The CSG West Energy Committee convened on July 17, 2019 during the Annual Meeting in Big Sky, Montana. Led by Montana Representative Geraldine Custer and Colorado Representative Chris Hansen, the respective chair and vice chair, the Committee focused on two selected topics: integrating the western grid and an update on Section 401 of the Clean Water Act as it relates to energy projects.

Doug Howe, Director of the Western Grid Group, gave a succinct presentation on the history of regional transmission organizations (RTO), their characteristics, and their functions in the United States. Mr. Howe reviewed the RTOs that exist currently and laid out the reasons why it would make sense for the western U.S., which does not have one, to establish an RTO. Offering perspective on the topic, he also reviewed areas of political controversy that have kept an RTO from forming in the region.

Following Mr. Howe’s presentation Representative Hansen facilitated a committee discussion on western grid integration. A question was posed as to why an RTO is necessary if states already exchange energy. Mr. Howe explained that the RTO would lower energy costs and increase reliability for the region. Another committee member questioned how equipment replacement or upgrades would be handled under an RTO arrangement. Mr. Howe indicated that it would be the responsibility of the RTO authority to upgrade transmission equipment. Answering a question on cybersecurity, Mr. Howe suggested that cybersecurity would be vastly improved under one RTO security system versus the 38 different systems that currently exist in the region.

Following the grid discussion, Darrell Early from the Idaho Attorney General’s office gave the Committee a review of Section 401 of the Clean Water Act. This included an overview of what the Act constitutes, how it has traditionally worked, how it can impact potential energy projects, and recent developments in changing guidelines to the section. In his review of how the guidelines have worked in the past, Mr. Early emphasized that Section 401 represents one of the most important tools states have to control resource development in their states. Any application for a federal license or permits for an energy project involving a discharge into
Navigable waters must be reviewed by the state where the discharge occurs and certify that it meets water quality standards. Any limitations to maintain water quality standards determined by the state, including monitoring, become part of the federal license.

Mr. Early also gave a brief review of several court cases that have arisen over Section 401 guidelines. These cases have involved defining the specifics of a discharge to navigable waters, the scope of conditions states can add to an application, the initiation date of an application’s one-year timeline for state review, and whether federal agencies have authority to review state determined conditions. Additionally, issues involving tribal and down-stream state authority have also become a part of the larger conversation surrounding guidelines.

Concluding his presentation, Mr. Early shared an update on the current efforts by the Environmental Protection Agency (EPA), as per Presidential Executive Order 13868 “Promoting Energy Infrastructure and Economic Growth,” to change some of the Section 401 guidelines as made public in August 2019. Summarizing this update, he stated that changes initially indicate it would decrease state authority in the review process.

Following Mr. Early’s presentation Representative Custer lead a roundtable discussion on the impacts of Section 401 on energy projects currently being considered in the West and how the new EPA guidelines may impact those projects.