

**Effective and Empowered Collaborative Institutions for Multi-State Decisions
on Transmission Planning and Cost Allocation**

by

Malcolm McLellan and Lou Ann Westerfield¹

Today, energy policy in the United State and in many states encourages the development of new renewable power resources over carbon based resources, with wind being the primary resource of choice. However, generation facilities using wind as their fuel must be constructed in specific geographic locations where the wind blows with sufficient intensity to make power production commercially viable. In most cases, these locations are far from load centers and the existing infrastructure used to move energy to load. The challenge, therefore, becomes the construction of the transmission facilities necessary to deliver power from these remote wind resources to load.² Solving this challenge requires a clear understanding of who pays for the construction, operation, and eventual removal of the new transmission infrastructure. The crucial element in this dynamic is the line's route, as the line's route affects who is impacted (both positively and negatively).

Adding to the complexity of this problem is the reality that most transmission lines span multiple states with each being affected differently. For example, it is common for a generation facility to be located in one state, with another hosting the transmission line that merely moves power across the state, while a third state contains the load that will consume the energy. Then add to this mix the fact that the electrical effects of the new transmission lines are very difficult to isolate. Since the laws of physics control the flow of energy, a new transmission line may impact other existing or proposed lines and/or systems. Thus, many people have legitimate interests in new transmission lines. In this situation, the reality is that the greater the number of people involved in the decision making process the greater the probability of divergent interests, thereby reducing the probability of finding a sufficiently sized group that is capable of making the decisions necessary to build the line.

¹ Malcolm McLellan is a Member of Van Ness Feldman, PC, a law firm focused on energy and natural resource law in Seattle, Washington and Washington, D.C.; Lou Ann Westerfield is a Policy Strategist for the Idaho Public Utilities Commission and former Chair of the Northern Tier Transmission Group's Cost Allocation Committee. The views expressed herein are solely those of the authors.

² Ironically this is the case, even though national and most state's energy policies suggest that lines should be built so that power from the renewable generation facilities can be used to satisfy load growth and to allow the retirement of generators that use carbon based fuels.

If one person, or a small group of individuals, is willing to construct the transmission line, these decisions would become simpler. However, few have access to the capital necessary to build a transmission line. Those that do have the capital generally will allocate their limited capital to such a project only when it is an appropriate investment for their portfolio. In all other cases, a consortium must be built to construct a transmission line. The logical consortium consists of those that derive a benefit from the line. However, among these individuals there are likely to be those who subscribe only to costs that are equal to or less than the value of the benefit they stand to gain by the line's construction, and these gains must be greater than the gains they could expect to receive by investing their limited capital in other projects. In reality, some individuals, regardless of benefit, may simply not want to invest. Therefore, recognizing that not all beneficiaries will invest, those that do must be comfortable with the benefits that are expected to be received by those that do not, and most importantly, the investment pool must be large enough to pay for the line, as well as having someone(s) willing to expend the money necessary to build and maintain the line.

Here we will provide insight into how these consortiums can be identified and built. We will start by providing some background describing the electric system and the transmission planning process (**Section 1**); then, specifically focus on dynamics that encourage collaboration (**Section 2**) and using the Northern Tier Transmission Group's (NTTG) cost allocation process as an example of how regulators, developers and customers can work together to evaluate infrastructure options (**Section 3**); and then focus on situations where the Federal Government undertook infrastructure development (**Section 4**). We conclude (**Section 5**) with the point that as long as national and state policy encourage the development of renewable power generation federal and state leadership and money are essential to assembling the consortiums necessary to expand our power system in a manner consistent with this policy. When reading this paper please recognize that it is not intended to provide an in depth analysis of these topics. Rather it is intended to share our understanding of the dynamics involved in these decisions in the hope that our ideas may become a seed or catalyst for ideas that go on to enable our electric transmission infrastructure to be expanded.

Section 1: The Electric System and Transmission Planning

a. ***The Electric System.*** North American's power system is made up of three electric interconnections – the Western Interconnection,³ the Eastern Interconnection and the Electric Reliability Council of Texas (ERCOT). As of January 29, 2010, the Western Interconnection alone included thirty-four electrically interconnected balancing authorities which operate together to maintain the stability and reliability of electric service in the west.⁴ While these power systems began as isolated systems, over time they found that making greater use of our generating resources “can lower power costs to consumers and reduce the volatility of electricity prices.”⁵

The Western Interconnection has a history of voluntary cooperation fostered by the engineering challenges posed by the expanse of the west, and the river systems that could be used for irrigation, flood control, electric power production and a host of other uses. The Western Electricity Coordinating Council (WECC) is the successor to the body the industry created in the Western Interconnection to facilitate industry wide collaboration. WECC is, in fact, the only interconnection-wide transmission planning and reliability organization in North America. Its mission is to maintain a reliable electric power system in the Western Interconnection that supports efficient competitive power markets and to assure open and non-discriminatory transmission access among members.⁶

Transmission planners, regardless of the interconnection in which they work, must cooperate to develop transmission infrastructure that enables the needed transmission to be built. However, the product of transmission planning is a plan. Their success in transforming a transmission plan into transmission infrastructure depends, in part, on whether the various state regulatory jurisdictions provide realistic financial assurances for the transmission developers that invest in new projects.

³ The Western Interconnection includes the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and the provinces of Alberta and British Columbia. It also includes parts of South Dakota, Texas, far-western Nebraska and the Mexican State of Baja California North.

⁴ NERC Compliance Registry Matrix (January 29, 2010), and available at http://www.nerc.com/files/NERC_Compliance_Registry_Matrix_Summary20100129.pdf

⁵ Report of the Rocky Mountain Area Transmission Study (RMATS Report), September 2004, p. I. (<http://psc.state.wy.us/rmats/rmats.htm>).

⁶ Bylaws of the Western Electricity Coordinating Council, Sec. 1, Mission. <http://www.wecc.biz/library>

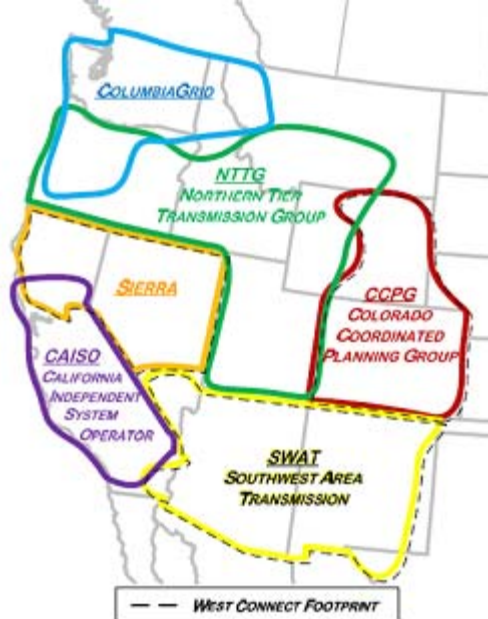


Figure 1. Location of the Western Interconnection Sub-regional Planning Groups.

b. *The Transmission Planning Process.*

Each transmission provider has its own planning process that addresses customer needs on its own system. However, some customer needs involve or significantly affect other transmission systems. In order to provide decision-makers with critical information and analysis on how an individual project fits into the regional picture, it is important that there be a comprehensive understanding of the timing, location and allocation of costs of

transmission projects that may be needed under a variety of scenarios and assumptions. These planning needs are initially addressed by the sub-

regional planning groups (“SPGs”) encompassing the geographic area of several transmission providers.

In the Western Interconnection there are four SPGs that evolved independently of one another based upon historical working relationships.⁷ They are the NTTG,⁸ Columbia Grid, WestConnect and the California Independent System Operator (CAISO).⁹ WestConnect is made up of the Sierra, Southwest Area Transmission Group and the Colorado Coordinated Planning Group. The locations of the SPGs are illustrated in **Figure 1**.

⁷ FERC in Order No. 890 contemplated Interconnection wide planning organizations but that vision failed to materialize anywhere in North America for a host of political, engineering and legal reasons. In essence they all boil down to the fact that in most cases the geographic scope of transmission planning needs is smaller than the entire Interconnection. Industry feared these local needs would become lost in an Interconnection wide plan. Specific information is available on the Internet for each group:

NTTG: <http://www.nttg.biz/>

CCPG: http://www.westconnect.com/planning_ccpg.php

SWAT: http://www.westconnect.com/planning_swat.php

ColumbiaGrid: <http://www.columbiagrid.org/>

WestConnect: <http://www.westconnect.com/>

Sierra Subregional Planning Group described at:

<http://www.wecc.biz/committees/BOD/TEPPC/TEPPC%20Meeting/Lists/Agendas/1/TEPPC%20Members%20Request.pdf> Document posts are made on the WestConnect web site.

CAISO: <http://www.aiso.com/> CAISO operates the only non-bilateral electricity market in the Western Interconnection.

⁸ Additional information concerning the local, sub-regional and regional transmission planning process within NTTG is described in the document titled, *Western Systems Transmission Planning Guidance for Customer and Stakeholder Participation*, and available at http://nttg.biz/site/index.php?option=com_content&task=blogcategory&id=119&Itemid=100

⁹ The States of Idaho, Montana, Oregon, Utah and Wyoming constitute the NTTG footprint.

Coordination and consolidation of sub-regional plans then occur on a regional basis.¹⁰ In the Western Interconnection, the SPGs are currently the highest-level organizations that develop transmission expansion plans. The WECC's Transmission Expansion Planning Policy Committee (TEPPC) serves as the regional transmission planning facilitator in the West.¹¹ As a result, combined sub-regional plans are the closest thing that WECC currently has to an interconnection-wide plan.¹² However, this situation is about to change due to the U.S. Department of Energy's granting funds to WECC and other Western stakeholders to participate in the development of an interconnection-wide transmission expansion plan over the next two years.¹³

Section 2: Dynamics that Encourage Collaboration

From the *Integrating Wind into Transmission Planning: The Rocky Mountain Area Transmission Study (RMATS)*,¹⁴ planners learned a number of lessons in how transmission planning must be approached to move forward effectively. Effective planning must [i] be broadly inclusive of all interested stakeholders, [ii] use an open and inclusive public process, [iii] make transmission plans using data, assumptions and scenarios developed by participating stakeholders, [iv] not exclude any need, appropriate generation technology or location option¹⁵, [v] evaluate all potential transmission plans and alternatives, [vi] include a thorough economic analysis of all options that make

¹⁰ An example is the Joint Initiative of Columbia Grid, NTTG and WestConnect described at <http://www.columbiagrid.org/ji-nttg-wc-overview.cfm>.

¹¹ WECC assists other entities, including SPGs, in planning transmission projects and provides, e.g., data development and project modeling support. WECC's policy is not to "pick winners or losers" or to be otherwise proscriptive in its work in assisting others. This is an outgrowth of WECC's nature as a voluntary organization of private and public sector transmission owners and operators.

¹² Additional information about transmission planning in the Western Interconnection is available in Western System Transmission Planning Guidance for Customer and Stakeholder Participation, Version 1.0 – October 29, 2008, and available at http://nttg.biz/site/index.php?option=com_docman&task=cat_view&gid=16&dir=DESC&order=date&Itemid=31&limit=5&limitstart=10

¹³ DOE also awarded funds to the Eastern Interconnection and ERCOT for this purpose.

¹⁴ Roger Hamilton, Ron Lehr, Dave Olsen, John Nielsen, Tom Ackerman, Michael Milligan, and Howard Geller, *Integrating Wind into Transmission Planning: The Rocky Mountain Area Transmission Study (RMATS)*, National Renewable Energy Laboratory, NREL/CP-500-35969 (March 2004), and available at: <http://www.nrel.gov/docs/fy04osti/35969.pdf>

¹⁵ I.e., the process will be apolitical and will not serve any particular agenda except meeting the public need.

operational, economic and environmental sense, and [vii] cooperate with other SPGs and WECC to ensure plans maintain or increase system reliability.¹⁶ The lesson's learned during and from RMATS helped shape the SPGs that formed in the Western Interconnection.

Because NTTG is unlike other SPGs in how it includes governmental and private sector entities as members on an equal footing, this paper will center on NTTG and the processes it employs in transmission planning. NTTG is funded by its non-governmental membership, most of which is comprised of people who own and operate transmission facilities.¹⁷ NTTG is, in essence, a trade name for the collaborative efforts of the NTTG private and state representatives to implement NTTG charters and agreements. The NTTG members are committed to working with each other, stakeholders, and other state and federal officials to increase the efficient use of the transmission grid¹⁸ and to develop the infrastructure needed to deliver new renewable and other energy resources to customers. The NTTG footprint, defined by the combination of the NTTG transmission providers' transmission systems, extends from the Rocky Mountains to the Northwest, and from nearly the Canadian border through the State of Utah as shown on Figure 1 above.

Members of state utility commissions and consumer counsels from Idaho, Montana, Oregon, Wyoming and Utah actively participate in NTTG's governance, and staff members from these states actively participate in NTTG's transmission use, cost allocation and planning committees. NTTG was the first SPG to include both public and private sector entities as full participating members.¹⁹ In contrast, the other SPG planning processes do not involve state utility commissioners and their staffs to the extent NTTG does.²⁰

¹⁶ RMATS Report, p. I.

¹⁷ Deseret Generation & Transmission Co-operative, Idaho Power Company, Northwestern Energy, PacifiCorp, Portland General Electric Company, and Utah Associated Municipal Power Systems. Utah Associated Municipal Power Systems, although a funding member of NTTG, is not a transmission provider.

¹⁸ The "grid" referred to here includes the transmission infrastructure in the NTTG footprint but, because of the interdependent nature of the Western Interconnection, also refers to the interconnection as a whole. as NTTG may influence its development.

¹⁹ The NTTG Steering Committee is co-chaired by an Idaho Commissioner and a PacifiCorp representative. Other Committee members include Commissioners from Montana, Oregon, Utah, and Wyoming; and representatives of NorthWestern Energy, Idaho Power Company, Utah Associated Municipal Power Systems, the Montana Consumer Counsel, and Deseret Power Electric Cooperative.

²⁰ WestConnect's planning process was not designed with a role for state utility commissions comparable to NTTG's. WestConnect's members produce its transmission plan based upon the work of the Southwest Transmission Planning Group (SWAT), the Colorado Coordinated Planning Group (CCPG) and other

By participating in the NTTG process, the various state utility commissions believe this transmission planning process produces better information and a more thorough sharing of information. A rigorous, public process for sharing and examining information increases participant confidence and increases the probability that the transmission plans will result in better and more efficient decisions related to the construction of generation and transmission necessary for a clean energy future.

Section 3: Benefits of Collaboration

a. ***Input in the Planning Process.*** Cost allocation is one of the thorniest issues confronting transmission planners and one of the most divisive. The participants often cannot agree on cost allocation principles, even though they may have agreed to most of the other aspects of the task. Because NTTG's Cost Allocation Committee coordinates its recommendations with the preparation of NTTG's transmission plan, economic experts from the various state utility commissions and consumer counsels can participate directly in the sub-regional planning process. This allows for the ability to provide insight into likely state regulatory reactions at several critical junctures in the transmission planning process before the transmission projects are implemented. In doing so, the Cost Allocation Committee could ensure that local and state requirements are addressed and that any cost, benefit, and risk issues are identified and examined in the planning process. This state regulatory participation in the transmission planning process could potentially streamline the regulatory process and assist the development of necessary transmission projects through better information sharing and analysis prior to formal consideration of the projects in state regulatory processes. Admittedly without the ability to guarantee cost recovery, the process nevertheless gives insight -- and thus a measure of comfort -- to those undertaking the project and to those who would finance it.

Looking deeper into NTTG, its cost allocation principles apply to the determination of how planned sub-regional transmission projects should be paid for and are also intended to bring a measure of clarity to the planning process. The cost allocation process is not designed to require NTTG transmission providers to assume cost responsibility for any project if their share of the cost of the project is not reasonably expected to be recoverable in their retail and/or wholesale rates. Nonetheless, NTTG's Cost Allocation Principles have proved to be a particularly

subregional transmission planning groups. See WestConnect's website: <http://www.westconnect.com/planning.php>

important component of sub-regional transmission project planning. Some costs are outside of the purview of NTTG's sub-regional cost allocation principles and process.²¹

Cost Allocation Committee meetings are open to all stakeholders and the public to the extent possible. Meetings are publicly noticed and conducted in accordance with applicable standards of conduct and rules on the protection of confidential and proprietary information and critical infrastructure information. Key to the participation of state regulatory commission representatives in the NTTG Cost Allocation Committee process is the avoidance of even the appearance of pre-judgment which would taint the later consideration of any project brought before state commissions for official decisions. The committee charter addresses this issue in Section III.4 as follows²²:

If the state commission's designated representative (or alternate) is a member of the Committee, with respect to the Committee said individual will not be acting as a representative of a state commission. No action or position taken by the individual or the Committee will preclude a state commission from taking contrary actions or positions in proceedings before it or other regulatory bodies.

The Committee's recommendations shall not be framed as decisions binding on individual state members and shall state clearly that each state retains its decision-making prerogatives. No action or position taken by a state commission's representative or by NTTG shall preclude a state commission from taking conflicting action consistent with its jurisdiction or constitute prejudgment of any issue in a proceeding before it.

²¹ NTTG's principles are not intended to supersede costs set forth in a transmission provider's FERC tariff for such things as customer transmission service requests, generation interconnection requests, Network Upgrades, Direct Assignment Facilities, or other costs related to the delivery of electricity which are routinely determined by individual state regulatory authorities -- generally in rate cases. Furthermore, the costs of upgrades or other transmission investments subject to an existing transmission service request pursuant to the transmission provider's FERC tariff are evaluated in the context of that transmission service request. Attachment K to a transmission provider's FERC tariff is also not intended to relieve or modify the obligations of the provider or the requesting transmission customer under the transmission provider's tariff. On February 16, 2007, the FERC issued its Order No. 890, one objective of which was to limit undue discrimination in transmission system planning by requiring coordinated, open, and transparent transmission planning on both a local and regional level and by involving stakeholders in the early stages of transmission planning. Order 890 required Transmission Providers to revise their open access transmission tariff (OATT) to summarize the transmission planning process. Attachment K documents the transmission provider's planning process and how it reflects the Order 890 principles of: (1) Coordination, (2) Openness, (3) Transparency, (4) Information exchange, (5) Comparability, (6) Dispute resolution, (7) Regional participation, (8) Economic planning studies, and (9) Cost allocation for new projects.

²² http://nttg.biz/site/index.php?option=com_content&task=blogsection&id=20&Itemid=90

This ensures that State commissioners remain free to make and decide cases without having their hands tied in later proceedings where they are required to formally consider the information. The presumption is that a project recommended by the Cost Allocation Committee is economically sound and the proposed allocation of costs, benefits, and risks among affected parties appears fair and reasonable. This presumption remains rebuttable in each state jurisdiction as no state in the NTTG footprint has the ability to give away its right to make decisions based on the evidence and in the public interest of the state.

The Cost Allocation Committee's primary function is to implement the NTTG cost allocation process found in the Cost Allocation Committee Charter and described in the transmission providers' Attachment Ks to their FERC-approved Open Access Transmission Tariffs (OATTs). NTTG has identified a number of principles that need to be observed for the fair allocation of transmission project costs.²³ In doing so, NTTG has assumed that the costs of

²³ Cost Allocation Committee Principals:

Principle 1: As a matter of equity, cost allocations will reflect the classic principles that "cost causers should be cost bearers" and that "beneficiaries should pay" in amounts that are reflective of the benefits received.

Principle 2: Projects brought forward for consideration will be shown not to be in conflict with state and federal IRP, Competitive Bidding, RPS (Renewable Portfolio Standard), siting, certification and other policy and planning requirements affecting transmission development, to the extent they are applicable to the project. Selecting an efficient portfolio of remote generation, in-state generation and demand-side solutions requires that the proposed allocation of transmission project costs be known with clarity. Therefore, the NTTG process will encourage efficient and stable resource planning processes by which the project developer identifies the extent of cost allocation consensus for a proposed transmission project as soon as practical in the project life cycle, allowing the states to evaluate the proposed project for compliance purposes and to understand costs relative to other resource options. Regional and sub-regional planning resources should be utilized and the results demonstrated.

Principle 3: Cost allocations will result in a reasonable opportunity for the transmission owner(s) to achieve full recovery of the costs of the project, but no more.²³

Principle 3a: Transmission project costs should be directly assigned to a single transmission customer or allocated to multiple transmission customers or areas (or the entire region) based upon the distribution of benefits.

Principle 3b: Upgrades and other projects proposed on the basis of economic or other benefits for specific transmission customers will be accommodated if (i) the customers and/or transmission owner accept responsibility for the associated costs; (ii) the project does no harm to the network; and (iii) the project otherwise results in no uncompensated adverse impact on regional transmission service.

certain projects in the West, such as those it would classify as Requested Projects or Generation Interconnection Projects, would be largely assigned directly to the parties involved and would not generally involve allocations to other transmission owners or users.²⁴ NTTG believes that project developers should be encouraged to use open seasons²⁵ or other processes to determine cost allocations without resorting to other processes.²⁶

b. Coordinated Planning. The Cost Allocation Committee reviews project developers' applications and analyses and examines the distribution of benefits and risks of the projects in the context of all projects under consideration in the SPG transmission plan. By participating in the NTTG process, the state utility commissions could improve efficiency and coordination within the NTTG footprint. This approach offers state utility commissions a valuable alternative to reviewing transmission expansion plans as a matter of first impression because it capitalizes on the efficiencies gained through coordination of multiple transmission plans and minimizes the efficiencies lost from not coordinating these plans. Participation in the sub-regional

Principle 4: For Type 2 project costs,²³ the rest of the network and its customers will be held harmless and the transmission owner should look to its transmission customers for direct recovery of costs.

²⁴ These are projects typically requested by a single entity for its own benefit and not for the good of the general public. As such, others should not be required to absorb a portion of the costs.

²⁵ A period of time after a potential project is announced and entities are invited to indicate interest in subscribing to and paying for the cost of all or part of the project.

²⁶ To facilitate the use of open seasons for reliability and/or economic projects, NTTG has adopted default cost allocation principles for open seasons conducted by NTTG transmission providers. These default open season allocation principles are incorporated into each NTTG transmission provider's Attachment K. When a transmission provider elects to provide an open season solicitation of interest for a reliability and/or economic project, the transmission provider will choose to allocate costs among project participants in proportion to investment or based on a commitment to transmission rights, unless the parties agree to an alternative mechanism for allocating project costs. In the event an open season process results in a single participant, the full cost and transmission rights will be allocated to that participant. The cost allocation resulting from open season allocations is subject to review by the NTTG Cost Allocation Committee and ultimately the Steering Committee. For any project entered into by a Transmission Provider where an open season solicitation of interest process has not been used, project costs and associated transmission rights will be allocated as agreed to among prospective project participants and consistent with NTTG's Cost Allocation Principles. As is the case with open seasons, the cost allocation resulting from negotiated allocations is subject to review by the NTTG Cost Allocation Committee and Steering Committee. For a project that is undertaken for economic reasons or congestion relief, the project costs will be allocated to the party or parties requesting the project. NTTG recognizes that, in some cases, the costs of projects may be subject to inter-jurisdictional allocation principles developed outside of the NTTG context. One example is the Multi-State Process or MSP which represents agreement of the six PacifiCorp footprint states (California, Idaho, Oregon, Utah, Washington, and Wyoming) on how project costs are to be allocated to specific jurisdictions or shared as system resources.

planning process could provide important and necessary information not only for streamlining the regulatory process, but also for identifying sub-regional benefits and risks for potential consideration by each state in the regulatory process. This participation is also structured to avoid the appearance of prejudgment or impermissible ex parte communication, leaving each state free to make its own decisions informed by the essential groundwork provided by NTTG.

Many regulatory regimes do not finally determine cost recovery for projects until after the investment is made and the project is in service. This gives understandable discomfort to those building and financing billion dollar transmission projects. The NTTG process seeks to alleviate some of this discomfort through the work of the Cost Allocation Committee and its interaction with the project developers. In fact, the Cost Allocation Committee strongly encourages **voluntary** negotiated agreements among project sponsors and participants that address cost allocation.²⁷ However, guaranteed pre-approved cost recovery is not part of the cost allocation process.

c. ***Collaboration for the Common Good.*** By participating in the planning and cost allocation processes, the state utility commissions can increase the value of their collaboration with the regulated community. This information sharing could prove vital in facilitating the implementation of transmission plans in light of the dynamic energy policy landscape, in addition to providing information that could enhance and streamline project permitting, financing, and construction. This collaboration could allow regulators and the regulated to work toward the common goal of developing sufficient infrastructure to maintain safe, reliable and adequate service to consumers at the least cost practicable by examining and garnering the benefits and value of sub-regional coordination. The process can also identify projects which must be joined together to achieve operational and economic viability. Because non-regulated entities are also welcome to participate in the process, additional projects may be considered -- perhaps in conjunction with regulated projects -- to gain efficiency and increase the likelihood that projects will be built where needed.

d. ***Applicability Elsewhere in the West.*** Even though the various sub-regional planning processes coordinate their transmission plans between themselves and through the interconnection-wide WECC TEPPC process, most of them do not involve the affected state utility commissions to the extent NTTG does. NTTG's principles are not specific to the footprint states and should "travel well" if other state

²⁷ Section V.3. of the NTTG Cost Allocation Committee Charter states in part: "Reaching agreement on an appropriate cost allocation that satisfies the criteria of the proposed cost sharing participants for an adequate relationship between risks and benefits is not simply a process of technical analysis but will likely also involve negotiation and persuasion." See also Section V.1.j.

utility regulators should seek to participate more fully in sub-regional planning and coordination processes or coordinate separately in parallel with these discussions. The resulting collaboration should produce similar benefits that are believed to result from the collaboration occurring among the state utility commissions, state consumer advocates, utilities and stakeholders in NTTG.

e. ***Rebuttable Presumptions.*** NTTG arose in a regulatory landscape in which none of the footprint states had laws allowing regulatory commissions to give up their local decision-making autonomy in favor of a collective process. However, the NTTG model provides reliable information for the use of regulators in considering the local aspects of transmission projects in a region-wide project context. For purposes of state cost recovery, inclusion of a project within NTTG's Sub-regional Transmission Plan does not create any rebuttable presumptions, but, in the absence of identical state laws allowing them to be created, it nevertheless advances and streamlines the process with high quality planning and economic information. However, at the federal level, incentive rates are available for transmission projects that satisfy the requirements of Section 219 of the Federal Power Act, 16 U.S.C. § 824s, and the requirements of FERC Order No. 679.²⁸ Inclusion of a transmission project within a transmission plan is one of the elements.

Section 4: Federal Role in Infrastructure Development

a. ***Compact Clause.*** NTTG is a voluntary organization consisting of transmission providers, customers, state regulators, and state consumer counsels making transmission planning and cost allocation recommendations that are non-binding on applicable federal and state entities exercising authority over rates or other aspects of transmission expansion. As such, NTTG builds on the long history of shared state jurisdiction over retail rates and services of multi-state utilities.²⁹ However, state representatives working on these projects must be mindful of the compact clause of the United States Constitution.³⁰ The compact clause requires agreements between states to be ratified by the United States Senate as these agreements may have an adverse effect

²⁸ Western Grid Developers, 130 FERC ¶ 61,056 at P67 (January 21, 2010) ("Because the Projects have not received approval through the CAISO's transmission planning process or received construction approval from the relevant state authorities, Western Grid is not entitled to the rebuttable presumption that the Projects are needed to maintain reliability or reduce congestion. Consequently, to meet the requirements of FPA section 219, Western Grid must provide a factual record sufficient to support a finding that the Projects are needed.")

²⁹ Because each state sets retail rates based solely on costs to serve its citizens, interstate commerce is not impeded, and multi-state compacts are not necessary.

³⁰ United States Constitution, Article 1, Section 10.

on interstate commerce. The failure to obtain Senate ratification results in the agreements being voidable by the courts.

b. Transmission Rights. Assuming states have structured a decision-making process within the parameters of the compact clause, and the transmission planning process has identified one or more high-value transmission projects and fairly allocated costs among the beneficiaries, coalitions are still required to build the project, and those with cash must be willing to invest in the project. To make this investment developers need assurance that they will be able to use the transmission capacity they are purchasing through the construction of the line. Said another way, developers need assurance that FERC will not give unused capacity to an entity seeking access. Most holders of transmission rights are willing to sell those rights to a third-party to use until they are needed. But, when they are needed, they must be able to get those rights back. While seemingly basic concepts, the legal mechanics surrounding these transactions are not well established. The most recent FERC order addressing these points is *Milford Wind Corridor*.³¹

In *Milford Wind Corridor*, FERC allowed transmission capacity to be reserved for a wind project under development. The developer, Milford Wind Corridor, requested a declaratory order on its ability to reserve all 1,000 MW of capacity of 88-miles of 345 kV transmission to be constructed near Milford, Utah to connect a multi-phased 1,000 MW wind project. The developer represented that the line and the first 200 MW of the wind project will be operational that year as the output of the first phase was sold pursuant to a 20-year power purchase agreement, and the next 100 MW of capacity was "...in the advanced stages of planning and construction should begin shortly after Phase 1 is complete." The remaining 700 MW of the project is under development with a target completion date of 2015.³² No further description was provided.

A number of intervenors encouraged FERC to establish a safe harbor period of firm rights during which time the "developer would not be required to defend its firm rights against a third-party request for service."³³ The Commission granted the developer's request for firm priority rights for the full 1,000 MW capacity of the line.³⁴ In doing so the Commission stated that its decision was "[b]ased on these specific plans

³¹ *Milford Wind Corridor*, 129 FERC ¶ 61,149 (November 19, 2009) ("*Milford Order*").

³² *Milford Petition* at page 4.

³³ *Milford Order* at P17.

³⁴ *Id.* at P22.

and milestones for construction, and Milford's demonstration of material progress towards meeting those milestones..."³⁵ However, FERC rejected the suggested safe harbor concept, stating: "we will require Milford to offer service on the Milford Line until Milford is ready to use such capacity for its firm priority rights and to expand the Milford Line if a third party requests capacity and there is no capacity available to meet the request."³⁶ While the result is helpful initially, FERC did not discuss the development progress the developer must be able to show to continue holding the capacity over time, and did not discuss the ability to continue holding capacity if development stalled, even though this issue was presented by an intervenor and is a development reality.

c. ***Federal Financing.*** In the event insufficient private and state government capital is available to construct a high-value transmission project, the project will sit on the shelf and become another example of a great planning effort that failed to place steel in the ground. There remains another option – the Federal government. If we look back into our history, we find numerous examples of huge public works projects constructed and/or financed by the Federal government. In 1996, the Public Broadcast System produced an excellent multi-part documentary titled, *The Cadillac Desert*, that chronicled the electrification of the west.³⁷ Today, the United States Bureau of Reclamation, the United States Army Corp of Engineers, the Bonneville Power Administration (BPA), and the Western Area Power Administration (WAPA) each have various responsibilities for generating, transmitting and/or marketing power produced by Federal assets.³⁸

National energy policy is encouraging, in part, the development of renewable generation. While Congress has provided some tools to facilitate the construction of interstate transmission projects,³⁹ Congress should learn from these great public works projects of the past and provide real cash to build transmission. U.S. Senate

³⁵ *Id.*

³⁶ *Id.* at P23.

³⁷ [Marc Reisner](#), *Cadillac Desert*, (1986) (ISBN 0-14-017824-4) about land development and water policy in the [western United States](#). A four-part television documentary based on the revised book was produced by [KTEH-TV](#), the PBS affiliate in [San Jose, California](#), in 1996. The parts are entitled [Mulholland's Dream](#), [An American Nile](#), [The Mercy of Nature](#), and [The Last Oasis](#).

³⁸ Numerous articles have been written about the projects operated by these entities. An example of one of these articles is, James F. Shepherd, *The Benefits and Costs of the Columbia Basin Project: Earlier Perspectives and Changing Perceptions*, *Agricultural History*, Vol 76, No. 2, *Water and Rural History* (Spring 2002), pp. 463 – 480), and available at <http://www.jstor.org/stable/3745017>.

³⁹ [Insert reference to FERC backstop siting authority, national electric corridors, and tax benefits]

Majority Leader Harry Reid, D-Nev., has introduced S.2076. This legislation would direct Power Marketing Agencies,⁴⁰ under certain circumstances, to construct the transmission needed to support generation development in renewable energy zones if no other transmission developer steps forward. While the bill failed, it is an example of a big idea to put steel in the ground. There have been other efforts along these lines. BPA and WAPA have received increased borrowing authority enabling them to construct new transmission. While the projects undertaken with this authority have made an impact, more is needed.⁴¹ The “more” need not be federally constructed and owned projects. Congress could provide financing in other ways. For example, Congress could provide loan guarantees or grants that assist private capital building projects.

Section 5: Conclusion

There have been many attempts to break through the uncertainties which have kept needed transmission from being built in the west. Part of the remedy is to increase the level and quality of cooperation at the sub-regional level. NTTG seeks to address this problem through the application of the collaborative principles built into the NTTG charters and discussed above. Uniquely among SPGs, it involves both private and governmental entities as full participants in the governance and day to day activities of NTTG. State law generally allow for some level of state cooperation in transmission planning and development, even though they generally do not allow the individual commissions to give up their autonomy to a regional entity, and may give pre-approval to certain projects only in the most limited and specific circumstances. Working in this milieu, NTTG has recognized the value of cooperation among regulatory bodies and the private sector and regularized it to the extent possible under the circumstances. As regulatory and infrastructure authorities continue to evolve, it may be possible to achieve higher levels of active cooperation. However, if greater certainty in the transmission planning process is thought desirable, it must await state or federal legislation. This requires an identity of purpose among the various states which may be difficult to achieve in the near term, but which appears to be emerging as a serious topic of discussion. In the meantime, the NTTG model should be relatively “portable”. Being

⁴⁰ A Power Marketing Agency is a statutory term used to refer collectively to BPA and WAPA.

⁴¹ Federal ownership of projects does not come without problems. David P. Yaffe & Malcolm C. McLellan, Power Administrations Seek Increased Role, *North American Windpower* (December 2008), and available at http://www.vnf.com/assets/attachments/DPY.Power_Administrations_Sseek_Increased_Role.North_American_WindPower.12.2008.pdf.

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built on sound traditional regulatory principles, it should be relatively easy to implement where the need for increased cooperation and coordination is felt.