW Docket No. 05-CE-113 (Oct. 31, 2001) (*Arrowhead-Weston*). The Arrowhead-Weston project was a major project to construct a 345kV line from Duluth to the Wausau, Wisconsin, area to enhance regional reliability and importation of power in the Upper Midwest. The project went into service in January, 2008. The Final Decision may be accessed at the PSCW website's Electronic Regulatory Filing (ERF) system No. 3817, http://psc.wi.gov/apps/erf_search/default.aspx.

(2) *Joint Application of Northern States Power Company-Wisconsin, Northern States Power-Minnesota, and Dairyland Power Cooperative for Authority to Construct and Place in Service Electric Transmission Lines and Electric Substation Facilities for the Chisago Transmission Project, Located in Chisago County, Minnesota, and Polk County, Wisconsin*, Amended Order, PSCW Docket Nos. 4220-CE-155/1515-CE-102 (Feb. 7, 2002) (*Chisago Project*). This docket authorized a cross-border reinforcement project will cost approximately \$28 million for a line and substation facilities. The in-service date is projected for 2010, after proceedings are completed for approval required by Minnesota agencies on the Minnesota portion. (ERF No. 75294.) The Chisago project is notable that in the first of two rounds of state proceedings on this project, the PSCW actually exercised its authority to intervene in the proceedings of a Minnesota environmental agency charged with transmission line siting approvals.

(3) *Application of American Transmission Company, as an Electric Public Utility, to Construct a New 345kV Transmission Line from the Rockdale Substation, Dane County, Wisconsin, to the Paddock Substation in Rock County Wisconsin*, Final Decision, PSCW Docket No. 137-CE-149 (June 13, 2008) (*Paddock-Rockdale*). This project was the first primarily economic project approved by the PSCW for the purpose of reducing the Locational Marginal Price (LMP) for wholesale power in Wisconsin closer to the MISO region-wide average. (ERF No. 96410.)

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?

Answer:

Yes. The PSCW has actively coordinated with other states in regional transmission cost sharing under the umbrella of the Organization of MISO States, Inc. (OMS), a non-profit corporation for the state commissions within the MISO footprint and funded by MISO. OMS' Executive Director and small staff are based in Des Moines, IA. Through OMS, the PSCW has addressed transmission cost sharing rate design in the tariffs of the Midwest Independent Transmission System Operator, Inc. (MISO), as filed with and approved by the Federal Energy Regulatory Commission. Commencing in January, 2009, at the request of MISO, OMS state commissions will lead a collaborative of state commissions to re-examine the sharing of costs for regional transmission projects. Commencing in February, 2009, MISO will also begin a process, known as the Regional Expansion and Criteria Benefits (RECB) Task Force, which will be chaired by Lauren Azar, PSCW commissioner and current vice-president of OMS. The RECB Task Force will likely act as sounding board for the OMS initiative.

Separately, the PSCW chair, Eric Callisto, is an active participant in the Upper Midwest Transmission Development Initiative (UMTDI), announced on September 18, 2008, by the governors of North and South Dakota, Minnesota, Iowa, and Wisconsin. This initiative seeks coordination of transmission development to support access to wind energy resources. The opening press release is available at http://www.wisgov.state.wi.us/journal_media_detail.asp?prid=3692&locid=19.

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?

Answer:

Yes, as set forth in the answer to Question No. 3 above.

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