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The Public Interest Jurisdictionally and Extra-Jurisdictionally: Toward Effective and Empowered Collaborative Institutions for Multistate Decisions on Transmission Planning and Cost Allocation

By

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The Western Interconnection² is one of three electric power grids operating in the United States.³ It includes sixty eight electrically interconnected electric power systems which operate together to maintain the stability and reliability of electric service in the west. In the past, the electric power industry in the west has been reluctant to invest in new transmission infrastructure due to protracted regulatory uncertainties. Without such investment, the interconnection will become increasingly less capable of employing sufficient resources, including wind energy, to bring electric power to the areas of the west experiencing load growth. Previous studies of this problem have found that making greater use of our generating resources “can lower power costs to consumers and reduce the volatility of electricity prices.”⁴

The physical reality in the western United States is that long transmission lines linking generating resources with load centers create inherent stability and reliability problems. As a result, the Western Interconnection has a history of voluntary cooperation in addressing reliability issues. The Western Electricity Coordinating Council (“WECC”) is, in fact, the only interconnection-wide transmission planning and reliability organization in

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² 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 Norte.

³ The other power grids are the Eastern Interconnection and ERCOT (the Electric Reliability Council of Texas).

⁴ Report of the Rocky Mountain Area Transmission Study (RMATS Report), September 2004, p. I. (<http://psc.state.wy.us/rmats/rmats.htm>).

the United States. 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. WECC may resolve transmission access disputes between members on a voluntary basis consistent with the policies of the Federal Energy Regulatory Commission.⁵

The Western Interconnection faces the challenge of meeting the demand for energy. To do this, transmission providers must cooperate to develop transmission infrastructure that enables the needed transmission to be built. The answer depends, in part, on whether the various state regulatory jurisdictions can encourage transmission planning and help to provide more realistic financial assurances for transmission developers that invest in new projects.

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 sub-regional planning groups (“SPGs”). Coordination and consolidation of sub-regional plans then occurs on a regional basis. Currently, the SPGs are 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 West⁶. As a result, combined sub-regional plans are the closest thing that WECC currently has to an interconnection-wide plan.

From the Rocky Mountain Area Transmission Study (“RMATS Report”), 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 option⁷, [v] evaluate all potential transmission plans and alternatives, [vi] include a thorough economic analysis of all options that make operational, economic, and environmental sense, cooperate with other SPGs and WECC to ensure plans maintain or increase system reliability.⁸

⁵ Bylaws of the Western Electricity Coordinating Council, Sec. 1, Mission. <http://www.wecc.biz/library>

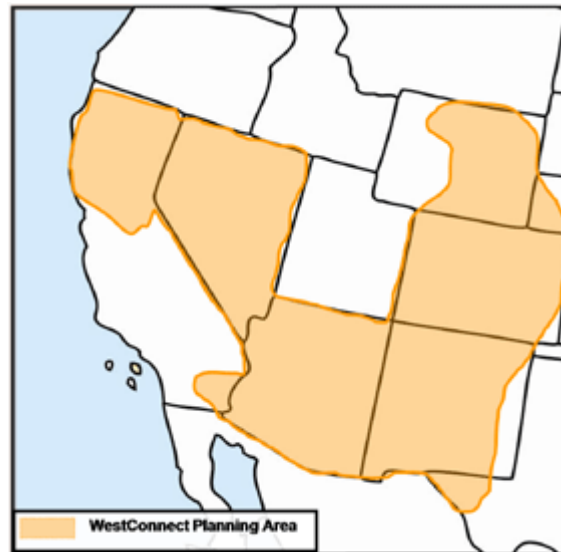
⁶ WECC assists other entities, including SPGs, in planning transmission projects and provides, e.g., data development and project modeling support. WECC’s policy is not to “pick winners or losers” or to be otherwise proscriptive in its work in assisting others. This is an outgrowth of WECC’s nature as a voluntary organization of private sector transmission owners and operators.

⁷ I.e., the process will be apolitical and will not serve any particular agenda except meeting the public need.

⁸ RMATS Report, p. I.

Northern Tier Transmission Group (“NTTG”) is one of the SPGs within the Western Interconnection.⁹ Members of the Wyoming and Utah Public Service Commissions actively participate in NTTG’s governance, and staff members from these states actively participate in NTTG’s cost allocation and planning committees. NTTG was also the first SPG to include both public and private sector entities as full participating members.¹⁰ In contrast, Colorado and New Mexico are within the WestConnect footprint.

Figure 1.



The WestConnect transmission planning process was established by transmission providers in its footprint.¹¹ WestConnect does not involve state utility commissioners and their staffs to the extent NTTG does.¹²

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

¹⁰ 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. Interested parties have the opportunity to participate in the NTTG Planning, Transmission Use, and Cost Allocation Committees.

¹¹ Arizona Public Service, El Paso Electric, Imperial Irrigation District, Nevada Power Co. / Sierra Pacific Power Co., Public Service Co. of New Mexico, Sacramento Municipal Utility District, Salt River Project, Southwest Transmission Cooperative, Transmission Agency of Northern California, Tri-State Generation and Transmission Association, Tucson Electric Power Company, Western Area Power Administration, and Xcel Energy / Public Service Co. of Colorado.

¹² 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 subregional transmission planning groups. See WestConnect’s website: <http://www.westconnect.com/planning.php>

This article will therefore explore opportunities for increased collaboration between the states of Wyoming, Utah, Colorado and New Mexico, particularly with respect to the development of renewable resources. Collaborative effort alone will not facilitate investment in transmission infrastructure without some assurance that transmission developers will be able to recover their investments. Accordingly, this paper also evaluates the applicable laws and utility codes in the states of Colorado, New Mexico, Wyoming, and Utah to determine whether the cost allocation principles used by groups like NTTG can be used to produce transmission under the current legal framework of the various states which provide a level of reasonable assurance to transmission developers. In addition, it evaluates statutory or procedural issues that affect the ability of the various regulatory commissions to use the NTTG principles of cost allocation. Knowing the longstanding reluctance of transmission developers to make the large long term investments in new projects, this article evaluates whether the various states' statutes and codes enable a sufficient rebuttable presumption to be created as a result of a transmission plan that incorporates NTTG cost allocation principles. Finally, this Article responds to the question of whether Utah, Wyoming, New Mexico and Colorado should collaborate on cost allocation issues separately from and parallel to NTTG. Ultimately, this Article concludes that States have considerable flexibility under the existing laws.

Subregional Transmission Groups in the Western Interconnection and the Focus on the Northern Tier Transmission Group.

The Western Interconnection has developed a number of subregional planning groups¹³ which evolved independently but which coordinate on many issues among themselves¹⁴ and with WECC TEPPC.

¹³ 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.

¹⁴ An example is the Joint Initiative of Columbia Grid, NTTG and WestConnect described at <http://www.columbiagrid.org/ji-nttg-wc-overview.cfm>.

Figure 2.



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 own and operate transmission facilities.¹⁵ 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 commit to working with each other, stakeholders, and other state and federal officials to increase the efficient use of the transmission grid¹⁶ 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 boarder through the State of Utah and into Wyoming as shown on Figure 2 above.

NTTG is governed by a Steering Committee, as established by the Steering Committee Charter which specifies that membership shall include (1) a state regulatory utility commissioner from each state within the NTTG footprint; (2) a utility representative from each utility who is a party to the NTTG funding agreement; and (3) a representative

¹⁵ 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.

¹⁶ 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.

from each state customer advocacy group within the NTTG footprint.¹⁷ The Steering Committee is responsible for approving the biennial transmission plans developed through NTTG's transmission planning process (described below), charters for NTTG initiatives and NTTG's policy positions on issues relating to electric transmission planning and usage within the NTTG footprint.¹⁸ As a result, NTTG provides the state utility commissions with a means to be directly involved in the planning and coordination of transmission at the sub-regional level without leaving state regulators open to charges of prejudgment.¹⁹

NTTG's Planning Committee conducts sub-regional transmission planning, described in more detail below, in accordance with the NTTG Planning Committee Charter and the NTTG Planning Agreement²⁰. These documents form the basis upon which the NTTG transmission providers, as well as interested customers and other parties, carry out an open, transparent, coordinated transmission planning process for service and facilities involving the combined systems within the NTTG footprint. As noted above, NTTG funding members provide the financial resources for NTTG, and the parties to the Planning Agreement²¹ provide in-kind human resources, generally from their in-house planning teams, as is necessary to develop a ten-year integrated regional transmission plan for the NTTG footprint.

A. NTTG Planning Process

Many challenges to the successful planning and construction of new transmission infrastructure deal with varying terrain, demographics, system configuration and the sometimes great distances between loads and resources. Given the geographic scale of the Western Interconnection, no single, regional entity currently addresses the planning needs of the entire region. For this reason, SPGs were organized to address common issues within portions of the Western Interconnection and in areas where it makes sense for groups of transmission providers to plan together on a sub-regional basis.

¹⁷ http://nttg.biz/site/index.php?option=com_docman&task=doc_download&gid=587&Itemid=31, p.2.

¹⁸ *Id.*, p. 3.

¹⁹ *Id.* Steering Committee recommendations are not binding on the state utility commissions, and each commission retains its decision-making authority. However, each state utility commissioner "shall make reasonable efforts to support in good faith and to the extent possible the principles and objectives of Northern Tier and the Steering Committee."

²⁰ Both Posted on the web at:

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

²¹ Signatories include: Black Hills Power, Inc. [12/7/2007], Deseret Power Electric Cooperative [8/9/2007], Horizon Wind Energy [4/15/2008], Idaho Power Company [8/14/2007], NorthWestern Energy [8/13/2007], PacifiCorp [8/13/2007], Portland General Electric Company 5/19/2008, Utah Associated Municipal Power Systems [8/15/2007] and TransCanada Energy [1/28/2008].

The NTTG planning process integrates the individual transmission plans of the NTTG transmission provider member and other participating organizations into a comprehensive ten-year regional transmission expansion plan for the NTTG footprint. This plan, updated on a biennial basis, is intended to take into account all participating transmission providers' current and anticipated service commitments to its retail utility customers, transmission customers and to the network itself.²² It does not take a "build-only" view of the system but examines all available alternatives, including, for example, reinforcing the existing system, more efficient use of the grid, combating congestion²³ and reviewing all options for integrating new generation resources.

The NTTG transmission providers engage in sub-regional transmission planning primarily through membership in the NTTG and its Planning Committee. NTTG will develop a coordinated Sub-Regional Transmission Plan and will respond to requests for Economic Study Requests from its members or stakeholders. NTTG's sub-regional planning process is further described in its Planning Committee, Transmission Use Committee and Cost Allocation Committee Charters.²⁴

Through the biennial planning process, NTTG's Transmission Plan identifies needs, least cost expansion project alternatives²⁵, operational and reliability benefits, projected costs, and an allocation of costs. In the biennial planning process, the Planning Committee first collects data from transmission providers, customers and other stakeholders. With this data, the Committee can prepare a work plan including realistic study assumptions, criteria to be used, various scenarios and sensitivities and decides on cases to be studied in detail. The Committee then tests the viability of the plan proposals through performance of a Transmission Capacity System Planning study with reliability performance analysis studies, and identification of system performance incorporating proposed or newly identified transmission expansion. The NTTG Transmission Use Committee groups together and prioritizes economic studies requested by transmission providers or stakeholders. The results of economic studies are factored into the Transmission Plan. The various proposals include the proposer's view of how costs are to be allocated to and collected from various stakeholder groups which may benefit in varying degrees from the new project. The Cost Allocation Committee provides analysis and recommendations which are incorporated into the Transmission Plan. Finally the completed Transmission Plan report is sent to the NTTG Steering Committee for examination and possible approval. The Steering Committee may return a Plan with directions to provide more information on any aspect that requires further substantiation.

²² Generally, reliability and system stability issues in the Western Interconnection.

²³ When demands on the system exceed its carrying capacity, congestion results.

²⁴ All posted on the Internet at:
http://nttg.biz/site/index.php?option=com_content&task=blogsection&id=20&Itemid=90

²⁵ The biennial planning process will normally recommend the most economically efficient approach to producing transmission system enhancements and explain why it did so.

Subject to appropriate CEII requirements²⁶, each transmission provider will post planning criteria and assumptions adopted by NTTG, in addition to all NTTG study results on the transmission provider's OASIS.²⁷ The process is described further below, and additional information regarding the NTTG planning process is available in the NTTG Planning Committee Charter.²⁸

1. *Sequence of Events in Study Cycle*

The NTTG sub-regional planning process is conducted over eight quarters in two years. Each NTTG transmission provider will post the dates of the current NTTG study cycle on its OASIS along with notices for each upcoming sub-regional planning meeting, which are open to all interested parties. Results of sub-regional and regional planning efforts will be considered in the members' own future Local Transmission Plan study cycles.

The NTTG sub-regional transmission planning process is synchronized with the member transmission providers' Local Transmission Planning cycles as well as the planning processes of WECC. Eligible customer and stakeholder input occur at various times in the eight quarter cycle during open stakeholder meetings, study review, and data input request periods. The Committee first gathers and coordinates transmission provider and stakeholder input applicable to the planning horizon. (Quarter 1) Loads, resources, transmission requests, desired electricity flows, transmission and other constraints, and other technical data needed to be included and monitored during the study period are identified. Study methodology, criteria, assumptions, databases, and particular analysis tools will be identified and posted for comment and direction by stakeholders and planning committee members. (Quarter 2) The Committee conducts power flow modeling of system loads, resources, and improvements to evaluate preliminary feasibility and reliability of the system and produces a draft transmission plan for public and stakeholder comment. (Quarters 3 and 4) Stakeholders then review and comment on the draft study results. During this time, the Committee reviews, prioritizes and selects economic study requests for further analysis, determination of possible congestion effects and the need for any modification to the draft plan. (Quarter 5) Economic studies: the Committee will conduct up to two production cost simulation studies per two-year study cycle. The documented results and identified benefits are factored into the cost allocation process. (Quarter 6) A

²⁶ CEII stands for Critical Energy Infrastructure Information. 18 CFR Section 388.113(c) defines CEII as: (1) Critical energy infrastructure information means information about proposed or existing critical infrastructure that: (i) Relates to the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the location of the critical infrastructure. (2) Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

²⁷ Open Access Same-Time Information System

²⁸ See pages 6-9 of the Charter at URL provided at fn. 24.

final plan report is produced and the Committee facilitates stakeholder review and comment. The final plan will document and consider simultaneous feasibility of identified projects, cost allocation recommendations, and stakeholder comments.²⁹ (Quarter 7) Once final approval of the plan is given by the NTTG Steering Committee, the two-year cycle is complete. The final plan is shared for consideration in local and regional study processes. (Quarter 8)

2. *Regulator, Customer and Stakeholder Participation*

The NTTG planning process provides many opportunities for participation by regulators, customers and stakeholders directly through the NTTG sub-regional planning process or indirectly through development of Local Transmission Plans by individual NTTG transmission providers. For example, a member transmission provider's customers and stakeholders may have their inputs, plans, and data integrated into the NTTG planning process based on the transmission provider's participation in NTTG, and the transmission provider's integration of its local plan into the NTTG planning processes as described below. Additionally, regulators, customers and stakeholders can elect to participate directly in the NTTG planning process by any or all of the following: (1) becoming a voting member of the planning committee, (2) participating in the periodic open stakeholders meetings, and (3) submitting customer planning data in the data collection process of the NTTG Biennial Planning Process.

B. NTTG's Cost Allocation Process

Cost allocation is one of the thorniest issues confronting transmission planners and one of the most divisive. NTTG's cost allocation principles apply to the determination of how planned sub-regional transmission projects should be paid for and they are 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 its share of the cost of the project is not reasonably expected to be recoverable in its retail and/or wholesale rates. Nonetheless, NTTG's Cost Allocation Principles have proved to be a particularly 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.³⁰ NTTG's Cost Allocation Principles have proved to be a

²⁹ Some individual projects make better economic or operational sense -- and indeed may only be viable -- if they are consolidated into a single project.

³⁰ NTTG's principles are not intended to supersede costs set forth in a transmission provider's 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 tariff are evaluated in the context of that transmission service request. Attachment K to a transmission provider's 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

particularly important component of sub-regional transmission planning.

1. *Cost Allocation Committee*

The NTTG Cost Allocation Committee performs its cost allocation reviews during the NTTG Planning Process and makes recommendations for incorporation into the plans submitted to the Steering Committee for approval. The Cost Allocation Committee itself consists of financial expert representatives appointed by the state regulatory and consumer agency NTTG members and by the publicly-owned and consumer-owned NTTG members.³¹ It works with the NTTG Planning Committee to solicit input from NTTG members and other stakeholders. The Steering Committee makes final determinations and resolves disputes on cost allocations as a part of its decision on the plans submitted by the Planning Committee.

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 follows³²:

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.

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 document 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.

³¹ Thus, state commissioners, transmission providers and developers do not have seats on this committee.

³² http://nttg.biz/site/index.php?option=com_content&task=blogsection&id=20&Itemid=90

The charter ensures that State commissioners remain free to decide cases and are not considered to have prejudged the cases by virtue of their participation. The presumption is that a project recommended by the Cost Allocation Committee is economically sound and the proposed method of cost recovery 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.

2. *Cost Allocation Process*

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.³³ The cost allocation process is set forth in Section V of the Charter and is restated and/or summarized below.

The cost allocation process is triggered when NTTG's Planning Committee receives a project proposal for evaluation in the NTTG Transmission Plan.³⁴ The Cost Allocation Committee reviews project developers' initial applications and analysis and, in addition to examining the cost allocation in accordance with the NTTG Cost Allocation Principles, also examines the distribution of benefits and risks of the projects themselves and in the context of all projects under consideration in the sub-regional transmission plan. The analysis will be updated and presented publicly as required by the NTTG Planning Committee's timeline for development of the sub-regional transmission plan. Based on its analytical work, application of the Cost Allocation Principles, and input from the public processes described above, the Cost Allocation Committee provides recommendations on cost/benefit allocations for inclusion in the sub-regional transmission plan submitted to the Steering Committee for approval.

If it is satisfied with the recommendations of the Cost Allocation Committee in the submitted sub-regional transmission plan, the Steering Committee will issue a determination letter on the project to each affected authority having siting, cost recovery and other jurisdiction over the project, describing the extent to which the project complies

³³ See fns. 30 and 32, *supra*.

³⁴ "The project developers shall provide the following information with the application: a) project description; b) physical location; c) cost/benefit analysis; d) investors (description and interest); e) operator; f) subscribers/contracts; g) pertinent transmission study results; h) a copy of any WECC economic and reliability determinations relative to the project; i) proposed siting process; j) proposed cost allocation; k) proposed cost recovery; l) a risk and benefit analysis focusing on the distribution of costs, benefits and risks among the parties proposed to share in the cost allocation of the project; m) proposal on dealing with cost overruns; n) degree of consensus among stakeholders on all of the above; o) how each NTTG cost allocation principle was applied in the analysis; p) a description of any regulatory rulings needed prior to examination of the project; q) any NTTG Planning Committee analysis pertinent to the project and a description of how it fits into the NTTG Annual or Biennial Plan; r) description of any proprietary or commercially sensitive information applicants believe should remain confidential during the review process." Cost Allocation Committee Charter, Section V,1 (October 1, 2007)

with NTTG cost allocation principles. The Steering Committee may, in the alternative, decline to issue a determination and send the project back to the Committee for modification or clarification. The determination letter will discuss the extent to which the project developers have provided adequately for project cost recovery, including any evidence produced to support allocation of any portion of the costs solely on the basis of reliability enhancement (one of the most contentious “benefit” issues facing transmission planners and builders.) In its review, the Steering Committee will ensure that all of the NTTG cost allocation principles have been observed and fairly applied. Further procedural rules for the conduct of the review will be added later as experience dictates.

3. *Cost Allocation Principles*

NTTG has identified a number of principles that need to be observed for the fair allocation of transmission project costs. In doing so, NTTG has assumed that the costs of 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.³⁵ NTTG believes that project developers should be encouraged to use open seasons³⁶ or other processes to determine cost allocations without resorting to other processes. 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-

³⁵ 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.

³⁶ 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.

jurisdictional allocation principles developed outside of the NTTG context.³⁷

The Cost Allocation Committee reviews cost allocations according to the following principles, as set forth in Section VI.1 of the Charter:

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.³⁸

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.

³⁷ 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.

³⁸ This means that it would be improper to sum up all allocations of project costs and find that an unfair over allocation of 110% of the costs has been made.

Principle 4: For Type 2 project costs,³⁹ 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.

The NTTG Cost Allocation Committee recognizes that projects brought to NTTG for consideration may contain all types of costs described above. That is, projects which plan to address a variety of wholesale and retail needs in a single project are encouraged, as are other more narrowly focused projects. The proposed cost allocations for a project will be assessed objectively by the Cost Allocation Committee regardless of the cost allocation proposed. All wholesale and other costs will be taken fairly into account as the Cost Allocation Committee assesses the overall allocation of project costs.

NTTG's cost allocation Principle 3 states that cost allocations, if properly done, should result in the allocation of responsibility for all of a project's costs -- no more and no less. The NTTG Cost Allocation Committee anticipates that transmission projects, planned in accordance with NTTG's criteria, may address the needs of a variety of different owners and project participants, which may be regulated at the state or federal level or, in the case of merchant facilities, not at all. The Cost Allocation Committee's analyses will therefore focus on project costs and not prescribe levels of project profits or rates of return.

We have presented the Cost Allocation Principles verbatim. Because they were very carefully negotiated word-for-word by persons whose interests are often dissimilar, they do not lend themselves to summarization. Agreement on cost allocation principles is centrally important to any sub-regional planning effort and difficult to achieve. Planning efforts which fail often do so because the participants cannot agree on cost allocation principles, even though they may have agreed to most of the other aspects of the task.

These cost principles, properly applied, should yield a result generally acceptable to the regulatory commissions of the NTTG footprint states. NTTG does not have the power to bind the individual states with the notion of an irrefutable presumption of correctness. We conclude, however, that these cost principles as developed by NTTG are useful in that they are capable of producing a fair and well reasoned result applying principles which are shared among the footprint states. The NTTG process seeks to identify objections to proposed projects and the recovery of their costs early on in the process. NTTG seeks to engage opponents as well as proponents to get them to state their positions clearly so they may be addressed in the NTTG process and later in the individual state processes.

³⁹ Type 2 project costs are defined in the NTTG Cost Allocation Principles document.

Some Lessons from NTTG: Work In The Open and Collaborate Early and Often

By participating in the NTTG process, the various state utility commissions believe their participation in this transmission planning process produces better information and a more thorough sharing of information. A rigorous, public process for sharing and examining information should increase general confidence in the transmission plan. NTTG's rigorous operational and economic vetting of proposed plans 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. More specifically, better information sharing occurs as follows:

Input in the Planning Process. Because the Cost Allocation Committee coordinates its recommendations with the biennial transmission plan, economic experts from the various state utility commissions can participate directly in the sub-regional planning process. This gives 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.

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 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. However, guaranteed pre-approved cost recovery is not part of the process.

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.

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 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.

Irrebuttable Presumptions. NTTG arose in a regulatory landscape in which none of the footprint states have 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 project-wide regional context. It does not create irrebuttable 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.

Evaluation of Colorado State Law

I. Colorado Revised Statute 40-2-115

Colorado Revised Statute 40-2-115 permits the Colorado Public Utilities Commission to cooperate with other states or agencies in order to meet its transmission goals. Although this law was not enacted directly as a result of the newly adopted

renewable energy standard⁴⁰, it has become an important tool allowing the Colorado Public Utilities Commission to take cooperative action to meet its renewable energy targets. CRS 40-2-115(1) gives the Colorado Commission broad powers to confer and work with other states and the United States in furtherance of its duties under Colorado law.⁴¹

The remaining sections go on to discuss the regulation of gas pipelines and it is in this context that the law was initially adopted. What remains unclear in this section is how the provisions regarding “economic and safety laws” have been interpreted. Based on the broad terms used, it seems likely that a broad reading of the definition is most reasonable. If that is the case, it is plausible that the commission is permitted to share information with groups like NTTG or other state commissions as long as it concerns an economic or safety law relating to public utilities. Therefore, based on a broad reading of the applicable statute, some form of cooperation is likely permitted.

In addition, because of the above section’s general applicability, the Public Utilities Commission has used it to develop plans to meet its stated renewable energy goals. as seen in a recent decision by the Commission regarding revisions to procedural rules in order to allow the state to seek stimulus funds for reimbursement of investments made by utilities.⁴² In this decision, the commission states that,

“Pursuant to 40-2-115 C.R.S., (it) is authorized to confer or hold joint hearings with the authorities of any state or any agency of the United States in connection with any matter arising in proceedings under Title 40, under the laws of any state, or under the laws of the United States; to avail itself of the cooperation, services, records, and facilities of authorities of this state, any other state, or any agency of the United States as may be practicable in

⁴⁰ Colorado Revised Statute 40-2-124(c) states that “the electric resource standards shall require each qualifying retail utility to generate, or cause to be generated, electricity from eligible energy resources in the following minimum amounts:

- (A) Three percent of its retail electricity sales in Colorado for the year 2007;
- (B) Five percent of its retail electricity sales in Colorado for the years 2008 through 2010;
- (C) Ten percent of its retail electricity sales in Colorado for the years 2011 through 2014;
- (D) Fifteen percent of its retail electricity sales in Colorado for the years 2015 through 2019; and
- (E) Twenty percent of its retail electricity sales in Colorado for the years 2020 and thereafter.

A different standard applies to municipalities and co-operatives.

⁴¹ “The commission is authorized to confer with or hold joint hearings with the authorities of any state or any agency of the United States in connection with any matter arising in proceedings under this title, under the laws of any state, or under the laws of the United States; to avail itself of the cooperation, services, records, and facilities of authorities of this state, any other state, or any agency of the United States as may be practicable in the enforcement or administration of the provisions of this title; and to enter into cooperative agreements with the various states and with any agency of the United States to enforce the economic and safety laws and rules of this state and of the United States. The commission is authorized to provide for the exchange of information concerning the enforcement of the economic and safety laws and rules of this state, any other state, and the United States relating to public utilities or to safety of transportation of gas by any person including a municipality...”

⁴² *Order Soliciting Comments on Possible Rule Changes*, Decision No. C09-0104 (Feb. 4, 2009).

the enforcement or administration of the provision of Title 40...”

This docket, seeking comments on a proposed rule change, was opened on the Commission’s own motion, showing its potential as a tool for Commission use. Therefore, based on the text of the statute, as well as the commission’s recent activity, it is likely that the Public Utilities Commission itself may seek cooperation from transmission planning groups like NTTG or other state commissions to implement its long-term standards for renewable energy.

Unfortunately, there is nothing in the statutes or regulations indicating that actions taken under this statute create any type of presumption. The regulations do provide that any party may seek review of the commission’s decisions via the judicial system. Based on this judicial review and the commission’s responsibility for regulating utilities, their decisions shall be binding unless successfully challenged. *See* 4 CCR 723-1-1507. As a result of the binding effect of their decisions, the commission does have the power to direct the Attorney General to bring enforcement actions against any violators of its orders or rules. 4 CCR 723-1-1508. Thus, if the Colorado Commission incorporates an NTTG recommendation into a formal Commission order, it would make the recommendation enforceable under Colorado law.

II. Colorado Revised Statute 40-2-126

Generally, transmission plans deal with how public utilities will actually acquire or build the appropriate transmission facilities to meet the future need imposed by the construction of new generation, including new renewable energy generation and imposed by load needs. Based on the cooperation allowed under C.R.S. 40-2-115, discussed above, the commission or its staff may advance the planning effort within the state by participating in the planning process. Furthermore, nothing in the text of the State’s statutes indicates that a utility is prohibited from cooperating with other states or agencies to develop its plan.

In 2007, Colorado enacted Revised Statute 40-2-126 concerning transmission facilities as a direct result of the passage of the renewable energy standard described above. This statute requires Colorado public utilities to consider transmission planning in providing the infrastructure to support the renewable energy construction that will be necessary to meet the renewable energy standard passed by the voters. C.R.S. 40-2-126 states:

“On or before October 31 of each odd-numbered year, commencing in 2007, each Colorado electric utility subject to rate regulation by the commission shall: (a) designate energy resource zones; (b) develop plans for the construction or expansion of transmission facilities necessary to deliver electric power consistent with the timing of the development of beneficial energy resources located in or near such zones...”⁴³

⁴³ C.R.S. 40-2-126(a) and (b).

An energy resource zone is defined as, “a geographic area in which transmission constraints hinder the delivery of electricity to Colorado consumers, the development of new electric generation facilities to serve Colorado consumers, or both.”⁴⁴ This mandate from the legislature appears to require utilities to establish appropriate plans to accommodate the development of renewable energy; and nothing in the text of the statute itself explicitly precludes collaboration with a planning group like NTTG in developing these plans.

Under 4 C.C.R. 723-3-3002, any utility has the ability to file an application asking the commission to take action regarding a number of matters, including for approval of or for amendment to a least-cost resource plan, as provided in section 3603, etc.⁴⁵ Section 3602 of the Colorado PUC Rules defines a resource plan as “a utility plan consisting of the elements set forth in section 3604.”⁴⁶ Under Rule section 3604, the utility shall file a plan with the commission that contains “an evaluation of existing resources developed pursuant to rule 3607.”⁴⁷ When we look to section 3607, subsection (c) indicates that the plan must include an evaluation of existing transmission capabilities and future needs.⁴⁸ Finally, upon proper submission of the necessary resource plan information, the commission will review the application and make a decision. In coming to their decision, the commission is allowed to hold a hearing to review the contents of the utility’s plan.⁴⁹ After considering the evidence on record, if the commission issues a decision approving the resource plan, the decision creates a presumption that utility actions consistent with that approval are prudent.⁵⁰

III. Colorado Cost Allocation Measures

Due to the passage of the renewable energy standard, a number of cost allocation provisions were also enacted that may influence whether the NTTG principles will be very influential in Colorado. Under C.R.S. 40-2-124, the commission is required to revise or clarify existing rules to establish policies for the recovery of costs incurred with respect to the renewable energy standards.⁵¹ Generally, the legislature has made it a priority for

⁴⁴ C.R.S. 40-2-126(1).

⁴⁵ 4 C.C.R. 723-3-3002(a)(XVI).

⁴⁶ *Id.* 723-3-3602(m).

⁴⁷ *Id.* 723-3-3604(c).

⁴⁸ Generally, transmission plans are included within a utility company’s “resource plan” submitted to the Public Utilities Commission.

⁴⁹ 4 C.C.R. 723-3-3613(a).

⁵⁰ *Id.* 723-3-3613(d).

utilities to be able to recover their costs in developing new, renewable energy so long as they are reasonably incurred as a result of compliance with the renewable energy quotas.⁵² In addition, the law mandates that the commission establish a maximum retail rate impact of two percent of the total electric bill annually for each customer.⁵³ Also, in looking at the regulations for filing tariffs, there does not appear to be any provision that would inhibit collaboration between NTTG and individual utilities so long as the cost allocation principles did not exceed the above stated retail rate impact limits.⁵⁴

Nothing in the current system prevents a utility from collaborating with a cooperative group such as NTTG. And, as long as whatever measures are adopted comply with the strict procedural rules for the filing of tariffs and the retail rate impact regulations and laws, NTTG's cost allocation principals could guide the discussions. This conclusion is supported by the NTTG's report on cost allocation principles. *See NTTG Cost Allocation Principles*, May 29, 2007 (online). In this report, NTTG proposes a number of principles by which to allocate costs and concludes that, nearly all can be implemented without any major change at the individual state level. In fact, most only require an agreement among the members of the group to act in favor of equitable allocation of costs. And, in doing so, it may be beneficial for states to share in some of the sub-regional costs of building transmission facilities that will allow for greater renewable energy development and more efficient transportation of electricity. Generally, as mentioned in the report, most states focus on least-cost alternatives and, therefore, a group like NTTG would have to show why collective cost allocation would in fact be the most cost-effective solution. As such, as long as these principles do not conflict with the current cost allocation measures in place, there is no reason the Commission or a public utility in Colorado, should be limited in its ability to coordinate with NTTG.

IV. Colorado Clean Energy Development Authority

In addition to the laws cited above, C.R.S. 40-9.7-104 creates the Colorado Clean Energy Development Authority (Authority or CCEDA). This political subdivision of the state has the power to invest or reinvest in projects that promote clean energy within the state of Colorado.⁵⁵ Part of the legislative mandate for the creation of such a program was to grant the Authority the power to increase the transmission and use of clean energy by financing and refinancing projects located within or outside the state.⁵⁶

⁵¹ C.R.S. 40-2-124(1)(f).

⁵² *Id.* 40-2-124(1)(c-f).

⁵³ *Id.* 40-2-124(1)(g)(I).

⁵⁴ 4 CCR 723-1-1210.

⁵⁵ C.R.S. 40-9.7-106 (2009).

⁵⁶ *Id.* 40-9.7-102(2)(b).

Based on this broad grant of authority, it is likely that the Colorado Public Utilities Commission could collaborate with the CCEDA to implement some of the NTTG principles for transmission planning and cost allocation. Additionally, because the Authority is explicitly created as an independent body politic and is not subject to the administrative direction of any department, commission, board, or agency, its ability to coordinate with State agencies or departments and its ability to implement appropriate transmission plans cannot be hindered.⁵⁷ Although the program was created in 2007, it has not been used successfully due in part to funding issues.⁵⁸

In coordination with this program, the Colorado Governor's office has created the Renewable Energy Development Infrastructure project (REDI), which is designed to work with the CCEDA to develop and facilitate the expansion of Colorado's transmission capabilities to better provide renewable energy to the market. The REDI project provides just one example of how developmental authorities in Colorado can collaborate with other agencies or government departments to carry out long-range transmission planning goals. Using REDI as an example, the Colorado Public Utilities Commission could follow a similar process and collaborate with CCEDA to implement some of the planning and cost allocation principles of sub-regional planning groups like NTTG.

Colorado therefore has several useful avenues for cooperation with other states in sub-regional transmission planning.

Evaluation of New Mexico State Law

I. New Mexico Statute 62-17

New Mexico's statutory framework is very different from that of Colorado. Unlike Colorado, there is nothing in New Mexico's current utility code or administrative regulations that directly allow the public regulation commission to cooperate with other sub-regional planning groups. The only process by which the New Mexico Public Regulation Commission (New Mexico PRC) can look to other states or agencies is through the approval of an integrated resource plan.⁵⁹ Like many other states, the New Mexico PRC is charged with ensuring that public utilities within their state implement energy efficient resource plans.⁶⁰ And, in doing so, the commission may periodically require integrated resource plans to be filed by public utilities in order to ensure that they are implementing

⁵⁷ *Id.* 40-9.7-104(1).

⁵⁸ The power of the Authority is limited because it cannot incur multi-year financial obligations through government bonds without voter approval. As such, any bonds backed by the funds granted to the Authority must be payable within the current fiscal year or be backed by third-party financiers instead. *See*, C.R.S. 40-9.7-109 (2009) for a more thorough explanation.

⁵⁹ N.M. Code § 62-17-10; note also the Annual Renewable Energy Portfolio Procurement Plan required in the New Mexico Rules at section 17.9.572.16.

⁶⁰ N.M. Code § 62-17-5.

efficient plans.⁶¹ When considering these integrated resource plans, the regulation commission is permitted to take into account a public utility's resource planning requirements in another state and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements.⁶² Based on this discussion, it appears that the New Mexico Public Regulation Commission could take into consideration collaboration with other states. By doing so, it is conceivable that the public regulation commission could require public utilities to incorporate some of the cost allocation or transmission planning principles of sub-regional groups like NTTG into their integrated resource plans, given the mandates for planning efficiency.

II. New Mexico Renewable Energy Transmission Authority

In addition to the ability of the New Mexico PRC to cooperate with other states through the integrated resource planning process, New Mexico also has an agency dedicated to developing transmission planning similar to Colorado's Colorado Clean Energy Development Authority. Similar to the structure of the CCEDA, the New Mexico Renewable Energy Transmission Authority (RETA) is composed of various appointed members and state employees.⁶³ Much like the Colorado authority, RETA was designed to provide funding for transmission infrastructure improvements and planning.

Unlike the CCEDA, New Mexico's RETA is explicitly granted the power to participate in appropriate regional transmission forums and coordinate, investigate, plan, prioritize, and negotiate with entities within and outside the state for the establishment of interstate transmission corridors.⁶⁴ Based on its broad grant of power, it is likely that RETA can collaborate with other agencies or departments to develop transmission lines that benefit the state's energy system generally, even though this agency was originally created to bring clean energy to the markets. In addition, the authority and any eligible facilities acquired by it are not subject to the supervision, regulation, control, or jurisdiction of the public regulation commission so long as a public utility does not include the cost of eligible facilities in its rate base without approval of the public regulation commission.⁶⁵ Furthermore, the law states that if a utility obtains a certificate of public convenience and necessity from the New Mexico PRC, it may recover the capital cost of a project undertaken pursuant to the New Mexico Renewable Energy Transmission Authority Act from its retail customers.⁶⁶ These costs, in order to be recoverable, must also be prudently incurred and

⁶¹ *Id.* § 62-17-10.

⁶² In N.M. Code § 62-17-10, "The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements."

⁶³ *Id.* § 62-16A-3.

⁶⁴ *Id.* § 62-16A-4(B)(6).

⁶⁵ *Id.* § 62-16A-4(E).

the project must be used and useful in serving those customers.⁶⁷ Unfortunately, though, nothing in the applicable statutes or regulations allows the principles of a sub-regional planning group like NTTG to be used in establishing any type of rebuttable presumption or precedent in transmission matters.

Therefore, based on the broad grant of authority given to RETA and its ability to recover some of its costs through rate adjustment, it is very likely that the New Mexico PRC could collaborate with RETA to implement some of the principles of sub-regional planning groups like NTTG. Because RETA is explicitly granted the power to cooperate with outside agencies and other states, it seems that it would be receptive to open collaboration on the implementation of comprehensive transmission plans that include some of the NTTG principles. Unfortunately, though, because the authority in New Mexico is newer than the one in Colorado, it has not taken much action to date. Thus far, RETA has established various committees, set up criteria for project selection and has produced a detailed response to 2009 New Mexico Senate Memorial 44, in which the New Mexico Senate requested that RETA identify and prioritize the best viable options for transmission corridors to accommodate renewable energy export from New Mexico. It also has the capacity to identify and prioritize renewable energy resource zones in New Mexico having the potential to support industry development among renewable energy developers for renewable resource generation projects.⁶⁸

New Mexico has taken important steps toward increasing the scope of its renewable energy and transmission planning requirements. Its planning for export will necessarily involve it in multi-state processes like NTTG.

Evaluation of Wyoming State Law

I. Wyoming Statute 37-2-114

Wyoming has a law similar to the Colorado statute permitting the Wyoming Public Service Commission (Wyoming PSC) to collaborate with various agencies or planning groups. Wyoming Statute (W.S.) § 37-2-114 states

“The commission may confer in person, by attending conventions or otherwise, with the members of railroad or other public utility commissions of other states and with the interstate commerce commission on any matters relating to public utilities, and shall be allowed actual traveling expenses when engaged in such work.

This grant of power, in the Wyoming utility statutes since their inception in 1915, although

⁶⁶ N.M. Stat. § 62-16A-4(G) (2009).

⁶⁷ *Id.*

⁶⁸ See the memorial and the details of RETA’s Response on the Internet at http://www.nmreta.org/new_mexico_reta_documents.php

somewhat vague, appears to give the Wyoming PSC the ability to collaborate with other states or utility commissions on all matters related to public utilities. In doing so, it would provide the Wyoming PSC with the ability to collaborate with states that have also implemented some of the principles of various sub-regional planning groups like NTTG, in order to implement some of the same policies within their own state.⁶⁹ There is nothing in Wyoming law indicating that such collaboration can create a rebuttable presumption, but the NTTG principles are well grounded in accepted regulatory practice and, if carefully applied, can produce recommendations which can be given appropriate weight in Wyoming PSC decisions. In addition, the ability to collaborate with other groups may provide the Wyoming PSC with other alternatives to utilize the NTTG planning principles and cost allocation principles in its decisions.⁷⁰

II. Wyoming Infrastructure Authority

Much like the RETA in New Mexico, Wyoming also has a transmission planning authority that possesses significant powers. The Wyoming Infrastructure Authority (WyIA), similar to both of the others already considered, is comprised of five appointed members. The purpose for which Wyoming created the WyIA is to diversify and expand the Wyoming economy through improvements in the state's electric transmission infrastructure and to facilitate the consumption of Wyoming energy by planning, financing, constructing, developing, acquiring, maintaining, and operating electric transmission facilities.⁷¹

Similar to the others, the WyIA was formed with the intention of providing financing for transmission projects. Similar to New Mexico, there is a rate-recovery mechanism that allows the Authority to establish and collect fees for the use of facilities of the Authority.⁷² Unlike any of those authorities yet discussed, the WyIA cannot exercise any of its rights if a private person, firm, or corporation is performing the acts, constructing the facilities, or providing the services contemplated.⁷³ Additionally, it is important to note that the Wyoming Legislature has provided the WyIA with \$1 billion in bonding authority in order to implement this program. In addition to the cost recovery mechanism discussed, the WyIA is granted broad power to cooperate with other organizations. For example, the authority may enter into partnerships with public or private entities in order to accomplish its purpose.⁷⁴ Also, like many of the others authorities, the WyIA is not under the

⁶⁹ Representatives of Wyoming were among the principal authors of the NTTG Cost Allocation Committee Charter and Cost Allocation Principles.

⁷⁰ It should be noted that the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate participate in NTTG committees under their current statutory authority.

⁷¹ W.S. § 37-5-303.

⁷² *Id.* § 37-5-303(c).

⁷³ *Id.* § 37-5-303(d).

jurisdiction of the Wyoming PSC. The fees, rates, rental, and other charges and services are similarly not subject to Wyoming PSC jurisdiction.⁷⁵

Unlike similar institutions already discussed, nothing in the statutes creating the WyIA task it solely with the explicit purpose of bringing clean energy to the markets.⁷⁶ Although this is undoubtedly an important goal of the state, the WyIA is given even broader authority to develop transmission plans, establish corridors and finance their construction generally.⁷⁷ This is important because it allows the state utility commission to cooperate with the WyIA to establish a long-term transmission plan that might include some of the NTTG principles without ignoring the purpose for which the WyIA was created. Additionally, because of the WyIA's broad grant of power and ability to recoup costs through rate adjustment, the state utility commission could coordinate with the WyIA to implement sub-regional planning principles that would allow the cost-allocation principles of NTTG to be incorporated into the WyIA's rate recovery mechanism already in place. Therefore, as long as the WyIA is actually doing the planning and development rather than a private entity, there is an enormous opportunity for the public utility commission to coordinate with the WyIA in the development of the transmission infrastructure needed to provide for the transportation of energy throughout the state of Wyoming. Finally, unlike some of the others discussed, the WyIA is very active in the transmission planning process and currently is working on several different transmission projects in the planning or developmental stages.⁷⁸

Evaluation of Utah Law

I. Utah Regulatory Law

The laws of Utah provide very little guidance for the Public Service Commission of Utah regarding its ability to collaborate with other states or agencies in transmission planning. Nothing currently in effect in either the Utah Code Annotated or the Utah Administrative Code explicitly permits or prevents the Utah PSC from collaborating with other agencies or states on transmission issues. The utilities themselves are given some explicit power to collaborate in the development of common facilities such as transmission

⁷⁴ W.S. § 37-5-304(a)(xi).

⁷⁵ Under W.S. § 37-5-307, "Notwithstanding any other provisions of law to the contrary, the authority shall not be subject to the supervision, regulation, control or jurisdiction of the public service commission, and the fees, rates, rental and other charges and services of the authority shall not be subject thereto."

⁷⁶ W.S. §37-5-301, *et seq., passim*.

⁷⁷ W.S. § 37-5-304(a)(iv) and (x); and W.S. § 37-5-303.

⁷⁸ These include the Wyoming-Colorado Intertie Project (WCI), Energy Gateway South (GWS), Energy Gateway West (GWW), the TransWest Express Project (TWE), the High Plains Express Project (HPX), and the Zephyr Project (ZTP)The Overland Intertie Project (OIP). Of these projects, only WCI and OIP do not in some aspect involve NTTG. More detail is available on the Internet at <http://wyia.org/projects/transmission-projects>.

lines, but there is no mention of the commission and there do not appear to be any laws currently in effect that explicitly grant a similar power to the commission.⁷⁹ Public utility commission coordination though appears to be consistent with Utah's stated energy policy because it specifically states, "Utah will promote the development of resources and infrastructure sufficient to meet the state's growing demand, while contributing to the regional and national energy supply, thus reducing dependence on international energy sources."⁸⁰

II. Utah Renewable Energy Zone Task Force

The governor's office created the Utah Renewable Energy Zone Task Force (UREZ) to analyze how much renewable energy can be cost-effectively delivered to market and what policies are needed to facilitate more renewable energy production and transmission. Initially, the task force was charged with studying policy and renewable energy zones. Subsequently, the task force has moved into its second phase, where it has begun to study the issue of transmission planning specifically.⁸¹

The task force is comprised of 20 members appointed by the Governor and each represents a different segment of society, including utilities; renewable energy generation developers; environmental organizations; federal, state and local government representatives; and energy advocate representatives.⁸² Because the task force is almost entirely focused on planning and has no implementation authority, it is housed within the Utah Geological Survey.⁸³ Although UREZ was only created about a year ago, it has already been very active in the study of transmission issues. In fact, in late 2008, the task force produced a comprehensive phase one report on renewable energy resource zones. And, as mentioned, they are now working on studying transmission issues generally in preparation for a phase two report.⁸⁴ Unfortunately, because their actual authority to implement the study findings is minimal, this group mainly provides the public service commission with an avenue for collaboration in an attempt to implement some of the principles of a sub-regional planning group. But, if the public service commission is able to collaboratively incorporate some of the NTTG principles into the phase two report being prepared by UREZ, it is conceivable that such a report would be endorsed by the governor and further legislative action may result in some of the principles becoming incorporated into Utah's future transmission plans.

⁷⁹ Utah Code Ann. § 54-9-103.

⁸⁰ The Utah Public Service Commission and Utah Division of Public Utilities participate in NTTG committees under their current statutory authority. Wyoming and Utah were the founders of the RMATS study effort.

⁸¹ http://geology.utah.gov/sep/renewable_energy/urez/index.htm.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*, All Phase I and II activities are posted here, along with the Phase I report.

In addition, there does not appear to be any presumption that currently can be created that would allow the NTTG principles to carry precedential value in Utah. Therefore, by effectively collaborating with UREZ, other states, and agencies, the commission may be able to effectively implement some of the NTTG principles as a matter of policy. But, there does not appear to be any one clear path in establishing those principles as a rebuttable presumption within the context of the current laws and regulations.

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 subregional 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. As discussed above, the laws of the four footprint states allow for some level of cooperation in transmission planning and development, even though they do not allow the individual commissions to give up their autonomy to a regional entity and may give preapproval to certain projects 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 legislation. This requires an identity of purpose among the various states which may be difficult to achieve in the near term but which appear to be emerging as a serious topic of discussion. In the meantime, the NTTG model should be relatively “portable”. Being built on sound traditional regulatory principles, it should be relatively easy to implement where the need for increased cooperation and coordination are felt.