
State and Federal Coordination on Jurisdictional Boundary Issues

*Recommendations for the
U.S. Department of Energy*

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EAC
ELECTRICITY ADVISORY COMMITTEE

State and Federal Coordination on Jurisdictional Boundary Issues: Recommendations for the U.S. Department of Energy

Introduction

The electric industry is undergoing a tremendous amount of change with respect to decarbonization, new technologies, and new uses of existing technologies. Most of the industry trends straddle the state–federal jurisdictional boundary, driving the increased need for coordination between states and federal entities. The Department of Energy (DOE) is in an ideal position to help facilitate discussions across the industry that might lead to a set of principles that states can agree to, and others can rely on, as we implement policies and solutions. These recommendations are not to set policy but rather to suggest a path forward for potential consensus building. Examples include enacting transparency principles on distributed energy resources and agreeing on data-sharing principles.

The Electricity Advisory Committee (EAC) embarked on an exercise to better understand what the priority boundary issues might be, gauge industry appetite for engaging in coordinating conversations, and ultimately develop a potential path forward for DOE to further state–federal coordination on industry matters that impact the reliability and cost of electricity to consumers.

Approach

To gain consensus on a recommendation, EAC’s Smart Grid Subcommittee first conducted an internal poll to rank key state–federal boundary matters in order of impact and importance. Then, the Subcommittee solicited feedback from the full EAC on issues related to state–federal coordination that EAC members felt were a top priority. EAC members also participated in a roundtable discussion on the topic during the EAC’s October 2020 meeting, and this feedback was incorporated. After creating a priority list of issues based on member feedback, the Subcommittee developed a set of interview questions to ask relevant stakeholder groups. These stakeholders included the following entities:

- National Association of Regulatory Utility Commissioners (NARUC)
- National Association of State Energy Officials (NASEO)
- National Association of State Utility Consumer Advocates (NASUCA)
- National Rural Electric Cooperative Association (NRECA)
- American Public Power Association (APPA)
- Edison Electric Institute (EEI)
- Transmission owners
- Generation owners
- Independent power producers
- Investor-owned electric utilities
- Regional transmission organizations (RTOs)
- Independent system operators (ISOs)
- State public utility commissioners

Feedback from these stakeholder groups was compiled into the findings and recommendations presented here. The questions used during interviews are available in the appendix.

Findings

The findings below represent the culmination of EAC discussions and industry research.

Finding 1: Most Impactful State–Federal Boundary Issues

Stakeholders identified a range of issues related to state–federal jurisdictional boundaries that impacted their organizations. Key issues identified the most include:

- Distributed energy resources (renewables)
- Transmission/distribution and siting
- Energy storage
- Sensitive data definitions and sharing /information sharing
- Resilience (including the definition)
- Climate policies

Other notable issues identified include:

- Costs
- Cybersecurity
- Interstate highways and charging stations
- Resource mix policies
- Wholesale versus retail definition
- Offshore wind
- Federal Energy Regulatory Commission (FERC) and state authority delineation

While the lists are not exhaustive, they represent feedback from a variety of industry entities. When the Smart Grid Subcommittee initiated the interviews, one notable topic that was not present at the time was FERC Order 2222. That topic has risen to the top as it encapsulates how DERs should be considered in wholesale markets.

Finding 2: Value of Convening Forums

Many stakeholders noted that 1) it would be valuable to convene a forum or forums to help establish consensus principles on state–federal jurisdictional boundary issues, and 2) they were open to participating. Some felt the engagement should be an ongoing or evergreen discussion of key issues, and several noted that FERC and the RTOs would need to participate. Further, any forum would need the support of both state and federal regulators and be understood as a partnership between those entities. Tensions and antagonism have been increasing in recent years, while trust has been decreasing.

Some noted that past discussions have fallen apart for several reasons. At times, federal regulators and agencies have taken a tone of telling states what to do. State regulators, however, are protective of their responsibilities and portfolio. Any forum designed to enhance federal control will not be viable. Another obstacle to past discussions has been FERC’s limitations on meaningful participation due to ex parte rules and similar concerns. There needs to be a way for FERC to participate meaningfully without the constraints imposed by those rules.

Further, some expressed an interest in seeking efficiency by using existing forums as opposed to developing a new one.

Finding 3: Existing or Past Coordination Efforts

Stakeholders were familiar with multiple current or past efforts related to formalizing coordination and consistency on state–federal jurisdictional boundary issues. It is important to note that some did express that if existing efforts are considered, the membership might need to be expanded to include other participants for a more rounded discussion. Additionally, some entities expressed concern with efficiency and suggested that existing efforts should be favored over the creation of new forums.

Efforts identified by interviewees include the following, with efforts mentioned more frequently listed higher:

- FERC/NARUC Collaborative
- DOE Distribution Planning Forum
- NARUC/NASEO Task Force on Comprehensive Electricity Planning
- NASUCA coordination of state utility consumer advocates
- ISO/RTO Council (IRC)
- NARUC-NCEP (National Council on Electricity Policy)
- Carbon Free New York Initiative (carbon pricing)
- North Carolina stakeholder discussions (qualifying facility queue reform)

Finding 4: Interest in Participating

All stakeholders the EAC interviewed were interested in participating in a discussion to drive consensus on state boundary matters. However, at least one entity expressed concern with the ability to support such a discussion from a personnel and funding perspective.

Finding 5: Key Components of Success

A vision of success emerging from discussions around state–federal jurisdictional boundary issues took several forms. Some cited the former FERC/NARUC Collaborative as a successful model, except that the process fell apart based on FERC’s inability to fully participate due to ex parte rules and similar concerns.

Several members of the consumer advocate stakeholder community specifically noted the need to first acknowledge that there is a problem that needs to be solved. They expressed frustration that the rules keep changing (regarding siting, energy mix, etc.) and voiced a desire for agreement on what the rules are and clarity on a framework or solution for the issues that need to be resolved.

Another metric offered for measuring success was the extent to which litigation over jurisdictional issues can be reduced or avoided. Others said that the first step would be to establish a meaningful dialogue before deciding what success would look like.

Some felt that DOE would not be able to resolve disputes between states and FERC. However, DOE can provide technical assistance (TA) to states on how to protect the reliability of the distribution system, especially in the context of increased participation and activity by third parties. Importantly, DOE should not decide which particular model is best. Rather, TA should be provided for various scenarios and models. DOE can also educate about information flow.

Other comments suggested:

- There should be clear objectives to help motivate parties to come to an agreement on matters.
- Conversations must include future of the grid and grid services matters.
- It is important to include regulators in conversations.
- There is no need for another task force given the forums that already exist.
- Vertically integrated states should be included.

Others noted that, rather than taking a national approach, it might be better to focus on regions to ensure that regional differences are considered.

Recommendations

Based on the many discussions and interviews, there is no shortage of issues to consider with respect to state–federal boundaries. This is a complex topic, requiring a complex solution set, and it calls for a great deal of focus and participation across the industry to make this work. Additionally, the topics selected for early consideration need to be consistent with DOE’s current priorities and timelines. The unmet need is an objective facilitator of discussion that could drive cross-state consensus on key boundary topics. The consensus could help create more reliable bulk electric power and distribution-level solutions to the industry trends as noted above. The recommendations below are consistent with driving consensus.

Recommendation 1: Distributed Energy Resources

Develop a data-sharing program across the industry for Distributed Energy Resources (DERs).

In FERC Order 2222, FERC outlines a participation model for DER participation in wholesale markets. This approach stops short of the data sharing models that need to be considered from a reliability perspective with respect to all DERs, whether they participate in a market or not. At its core is the issue of transparency. States have varying rules with respect to the obligation to notify and provide data. Even if DERs are not specifically integrated into a wholesale market, transparency and visibility into where the DER exists and the load it offsets, particularly during peak times, could benefit states from a reliability and cost perspective. This would be especially true for neighboring states and states with large penetrations of DERs. Additionally, information sharing is paramount to ensuring that wholesale and distribution entities do not double count DERs.

Specific actions could include the following:

1. Select a forum for the discussion: A NARUC Collaborative might be the best choice given the broad state participation.
2. Set up a framework for discussion that includes data, policies, and technologies to consider.
3. Help set up a framework for consensus building.
4. Provide technical support during the process.

Recommendation 2: Transmission-Distribution Planning Coordination

Develop a roles and responsibilities matrix clearly identifying state and federal roles to which states would be willing to agree.

The transmission-distribution interface is increasingly important as the industry evolves with new technology and types of participants. The planning for such participants, including DER and offshore wind, needs to evolve if the industry is to maintain a high level of reliability and security. The industry could benefit from states agreeing on a set of principles such that transmission system operators (TSOs) and distribution system operators (DSOs) can plan for and operate the grid more efficiently. This effort could also include suggested roles and responsibilities of major participants (e.g., TSOs, DSOs, and aggregators) with respect to planning, grid operations, and market operations. This coordination would also help to advance earlier DOE efforts on grid modernization.

There are two relevant forums where coordination conversations are or have taken place that could be expanded to drive an industry standard with respect to a roles-and-responsibilities matrix. These forums are the DOE Distribution Planning Forum and the recently concluded NARUC/NASEO Task Force on Comprehensive Electricity Planning.

Specific actions could include the following:

1. Select a forum for the discussion: potentially reconstituting the NARUC/NASEO Task Force on Comprehensive Electricity Planning or establishing a similar task force.
2. Develop the matrix for consideration, with key stakeholders as a starting point for discussion.
3. Host a series of discussions to receive and address feedback.
4. Provide technical support during the process.
5. Ask states to adopt the framework as an industry standard.

Conclusion

The recommendations were limited to two because the two recommendations require a great deal of effort. Though success requires two or more states to adopt the frameworks listed above, even having a consistent framework for consideration is more than exists today. The industry recognizes the need for a national data-sharing program in order to facilitate the adoption of new technologies more broadly. The business case for this adoption is reliability and efficiency—the two things that entities, including states, drive for consistently.

As the Biden Administration evolves policy initiatives in this area, there may be additional state–federal coordination efforts needed, such as the recently announced efforts to site transmission along public rights-of way to unlock and integrate renewable energy for the nation.

Appendix A: Stakeholder Interview Questions

1. Which state–federal boundary issues are most impactful to your organization/constituents? Why?
2. Do you believe that it could be valuable to convene forums to help drive one or more states toward agreeing to principles as it relates to these topics and their impacts/interaction at the wholesale/retail levels?
3. Do you know of any efforts that are currently driving toward formalizing coordination/consistency on any of the three topics (or other topics)?
4. Would your organization be open to participating in such a forum?
5. What might success look like if an entity undertook coordination of such an effort?