



WESTERN
GOVERNORS'
ASSOCIATION

Siting and Permitting Transmission Reforms – Recommendations and Action Items

May 2012

Siting and Permitting Transmission in the West

The West has many unique characteristics that make development of renewable energy and transmission a challenge. The vast majority of federally managed land is in the West, and siting and permitting on federal land has been historically difficult. There are often long expanses across rugged landscape that transmission lines must cover. Wildlife and species issues exist in all corners of the West. Much of the West is arid or semi-arid, and the availability of water for energy development can be highly restricted.

Western Governors recognize that the myriad of challenges require bold action if the West is to achieve a clean, diverse, reliable energy system. We must clearly identify those areas where species sensitivity can make development more difficult, and similarly highlight those areas where development would have fewer impediments. We must fully characterize water supply and allocation so that energy developers can easily assess development potential. We must find ways to bring the electricity from our abundant renewable and fossil resources to the load centers that need them. Most critically, we must identify ways to increase the efficiency of siting and permitting, on federally managed lands, within a single state, and on interstate projects.

This report presents recommendations that Western Governors could implement to increase the efficiency of siting and permitting procedures across the West. It includes suggestions for greater collaboration and coordination between states and federal agencies, and numerous recommendations for making the siting and permitting process go smoother.

Background

Both the states and federal government recognize the financial benefits to streamlining siting and permitting. Many of the proposed transmission lines connect to new areas of energy development, creating jobs and other economic benefit. The existing process is lengthy in time and requires an excessive amount of resources, often due to duplicative efforts. These resources are capitalized by the transmission developer and ultimately passed on to the consumers' electricity bill.

Through extensive interviews and researching work on previous transmission line construction, WGA developed an initial set of recommendations designed to improve the efficiency of permitting processes. WGA then held a workshop with the states to obtain their input on the recommendations. The workshop produced a strong consensus that collaboration with all stakeholders and all levels of a permitting agency was key to successfully siting and permitting transmission. Recommendations in this area are focused on 'how' to create collaborative efforts and consider how governors can have the greatest impact on improving siting and permitting efficiency.

Other key concepts included: improved coordination among state, local and federal agencies; robust outreach prior to formal permit application; and collaborative planning processes to properly allocate staff resources and agency analysis. The importance of having good public outreach before a formal application seeking a permit for a proposed transmission line was a continual point of emphasis. Creation of a collaborative process at the onset reduces duplicative or wasted efforts later. State, local and federal participants agree that the initial application would include review criteria from all cooperating agencies, with the idea of ultimately creating a process that is transparent and accountable to all stakeholders while ensuring certainty for applicants as they move forward.

The next most critical recommendations relate to the State-Federal Coordination Process, including:

- Encouraging states to work closely with the federal government to improve coordination of state and federal siting. Governors can play a pivotal role by identifying a person who can act as a liaison between state and federal agencies and applicants. This person would be a single point of contact that works closely with the state agencies and governor's office to ensure that when an obstacle is encountered the proper authorities are brought together to make decisions.
- States also need to identify their funding needs at the outset to ensure that resources are made available to conduct analysis and review submitted applications.
- One of the most costly elements for applicants is the preparation of the environmental review. State utility commissions should look for ways of certifying project need in the early stages of environmental review rather than at the end of the process. Obviously if the PUC determines the project is not necessary, it would be better for applicants to know prior to engaging in a costly environmental review.
- Consideration of the establishment of a one-stop siting agency for large energy projects. Applicants are overwhelmed with having to deal with multiple agencies, from natural resource departments to land use entities. Because one of the main goals of this project is to save time for permit applicants without sacrificing important considerations, having one agency ensure that permit requirements are not duplicated can substantially shorten an applicant's timetable.
- In those states without a central siting authority, Governors could at least identify liaisons to coordinate with multiple local land use agencies.

Finally, two other critical areas were identified by workshop participants:

- A process to identify state and federal transmission corridors that takes into account critical issues, such as public opinion, wildlife sensitivity, viewsheds, and cultural and historical designations.

- Staying in close contact with the agencies leading the RRTT project, and providing regular and comprehensive feedback to those agencies to ensure that the goal of substantially increasing permit processing efficiency is met expeditiously.

Recommendations

The entirety of presented recommendations totaled over 46 suggestions and covered process, management and legislative changes at all levels of government. WGA and state representatives focused in on the highest impact action items that can be fostered and implemented at the state and governor level. Following are suggested items that states can weigh in on as improvements are made to the siting and permitting process:

- 1. Engage in aggressive, open and transparent public outreach efforts before a formal application seeking a permit for a proposed transmission line is submitted to the government. (DEVELOPER)***

For a number of the projects studied, either the project proponent and/or the federal lead agency did not conduct a robust and extensive public outreach process to inform the communities and constituencies that could be affected by the possible project routes. In all of these cases, the lack of aggressive public outreach led to greater public opposition to the project and to serious delays in the initially planned project schedule because of additional outreach efforts undertaken later in the process. For these reasons, it makes sense that both the project proponent and the federal (and, where applicable, state) lead agencies adopt a proactive public participation policy. Such a policy should embody the core belief that it is in everyone's interest that stakeholders have a right to be fully informed and have opportunities to be involved in the decision-making process. It also underscores the philosophy that both the proponent and the Lead Agency are committed to provide and enhance opportunities for stakeholder involvement and participation. Moreover, this process of public outreach has to be predicated on an ironclad commitment to open processes. The project proponent and the lead agency need to work with the public to seek to define and evaluate a feasible project route that will balance the needs of the company and its ratepayers, of society at large and of the environment.

This outreach can occur at two important key stages of project development:

- A. Prior to application filing and the final definition of the route to be proposed in an application to a federal agency, the proponent should conduct an outreach campaign, including public meetings, mailings, and website information. The proponent should use information gathered at this stage to revise its initially proposed route and redefine the project based on the information acquired during this initial outreach effort.

Case Study – Boardman to Hemingway

A telling example of the benefits of an aggressive public outreach program is the experience of the Idaho Power Company (“IPC”) in the case of its proposed B2H project. The need for the B2H project was initially identified in IPC’s Integrated Resource Plan in 2006, and its need was validated in 2009 and again in 2011. In 2008, IPC began the process of seeking permits from BLM, as the lead federal agency responsible for the permit review of the project. However, IPC did not engage in any significant public outreach prior to its initial application filing with BLM. BLM accordingly began its own public outreach on the project after issuing a Notice of Intent to prepare an EIS, by releasing a large-scale regional map with 47 different possible routes penciled on it. This led to considerable initial public opposition. At that point, IPC asked BLM to modify the schedule to allow time to work with the community.

In 2009, IPC stopped work on the permitting of the project per se and, rather, initiated a Community Advisory Process to help them delineate the least controversial route for the project. It took well over a year for IPC to work with the potentially impacted communities in order to develop three alternative routes that deserved detailed further study. These routes were designated the Central, Eastern and Western routes. Two of these routes that came out of the Community Advisory Process included relatively significant segments that would traverse National Forest land. However, the National Forest Service took the position that it would not allow any new transmission lines through the Wallowa-Whitman or Malheur National Forests until the carrying capacity of an existing transmission corridor that skirted the edges of the National Forests in Northeast Oregon was reached. Accordingly, IPC amended its application with BLM, and also with the Oregon Energy Facility Siting Council (OEFSC), relying only on the Eastern route.

The key lesson that can be drawn from the B2H experience is that enhanced public outreach efforts need to be combined with an open, transparent and wide-ranging dialogue – at the very beginning of the permitting process – with all major governmental and private stakeholder interests. The purpose of this public outreach effort should be to identify and screen all feasible route alternatives, as well as to identify a single route alternative that is likely to pose, overall, the least harm to the greatest number of resources and stakeholders.

B. After application filing, and both before and after issuance of the Notice of Intent to prepare an EIS, the Lead Agency and the proponent should develop and implement a public outreach plan that involves all cooperating, responsible and permitting agencies, local jurisdictions, landowners along the rights of way (ROW), and residents in the project area. NEPA defines public outreach opportunities as primarily during scoping and after release of the Draft EIS.

It should also be noted that in cases where routes ultimately identified for more detailed further study were an outcome of an aggressive public outreach effort, subsequent requests to landowners for right-of-entry to conduct further study of the proposed route that identified through a transparent public process were more easily accepted.

Finally, such improved efforts at outreach and dialogue with affected stakeholder groups need to be institutionalized both in federal regulations and in more informal guidance documents that the federal government should develop for use as a road map for how to site complex multi-state transmission projects in an efficient manner.

Use of “Live Geographic Information Systems” at Public Open Houses. There are documented examples of the very productive use of “Live GIS” at public meetings to illustrate proposed and alternative transmission line routes, overlaid onto environmental and geographic data. These include the illustration of routes and access roads in comparison with the boundaries of sage grouse core habitat, winter elk range, or individual property boundaries. Information can be presented on a computer monitor in response to the concerns of any individual. This type of live feedback can be very useful in eliminating misinformation about a project and demonstrating (or designing) setbacks from resources or sensitive receptors.

Action Item: WGA will work with states and federal agencies to create a state-by-state pre-application template.

2. *Coordinate State and Federal permitting processes.* **(STATE & FEDERAL)**

The timelines and processes for the review of major transmission projects by federal Lead Agencies under NEPA and by many of

the Western States under their respective state laws may either disallow or discourage concurrent review. In most cases, state-level review can only commence once the federal process is nearly complete, substantially slowing permit processing.

The coordination of state and federal siting activities can be particularly challenging in states like Idaho, where final project approval for an intrastate transmission project is left to the respective counties through which the project passes. In those states, the counties will typically not begin their own route assessment process until after the federal Lead Agency issues its Final EIS, identifying the preferred alternative. This can lead to the unfortunate circumstance of a county being faced with a “take it or leave it” project in which the federal Lead Agency will have already identified a preferred route. If a county is dissatisfied with that route and inclined not to approve it, the project proponent would be compelled to go back to the federal Lead Agency and essentially re-start the process of permitting any portion of the project where a route segment may not have been studied in the NEPA documents.

Although the timelines and processes for review of a project by the respective federal, state, or local lead agencies can be very different, this temporal disconnect can be mitigated to some extent when the federal agency works closely with a designated project manager for the state’s review of the project. By developing a cooperating agency arrangement the permitting entities can ensure that all of the information that the state will ultimately need in order to complete its review of the project will be included in the Lead Federal Agency’s Final EIS. Under this model, although the federal and state processes must necessarily move along separate paths, the two levels of government will collaborate toward the goal of facilitating each other’s processes to the extent possible.

Action Item: For large, projects, host regular conference calls with high level officials to ensure projects coordination is addressed. Obstacles will be identified and addressed among state coordinators.

3. Designate a comprehensive state environmental siting policy/agency or coordinator (STATE)

Having a single point of contact appointed by the governor for a respective project can promote communication among the state agencies, as well as with any other states sharing a major transmission line. Having a dedicated person in charge of managing and overseeing the project would help consolidate questions and ensure that road blocks are elevated to the appropriate authorities in a timely manner. The coordinator would be key to maintaining the master schedule and holding all parties and stakeholders accountable for their respective tasks. Where there is no single state-level siting agency, the state should develop a coordination process for counties or other local jurisdictions to work together. Such a process would include the development of consistent guidance on local permitting processes, and the establishment of an information repository to support local agencies. This coordinator would also be responsible for coordinating with other states on interstate transmission line projects. The respective state coordinators would

work together to ensure environmental, economic and other needed analysis are conducted in tandem.

Action Item: Governors can assign a single-point of contact to a WGA lead task force that can stimulate conversation, share best practices and provide timely project management.

4. Create communication channels and negotiate cost recovery agreements with project developers before processing a project application. (STATE)

As is discussed above, experience suggests that the conscientious use of a “pre-filing” process can expedite the processing of an application. In pre-filing, the project developer and the expected federal and state Lead Agencies should work closely together to define the parameters of the project before any permit application is filed. States should enter into all agreements with project developers that are needed to define the parameters of the project before any permit application is filed.

There are two types of agreements in particular that should be in place before work starts on a permit application for a major transmission project: a communications agreement and a cost recovery agreement.

A communications agreement, in the form of an MOU, should include the establishment, at the very beginning of the project review process: (1) comprehensive, shared contact lists, which include the names and contact information for all agency personnel at the state and local levels and all key developer personnel (including contractors) who will be working on the project; (2) the parties’ respective commitments in connection with the issuance by the state siting agency of, and the provision by the developer of answers to, requests for additional data; (3) the anticipated schedule for the state and local-level review of the project; (3) a process for regular conference calls between the developer and the state siting agency; and (4) a dispute-resolution procedure, which will facilitate the efficient and timely resolution of any disputes that arise between the developer and the state agencies and subdivisions that are reviewing the project.

Establishment of Resource Funding Mechanisms for Federal, State and Local Agencies. There should be a mechanism in place that provides funding so that the state (and local) agencies that have substantive project review responsibilities can be reimbursed for their costs. Without such cost reimbursement, it can be very difficult for such agencies to participate in the project review in an active, on-going and comprehensive manner. Such active, on-going state agency involvement will provide for more robust and timely data exchanges and will help facilitate the timely processing of the project application.

The optimal mechanism for codifying the responsibilities of the project developer to reimburse state and local agencies for their participation in the project review process is the execution of an MOU between the state siting agency and the project developer. In states where there is a state-level siting agency, that agency should make sure that an MOU addressing cost recovery for all

state and local efforts connected to the review of the project is in place before the project developer files a formal application with that agency.

In states where land use siting is a local responsibility, the state PUC/PSC should mandate that all transmission projects proposed by jurisdictional utilities shall provide cost reimbursement to all state and local agencies with siting and/or permitting authority over the project. By virtue of its economic regulatory authority over the state's investor-owned utilities, the PUC/PSC should be able to execute a cost recovery MOU on behalf of the other agencies and subdivisions of the state that do have siting and/or permitting authority over the project. In states where there is not yet a formal mechanism for assuring cost recovery by state and local agencies, such a mandate could be implemented via: (1) a finding of fact and/or conclusion of law in the PUC/PSC's decision approving an IRP which covers the proposed project; (2) a finding of fact and/or conclusion of law in the PUC/PSC's decision approving the utility's rate case; or (3) a decision in a special purpose proceeding to address this question that is initiated by the PUC/PSC itself.

To the extent that the law of a given state does not authorize such cost-recovery, transmission project developers in that state, in collaboration with the state PUC/PSC, should consider requesting legislation that would specifically authorize the recovery of agency costs by all state agencies and subdivisions of the state (including counties and cities) that are necessary parties to the process of permitting transmission lines in that state.

Action Item: A generic template could be created for states to enter into cost recovery agreements with developers. This could be shared and modified as needed by the states.

5. *Process permit applications in earlier stages of environmental review rather than at the end of the process. (PUCs)*

In states like California and Nevada, where the PUC/PSC has authority to approve projects proposed by jurisdictional utilities on the basis of environmental and land use considerations as well as on the basis of project need (or public convenience and necessity), it may not be legally possible for the PUC/PSC to make a conclusive determination of project need before the environmental review is completed. However, in some states, the agency making an economic determination of project need with regard to projects proposed by jurisdictional utilities has no environmental siting or permitting authority. Here, early action by the PUC/PSC can serve as an encouragement to move forward expeditiously in completing environmental permitting activities. This early action would provide incentive to other state agencies and to the project developer, as well as to federal agencies that are actively collaborating with the state(s).

PUC/PSCs in traditionally regulated states will typically require their utilities to prepare integrated resource plans ("IRPs") on a regular basis. The purpose of such IRPs is to identify the new resources that the utility needs to procure – typically over a ten-year time frame – in order to be able to continue to provide reliable service to its customers at a reasonable cost. Utility IRPs are subject to PUC/PSC approval. The needed new resources and projects identified in an IRP will often include new transmission. When a significant new transmission project is identified in

a utility IRP and the PUC/PSC has approved that resource plan, so long as there is no legal prohibition on such PUC/PSC action under state law, there is no reason why the PUC/PSC should not take all actions needed – including the issuance of a Certificate of Public Convenience and Necessity (CPCN) -- to support that transmission project, especially when it is undergoing a complicated, multi-agency environmental review. If nothing else, early PUC/PSC approval of a CPCN for such projects can serve as a strong underpinning for the description of the project's "purpose and need," which is a necessary component of a federal EIS.

Action Item: WGA could host a meeting to discuss options under this recommendation.

6. *Establish Corridor Designation Process for State and Private Lands (STATE & FEDERAL)*

Federally-designated utility corridors exist on public lands, but these designations cannot apply to state or private lands. This creates discontinuity at intersections of federal and private and state lands. This discontinuity of the federal corridors can be resolved by coordinating with state and private landowners to create a contiguous corridor. Any land planning efforts must use an open public process, at which land owners would need to represent their interests and be a part of the overall land planning efforts.

More assertive planning by the states could identify and protect preferred transmission line routes by identifying these routes in state and local planning documents. An excellent example of such an effort is reflected in California's Senate Bill 1059, which was enacted in 2006. This law states that it will provide the following benefits:

SB 1059 provides a bridge between the transmission planning process and the permitting process by designating transmission corridor zones (transmission corridors) on state and private lands available for future high-voltage electricity transmission projects, consistent with the state's electricity needs identified in the biennial Integrated Energy Policy Report (Energy Report) and Strategic Transmission Investment Plan (Strategic Plan).

SB 1059 enables local governments, utilities, energy developers, public interest groups, California Native American tribal governments, affected land owners, and members of the public to participate in the corridor designation process by commenting on the suitability of any proposed transmission corridor with respect to environmental, public health and safety, land use, economic, and transmission system impacts or other factors in which they may have expertise and/or interests.

Transmission corridor planning and preservation can help prevent costly permitting delays, ensure that optimal routes are used to reduce environmental impacts, avoid or mitigate land use conflicts, consider possible alternatives to meet project reliability or economic goals, and ensure that corridors are available when needed. Within a designated transmission

corridor, proponents will have greater certainty that projects meeting state objectives and public interests can be permitted in a timely manner.

A similar effort is underway in New Mexico to provide the State with a more prominent role in transmission planning:

“Allowing private companies to place lines throughout the state has the potential of creating environmental and economic harm and would not facilitate the coordination of multiple line proposals to minimize impacts. Transmission corridors established by the state could ensure that the state’s interests are taken into consideration for all transmission line projects.”

(New Mexico Task Force on Statewide Electricity Transmission Planning, 2010).

Action Item: WGA could host a meeting to discuss the pros and cons of this scenario. States are developing tools (Crucial Habitat Assessment Tools database) and other capabilities to direct development to appropriate areas. The meeting could address and promote these tools.

7. *Modify current practices for making landowner payments (DEVELOPER)*

Traditionally, transmission project developers who obtained ROWs from private landowners would pay those landowners a lump-sum payment, usually equivalent to the per acre value of the land, for a permanent easement. At several of the RRTT field trips to the Western States in January 2012, individuals living along proposed transmission routes stated their preference for alternative forms of payment. A peripheral concern about lump-sum payments was made by farmers and ranchers who would ultimately be obligated to accept a transmission line across their land. A lump-sum payment could throw them into a much higher tax bracket, leading to a situation where much of the money they received in exchange for the easement across their property would ultimately have to be paid to the government in taxes.

Some of these individuals noted that annual payments over a course of years would make a lot more sense to them, both in terms of getting value for what they were giving up and also in terms of its tax consequences. Transmission developers should accordingly seriously explore using alternative forms of payments for easements, including, but not limited to, the use of fixed or escalating annual payments for a period of year.

Action Item: This recommendation is highly controversial amongst utilities and states. Southern California Edison and Bonneville Power have done some research into landowner payment options. WGA could facilitate a discussion to share lessons learned and gain better understanding of options available and what that means to landowners. These discussions could be held during Task Force meetings where best practices and information sharing can occur.

8. *Convene transmission permitting agencies after subregional plans are developed ((STATE, FEDERAL & DEVELOPER)*

The sub-regional transmission planning groups hold regular meetings to review plans and needs for new wires based on projected load and generation. Once these plans are finalized, a meeting

to review the plans and start the coordination of permitting the projects could help shorten the siting and permitting process. The meeting would allow the planning groups to describe transmission plans, their importance and regional significance to permitting agencies and address regulatory needs under FERC Order 1000. This would create a relationship building opportunity as well as provide a general understanding for need and purpose.

Action Item: WGA and WECC routinely meet to discuss the various assortment of transmission plans throughout the WECC region. As plans are finalized at the various levels of development, WGA can host meetings with appropriate decision makers to elaborate on planned development and next steps.

Summary

The initial recommendations presented at the state workshop covered a wide array of suggestions for all levels of government and numerous facets of process improvements. Many of the suggested improvements are dependent on changes at the federal level, both structurally and legislatively. While the Western Governors have less influence over these types of changes, they have the opportunity to lobby and advocate for changes that make the siting and transmission process more efficient on federal lands. The key to all improvements is open, transparent and meaningful collaboration.

Western Governors' can be effective in implementing change by endorsing a process that encourages communication within their respective states, among other states and with federal agencies. By creating a Siting and Permitting Task Force, WGA can create a mechanism to maintain communication for relationship building and discussing key projects and issues as they arise. The task force could, over time, address many of the recommendations originally reported by the siting experts. Issues that prove overly challenging can be brought to the Governor and Secretary level for resolution, where the weight of the respective offices can push issues to resolution. A regular meeting among high level officials also ensures that schedules and analysis remains on track as planned; thus creating certainty for resource allocation as applied to all stakeholders.

To further promote federal and state collaboration, it was suggested that training be provided at all levels of government to better understand the needs for transmission, as well as gain an understanding of the relevant issues for siting and permitting. Providing the 'big picture' perspective offers siting authorities a greater understanding and appreciation of others' roles and responsibilities.

The ultimate goal is to foster relationship building between developers and siting authorities that creates certainty in schedules, within a shorter timeline, all while ensuring the

proper regulations and analysis is completed. Effective planning and stakeholder engagement at the early stages of transmission development are crucial to efficiently siting and permitting the line. The Governors can be most effective in using the weight of their offices to stimulate development, regardless of the infrastructure project.

Acknowledgements

WGA would like to acknowledge the services provided by Larry Chaset of Keyes, Fox and Wiedman LLP, a law firm that specializes in the renewable energy and distributed generation sectors and Susan Lee of Aspen Environmental Group, a consulting service business with core strengths in NEPA and CEQA document preparation. Both worked closely with state agencies and utilities to provide a comprehensive analysis on siting and permitting reforms. Their recommendations are the foundation for future WGA initiatives.