



## **Inclusive Joint Transmission Ownership Arrangements: An Effective Means to Getting Needed Transmission Sited and Built**

There is general consensus that to deliver renewable energy to load, maintain electric reliability, and promote greater wholesale electric competition, we need to expand the U.S. transmission grid, as recognized in FERC's Order 1000. In the Energy Policy Act of 2005, Congress recognized the need to spur new transmission construction by, among other things, enacting FPA Section 217(b)(4), which directs FERC to facilitate planning and expansion of the grid to meet the reasonable needs of load-serving entities (LSEs), as well as Section 216, providing for Federal backstop siting authority, and Section 219, providing for incentive- or performance-based rate treatments for transmission that benefits consumers by ensuring reliability or reducing the delivered cost to consumers.

Inclusive joint ownership arrangements—ones that invite participation on reasonable terms to all LSEs in the relevant footprint—have been shown effective in getting needed transmission built in a manner that benefits consumers. An ownership structure that is open to all LSEs in the footprint leads to a collaborative and inclusive process for the planning and development of new transmission that results in a better and more efficiently planned transmission system, helps facilitate solutions to cost allocation, and lays an important foundation for the siting of new transmission lines. Such joint ownership may be the single most important factor in determining the success of a transmission project. The Commission has repeatedly recognized the benefits of such arrangements and encouraged them. TAPS urges the Commission, in addition to removing obstacles to joint ownership, to take actions to make that encouragement effective, including:

- Tying return on equity incentives to the applicant's willingness to offer all transmission dependent utilities (TDUs) in the relevant footprint the opportunity to participate in the project on reasonable terms;
- Promoting inclusive joint ownership arrangements as a not unduly discriminatory factor in selection of a project for regional cost allocation;
- Encouraging and favorably considering proposals for bidding out the cost of construction and associated capital requirements when selecting projects for regional cost allocation, with bidding structured in a way that enables all LSEs in the footprint to participate in supplying their fair share of the required capital; and
- Urging DOE to consider inclusive joint ownership arrangements as a factor in selecting projects for rapid permitting.

**a. Inclusive Joint Ownership Arrangements Have a Strong Track Record of Getting Needed Transmission Built**

Several types of inclusive joint ownership arrangements provide recent success stories:

***Inclusive transcos:*** An early example of an inclusive transmission-only company (or transco) is the Vermont Electric Power Company (VELCO), formed in 1956. Initially excluded, municipal and cooperative utilities won the right to participate in VELCO in the 1970s through conditions placed on nuclear plant licenses to address situations “inconsistent with the antitrust laws.”<sup>1</sup> Today, municipal and cooperative participation is an integral part of VELCO’s mechanism for financing transmission investment. According to VELCO: “With the completion of recent major transmission projects to ensure Vermont’s electric reliability, VELCO is the country’s fastest growing transmission company.”<sup>2</sup>

A more recent inclusive transco is the American Transmission Company LLC (ATC). Since its formation in 2001, ATC has invested \$2.7 billion in its transmission system, located in Wisconsin, Michigan, Minnesota, and Illinois. It is jointly owned by 29 utilities: five investor-owned utilities (which contributed their transmission systems) and 24 public power and cooperative utilities (which contributed their transmission facilities or, if TDUs, cash to buy in at net book value). All received equity stakes in ATC, with limited governance rights; ATC’s board includes both independent members and representatives of the owners. All owners fund their share of improvements over time through pro-rata capital calls and/or the use of transco retained earnings and debt offering proceeds.

***Inclusive shared system arrangements:*** The shared system model has a long history of success in Georgia, Indiana, Minnesota, North Dakota, and South Dakota.<sup>3</sup> In such arrangements, the transmission facilities of two or more utilities in an area are planned and operated jointly, as a single system, pursuant to a long-term agreement. Ownership in the joint system generally is in proportion to each participant’s load ratio share of the customer load connected to the system, although there are a variety of ways this ownership share can be achieved, e.g., through owning an undivided share of the entire joint system; owning discrete facilities; owning new facilities. In exchange for its investment, each owner has undivided use rights over all the facilities comprising the joint system, generally with no additional charges. The joint planning process ensures that the shared system is built to efficiently meet the needs of all those who rely on it.

A new variation on the shared system model was consummated in 2011 with the acquisition by the Connecticut Transmission Municipal Electric Energy Cooperative (CTMEEC) (formed by a group of participating members of the Connecticut Municipal Electric Energy Cooperative, all of which are municipal electric utilities) of certain high voltage transmission facilities built by Connecticut Light & Power Company (CL&P), a Northeast Utilities company. CTMEEC owns, and contracts with CL&P and ISO-New

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<sup>1</sup> Atomic Energy Act of 1954, 42 U.S.C. § 2135(c)(5).

<sup>2</sup> <http://www.velco.com/Pages/Default.aspx>.

<sup>3</sup> For more details, see TAPS, *Effective Solutions for Getting Needed Transmission Built at Reasonable Cost* (June 2004), available at <http://www.tapsgroup.org/sitebuildercontent/sitebuilderfiles/effectivesolutions.pdf>.

England to maintain and operate, a portion of a 345 kV line that passes through the service area of a Connecticut municipally-owned distribution system. This arrangement allows CMEEC, through CTMEEC, to better meet the reliability needs of its members in a cost-efficient manner.<sup>4</sup> Similarly, under a Midwest Municipal Transmission Group - MidAmerican Energy Company Agreement and Memorandum of Understanding,<sup>5</sup> sixteen Iowa municipal utilities have recently made investments in two MidAmerican Energy Company transmission projects, thereby securing the benefits of transmission ownership to offset the transmission charges they must pay.

***Inclusive arrangements for new facilities:*** CapX2020, a joint transmission-planning process in the northern Midwest, is a recent joint ownership success story. CapX consists of eleven investor-owned, municipal, and rural cooperative utilities in Minnesota, North Dakota, South Dakota, and Wisconsin that have jointly planned needed transmission upgrades and have opportunities to jointly own those facilities. CapX planners evaluated various generation scenarios, initially focusing on the substantial transmission facilities that were always required, regardless of the generation scenario studied. In its first phase, CapX is seeking to build four backbone transmission lines—three 345 kV lines and one 230 kV line—to significantly strengthen the Minnesota transmission system. These facilities, estimated to cost about \$1.7 billion, are jointly owned by subgroups of the eleven members, with a lead entity for each project that will manage construction and, most likely, operate the facility. The first segment (Monticello to St. Cloud) of the Fargo-St. Cloud 345 kV line was energized December 21, 2011. CapX is beginning to plan later phase projects, which will be focused primarily on enabling area utilities to meet their renewable energy needs under state law. The cost estimates for these facilities range between \$4-7 billion.

#### **b. Benefits of Inclusive Joint Ownership Arrangements**

Experience has shown that inclusive joint ownership arrangements, whether structured as a transco, a shared system, or joint ownership of new transmission facilities, lead to a collaborative and inclusive process for planning, development, and siting transmission, which has been proven to be highly effective in getting transmission built that accommodates all needs. Benefits of joint ownership include:

1. *Inclusive joint ownership makes joint planning real.* Although FERC has issued rules in an effort to promote joint planning, there is a big practical difference when all LSEs are at the table as owners, aligning the ownership structure with the reality of the way the network operates and should be planned. When diverse parties are owners, openness, transparency, and more balanced decisionmaking flow automatically.
2. *Inclusive joint ownership results in a better and more efficient transmission system planned to meet multiple needs.* This has been the experience of TAPS members in Wisconsin, where combining five systems into one jointly owned transco has certainly led to a more rationally developed system than had balkanized planning and construction.

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<sup>4</sup> *The Conn. Light & Power Co.*, 134 FERC ¶ 62,091 (2011).

<sup>5</sup> The June 23, 2005 Agreement and Memorandum of Understanding is filed in *MidAmerican Energy Co.*, Docket Nos. EL05-59-000 and ER96-719-006 (Aug. 1, 2005), eLibrary No. 20050804-0205 (Attach. A to Filing Letter).

We also see it in CapX. This approach is far better than reactively planning for discrete transmission or interconnection service requests after the requests are made.

3. *The diverse support that joint ownership provides is very important in siting.* By meeting the needs of multiple utilities, a joint project is able to demonstrate multiple benefits. Although participation by municipals and cooperatives may be relatively small percentage-wise, these utilities bring a wealth of political support to the state approval process. This support can make all the difference in speeding up permitting and addressing local concerns.
4. *Inclusive joint ownership arrangements provide the critical alignment of interests that makes it easier for state regulators to approve proposed transmission projects.* When state commissions are presented with projects that are least-cost because they meet multiple needs, when they see unity among the utilities on need, and when they are faced with a broad base of support from diverse stakeholders, it is far easier for them to grant requested authorizations.
5. *Inclusive joint ownership makes the cost allocation issue easier to resolve, although it still remains a thorny issue.* For instance, the transmission rates paid by some ATC customers have tripled because of ATC's major construction program. Through their ownership in ATC, however, municipal and cooperative owners have been able to offset about 25% of that increase. This has made it much easier for them to support ATC's build-out. Similarly, investor-owned utilities that are able to participate in projects have an earnings opportunity, rather than simply an opportunity to pay.
6. *Inclusive joint ownership spreads the risk of major projects broadly and provides a variety of sources of capital for projects.* In a post-financial-crisis world of tightened credit and tougher credit-worthiness standards, the financial diversity and strength achieved through joint ownership arrangements should be increasingly valuable. Rating agencies have recognized that ATC's inclusiveness is a significant benefit.
7. *The broad base of support achieved through joint ownership arrangements can be essential to securing state legislative action required to better align retail rate recovery with the need for supporting major transmission investment, as has occurred in Minnesota with the full support of the CapX group.*
8. *Inclusive joint ownership arrangements reduce the need for FERC to referee rate and other disputes.*
9. *Inclusive joint ownership arrangements benefit consumers.* The benefits listed above work together to produce transmission better designed to meet all needs, and that can be sited and built more quickly. As a result, inclusive joint ownership arrangements benefit consumers and reduce costs.

Despite these important benefits, inclusive joint ownership arrangements remain the exception, rather than the rule. Offers by TAPS members to invest in the grid have too often been rebuffed.<sup>6</sup>

**c. The Commission Has Recognized the Benefits of and Encouraged Inclusive Joint Ownership Arrangements; It Should Take Steps Now to Make That Encouragement Real**

Given these tangible benefits, it is not surprising that the Commission has recognized that inclusive joint ownership arrangements are beneficial; and it has encouraged these types of arrangements in a number of recent rulemakings, stating:

We reiterate here our statement in Order No. 890 that we believe there are benefits to joint ownership of transmission facilities, particularly large backbone facilities, both in terms of increasing opportunities for investment in the transmission grid, as well as ensuring nondiscriminatory access to the transmission grid by transmission customers. (Order 1000, P 776 (citing Order 890, P 593).)

[T]he Commission supports investment in transmission infrastructure by transmission dependent utilities . . . . (Order 1000-A, P 81.)

We agree with comments that public power participation can play an important role in the expansion of the transmission system. We want to encourage public power participation in new transmission projects ... Encouraging public power participation in such projects is consistent with the goals of Section 219 by encouraging a deep pool of participants. (Order 679, P 354.)

We believe a consortium approach that includes public power and other entities for new investment has value and we encourage participation by public power in meeting the transmission infrastructure provisions of Section 219. (Order 679, P 357.)

[T]he Commission encourages public power participation ....  
[T]he Commission will look favorably on an incentive request

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<sup>6</sup> For example, in response to the Notice of Inquiry leading up to Order 890, TAPS describes and attaches correspondence from two TAPS members offering to invest in Entergy's system after Hurricane Katrina, and Entergy's response to one of them (the other received no response); no investment was allowed. TAPS Comments at 14 & n.25, 104 & n.200, Attach. 1 (Nov. 22, 2005), eLibrary No. 20051122-5133. TAPS member Alabama Municipal Energy Authority has fared no better with its joint transmission ownership proposal (originally extended on September 7, 2005, and renewed periodically thereafter) to Alabama Power Company.

that includes public power joint ownership. (Order 679-A, P 102.)

However, the Commission has declined to take concrete steps to make its encouragement of inclusive joint ownership arrangements effective. *See* Order 679, PP 356-57; Order 679-A, P 102; Order 890, P 594; Order 1000, P 776.<sup>7</sup> Indeed, in granting significant ROE incentives, the Commission has expressly rejected intervenor arguments questioning the claimed risk supporting such incentives where applicants have turned down public power offers to invest in the project,<sup>8</sup> or failed to seek investment partners that would reduce that risk.<sup>9</sup>

It's time for the Commission to rethink this passive position, and actively reward what works, which is inclusive ownership. By failing to make inclusive ownership a key factor to be considered in awarding incentives, the Commission does just the opposite—rewarding transmission owners that turn down transmission customer offers to invest in the grid. That is a position the Commission should now reverse.

#### **d. Steps the Commission Should Take to Spur Inclusive Joint Ownership Arrangements**

The Commission should promptly take concrete action to make real its stated intent to encourage inclusive joint ownership arrangements, including:

1. *Tie return on equity incentives to the applicant's willingness to offer TDUs in the relevant footprint the opportunity to participate in the project on reasonable terms.* Applicants for incentives should have to state whether they are open to joint investment on reasonable terms by technically and financially qualified TDUs located in the relevant footprint (e.g., the state or region), and depending on the answer, to either explain why not or identify the

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<sup>7</sup> The Commission noted other benefits in granting municipal joint owners hypothetical capital structures: “[A]llowing Central Minnesota to receive a revenue requirement ... that reflects the higher capital costs of the investor-owned utilities’ will offset the Midwest ISO transmission rates that its members pay, which largely reflect those investor-owned utilities’ higher capital costs, thereby allowing Central Minnesota and its members to effectively reduce their future transmission rates to reflect their lower capital costs to mitigate their investment risks associated with the project.” *Cent. Minn. Mun. Power Agency*, 134 FERC ¶ 61,115, P 31 (2011). It also “noted that encouraging public power participation in such projects is consistent with the goals of section 219 of the FPA by encouraging a deep pool of participants.” *Id.* P 19 n.23. Although dissenting on the showing made to support a particular hypothetical capital structure, Commissioner Norris recognized the value such arrangements bring: “In addition to encouraging a deeper and more collaborative pool of participants in the transmission development process, public power participation can generate key support for needed transmission projects that often face difficult siting decisions by state and local authorities. Public power entities play a significant role in meeting the energy needs of consumers across the country, and it is important to have these entities at the table as we move forward to plan and develop needed new transmission infrastructure.” *Id.* at 61,524 (Norris, Comm’r, dissenting). *See also Mo. River Energy Servs.*, 138 FERC ¶ 61,045 (2012) (unanimous decision approving hypothetical capital structure).

<sup>8</sup> *See, e.g., Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152, PP 70, 87 (2010).

<sup>9</sup> *See, e.g., Cent. Me. Power Co.*, 135 FERC ¶ 61,136, PP 36, 42 (2011). *See also Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, PP 45, 47-50 (2009) (finding sufficient nexus to support incentives without addressing summarized intervenor argument that allegations of risk are undermined by failure to offer participation to public power entities with lower financing costs), *clarified and reh’g denied*, 130 FERC ¶ 61,044 (2010).

criteria to qualify for participation. Failure to offer opportunities for such participation should be taken into account in assessing whether to grant ROE incentives. An applicant that refuses to consider—or worse yet, turns down—TDU offers to participate has undermined any claimed nexus between the risk of investing in the project and the requested incentives.

2. *Promote inclusive joint ownership arrangements as a not unduly discriminatory factor in selection of a project for regional cost allocation.* Although the Commission declined to require that joint ownership be a factor in the selection of projects for regional cost allocation in all regions, it expressed its support of TDU investment in transmission infrastructure (Order 1000-A, P 81), and recognized the benefits of joint ownership (Order 1000, P 776) as well as its responsibility to consider anticompetitive practices and eliminate barriers to competition (Order 1000, P 287). In evaluating the Order 1000 compliance filings, the Commission should identify making inclusive joint ownership arrangements a factor in selection of a project for regional cost allocation as a means to strengthen, and remedy inadequacies in, regional planning processes. The process for selecting projects for regional cost allocation under Order 1000 could prove a significant lever for prompting the inclusive joint ownership arrangements that would serve the Commission’s stated purposes in issuing Order 1000—making it more likely proposed projects actually get built, increasing opportunities for grid investment, and ensuring nondiscriminatory transmission access.
3. *Encourage and favorably consider proposals to bid out the cost of construction and associated capital requirements when selecting projects for regional cost allocation.* As highlighted by the contentiousness of the right of first refusal issue in the Order 1000 rulemaking and by recent controversies before this Commission as to which utility has the right to build a given project, there is no scarcity of willing investors and constructors. Competitive bidding of the cost of construction and associated capital requirements provides a mechanism to harness that interest to yield the lowest cost to consumers. Although Order 1000, PP 259-60, 321, 336, makes competitive bidding an option for a region, the Commission should do more to promote competitive bidding, structured in a way that enables all LSEs in the footprint (acting individually or on a joint basis) to participate in supplying their fair share of the required capital. Particularly with respect to the regional planning processes proposed by TPs in non-RTO areas—which by definition lack an RTO that could take on the role of deciding which entity will build regionally-planned facilities and how the costs of such facilities should be allocated—the Commission should encourage and look favorably on such competitive bidding arrangements.
4. *Urge DOE to consider inclusive joint ownership arrangements as a factor in selecting projects for rapid permitting.* This Commission is among the nine federal agencies participating in the Rapid Response Transmission Team (RRTT). “The RRTT aims to improve the overall quality and timeliness of

electric transmission infrastructure permitting, review, and consultation by the Federal government on both Federal and non-Federal lands . . . .”<sup>10</sup> It will do this by, among other things, “[c]oordinating statutory permitting, review, and consultation schedules and processes among involved Federal and state agencies, as appropriate, through Integrated Federal Planning . . . .” *Id.* RRTT is starting with seven pilot projects, which have already been selected, but more are expected. Selecting future RRTT projects will require explicit or implicit criteria. Consistent with RRTT’s objectives, the Commission should affirmatively support inclusive joint ownership arrangements—open to all LSEs in the footprint—as a factor for the Department of Energy and others to apply in identifying future projects to receive expedited federal review.

In addition, the Commission should take steps to eliminate obstacles to such arrangements and provide for comparable compensation.

1. *Make clear that all transmission investors should be allowed to earn transmission returns comparable to the returns allowed to investor-owned utilities, even if that requires a hypothetical capital structure.* The Commission has found that the requested hypothetical structure “will ensure a needed constant revenue stream for purposes of both construction and financing” and allow the municipal joint owner “to receive returns comparable to those of investor-owned utilities that are investing in the Brookings Project,” *Cent. Minn. Mun. Power Agency*, 134 FERC ¶ 61,115, P 32, and has approved use of such structures in several cases. *Id.*; *see also Mo. River Energy Servs.*, 138 FERC ¶ 61,045. The Commission should generically state its willingness to do so.
2. *Eliminate artificial barriers to inclusive joint ownership arrangements.* Order 1000, P 315, provides for not unduly discriminatory qualifications to propose projects in the regional planning process; in Order 1000-A, P 441, the Commission stated that it will review whether the qualification criteria proposed by transmission providers in their Order 1000 compliance filings act as an unreasonable barrier to entry. Qualification requirements designed for proposals submitted by a single entity could unintentionally foreclose beneficial project participation by multiple entities. As part of its review of Order 1000 compliance filings, the Commission should assure that all proposed qualification criteria reasonably accommodate joint ownership, including by small entities that would not have the financial resources to fund the entire project alone.

Thus, the Commission has many tools it can use to really encourage inclusive joint ownership arrangements, which have been shown effective in advancing the Commission’s objectives. The time is ripe to put those tools to good use.

May 7, 2012, updated September 7, 2012

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<sup>10</sup> <http://www.whitehouse.gov/administration/eop/ceq/initiatives/interagency-rapid-response-team-for-transmission>; [http://www.whitehouse.gov/administration/eop/ceq/Press\\_Releases/October\\_5\\_2011](http://www.whitehouse.gov/administration/eop/ceq/Press_Releases/October_5_2011)).