



# Electric Transmission Issues: Lessons Learned from the Natural Gas Industry

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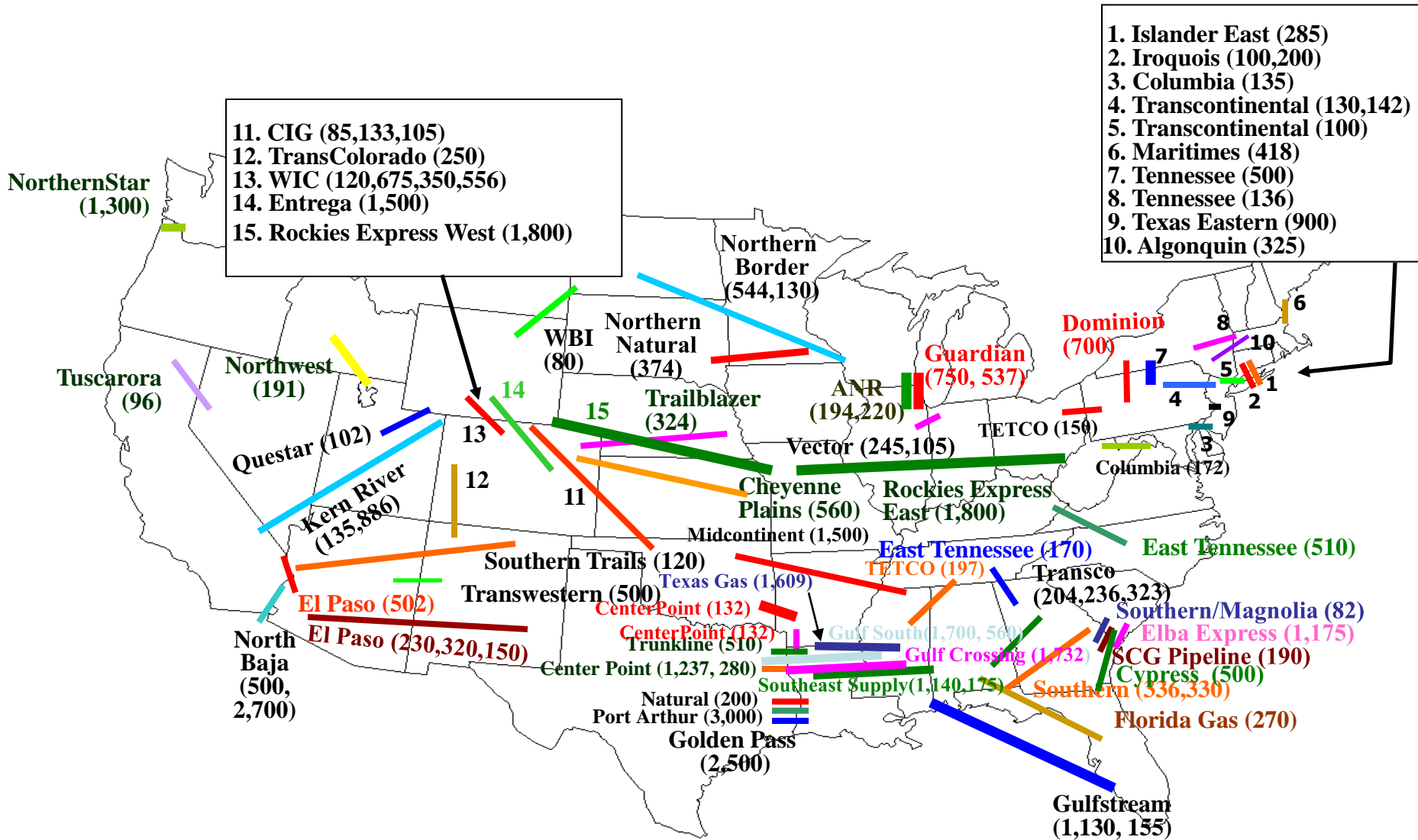


# Yes, Electricity and Natural Gas Are Different

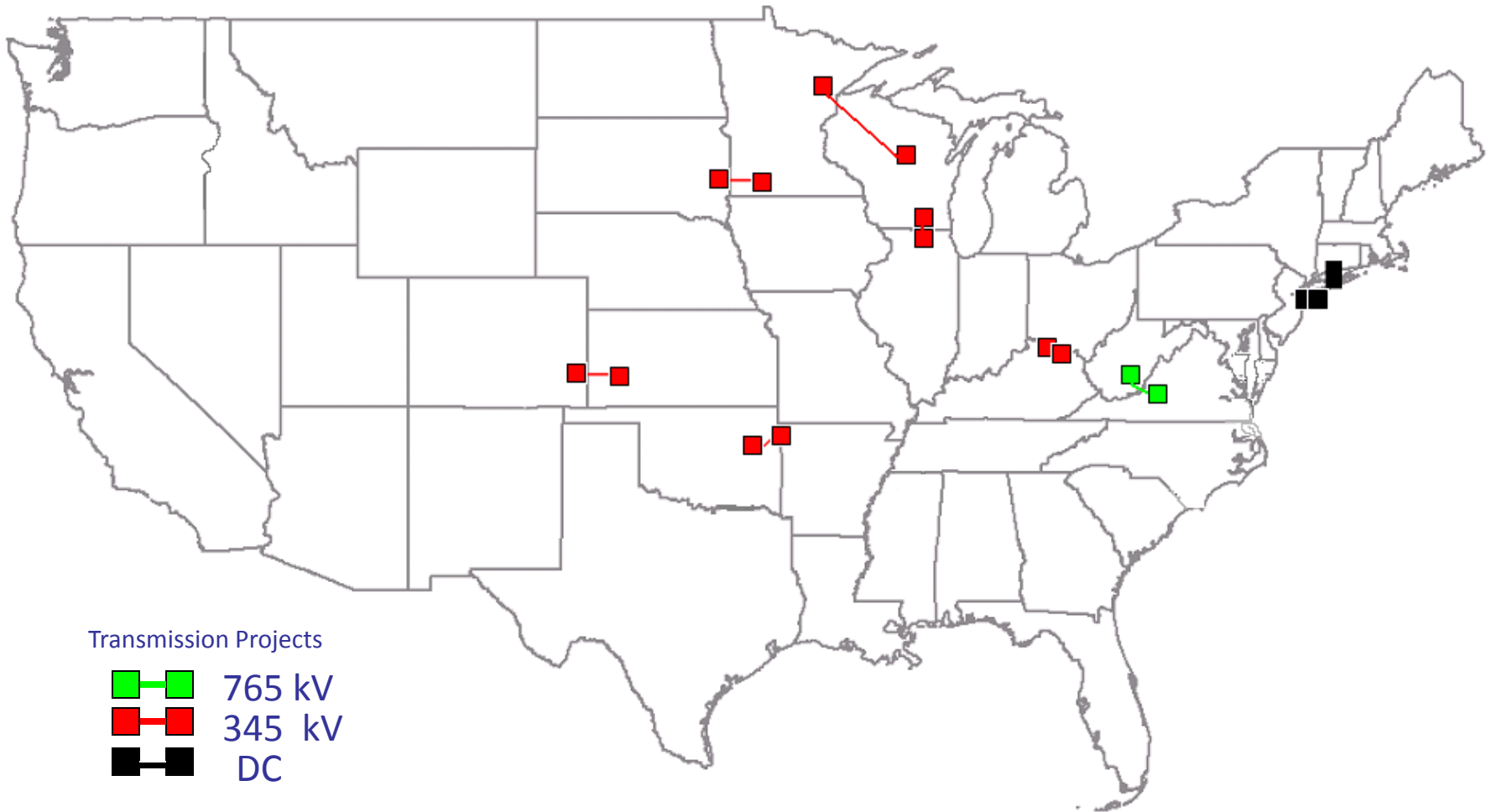
- The physics are different
- The industries are structured differently
- The relative balance of state and federal authority are different

Still, how do you explain this?

# Between 2000 and 2009 FERC approved 15,000 miles of interstate pipeline

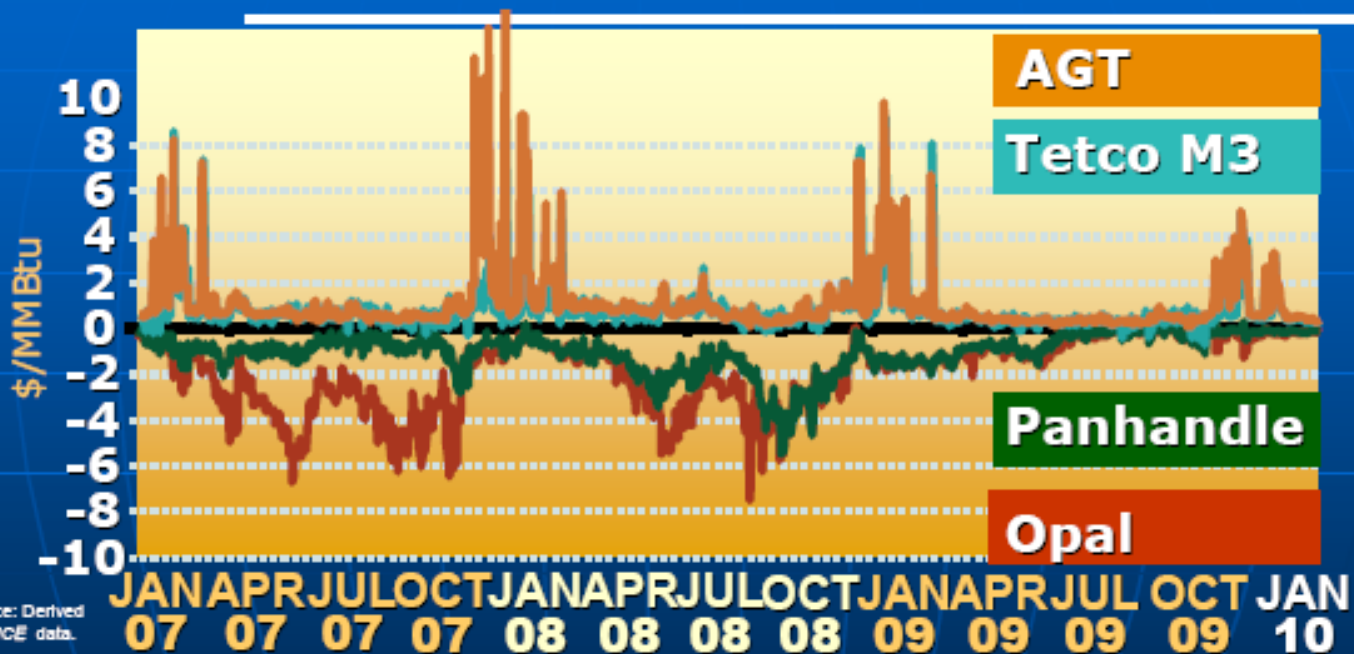


# Since 2000, 9 High Voltage ( $\geq 345\text{kV}$ ) Interstate Transmission Lines have been built totaling 682 miles.



# Robust Transmission Infrastructure Makes a Difference

# New Infrastructure Created National Gas Market



Source: Derived from ICE data.

# Why does it work for natural gas?

- A federal siting law that recognizes the inherent interstate character of the natural gas industry.
- A stable economic regulatory regime that gives investors confidence.



# Natural Gas Act Section 7

- A project found to be in the public convenience and necessity is provided with a federal right of eminent domain.
- State law is preempted if it conflicts with the federal finding of PC&N.
- FERC is the lead federal agency for purposes of preparing an environmental impact statement.

# Energy Policy Act of 2005: Enhanced FERC Authority

- NGA Section 15
  - FERC as lead agency for coordinating all federal authorizations and NEPA compliance
  - FERC authority to establish a schedule for all federal authorizations required for a project authorized under NGA section 3 or 7
  - FERC authority to maintain a consolidated record for judicial review
- NGA Section 19(d)
  - Exclusive original jurisdiction in U.S. Courts of Appeal to review actions taken under federal law to issue, condition or deny any permit required to

# Economic Regulation

- FERC does not second guess the market in determining need
  - Project sponsor's willingness to put capital at risk
  - Contractual commitments as evidence of need
  - Incremental pricing prevents cross subsidization

# Competitive Entry

- Multiple proposed projects often compete for a market opportunity
- No legal or regulatory preference for incumbents serving a market
- Negotiated rate policy
- Multiple projects may be approved if they can satisfy the need criteria and pass environmental review
- Winners and losers are picked by the market, not FERC

# Natural Gas Act Section 7: Virtue in Simplicity

- Classic New Deal statute
- FERC given considerable latitude in determining need and in making a determination of public convenience and necessity
- Agency can adapt to changes in the market
- Contrast with attempts to draft legislation to create federal authority for siting electric transmission lines.

# One Weakness: State Action Under Federal Law

- While action pursuant to NGA section 7 preempts state law, it does not supersede state actions pursuant to federal law.
- In some cases, states act pursuant to delegated federal authority, e.g., CZMA, CWA.
- Absent direction from Congress, the federal courts will not break a stalemate.

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