

Getting Right of Way Right
Scottsdale, Arizona
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Workshop Review

Many proposed transmission lines extend over hundreds of miles, cross multiple states, and affect a diverse set of communities and individuals. Among the planning and siting challenges associated with effective engagement of these diverse stakeholders are those involving compensation to landowners and affected communities? Skepticism on the part of 'pass-through' communities and property owners that local economic benefits outweigh the costs can frustrate effective project planning. Some stakeholders are actively seeking new models for revenue generation for landowners and communities, which may or may not be realistic for project developers and existing business models.

Workshop Overview

The workshop convened a strategic group of experienced stakeholders to discuss right of way negotiations and landowner and community impact mitigation, based on their experiences, prior research, and approaches used in other transmission and linear infrastructure projects. The event was designed to initiate conversation among diverse stakeholders about opportunities for improving right of way development in the context of the West's ongoing infrastructure expansion.

The workshop began with an overview of the basic process of right of way development and key policy and market issues, specifically eminent domain and project financing. This overview was followed by panels representing stakeholder perspectives on right of way.

Landowner interests were discussed by representatives from the Montana Cattlemen's Association, Northern Plains Resource Council, Rocky Mountain Farmers Union, and Cornerstone Energy Solutions. Next, representatives from public and investor-owned utilities including Northwestern Energy, Idaho Power Company, Southern California Edison, and the Bonneville Power Administration shared their views on landowner compensation for transmission rights of way. This discussion was complemented by perspectives from merchant developers, and one public service commissioner. Many of the speakers observed the constraints imposed on them by federal and state law.

Table 1 summarizes the concerns, constraints, and possible solutions noted by various speakers throughout the panel sessions.

Table 1: Summary of Concerns, Constraints & Solutions

	Concerns and constraints	Solutions
Landowners	<ul style="list-style-type: none">-Compensation not commensurate with perceived impacts-Impact to future value, esp. to heirs-Limited influence in route selection-Varied priorities (landowners have different needs/concerns)-Concerns re: impacts to use of property numerous	<ul style="list-style-type: none">-Opportunities to negotiate as a group-Co-ownership of facility-Negotiate in detail on construction and operation and maintenance issues-Compensation for time invested in right-of-way negotiations-Royalties-Amortized payments

	<ul style="list-style-type: none"> -Lack of trust -Interrupted relationships, lack of continuity in negotiations/post-construction -Cost of legal challenges -Threat of eminent domain 	<ul style="list-style-type: none"> -Damage payments
Utilities	<ul style="list-style-type: none"> -Long-term certainty in access roads -Lengthy permitting time frame vs. short acquisition period -Internal utility processes regarding capital expenditure and time of licensing -Standard procedures limit payment to a percent of fair market value -Uniform Relocation Assistance and Real Property Acquisitions Act (1970) -State eminent domain status -Cost recovery stipulations for rate-based projects; PUC concerned with justifiable costs and what is acceptable to be passed onto ratepayers. -Compete with merchant line developers who don't have to adhere to statutory procedures for land compensation; sets higher expectations. -Capitalized vs. annual expenses -Tightening regulations from FERC & others 	<ul style="list-style-type: none"> -Rethink and revise timeframes -Early right-of-way title research -Fee purchase for small properties -Remove legal cost burdens for property owners in tort situations -Create choices for landowners -Cultivate relationships with landowners prior to mapping a corridor -In kind services -More empirical information on the value of impacts
Merchant developers	<ul style="list-style-type: none"> -Have to offer competitive project price -Finance options preclude royalties -Affected by other transmission projects and the political environment 	<ul style="list-style-type: none"> -Initiate positive conversations or groups outside of specific projects -Voluntary submission to regulatory processes -Long period of relationship building prior to project announcement -Research and document finance institutional barriers

In addition, the meeting featured case studies of transmission development in Minnesota and Southern California. Xcel Energy shared its perspective as a utility developing new transmission in Minnesota, the only state in the nation with a “buy the farm” statute, which allows a landowner to select to have the utility to purchase the entire property over which a high voltage transmission line will pass. Xcel representatives shared perspectives on the difficulty of implementing this regulation, including accounting and budgeting issues, equity issues in rural vs. suburban areas, and general interpretation of the intention of the law.

Representatives from San Diego Gas and Electric and Aspen Environmental Group, consultants, shared the experience of developing the Sunrise Powerlink project in Southern California. The line, which faced numerous permitting challenges, has received considerable interest because the developers built 6 miles of it underground. The speakers shared lessons learned, particularly with respect to public engagement, noting the importance of engaging stakeholders early in the pre-planning process in order to gain project support.

Discussions

Working groups were organized to follow up on the issues and possible solutions identified during presentations. Organized to include a variety of perspectives, the groups were charged with prioritizing issues and ideas that the Western Governors Association and the state siting task force might consider exploring in more detail. These were not policy recommendations per se, but rather ideas that struck a common chord, either because there were obvious gaps in the understanding and interest of different stakeholder groups or because an idea had merit. Issues prioritized by the groups included areas where better stakeholder education would be helpful and areas where technical research may be in order.

With regard to alternative approaches to landowner compensation for transmission rights of way, proposals for royalties or “through-put” payments tied to shipping contracts on transmission lines prompted much discussion. The need for more careful analysis of constraints facing either of these ideas emerged as a priority for further research and education. In addition, discussion groups emphasized the value in exploring creative ways of engaging with landowners beyond the right of way payment per se—for example, negotiating with groups of landowners, involving landowners in the siting process, and engaging landowners early.

In addition, working groups identified a need for specific information that will help in the process of negotiations with landowners. What are the best management practices for early engagement with landowners? What are the best ways to run public meetings?

Participants also prioritized the need for more empirical information on the impacts of transmission lines on property values. In particular, there is a need for studies that quantify the value of visual impacts of powerlines, as well as information on the impacts of powerlines in a variety of areas, including agricultural, rural, suburban, and urban areas.

Summary

In all, this workshop succeeded in initiating conversations and learning among different stakeholders who are actively involved and affected by transmission development. Many workshop participants, regardless of their background in transmission and utility issues, indicated that they valued the conversations and had learned something new about the right of way process. The participants will have an opportunity to provide feedback on a more detailed report on the workshop and key recommendations to the Western Governors Association later this year.

Moving forward, the Western Governors Association, Headwaters Economics, the Sonoran Institute, and the Lincoln Institute of Land Policy will continue to be engaged in this issue, and will work to meet the needs and answer the questions identified at the workshop.