

TRANSMISSION SITING IN COLORADO, NEW MEXICO, UTAH AND WYOMING

A STATE BASED AND REGIONAL PERSPECTIVE

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## EXECUTIVE SUMMARY

The electric transmission system in the western United States is inadequate to meet future loads and to transmit energy derived from an increasing number and variety of renewable energy resources. The bewildering variety of federal, state, and local requirements governing siting, construction and operation of transmission systems complicates expansion of the transmission system.

Congress has enacted provisions in the Energy Policy Act of 2005 designed to give the federal government overriding authority over transmission line siting decisions in certain circumstances, and further legislation is being proposed that would broaden federal authority and potentially supersede state authority over the siting of all major transmission facilities.

The states are uniquely positioned to assure that new transmission is optimally sited, environmentally responsible, economically feasible, and tailored to the needs of the region. However, to assure that the necessary infrastructure is developed, the states in the West will need to incorporate their best practices into a regional transmission siting regime. There are a number of examples of regional, multistate cooperation in the West that have attempted to facilitate uniform approaches to various issues by the participating states. These examples include the Grand Canyon Visibility Transport Commission established under the federal Clean Air Act Amendments of 1990 and its successor the Western Regional Air Partnership; the Western Climate Initiative; and the various uniform statutes that have been incorporated by individual legislatures into law and which, because of their consistency across state borders, facilitate multistate approaches to particular issues.

The regulatory systems for siting new electric transmission facilities vary from state to state. Some states have a centralized siting authority that has jurisdiction over a proposed project regardless of whether the developer is a regulated public utility, a municipality or an independent operator. Others have regulatory authority that is fragmented, depending on whether the proponent of a project is subject to state regulatory commission jurisdiction. Some states require the siting authority to consider regional needs for transmission development in connection with a proposal, while others require that only state and local interests be considered. Some state siting authorities not only preempt but actually make decisions for the local governments affected by a proposed project, while other states provide for a mechanism for project proponents to appeal onerous local government requirements to the siting authority or another entity.

## INTRODUCTION

The electric transmission system in the western United States is badly in need of upgrade and expansion. Little major transmission construction has occurred in the West in the last quarter century, while energy demand has increased dramatically. The demand for energy in the Western Electricity Coordinating Council (“WECC”) area increased 35 percent from 1992 to 2007.<sup>1</sup> Demand for electricity in the United States as a whole is projected to increase between 18 to 39 percent by 2030.<sup>2</sup> A major reason for the minimal expansion of the transmission system is the construction of natural gas power plants near load centers. As a result, little new transmission was needed to accommodate the added generation.

However, future generation additions will likely include large amounts of renewable generation located more distant from load centers. New transmission will be needed to deliver renewable generation. Renewable energy includes electricity from geothermal, wind, solar and other unconventional sources, and is most often generated in areas remote from the transmission grid.

It is vitally important to assure that states have a major role in approving and siting transmission infrastructure and that affected stakeholders have input at critical junctures of the approval process. However, there is an equally critical need to coordinate state, multi-state and federal approval processes and to provide a coherent roadmap for the developer of a multi-state transmission project.

This paper is both a survey of the various state and local requirements applicable to siting a major transmission project in the four western states surveyed (CO, NM, UT, WY) and an analysis of how the processes could be changed to accommodate the 21st century's growing appetite for low-carbon, efficiently generated, reasonably priced electric energy. This paper does not address rate incentives, financing considerations, or cost recovery or allocation of transmission investments. Those issues are critically important to the viability of a given transmission project, but do not pertain directly to the siting of projects.

The states discussed in this paper are the four contiguous western states of Colorado, New Mexico, Utah, and Wyoming (the Rocky Mountain West). The WECC area includes these states.

### CHALLENGES TO TRANSMISSION CONSTRUCTION

The challenges faced by the developer of a major transmission project in the western United States are daunting and have been one of the reasons for the very slow pace of transmission enhancements. Current state siting regimes reflect a system largely built to move power within local utility systems and to connect neighboring utilities to increase reliability. These regimes were not designed to address interstate and regional transmission siting on the scale required today. Like the grid itself, the substantive and procedural requirements for transmission infrastructure are in need of updating. The overview of current siting regimes in the Rocky Mountain West in this White Paper is a step in that direction.

The principal hurdles to transmission construction include:

*Increased demand for location-constrained renewable energy to power concentrated urban areas.* Political initiatives like renewable portfolio standards and social concerns over climate change and green energy have spurred an unprecedented increase in demand for renewable energy generation. Unlike traditional energy sources, renewable energy is largely location-specific, creating new challenges for the electric industry. Moving energy from non-traditional generating resources to major urban centers in the Rocky Mountain West often requires very long transmission lines traversing more than one state. For location-constrained renewable sources of generation to serve growing loads in western urban areas, new facilities will need to be constructed in resource-rich areas hundreds of miles away from the load centers. This will require the construction of thousands of miles of new transmission lines spanning the West.

*The NIMBY syndrome.* Not only do many people object to the esthetic and other impacts of a major power line in their own communities, but there is a growing number of objections to power lines on lands remote from population centers. Land use obstacles are common as lines often traverse fragile habitat, recreational land, scenic and historic trails, and parks. The NIMBY syndrome has spawned numerous legal and political battles that encumber siting processes across the West.

*Conflicts between local, statewide and regional interests.* Many state and local governmental entities are reluctant to base a decision on regional or national interests of a transmission project if there is no direct benefit to the state or local jurisdiction through which the transmission line will pass. In some cases, siting authorities are prohibited from approving projects that do not directly address state needs, though they may be responding to significant regional needs. In states where local governments have primary siting authority, a battle of wills often plays out as local needs trump state and regional needs. In the end, a myopic view of transmission siting can cause great delay or cancellation of a project.

*Inconsistent and conflicting state and local regulatory requirements.* The definitions of “public utility” vary from state to state, which means that the degree and scope of regulation of an interstate transmission line will vary depending on the state. Also, local governments in some states can effectively halt a project, even if the requisite state authorizations have been secured.

*Federal and state environmental reviews.* The National Environmental Policy Act (“NEPA”), the Endangered Species Act, the Migratory Bird Act, the California Environmental Quality Act, and various other federal and state environmental review requirements create a daunting welter of lengthy, complicated processes which are fertile sources of litigation by project opponents. In addition, the shelf life of an environmental review may not last through the entire siting process, requiring new reviews or updates.

*Federal land authorizations.* Along with the NEPA review process, a major transmission project proponent in the Rocky Mountain West has to navigate through a complex array of federal public land management requirements administered by the Bureau of Land Management, the Forest Service, the Fish and Wildlife Service, the National Park Service and the Bureau of Reclamation. In addition, a major project often requires modifications to land use management plans, which triggers an expensive, time-consuming and often litigious process.

*Lack of timing coordination among siting entities.* Timelines for completing environmental and other reviews associated with transmission line siting vary across siting authorities. It is often impossible to synchronize the siting process for an entire regional line. Because so much of the land in the Rocky Mountain West is federally owned, the federal government—mostly through the BLM—plays a central role in transmission line siting. Unfortunately, the federal government’s timelines for environmental reviews often exceed the siting processes of state and local siting authorities. The resulting situation requires entities to site portions of a line without any certainty about the final siting of the rest of the project.

*Inconsistent state policies regarding greenhouse gas emissions and renewable portfolio standards.* The California SB 1368 carbon emissions performance standard for long-term contracts for imported electricity has placed a severe constraint on the prospects for new coal-

fired generation in western states that might otherwise serve California markets.<sup>3</sup> The Minnesota PUC's recent decision conditioning approval of a transmission line from a proposed South Dakota coal-fired facility into Minnesota on carbon dioxide reductions at the South Dakota facility illustrates the potential reach of one state's regulatory policy into that of another.<sup>4</sup> In addition, not all states have renewable portfolio requirements, and those that do have differing definitions of "renewable energy" and differing goals and deadlines.

*Short-term capacity vs long-term needs.* Because of siting and cost issues, many lines that may have been built as extra high voltage lines (765 kVA, for example) will not be built that large. This is due in part to the high risks involved with building a line that big. It is also due to the narrow definition of "need" used by many siting authorities. If the full capacity of the line is not going to be used in the near future, that extra capacity may be considered unnecessary and hence not permitted.

*Uncoordinated siting of transmission lines and renewable generation.* The siting of future transmission lines is inextricably tied to the siting of renewable generation. However, renewable energy siting and transmission siting are often not considered together, which creates a significant barrier of risk that is difficult for a transmission proponent or siting entity to overcome.

*Timing of "need" determination.* The determination of need by siting entities often comes far too late in the siting process. This results in substantial expenditures of time and resources in project planning before the vital question of need, justifying that expenditure, is answered. Because siting is only loosely tied to planning, the essential question of need is left to the end of the process, costing unnecessary time, money and effort.

## NATIONAL INTEREST AND THE APPROVAL PROCESS

The number, complexity and cost of state and local authorizations are often blamed for the lack of significant transmission development in the Rocky Mountain West. The fundamental reasons for the difficulties in securing state and local authorizations for major transmission construction are not only the procedural requirements for permits but also the criteria used by the states and local entities to evaluate the need for and impacts of a transmission project. Few states explicitly require a consideration of whether a particular transmission proposal is in the regional or national interest, and those that identify regional or national interests as a consideration do not necessarily give them a priority. Generally speaking, the paramount consideration is whether a project will directly benefit the state or local jurisdiction from which it is seeking approval. When the interests of the siting authority do not coincide with the interests being served by the proposed line, the determination of benefit can be a major impediment to securing the authorizations necessary for a major transmission project to be developed.

Congress responded at least in part to the difficulties in securing state and local approvals by enacting Section 1221 of the Energy Policy Act of 2005,<sup>5</sup> which gives to the Federal Energy Regulatory Commission ("FERC") "backstop" authority to supersede state and local action or inaction in order to permit an electric transmission project in a designated National Interest Electric Transmission Corridor ("NIETC"). Only two NIETC's have been designated thus far by the U.S. Department of Energy - the Mid-Atlantic and Southwest Area NIETC's.<sup>6</sup> The NIETC

designations were immediately challenged by a number of states, members of Congress and other groups, and litigation challenging the designations is pending.<sup>7</sup> It remains to be seen whether the NIETC process will ultimately facilitate the development of transmission capacity enhancements or will be so mired in legal and political controversy that it will never have any practical effect.<sup>8</sup> In addition, some proposals in pending federal legislation on transmission expansion could extend FERC's authority to include the entire high voltage grid outside of NIETC's.<sup>9</sup>

This paper does not address federal authorizations in any detail; however, a prominent consideration in developing a transmission project in the Rocky Mountain West is the role of the federal government in the siting process. Because so much of the land in the Rocky Mountain West is federally owned, transmission proponents of large projects almost certainly will have to deal with the federal land agencies during the siting process. In particular, the federal agencies must choose routes to study for environmental impact analyses. While the federal agencies may consider the effects to private or state and local land along the routes they study, they are not required to give them a priority. As the federal agency issues its permits and rights-of-way, it essentially creates a de facto route through private, state and local lands. A developer must seek approval from the state or local authority to build those segments of the line between the federal segments. Opposition to siting the line at the state and local level can affect the project by requiring changes to the federal EIS, expiration of the "shelf life" of the EIS, or any number of other delays and difficulties. In addition to the nexus between federal and state/local authority, a major transmission project proponent often finds that other federal considerations can override the national interest consideration. A recent example is that of the Navajo Transmission Project, which would carry electricity from generation in New Mexico 470 miles to load centers in Phoenix and Las Vegas. The project was proposed 18 years ago and for a variety of reasons has still not been constructed. The most recent setback is a decision by the Interior Board of Land Appeals holding that the federally required environmental studies for the project need to be redone to take into account designation of critical habitat for two endangered species that were made after the project was originally proposed.<sup>10</sup>

## REGIONAL TRANSMISSION SITING OPTIONS

There are a variety of options to address multistate transmission developments, which are not necessarily mutually exclusive. One is to create a regional, multi-state approach to transmission siting approval. The Western Governor's Association and various federal agencies entered into a Siting Protocol in 2002 for "a systematic, coordinated, joint review process for siting and permitting of interstate transmission lines in the Western Interconnection."<sup>11</sup> The Siting Protocol sets forth procedures for interagency cooperation, but does not contain uniform substantive siting provisions. It can, however, serve as a basis for a more detailed substantive accord between the states and the federal agencies containing uniform criteria and procedures for siting regional transmission facilities. Similarly, the Western Renewable Energy Zones joint initiative between the Western Governors' Association and the U.S. Department of Energy could serve as the platform for development of a regional transmission siting regime. The current scope of the initiative contemplates the generation of conceptual transmission plans for delivering renewable energy to load centers in the Western United States.<sup>12</sup>

The Energy Policy Act of 2005 authorizes three or more contiguous states to enter into an interstate compact to “facilitate siting of future electric transmission facilities within those States” and to “carry out the electric energy transmission siting responsibilities of those States.”<sup>13</sup> The Energy Policy Act’s authorization of an interstate compact could be a powerful tool to maintain state control over the siting process while establishing regionally consistent policies and procedures. However, although there have been discussions between and among various Western states and other regulatory entities regarding regional approaches to transmission siting, no meaningful state siting reform has occurred to date.

The limitations on regional resource planning involve the Constitutional constraints of the Compact Clause: “No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State, . . .”<sup>14</sup>; the Takings Clause: “. . . [N]or shall private property be taken for public use, without just compensation.”<sup>15</sup>; and the Commerce Clause: Congress has the power “[t]o regulate commerce with foreign nations, and among the several States, and with the Indian Tribes.”<sup>16</sup>

In addition State law constraints against prejudice and the Substantial Evidence rule come into play. Regarding prejudice, in a matter that will result in a Commission order, the Commissioners cannot commit the Commission to a particular result before formally considering all of the evidence of record. A State Commission is therefore precluded from committing to a regional transmission plan at a meeting of State Commissions and then return home to hold a hearing, take evidence and make a decision committing to a course of action made before the hearing was even held. The Substantial Evidence rule also comes into play since a Commission must base its decisions on the evidence of record, not on evidence learned outside the record (unless such evidence is subsequently made a part of the record.)

There are a number of interstate organizations in the western United States that illustrate the efficacy of a multistate approach. For example, the 1990 amendments to the Clean Air Act established the Grand Canyon Visibility Transport Commission for the purpose of addressing the degradation of visibility in the Grand Canyon.<sup>17</sup> That Commission, consisting of several western states and tribes, extensively studied the sources of visibility degradation in the western United States and recommended measures to the Environmental Protection Agency to address visibility degradation which were incorporated into Federal regulations.<sup>18</sup>

Another example of a multi-state organization is the Western Climate Initiative (“WCI”), which is formulating a regional greenhouse gas regulatory program that will be applicable to each of the states that are members of the WCI.<sup>19</sup> The implementation of the WCI program will require legislative authorization from each of the WCI participants; however, if and when that authorization is secured, each state will be participating in a program of uniform applicability throughout the region. It is important to note that one of the principal challenges to successful implementation of the WCI’s proposed program is the disparate views of various WCI member legislative bodies with regard to participation in the Initiative. Although governors are essential in articulating the goals of a multistate initiative and even in developing the proposed regulatory structure under the initiative, it is imperative to involve legislatures significantly at an early stage in the formulation of the initiative.

Another approach would be the development of uniform transmission siting guidelines for adoption by the various western states. These guidelines, perhaps in the form of a model Major Transmission Siting Act, would include provisions for evaluating the regional or national interests in considering a major interstate transmission facility, and would also deal with critical corridor designations, environmental reviews, and the paramount role of the state in making overall siting determinations.

One organization of Western States coordinating transmission planning efforts is the Northern Tier Transmission Group (NTTG). NTTG is a group of transmission providers and customers in eleven Western States and two Canadian provinces that are actively involved in the sale and purchase of transmission capacity. NTTG coordinates individual transmission systems operations to meet and improve transmission services to customers.<sup>20</sup>

Absent a coherent multi-state regime for reviewing and permitting necessary transmission infrastructure developments, the states will likely be elbowed aside by the federal authority intended to supersede contrary state and local decisions on the siting and construction of major facilities. The FERC's Section 1221 backstop authority is but the initial step towards a comprehensive federal transmission permitting regime. Congress is considering additional legislation to give to the federal government the final say in the approval process for major electric transmission development.<sup>21</sup> A multi-state transmission siting initiative in the West would maintain the local control and stakeholder input which is a hallmark of an open process while assuring that necessary infrastructure is approved and built to bring energy to growing load centers.

This paper does not recommend that the federal government implement a comprehensive transmission siting process which would preempt state siting requirements. In all likelihood, however, the federal government will ultimately do what the states in the Rocky Mountain West cannot or will not do for themselves in facilitating regional transmission infrastructure improvement. The identification and implementation of best practices on a regional basis is imperative if the western States are to maintain significant control over the transmission siting process.

The siting requirements of each of the contiguous Rocky Mountain states applicable to major electric transmission facilities are described below, followed by a compendium of the best practices drawn from those requirements.

#### COLORADO

*Siting.* The siting and approval of a major transmission project in Colorado by a public utility is within the regulatory purview of the Colorado Public Utilities Commission ("Colorado PUC"). A "public utility," is defined as an "electric corporation, . . . person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest . . ."<sup>22</sup> Municipally owned utilities are exempt from Colorado PUC jurisdiction for utility operations within municipal boundaries.<sup>23</sup>

Colorado law prohibits the construction of a new electric facility, plan, or system without first "having obtained from the commission a certificate that the present or future public

convenience and necessity requires or will require such construction.”<sup>24</sup> Colorado courts have held that the key factor in this definition is whether the facility is supplying utility services “to the public,” and that a certificate is not required if the entity provides utility services only to a limited group of customers.<sup>25</sup> In addition, a certificate is not required for construction, operation or extension of a facility “in the ordinary course of business.”<sup>26</sup> A major transmission project which is constructed in Colorado and contains interconnections to other transmission or distribution systems which serve load in Colorado would likely need a certificate from the Colorado PUC.

Along with supplying the required technical information and design details, an applicant for a certificate of public convenience and necessity for construction or extension of transmission facilities is required to describe how it will achieve “prudent avoidance” with respect to planning, siting, construction, and operation.<sup>27</sup> “Prudent avoidance” is narrowly defined to mean “striking a reasonable balance between the potential health effects of exposure to magnetic fields and the cost and impacts of mitigation of such exposure.”<sup>28</sup> An overarching factor to be considered is the public interest or need, although the scope of public interest or need is left to the discretion of the Colorado PUC.<sup>29</sup>

*Local Governments.* The statute requiring a certificate of public convenience and necessity specifies that no public utility may construct facilities within the territorial boundaries of a city or county unless the utility complies with the applicable zoning requirements.<sup>30</sup> A public utility or power authority<sup>31</sup> is required to notify the affected local government of its plans to site a major electrical facility within the jurisdiction of the local government before filing a request for a certificate of public convenience and necessity or making any annual filing with the Colorado PUC that proposes or recognizes the need for new construction.<sup>32</sup> Typically, a county or city will approve a transmission line through the issuance of a special or conditional use permit (a “Use Permit”).<sup>33</sup> The decision of a local government denying a permit for a transmission facility or imposing unreasonable restrictions on the permit may be appealed to the Colorado PUC if (1) the applicant has applied to the Colorado PUC for a certificate of public convenience and necessity, (2) such a certificate is not required, or (3) the Colorado PUC has issued an order that conflicts with the local government’s action.<sup>34</sup> In considering an appeal from a local decision, the Colorado PUC is required to balance the local governmental interest with the statewide interest in the construction of the facilities. In particular, the Colorado PUC is required to consider the demonstrated need for the facility, the extent that it is inconsistent with local land use plans and ordinances, whether it would “exacerbate” a natural hazard, applicable engineering standards, the merits of feasible alternatives proposed by the applicant or the local government, the basis for the local government’s decision, the impact on local residents, and the safety of the public.<sup>35</sup>

*1041 Regulations.* Colorado cities and counties are authorized to regulate by permit activities within certain areas of state interest.<sup>36</sup> These approvals are commonly referred to as “1041 permits” because the statute was enacted in 1974 as H.B. 1041.<sup>37</sup> The 1041 process is in addition to the Use Permit process and often requires a substantial environmental analysis and consideration of project alternatives. Not all counties in Colorado have adopted 1041 regulations, but in those that have, the approval process for a project can be considerably slowed and complicated by the 1041 process. The 1041 process is applicable to “major facilities of a public utility,”<sup>38</sup> defined to include transmission lines and substations.<sup>39</sup> However, no decision

by an agency under the 1041 permit program may be inconsistent with the Colorado PUC's decision regarding public convenience and necessity.<sup>40</sup>

Given the foregoing, what is Colorado's ability to engage in regional transmission planning? One method is the creation of a Compact pursuant to the terms of the Compact Clause. Given Congress' interest in renewable energy, the economics of renewable energy and reduction of GHG, this option which requires Congressional approval is now more available to states than previously.

Another approach is the creation of a Regional Transmission Organization (RTO) which would not require the creation of an interstate Compact. Since it would be the regional entity, the RTO, making the decision regarding the addition of transmission facilities to meet the RTO's needs, no Compact would need to be created because the states are not reaching an agreement among themselves.

The question remains whether Colorado's Commission (as well as the ones in WY, UT and NM) is limited to parochial considerations of "public interest" and "need" for Colorado customers only. It may be that expansion of the traditional precepts of "public interest" and "need" and their limitation to the individual state, can appropriately be expanded to a more regional consideration given the integrated nature of states' transmission systems.

#### NEW MEXICO

*Siting.* In New Mexico, no electric transmission line with a capacity of 230kV or more may be constructed by any person, including a municipality, within New Mexico unless the project has been approved by the New Mexico Public Regulation Commission ("NMPRC").<sup>41</sup> No other state agency has siting authority for high-voltage transmission facilities in New Mexico.

If the proponent of the project is a "public utility," the proponent is also required to obtain a Certificate of Public Convenience and Necessity ("CPCN") from the NMPRC before commencing construction.<sup>42</sup> "Public utility" is defined to include a person "not engaged solely in interstate business" who owns, operates, leases or controls any facility for the transmission of electricity.<sup>43</sup> The NMPRC may approve the application for the CPCN without a formal hearing if no protest is filed within sixty days of the date that notice is given by the NMPRC that the application has been filed.<sup>44</sup> In any case, the NMPRC must issue an order granting or denying the application within nine months from the date the application is filed with the NMPRC.<sup>45</sup> If the NMPRC fails to issue its order within nine months, the CPCN is deemed to be granted, subject to one six-month extension by the NMPRC.<sup>46</sup>

In addition to the CPCN for public utilities, any person proposing to develop a transmission facility with a capacity of 230 kV or more must also file an Application for a Location Permit with the NMPRC.<sup>47</sup> A public utility may simultaneously file its applications for a CPCN and for a Location Permit.<sup>48</sup> The application for a location permit includes any environmental studies required by NEPA or equivalent studies.<sup>49</sup> The NMPRC's decision on a Location Permit application is determined by whether the proposed location will "unduly impair important environmental values," and if it does, whether those impacts can be mitigated.<sup>50</sup>

If the right-of-way for the proposed transmission line will be greater than 100 feet, the proponent must obtain a Determination of Right-of-Way Width from the NMPRC before constructing the facilities.<sup>51</sup>

*Local Governments.* As a general proposition, each local government in New Mexico has a planning and zoning process which governs proposed construction of an electric transmission line.<sup>52</sup> The degree of sophistication and detail on the land use requirements vary widely among the cities and counties in the State. Bernalillo County, for example, requires a special use permit for utility facilities, although it does not have detailed requirements relating to transmission lines.<sup>53</sup>

No Location Permit application may be approved by the NMPRC that violates an existing state, county or municipal land use statutory or administrative regulation unless the NMPRC finds that the regulation is “unreasonably restrictive and . . . not in the interest of the public convenience and necessity.”<sup>54</sup>

*Renewable Energy Transmission Authority.* There is no requirement that the NMPRC or local government bodies consider state, regional, or interstate benefits in addressing electric transmission projects, nor is there any provision specifically addressing proposed projects with a designated NIETC. However, in July 2007, the New Mexico legislature promulgated the Renewable Energy Act (“REA”).<sup>55</sup> The purpose of REA is to encourage the “generation of electricity through the use of renewable energy” and to “promote energy self-sufficiency, preserve the state’s natural resources and pursue an improved environment in New Mexico.”<sup>56</sup> In furtherance of that purpose, the legislature declared that, “it may serve the public interest for public utilities to participate in national or regional renewable energy trading.”<sup>57</sup>

To encourage renewable energy projects, the legislature created the New Mexico Renewable Energy Transmission Authority (“RETA”), which is charged with implementing REA.<sup>58</sup> RETA is authorized to enter into contracts and partnerships with public and private entities and to identify and establish electric transmission corridors within the state. It is also authorized to participate in regional transmission forums, to “coordinate, investigate, plan, prioritize and negotiate with entities within and outside the state for the establishment of interstate transmission corridors.”<sup>59</sup> To this point, no corridor has been identified .

## UTAH

*Siting.* Although the Utah Public Service Commission (“UPSC”) has broad jurisdiction to regulate every public utility in the state, it does not have direct siting authority for major transmission facilities. In fact, there is no Utah state agency which is charged with making siting determinations for major energy facilities. Rather, siting approval comes in the form of the various local land use and federal, state and local permits applicable to the project, including the granting of a Certificate of Public Convenience and Necessity (“Certificate”) by the UPSC to a public utility proposing to construct a major transmission line.

“Public utility” is defined to include an “electrical corporation” performing or delivering service for or to the public generally for domestic, commercial, or industrial use.<sup>60</sup> “Electrical corporation” is defined to include every corporation owning, controlling, operating, or managing any electric plant, or in any way furnishing electric power for public service within the state,

except where electricity is distributed by the producer solely for the producer's own use.<sup>61</sup> "Electric plant" includes all real estate, fixtures, or personal property owned or controlled in connection with the production, generation, transmission, or delivery of electricity.<sup>62</sup>

Service to the "public" is the defining feature of a public utility.<sup>63</sup> If an electric company holds itself out to serve "all who wish to avail themselves of its services, it is a public utility subject to the jurisdiction of the UPSC.<sup>64</sup> Municipal utilities are not subject to the jurisdiction of the UPSC,<sup>65</sup> although the Utah Supreme Court has held that an interlocal cooperation agency consisting of Utah municipalities is subject to UPSC jurisdiction insofar as it was required to obtain a certificate of public convenience and necessity for a major transmission project outside the boundaries of its member municipalities.<sup>66</sup>

An electric corporation "may not establish, or begin construction, operation, [or extension,] of a line, route, plant, or system . . . without first having obtained from the commission a certificate that the present or future public convenience and necessity does or will require the construction."<sup>67</sup> The applicant is required to file a statement with the UPSC that the proposed line, plant, or system will not conflict with or adversely affect the operation of any existing certificated public utility which serves the same territory.<sup>68</sup> Furthermore, an applicant for a certificate is required to file with the UPSC evidence showing the utility has received or is in the process of receiving the necessary consent or franchise from the proper municipal or county authority.<sup>69</sup> The UPSC may, after the hearing, issue the certificate, refuse to issue the certificate, or issue the certificate for the construction of a portion only of the project.<sup>70</sup> The UPSC has considerable latitude when reviewing a certification application.<sup>71</sup>

Electric utilities are required to file a report with the UPSC at least thirty days before beginning construction of a transmission line ten miles or more in length with a design voltage of 138 kV or greater, if the cost of the project will be greater than \$10,000,000.<sup>72</sup> The pre-construction report must include, among other things, a description of the purposes and reasons for the proposed facilities, a description of how the utility has or will obtain any required consent, franchise, or permit from the appropriate county, city or other public authority and any other necessary authorizations, and information to show that any proposed line will not conflict with, adversely affect, or extend into the area of operations of any existing certificated public utility which supplies the same product or service to the public.<sup>73</sup>

In 2008, the Utah State Legislature enacted S.B. 202, which amended the definition of "public utility" by expanding the exemption from regulation for independent energy producers and adding a definition of "independent power production facility."<sup>74</sup> Before the amendment, the exemption applied to "small power production facilities," which were defined as facilities with a capacity no greater than 80 megawatts, qualifying small power facilities under federal law, and generators of electricity solely from biomass, renewable resources, geothermal resources, or some combination thereof.<sup>75</sup> As amended, the statute now provides that "[a]n independent energy producer is exempt from the jurisdiction and regulations of the commission with respect to an independent power production facility if . . . the commodity or service is sold by an independent energy producer solely to an electrical corporation or other wholesale purchaser . . . ."<sup>76</sup>

The UPSC has cast some doubt on whether transmission facilities constructed by an independent energy producer in order to interconnect with the grid are exempt from the Certificate requirement. In a recent case involving the Milford Wind Corridor project in Beaver County, the UPSC held that the wind farm itself was exempt from the requirement to obtain a Certificate as an independent energy producer but that the 90-mile transmission line necessary to connect the wind farm with the grid so as to move the electricity to wholesale purchasers in California was not part of the independent energy producer facility and, therefore, not exempt from the requirement to obtain a Certificate.<sup>77</sup> The UPSC reasoned that the exemption for “independent power production facility” is limited to a facility that “produces electric energy.” In addition, the UPSC held that the exemption does not apply to facilities for the “delivery” of the electricity otherwise sold “solely to an electrical corporation or other wholesale purchaser.”<sup>78</sup>

*Local governments.* An applicant proposing a project to a Utah local governmental entity is entitled to approval of a land use request if the application conforms to the requirements of the pertinent local zoning ordinances, unless the local planning commission makes a finding on the record that a compelling, countervailing public interest would be jeopardized if the application were approved.<sup>79</sup> Local land use ordinances may include “conditional uses” as a category of permitted operations in a given zone, such as transmission lines.<sup>80</sup> The conditional use permit process is very similar in most Utah counties, with the major variations being which entity holds final authority to grant a conditional use permit and whether utility projects are classified as permitted or conditional uses under the particular county’s zoning ordinance.<sup>81</sup>

A local government or public utility may seek the assistance of the “Utility Facility Review Board” to resolve issues related to the siting and construction of facilities by public utilities, including transmission lines.<sup>82</sup> If a local government is considering imposing conditions on the construction of a facility, the utility is required to provide to the local government information regarding the standard costs and the estimated excess costs of the facility if constructed in accordance with the proposed conditions.<sup>83</sup> If the excess costs are not recoverable by the public utility through its rates, the local authority is required to pay those costs unless the Review Board decides otherwise.<sup>84</sup>

The Review Board consists of the members of the UPSC and one individual each appointed by the Governor from lists of nominees from the Utah League of Cities and Towns and the Utah Association of Counties.<sup>85</sup> The Review Board hears disputes regarding the excess costs of a project resulting from local government requirements; local requirements that will not permit the utility to provide service to its customers in a safe, reliable, adequate, or efficient manner; prohibition on construction by the local government; failure of the local government to make a final decision on the public utility’s application for a permit, authorization, approval, or exception with respect to the facility within 120 days of the of application, and inconsistent decisions from more than one local government on a project.<sup>86</sup>

To date, the Review Board has issued only one written decision, involving a dispute between PacifiCorp and West Jordan City.<sup>87</sup> In 2005, PacifiCorp appealed to the Review Board when the City denied a conditional use permit for the construction of a permanent substation in the “target location” selected by the utility. After hearing evidence from both parties, the Review Board held that requiring PacifiCorp to construct the substation at one of the alternative

sites suggested by the city would degrade electric service and reliability and ordered the city to issue the conditional use permit.<sup>88</sup>

In 2009, the Utah Legislature enacted the “Siting of High Voltage Power Line Act,”<sup>89</sup> which governs the obtaining of a land use permit by a public utility from a local governmental authority for high voltage power lines with a nominal voltage of 230 kVa.<sup>90</sup> A public utility proposing a high voltage transmission line is required to notify the local land use authority of its intent to file a land use application at least 90 days before submitting the application.<sup>91</sup> The proponent is also required to send a notice of intent to file an application for a conditional use permit to the local government and landowners within the proposed corridor at least 60 days before filing the application and to set up a website to provide information about the proposed facility and publish a notice in the local newspaper of the filing of the notice of intent.<sup>92</sup> The public utility is also required to conduct public workshops in the area of the proposed transmission line.<sup>93</sup> The land use authority is required to grant or deny the application within 60 days after the application is filed.<sup>94</sup> The Utility Facility Review Board may review the land use authority’s land use permit decision.<sup>95</sup>

*Renewable Energy Infrastructure Authority.* The 2009 Utah Legislature created the Utah Generated Renewable Electricity Network Authority.<sup>96</sup> The Authority is required to review the location and availability of renewable energy resources serving electric loads in the State, determine whether there is adequate transmission capacity to bring those resources to market, prioritize transmission projects, and fund plans to provide for connecting renewable energy sources to transmission facilities.<sup>97</sup> The Authority may issue bonds to fund qualifying transmission projects,<sup>98</sup> which are those which will contribute to state and local economies, maximize connections to renewable energy, and otherwise meets criteria relating to generation of revenue, technical and environmental requirements and compliance with regulations of the FERC, UPSC and North American Electric Reliability Council relating to transmission line development.<sup>99</sup>

## WYOMING

*Siting.* No public utility may begin construction of a line, plant or system, or of any extension of a line, plant or system without first obtaining from the Wyoming Public Service Commission (“WPSC”) a Certificate of Public Convenience and Necessity (“CPCN”).<sup>100</sup> A “public utility” is defined to include every person that owns, operates, leases, controls any plant, property or facility for the transmission to or for the public of electricity.<sup>101</sup> Wyoming courts have interpreted the term “to or for the public” to mean the citizenry or consumers of Wyoming.<sup>102</sup> Therefore, if a transmission line is not serving customers in Wyoming, it is not subject to WPSC jurisdiction.

Before construction of a transmission line subject to WPSC jurisdiction, the public utility must first obtain from the WPSC a CPCN for the construction of the project.<sup>103</sup> A “major utility facility” is required to submit information regarding the environmental impacts of the facility and the need for the facility by the citizens of Wyoming.<sup>104</sup> A “major utility facility” is defined to include electric transmission lines of more than three (3) miles in length designed to operate at 69 kV or above and electric substations or switching stations designed to operate at 69 kV or

above.<sup>105</sup> The issuance of a certificate for the construction of a high voltage electric transmission line of 230 KV or greater is prohibited until all rights-of-way for the line have been acquired.<sup>106</sup>

The Wyoming Industrial Development and Siting Act permits the construction of certain large industrial facilities only after a review of the socio-economic and environmental impacts of the proposed activity.<sup>107</sup> No person may construct an industrial facility in Wyoming without a permit for the facility from the Wyoming Industrial Siting Council ("ISC").<sup>108</sup> The ISC permits the construction of certain large industrial facilities only after a review of the socio-economic and environmental impacts of the proposed activity. An "industrial facility" is defined for purposes of ISC jurisdiction as any industrial facility with an estimated cost of \$173,200,00 or more.<sup>109</sup> The Wyoming Department of Environmental Quality Industrial Siting Division ("ISD") functions as the staff of the ISC.

Electric transmission lines with a design capacity not exceeding 500 KV do not need to obtain a permit from the ISC.<sup>110</sup> However, while an ISC permit is not required for exempt electric transmission lines, information about the project must be submitted to the ISD.<sup>111</sup> Proposed industrial facilities with a construction cost greater than eighty percent and less than one hundred percent of the current threshold construction cost require a certificate of insufficient jurisdiction from the ISC.<sup>112</sup> The ISC can also grant a waiver of the application requirements in certain circumstances.<sup>113</sup>

*Local Governments.* In Wyoming, land use and zoning are regulated by counties and cities.<sup>114</sup> Although it is possible that a privately owned transmission line could be classified as a "use by right" in accordance with the applicable County zoning code, a typical County code will classify such use as a conditional use or a use by special review.<sup>115</sup>

When the PSC or ISC has jurisdiction over a transmission project, it has authority to preempt local decisions regarding transmission siting and construction.<sup>116</sup> In particular, the Wyoming Supreme Court has held that a county does not have the power to regulate public utilities.<sup>117</sup> Assuming the county is complying with applicable law and acting within the confines of its authority, the State has little to no oversight or preemption authority over the county's decisions to issue conditional use permits concerning projects that are exempt from PSC jurisdiction or are otherwise not owned or operated by a public utility.<sup>118</sup>

*Wyoming Infrastructure Authority.* Wyoming has created a quasi-governmental entity called the Wyoming Infrastructure Authority (WIA). Created by the State Legislature in 2004, the WIA seeks to diversify and grow Wyoming's economy through the development of electric transmission. The WIA has bonding authority of \$1 billion as well as other powers to promote transmission development in the state and throughout the region.

## RECOMMENDATIONS

In our review of the foregoing state regulatory requirements for siting a major transmission facility in the Rocky Mountain West and other Western states, we identified a number of “best practices” which could serve as integral elements of a regional siting regime. These “best practices” are:

- State siting agency preemption of conflicting local decisions, at the same time using a process to assure that local community concerns are considered and that a local decision is only overridden if the broader public interest is compelling.
- A centralized siting agency with jurisdiction over transmission projects proposed by any entity, whether or not the proponent is a regulated public utility.
- A definition of “need” that recognizes the critical public interest in the reliable and efficient transmission of electricity from a diverse portfolio of generation sources in one part of the Western region to growing load centers in another, even if neither the generator nor the loads to be served are located within the state.
- Mechanisms to facilitate participation in regional and national transmission planning regimes to assure coordination and the most efficient use of resources in the construction of new transmission facilities.
- Regular, periodic planning to assess strategic and regional needs for transmission infrastructure and to assure that proposals are consistent with those needs.
- Timelines that are long enough to assure thorough review of a proposal but are short enough to assure that a decision is issued within a reasonable period of time.
- Accelerated reviews for projects in designated corridors, including NIETC’s designated under the Energy Policy Act of 2005 and other corridors designated pursuant to state and regional plans.
- A level regulatory playing field which does not favor investor-owned utilities or any other entities at the expense of other transmission developers.

There is a serious need for a coordinated and rational approach to transmission project siting which accommodates the need to assure protection of environmental and other critical interests, incorporates ample opportunity for input from affected stakeholders, allows for reasonable recovery of costs, and places a priority on the compelling interests in modernizing the transmission grid. A multistate approach, through an interstate compact or the adoption by each state of a model siting regime that allows consideration of regional and national needs, will facilitate the development and transmission of renewable energy to meet the demands of ever-growing Western urban areas and to secure robust interconnections with the national transmission grid.

## Endnotes

- <sup>1</sup> ENERGY INFORMATION ADMINISTRATION, U.S. DEPT. OF ENERGY, Electric Power Annual Report With Data for 2007, Table 3.2 (released Jan. 21, 2009), *available at* <http://www.eia.doe.gov/cneaf/electricity/epa/epat3p2.html>.
- <sup>2</sup> ENERGY INFORMATION ADMINISTRATION, U.S. DEPT. OF ENERGY, Annual Energy Outlook 2008, at 67, *available at* [http://www.eia.doe.gov/oiaf/aeo/pdf/trend\\_3.pdf](http://www.eia.doe.gov/oiaf/aeo/pdf/trend_3.pdf).
- <sup>3</sup> CAL. PUB. UTIL. CODE § 8340, *et seq.*
- <sup>4</sup> *In re* Application of Otter Tail Power Company and Others for Certification of Transmission Facilities in Western Minnesota, Order Granting Certificate of Need With Conditions, Docket No. E-017, (Minn. Pub. Util. Comm'n Mar. 17, 2009).
- <sup>5</sup> 16 U.S.C. § 824p (2006).
- <sup>6</sup> 72 Fed. Reg. 56,992 (Oct. 5, 2007).
- <sup>7</sup> *See* Piedmont Envtl. Council v. U.S. Dept. of Energy, Civ. No. 00093 (M.D. Pa., filed Jan. 14, 2008); Ctr. for Biological Diversity v. U.S. Dep't of Energy, Civ. no. 00168 (C.D. Cal., filed Jan. 10, 2008).
- <sup>8</sup> *See, e.g.,* Piedmont Envtl. Council v. Fed. Energy Regulatory Comm'n, 538 F.3d 304 (4th Cir. 2009).
- <sup>9</sup> *See, e.g.* §151 of H.R. 2454 ("American Clean Energy and Security Act of 2009), 111th Cong., 1st sess., which would give to FERC final siting authority for transmission facilities in the Western Interconnection.
- <sup>10</sup> *See* Scott Streater, *Obama Administration Faces Power Grid vs. Public Lands Conundrum*, N.Y. TIMES, Mar. 12, 2009, *available at* <http://www.nytimes.com/gwire/2009/03/12/12greenwire-obama-admin-faces-21stcentury-grid-vs-public-l-10103.html>.
- <sup>11</sup> Protocol among the Members of the Western Governors Association, The U.S. Department of the Interior, The U.S. Department of Agriculture, The U.S. Department of Energy, and the Council on Environmental Quality Governing the Siting and Permitting of Interstate Electric Transmission Lines in the Western United States, (June 23, 2002), *available at* <http://www.westgov.org/wga/initiatives/energy/protocol.pdf>
- <sup>12</sup> *See* <http://www.westgov.org/wga/initiatives/wrez/>.
- <sup>13</sup> 16 U.S.C. § 824p(i)(1) (2006).
- <sup>14</sup> U.S. Constitution – Article 1, Section 10, Clause 3.
- <sup>15</sup> U.S. Constitution, Fifth Amendment.
- <sup>16</sup> U.S. Constitution – Article 1, Section 8, Clause 3.
- <sup>17</sup> 42 U.S.C. § 7492(f) (1994).
- <sup>18</sup> 40 CFR § 51.309 (1999).
- <sup>19</sup> Arizona, California, Montana, New Mexico, Oregon, Utah, Washington and four Canadian provinces are WCI partners, and a number of other U.S., Canadian, and Mexican states and provinces are observers. *See* <http://www.westernclimateinitiative.org/>.
- <sup>20</sup> Northern Tier Transmission Group website
- <sup>21</sup> *See* note 9, *supra*, and Press Release, Reid Testifies On The Importance of His Energy Transmission Bill, (Mar. 12, 2009) *available at* [http://reid.senate.gov/newsroom/pr\\_031209\\_reidtestimonyenergy.cfm](http://reid.senate.gov/newsroom/pr_031209_reidtestimonyenergy.cfm); Draft Copy, Siting of Interstate Electric Transmission Facilities, *available at* <http://energy.senate.gov/public/files/Bingamandrafttextsitng03090920.pdf>.
- <sup>22</sup> COLO. REV. STAT. § 40-1-103(1)(a)(I).
- <sup>23</sup> COL. CONST. art. V, § 35, art. XXV; COLO. REV. STAT. § 40-1-103(1)(b)(II). *See also* City of Greeley v. Poudre Valley Rural Elec. Ass'n, 744 P.2d 739, 745 (Colo. 1987); Town of Holyoke v. Smith, 226 P. 158, 162 (Colo. 1920).
- <sup>24</sup> COLO. REV. STAT. § 40-5-101(1); 4 COLO. CODE REGS. § 723-3-3102(a).
- <sup>25</sup> *See* Pub. Utils. Comm'n v. Colo. Interstate Gas Co., 351 P.2d 241, 250 (Colo. 1960).
- <sup>26</sup> 4 COLO. CODE REGS. § 723-3-3102(a).
- <sup>27</sup> *See* 4 COLO. CODE REGS. § 723-3-3102(d).
- <sup>28</sup> *See id.*
- <sup>29</sup> Morey v. Pub. Util. Comm'n, 629 P.2d 1061, 1065 (Colo. 1981).
- <sup>30</sup> COLO. REV. STAT. § 40-5-101(3).

<sup>31</sup> A “power authority” is a separate governmental entity created by a contract between “cities and towns . . . which are authorized to own and operate electric systems” and which is “used by such contracting municipalities to effect the development of electric energy resources or production and transmission of electric energy in whole or in part for the benefit of the inhabitants of such contracting municipalities.” COLO. REV. STAT. § 29-1-204(1)/

<sup>32</sup> COLO. REV. STAT. § 29-20-108(4)(a).

<sup>33</sup> See generally COLO. REV. STAT. § 29-20-108(2).

<sup>34</sup> COLO. REV. STAT. § 40-5-108(5).

<sup>35</sup> COLO. REV. STAT. § 29-20-108(5)(d). See *In re Application of Tri-State Generation and Transmission Association, Inc.*, Docket No. 07A-265E, Dec. No. C09-0183 (Colo. Pub. Utils. Comm’n of Col. Jan. 28, 2009), available at [http://www.dora.state.co.us/puc/docketsdecisions/decisions/2009/C09-0183\\_07A-265E.doc](http://www.dora.state.co.us/puc/docketsdecisions/decisions/2009/C09-0183_07A-265E.doc)

<sup>36</sup> COLO. REV. STAT. § 24-65.1-501.

<sup>37</sup> Colo. H. B. 1041, 1974 Leg. (Colo. 1974).

<sup>38</sup> COLO. REV. STAT. § 24-65.1-203.

<sup>39</sup> COLO. REV. STAT. § 24-65.1-104(8).

<sup>40</sup> COLO. REV. STAT. § 24-65.1-105(1).

<sup>41</sup> N.M. STAT. § 62-9-3(B).

<sup>42</sup> N.M. STAT. § 62-9-1(A).

<sup>43</sup> N.M. STAT. § 62-3-3(G).

<sup>44</sup> N.M. STAT. § 62-9-1(C).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> N.M. STAT. § 62-9-3.

<sup>48</sup> N.M. STAT. § 62-9-3(K).

<sup>49</sup> N.M. Code R. § 17.9.592.10.

<sup>50</sup> N.M. STAT. § 62-9-3(F).

<sup>51</sup> N.M. STAT. § 62-9-3.2.

<sup>52</sup> See, e.g., Santa Fe City Code, Zoning Ordinances, § 14-6.2 (“Electric Facilities”).

<sup>53</sup> See, e.g., Bernalillo County Code, Appendix A (“Zoning”) Ordinance 213, § 18.B.24 (“Public Utility Facility”).

<sup>54</sup> N.M. STAT. § 62-9-3(G).

<sup>55</sup> N.M. STAT. §§ 62-16-1, *et seq.*

<sup>56</sup> *Id.*; N.M. STAT. § 62-16-1(A)(1).

<sup>57</sup> *Id.*; N.M. STAT. § 62-16-1(A)(7)

<sup>58</sup> N.M. STAT. §§ 62-16A-1, *et seq.*

<sup>59</sup> *Id.*; N.M. STAT. § 62-16A-4(B).

<sup>60</sup> UTAH CODE ANN. § 54-2-1(16)(A).

<sup>61</sup> UTAH CODE ANN. § 54-2-1(7).

<sup>62</sup> UTAH CODE ANN. § 54-2-1(8).

<sup>63</sup> *Crystal Car Line v. State Tax Comm’n*, 174 P.2d 984, 987 (Utah 1946) (“The principal determinative characteristic of a public utility is that of service to, or readiness to serve, an indefinite public which has a legal right to demand and receive its services or commodities.”).

<sup>64</sup> *Garkane Power Co. v. Pub. Serv. Comm’n*, 100 P.2d 571, 574 (Utah 1940).

<sup>65</sup> UTAH CONST. art. VI, § 28.

<sup>66</sup> *Utah Associated Mun. Power Sys. v. Pub. Serv. Comm’n*, 789 P.2d 298, 303 (Utah 1990).

<sup>67</sup> UTAH CODE ANN. § 54-4-25(1).

<sup>68</sup> UTAH CODE ANN. § 54-4-25(4)(b).

<sup>69</sup> UTAH CODE ANN. § 54-4-25(4)(a).

<sup>70</sup> UTAH CODE ANN. § 54-4-25(4)(c).

<sup>71</sup> See *Utah Gas Serv. Co. v. Mountain Fuel Supply Co.*, 422 P.2d 530, 533 (Utah 1967).

<sup>72</sup> UTAH ADMIN. CODE R46-401-3.

<sup>73</sup> *Id.*

<sup>74</sup> UTAH CODE ANN. § 54-2-1(14).

<sup>75</sup> UTAH CODE ANN. § 54-2-1(20) (2007).

<sup>76</sup> UTAH CODE ANN. § 54-2-1(16)(d)(ii).

<sup>77</sup> *In the Matter of the Application of Milford Wind Corridor Phase I, LLC and Milford Wind Corridor Phase II, LLC for Certificates of Convenience and Necessity for the Milford Phase I and Phase II Wind Power Project*, Utah Pub. Serv. Comm'n Docket No. 08-2490-01 (July 2, 2008).

<sup>78</sup> *Id.* at 3

<sup>79</sup> UTAH CODE ANN. §§ 10-9a-509(1), 17-27a-508(1)(a); *see also* *W. Land Equities v. City of Logan*, 617 P.2d 388, 389 (Utah 1980).

<sup>80</sup> UTAH CODE ANN. §§ 10-9a-507(1), 17-27a-506(1).

<sup>81</sup> In some counties, the planning commission has authority to approve or reject a conditional use permit, with the board of adjustment having authority to hear appeals respecting decisions made by the planning commission. *See, e.g.,* Box Elder County Land Use Mgmt. & Dev. Code § 2-1-050(D)(8) (October 2007) (Planning Commission), § 2-1-060(D)(2) (Board of Adjustment); *cf. Davis County Code*, § 15.32.210 (Sept. 25, 2007) (County Commission has authority to hear appeals of decisions made by Planning Commission).

<sup>82</sup> UTAH CODE ANN. §§ 54-14-101, *et seq.*

<sup>83</sup> UTAH CODE ANN. § 54-14-202.

<sup>84</sup> UTAH CODE ANN. § 54-14-203.

<sup>85</sup> UTAH CODE ANN. § 54-14-301(2).

<sup>86</sup> UTAH CODE ANN. § 54-14-303.

<sup>87</sup> Order Designating Geographic Area, Docket No. 05-999-08 (Utah Pub. Ser. Comm'n Nov. 28, 2005).

<sup>88</sup> *Id.*

<sup>89</sup> UTAH CODE ANN. § 54-18-101, *et seq.*

<sup>90</sup> UTAH CODE ANN. § 54-18-101(4).

<sup>91</sup> UTAH CODE ANN. § 54-18-301(2).

<sup>92</sup> UTAH CODE ANN. § 54-18-301(3) and (5).

<sup>93</sup> UTAH CODE ANN. § 54-18-302.

<sup>94</sup> UTAH CODE ANN. § 54-18-304(1)(a).

<sup>95</sup> UTAH CODE ANN. §§ 54-18-304(1)(b) and 54-18-305.

<sup>96</sup> Codified at UTAH CODE ANN. §§ 63H-2-101, *et seq.*

<sup>97</sup> UTAH CODE ANN. § 63H-2-301.

<sup>98</sup> UTAH CODE ANN. § 63H-2-401.

<sup>99</sup> UTAH CODE ANN. § 63H-2-302.

<sup>100</sup> WYO. STAT. ANN. § 37-2-205.

<sup>101</sup> WYO. STAT. ANN. § 37-1-101(a)(C).

<sup>102</sup> *Continental Pipeline Co. v. Belle Fourche Pipeline Co.*, 372 F.Supp. 1333, 1334 (D. Wyo. 1974).

<sup>103</sup> WYO. STAT. ANN. § 37-2-205(a).

<sup>104</sup> Wyoming Public Service Commission Regulations, Chap. II, Sec. 205.

<sup>105</sup> *See* Wyoming Public Service Commission Regulations, Chap. II, Sec. 202(c), 203.

<sup>106</sup> WYO. STAT. ANN. § 37-2-205(d).

<sup>107</sup> WYO. STAT. ANN. §§ 35-12-101, *et seq.*

<sup>108</sup> WYO. STAT. ANN. § 35-12-106.

<sup>109</sup> WYO. STAT. ANN. § 35-12-102(a)(vii). The ISC is authorized to adjust this amount each year using recognized construction cost indices. *See* memorandum from Tod Parfitt, ISD Administrator to Tom Schroeder, ISD Program Principal (Feb. 26, 2009), *available at* <http://deq.state.wy.us/isd/downloads/Web%20-%20Threshold%20Rates.pdf>.

<sup>110</sup> WYO. STAT. ANN. § 35-12-119(c).

<sup>111</sup> *See* WYO. STAT. ANN. §§ 35-12-119(d), 35-12-109(a)(iii), (iv), (v), (viii).

<sup>112</sup> WYDEQ Industrial Development Information and Siting Rules and Regulations, Chap.1, Sec. 3.

<sup>113</sup> WYO. STAT. ANN. § 35-12-107.

<sup>114</sup> WYO. STAT. ANN. § 18-5-201; §§ 15-1-503, 601.

<sup>115</sup> *See* WYO. STAT. ANN. § 18-5-201.

<sup>116</sup> *See Vandehei Developers v. Pub. Serv. Comm'n*, 790 P.2d 1282, 1287 (Wyo. 1990) (finding it unlawful for a county to infringe upon explicit statutory authority of the state).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*