

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Transmission Planning and Cost Allocation)
by Transmission Owning and Operating)
Public Utilities)
)

Docket No. RM10-23-000

COMMENTS OF NORTHERN TIER TRANSMISSION GROUP

Submitted by:

Deseret Generation & Transmission
Co-operative, Inc.

Idaho Power Company

Idaho Public Utilities Commission

Montana Consumer Counsel

Montana Public Service Commission

Northwestern Energy

PacifiCorp

Portland General Electric Company

Public Utilities Commission of Oregon

Utah Associated Municipal Power Systems

Utah Public Service Commission

Wyoming Public Service Commission

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On June 17, 2010, the Federal Energy Regulatory Commission (“**Commission**”) issued a Notice of Proposed Rulemaking concerning Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities (“**NOPR**”). The NTTG Commenters, as defined below, offer the following comments on the NOPR.

I. SUMMARY

The Northern Tier Transmission Group (“**NTTG**”) is a sub-regional¹ planning group facilitating a transmission planning process² spanning substantial portions of the Pacific Northwest and the Rocky Mountains, and is managed by a Steering Committee composed of the Funders³ and representatives of the Greater Northwest State Commissions and Consumer

¹ As used herein, the term “regional” refers to the Western Interconnection, the term “sub-regional” refers to the geographic footprint of the Funders’ service areas and equates to the NOPR term “regional,” and the term “local” refers to the service area of each Funder.

² Sub-regional planning is accomplished by NTTG through its transmission planning committee, and cost allocation analysis is accomplished by its cost allocation committee, both with oversight from NTTG’s Steering Committee. In addition to these functions, NTTG’s transmission use committee is working to increase stakeholders’ understanding of how the transmission system is being used, is facilitating business practice coordination, is identifying where greater available transfer capability is called for, and ultimately is setting the groundwork for strategic transmission expansion. Also, NTTG, in partnership with WestConnect and Columbia Grid, formed the Joint Initiative. The Joint Initiative is a collaborative and voluntary effort that is developing and implementing new product platforms for functions such as dynamic scheduling, intra-hour transmission scheduling business practices, and defining a web-based tool to facilitate intra-hour bilateral energy and capacity transactions (I-TAP). Several NTTG members in cooperation with BC Hydro, as successor to BC Transmission Corporation, developed and are implementing the ACE Diversity Interchange tool to aid in their management of area control error. Use of the ACE Diversity Interchange tool has expanded to balancing areas throughout the Western Interconnection. More information about NTTG’s programs is available on NTTG’s website, <http://www.nttg.biz/site/>.

³ NTTG is funded by five Commission jurisdictional transmission providers and one non-jurisdictional joint action agency -- Deseret Generation & Transmission Co-operative (“**Deseret**”), Idaho Power Company (“**Idaho Power**”), NorthWestern Energy (“**NorthWestern**”), PacifiCorp, Portland General Electric Company (“**PGE**”), and the Utah Associated Municipal Power Systems (“**UAMPS**”) (collectively, the “**Funders**”). NTTG operates pursuant to its charters, and Attachment K of the jurisdictional Funders’ Open Access Transmission Tariffs (“**OATT**”). Pursuant to

Counsel⁴ (collectively, and for the purpose of these comments, the “*NTTG Commenters*”). Stakeholders have become formal voting members of NTTG’s Planning Committee by signing the form contained in Attachment K of the jurisdictional Funders’ OATTs,⁵ and numerous non-voting stakeholders are participating in NTTG’s meetings. A map of the Funders’ transmission facilities is provided as Appendix A, and map of the sub-regional planning groups in the Western Interconnection is provided as Appendix B.

NTTG has completed its first biennial planning and cost allocation cycle culminating in the *Northern Tier Transmission Group 2008-2009 Biennial Transmission Plan, Final Report* dated (November 25, 2009), and the *Northern Tier Transmission Group 2008-2009 Biennial Transmission Plan, Cost Allocation Committee, Final Report* (December 1, 2009).⁶ Its second planning cycle for the period 2010 through 2011 is underway.⁷ NTTG’s Steering Committee has not only implemented an open, transparent, and coordinated sub-regional transmission planning process but has integrated sub-regional planning with local transmission planning and the Western Interconnection-wide planning efforts of the Western Electricity Coordinating Council (“*WECC*”).

those OATTs and the various charters, membership in NTTG’s planning committee is open to all stakeholders. The current membership of NTTG’s planning committee is identified in footnote 5.

⁴ The State representatives in NTTG include the: Idaho Public Utilities Commission, Montana Public Service Commission, Montana Consumer Counsel, Public Utilities Commission of Oregon, Utah Public Service Commission, and Wyoming Public Service Commission (collectively, the “*Greater Northwest State Commissions and Consumer Counsel*”).

⁵ The voting members of the NTTG planning committee are: Kip Sikes - Chair, Idaho Power; John Leland - Vice Chair, Northwestern; Brian DeKiep - Montana Public Service Commission; Erik Egge - Black Hills Power; Marshall Empey – UAMPS; Darrell Gerrard – PacifiCorp; Bill Hosie – TransCanada; Rhett Hurless - Grasslands Renewable Energy; Don Johnson - PGE; Paul Kjellander – Idaho Office of Energy Resources; Rodney L. Lenfest - Sea Breeze Pacific - Regional Transmission System; Matthew Stoltz - Basin Electric; Jim Tucker - Deseret; Jerry Vaninetti - NextEra Energy Resources; David Walker – Wyoming Public Service Commission; and Ted Williams - Gaelectric, LLC. This list is maintained on NTTG’s website at http://nttg.biz/site/index.php?option=com_content&task=view&id=13&Itemid=85

⁶ The reports are available at: http://nttg.biz/site/index.php?option=com_docman&task=cat_view&gid=220&Itemid=31.

⁷ The second planning cycle materials are available at: http://nttg.biz/site/index.php?option=com_docman&task=cat_view&gid=234&Itemid=31

In the NOPR, the Commission is proposing to make significant revisions to the existing planning and cost allocation processes when it is not apparent that such revisions are necessary or warranted. These revisions may negatively affect how NTTG, and other sub-regional entities in the Western Interconnection, plan for the construction of new transmission facilities. The NTTG Commenters have several overarching concerns with the proposals set forth in the NOPR:

- First, the Commission's proposals are premature. The Commission has not allowed sufficient time to truly assess the efficacy of the planning regime set forth in Attachment K. NTTG has completed only one transmission planning cycle and the construction of significant amounts of transmission are underway. Furthermore, as of the date of this filing, NTTG's planning process, transmission plan and cost allocation report have generated no complaints to the Commission and have operated without a single stakeholder invoking the use of dispute resolution.
- Second, the Commission's proposal to impose cost allocation through the transmission planning process inappropriately converts transmission plans to a rate making forum and disregards significant legal obstacles preventing the imposition of transmission costs.
- Third, the Commission has not adequately justified its presumption that existing cost allocation methodologies are failing or how the proposed cost allocation methodology overcomes these failings. Current processes are working. NTTG's method of allocating costs based upon voluntary project participation is designed to result in more or better projects than those resulting from the NOPR's proposed method of imposing costs. The transmission expansion projects underway and proposed within NTTG's footprint over the next ten years is more than double today's aggregate transmission rate-base.⁸
- Fourth, the Commission has proposed measures for cost allocation that are selectively imprecise and that will hinder the identification of viable projects and the ability to allocate costs to resulting beneficiaries. Further, there is no basis for differentiating between sub-regional and inter-sub-regional projects in the Western Interconnection for the purpose of mandatory cost allocation as proposed in the NOPR.

While the Commission suggests in the NOPR that participation-based cost allocation is insufficient, NTTG's current methods directly address core concerns, as expressed in the NOPR, and are expediting the construction of backbone transmission; whereas the cost allocation methods expressed in the NOPR may not. More importantly, as a practical matter, continuous

⁸ **\$3.3 billion** is the value of the jurisdictional Funders' net transmission plant in service. This value is derived for the jurisdictional Funders from their 2010 FERC Form 1, page 207, line 28 less page 219, line 25. **\$8.3 billion** is the value of the jurisdictional Funders' transmission projects contained in Table 1 of the *Northern Tier Transmission Group, 2008-2009 Biennial Transmission Plan, Cost Allocation Committee, Final Report*.

regulatory change as perpetuated by this NOPR injects investment decision delays, and threatens project approval and subsequent construction.

II. COMMUNICATIONS

Communications concerning these comments should be directed to the following:

Deseret Generation & Transmission
Co-operative, Inc.
c/o Miller, Balis & O'Neil P.C.
Attn: Craig Silverstein
1015 Fifteenth Street, NW, Suite 1200
Washington, DC 20005-2605
Tel: (202) 303-3887
email: csilverstein@mbolaw.com

Idaho Power Company
Attn: Richard Garlish
1221 W. Idaho Street
Boise, ID 83702
Tel: (208) 388-2670
email: DGarlish@idahopower.com

Idaho Public Utilities Commission
Attn: Neil Price
P.O. Box 83720
Boise, ID 83720
Tel: (208) 334-0314
email: neil.price@puc.idaho.gov

Montana Consumer Counsel
Attn: Robert A. Nelson
111 North Last Chance Gulch
Helena, MT 59620-1703
Tel: (406) 444-2771
email: robnelson@mt.gov

Montana Public Service Commission
Attn: James Paine
P.O. Box 202601
Helena, MT 59620
Tel: (406) 444-6377
email: jpaine2@mt.gov

NorthWestern Energy
Attn: Jason Williams
40 E. Broadway
Butte, MT 59701
Tel: (406) 497-3449
email: jason.williams@northwestern.com

PacifiCorp
Attn: Ryan Flynn
825 NE Multnomah, Suite 1800
Portland, OR 97232
Tel: (503) 813-5854
email: ryan.flynn@pacificorp.com

Portland General Electric Company
Attn: Cece Coleman
121 SW Salmon Street, 1WTC1301
Portland, OR 97204
Tel: (503) 464-7831
email: cece.coleman@pgn.com

Public Utilities Commission of Oregon
Attn: Jason Jones
P.O. Box 2148
Salem OR 97308-2148
Tel: (503) 947-5761
email: jason.w.jones@state.or.us

Utah Associated Municipal Power Systems
Attn: Marshall Empey – Operations
2825 East Cottonwood Parkway, Suite 200
Salt Lake City, UT 84121
Tel: (801) 327-6605
email: marshall@uamps.com

Utah Public Service Commission
Attn: David Clark
Heber M. Wells Bldg, 160 East 300 South
Salt Lake City, UT 84114
Tel: (801) 530-6708
email: drexclark@utah.gov

Wyoming Public Service Commission
Attn: Chris Petrie
Hansen Bldg –2515 Warren Ave, Suite 300
Cheyenne, WY 82002
Tel: (307) 777-5763
email: cpetri@state.wy.us

III. BACKGROUND ON NTTG

NTTG is committed to the effective planning and efficient use of the multi-state transmission system. Through their collective commitments to NTTG, its Steering Committee has not only implemented an open, transparent, and coordinated sub-regional transmission planning process but has integrated sub-regional planning with local transmission planning and the Western Interconnection-wide planning efforts of WECC.

The NTTG Commenters acknowledge the complex, but workable, nature of transmission planning in the Western Interconnection and across the nation. In fact, NTTG was formed and began implementing integrated transmission planning prior to Order No. 890. Indeed, NTTG was well on its way toward implementing the planning principles that the Commission subsequently required of jurisdictional transmission providers.⁹ Moreover, NTTG does so in the absence of a Commission-approved Regional Transmission Organization (“*RTO*”) or Independent System Operator (“*ISO*”). In this context, NTTG’s notable accomplishments include the following:¹⁰

- Successful co-management of NTTG by its transmission providers and representatives of their State utility commissions and consumer counsel;
- Stakeholders have become voting members of NTTG’s Planning Committee,¹¹ and numerous non-voting stakeholders are participating in NTTG’s meetings;

⁹ NTTG’s jurisdictional Funders received final approval of their Attachment Ks on April 8, 2010. *Idaho Power Co.*, 124 FERC ¶ 61,053 (July 17, 2008); *Idaho Power Co.*, 128 FERC ¶ 61,064 (July 16, 2009); Letter Order dated February 2, 2010, in *Idaho Power Co. et al.* Docket No. ER10-524-000; Letter Order dated April 8, 2010, in *Idaho Power Co.* Docket Nos. OA08-23-002 and OA08-55-005.

¹⁰ *Id.*

¹¹ *Supra*, n5.

- Successful completion of one planning cycle has been completed, including the implementation of models and the performance of economic studies, culminating in the *Northern Tier Transmission Group 2008-2009 Biennial Transmission Plan, Final Report* (November 25, 2009), and the *Northern Tier Transmission Group 2008-2009 Biennial Transmission Plan, Cost Allocation Committee, Final Report* (December 1, 2009);¹²
- NTTG's 2008-2009 Biennial Transmission Plan that expanded the transmission providers' local transmission plans is being further developed on an Interconnection-wide basis through WECC's Transmission Expansion Planning Policy Committee ("**TEPPC**") and Regional Transmission Expansion Plan ("**RTEP**") processes;
- NTTG's 2008-2009 Biennial Transmission Plan aggregated transmission needs for all participating stakeholders, reviewed, and considered every proposed project and solution for which data was submitted, irrespective of who submitted the proposed project or solution;
- NTTG's cooperative, open and transparent process is advancing a large build-out of 230 kV, 345 kV and 500 kV transmission lines that not only serve native load under a plethora of possible future conditions, but also uniquely connect remote high capacity factor Wyoming and Montana wind resources to West Coast load centers as illustrated on the map attached as Appendix C;¹³
- The estimated construction cost of the transmission projects included in NTTG's 2008-2009 Biennial Transmission Plan is \$8.5 billion;¹⁴
- NTTG's second planning cycle for the period 2010 through 2011 is underway;¹⁵
- NTTG's Steering Committee is continually seeking innovative ways to make NTTG's transmission planning process better for its stakeholders, including the submission and Commission acceptance of a filing that eliminated stakeholder membership fees and established a *pro forma* membership application process;¹⁶ and

¹² *Supra*, n6.

¹³ *Id.* (Northern Tier Transmission Group 2008-2009 Biennial Transmission Plan, Final Report at Figure 2.)

¹⁴ *Id.* (Northern Tier Transmission Group 2008-2009 Biennial Transmission Plan, Cost Allocation Committee, Final Report at Table 1.)

¹⁵ Materials are available at:
http://nttg.biz/site/index.php?option=com_docman&task=cat_view&gid=234&Itemid=31

¹⁶ Letter Order dated November 13, 2009, in *Deseret Generation & Transmission Co-operative, Inc.* Docket No. ER09-1700-000 (adopting simplified version of NTTG Planning Agreement in Funders' OATTs, eliminating the membership fee, and terminating rate schedules which had contained Planning Agreement).

- As of the date of this filing, NTTG’s planning process, transmission plan and cost allocation report have generated no complaints to the Commission and have operated without a single stakeholder invoking the use of dispute resolution.

The West is collaborating to assess Interconnection-wide transmission needs through the RTEP process facilitated by WECC. NTTG representatives hold key leadership positions, and NTTG is an active sub-regional planning group in the RTEP process. Specifically, the RTEP process has been developed by WECC and the sub-regional planning groups in response to a Department of Energy (“*DOE*”) Funding Opportunity Announcement.¹⁷ This new process is on track to produce an Interconnection-wide ten-year transmission plan by Fall 2011, and a twenty-year transmission plan by Summer 2013. On August 11, 2010, its Sub-regional Planning Coordinating Group finalized the list of transmission projects to be included in the base case analysis.¹⁸ The foundational transmission projects¹⁹ and potential projects²⁰ included in that list are identified in Appendices D and E, respectively. The RTEP process will accelerate and improve regional integration and planning, including optimizing corridor use and facilitating renewable resource integration. The Commission should support the WECC as the logical and most effective organization to facilitate the Interconnection-wide planning requirements suggested in the NOPR and support the western RTEP process.

Based upon experiences thus far, the NTTG Commenters have collectively gained significant insights into transmission planning and cost allocation in the Western Interconnection. As a result, the NTTG Commenters are in a unique position to comment on how the Commission’s NOPR may affect the development of transmission and the allocation of costs.

¹⁷ Transmission Analysis and Planning Funding Opportunity Announcement #DOE-FOA0000068.

¹⁸ Western Electricity Coordination Council, *SPG Coordination Group (SCG) Foundational Transmission Project List* (August 11, 2010) at pages 3 and 6, available at: <http://www.wecc.biz/committees/BOD/TEPPC/SCG/Shared%20Documents/SCG%20Foundational%20Transmission%20Project%20List%20Report.pdf>.

¹⁹ Foundational transmission projects mean those “projects that have a very high probability of being in service in the 10-year timeframe.” *Id.* at 1.

²⁰ Potential projects mean those “projects that have been identified in S[ub-regional]P[lanning]G[roups] 10-year plans but do not meet the foundational transmission project criteria.” *Id.*

IV. NOPR COMMENTS

The NTTG Commenters provide a response to many of the issues raised by the Commission in the NOPR.²¹ **Part A** comments on the need for reforms discussed in Section III of the NOPR. **Part B** focuses on the proposed transmission planning reforms discussed in Section IV of the NOPR. **Part C** comments on the proposed cost allocation reforms discussed in Section V of the NOPR.

The NTTG Commenters respectfully request that the Commission not perceive the absence of comments on any particular issue or other matter as a conclusive indication of NTTG's lack of interest with respect thereto. The NTTG Commenters have chosen to focus their comments on issues raised in the NOPR that are of key importance to its members at this time. However, the NTTG Commenters acknowledge the ongoing nature of the issues relating to the NOPR and reserve the right to present additional comments at a future time.

A. The Need for Reform

The following comments relate to the Commission's justification of the need for reform in Section III of the NOPR:

1. **The Commission's proposed revisions to the transmission planning and cost allocation processes will disrupt existing transmission planning and cost allocation processes and possibly delay the construction of transmission projects being facilitated by NTTG and current processes. Such risks are not reasonable as the NOPR is not narrowly tailored to respond to specifically identified deficiencies in the transmission planning or cost allocation processes.**

The Commission asserts that "[o]ur intention in this Proposed Rule is not to disrupt the progress that is already being made with respect to transmission planning and investment in transmission infrastructure, but rather address remaining deficiencies in transmission planning and cost allocation processes..."²² The Commission's proposed revisions to the transmission

²¹ On August 4, 2010, NTTG held a public stakeholder meeting in Bozeman, Montana to solicit input on issues raised in the NOPR. Stakeholders provided few comments. The few comments expressed by stakeholders were unrelated, or only tangentially related, to the NOPR.

²² NOPR at P 33.

planning and cost allocation processes will inhibit NTTG from attaining the goals of Order No. 890 that have been implemented and approved for its sub-region. Following the issuance of Order No. 890 on February 16, 2007, transmission providers began developing the requisite transmission planning and cost allocation processes as Attachment K of their respective OATTs. For NTTG, the Commission granted final approval of the jurisdictional Funders' OATTs on April 8, 2010.²³

In general, the Commission has not allowed sufficient time to truly assess the efficacy of the planning regime set forth in Attachment K. As indicated above, NTTG has completed only one transmission planning cycle, and WECC's RTEP has just received DOE funding to produce an Interconnection-wide transmission plan by 2013. The construction of significant amounts of transmission as indicated above is being facilitated by these efforts. The Commission's proposal to change the planning rules in midstream undermines these planning efforts and their intended results. Furthermore, the uncertainty that accompanies a regulatory change at this point in the approval processes for transmission facilities risks causing delay for these projects or, at worst, suspension of one or more of these projects. At this time in the implementation of Attachment K, the potential for consequences such as these significantly outweighs the perceived benefits of the proposed regulations.

More importantly, it is unreasonable to assume the risk of these consequences as the Commission has not presented facts that support a finding of systematic discrimination in the transmission planning and cost allocation processes, or a finding of discrimination with respect to Attachment K of NTTG's FERC jurisdictional transmission providers, or any other transmission provider. In the NOPR, the Commission merely states that reforms are needed to protect against undue discrimination on the basis of possible opportunities for discrimination.²⁴

²³ *Supra*, n9.

²⁴ *Eg.*, NOPR at P 4 ("The Commission preliminarily finds that these proposed reforms are needed to protect against unjust and unreasonable rates, terms and conditions and undue discrimination in the provision of Commission-jurisdictional services.") (Emphasis added); NOPR at P 37 ("As discussed in greater detail below, the Commission preliminarily finds that the failure to account explicitly for such public policy requirements in the transmission planning process may result in undue discrimination and rates, terms, and conditions of service that are not just and reasonable.") (Emphasis added); NOPR at P 38 ("Many commenters raise similar concerns in response to the October 2009 Notice, describing what they see as remaining opportunities for undue discrimination against nonincumbent transmission project developers in the transmission planning process.") (Emphasis added); NOPR at P 39 ("The October 2009 Notice observed that the lack of coordinated planning over the seams of current

The Court of Appeals has already rejected such justifications for rulemakings saying the Commission needs to provide evidence of real problems or examples of abuse or stakeholder complaints.²⁵ While the Court did not foreclose the possibility of theoretical threats necessitating rulemaking, it suggested that the Commission would have to present justification that goes beyond comments that merely state a theoretical or potential for abuse.²⁶

Simply stated, the Commission has not satisfied the Court of Appeals' threshold requirements in the NOPR, and the NTTG Commenters are unaware of facts specific to NTTG that would satisfy this threshold. As a result, the Commission should not pursue the broad revisions it has proposed in the NOPR. Instead, the Commission should address any findings of discrimination on a case-by-case basis with remedies narrowly tailored to address the facts at issue. Contrary to the Commission's suggestion of discrimination, NTTG's planning and cost allocation processes are just and reasonable and satisfy Order No. 890's nine planning principles, including a robust stakeholder process that involves State regulator and consumer counsel participation.²⁷ The Commission has not demonstrated or established a record that the existing Commission-mandated and approved processes are unjust, unreasonable, unduly discriminatory, or preferential.

B. Proposed Reforms: Transmission Planning

The following comments relate to the Commission's proposed transmission planning reforms in Section IV of the NOPR:

transmission planning regions could be needlessly increasing costs for customers of individual transmission providers.") (Emphasis added); NOPR at P 40 ("Finally, we preliminarily conclude that existing methods for allocating the costs of new transmission may not be just and reasonable because they may inhibit the development of efficient, cost-effective transmission facilities necessary to produce just and reasonable rates.") (Emphasis added)

²⁵ *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 841 (D.C. Cir. 2006).

²⁶ *See Id.* at 844-45.

²⁷ *Supra*, n9.

1. **The Commission should continue to provide flexibility as to the manner in which sub-regional transmission plans are produced.**

In the NOPR the Commission calls for the development of “...a regional transmission plan that identifies the transmission facilities that cost-effectively meet the needs of transmission providers, their transmission customers, and other stakeholders.”²⁸ While the NTTG Commenters agree with the stated goal of the sub-regional transmission plan, the Commission should continue to provide flexibility as to the manner in which sub-regional transmission plans are produced. For example, NTTG relies upon a “bottom-up” planning process whereby individual transmission providers assess and compile the needs of their existing and future transmission customers, seek and receive input from local stakeholders, and plan, as necessary, with other transmission providers through a sub-regional and, ultimately, regional (Interconnection-wide) process. This approach provides information and the ability to examine plans from a broader perspective, thereby providing investors and transmission planners (who are not necessarily the same) with more complete information that they may rely upon when determining which projects get constructed or where a transmission line is located. Thus, the Commission should emphasize the results expected from a sub-regional transmission plan and clarify that sub-regions may still rely on, if not encourage, a “bottom-up” process in developing a sub-regional transmission plan.

2. **The Commission should clarify how public policy requirements established by State or Federal law are considered in the transmission planning process.**

In the NOPR “the Commission preliminarily finds that transmission needs driven by public policy requirements established by State or Federal laws or regulations should be taken into account in the transmission planning process.”²⁹ To implement this finding, the Commission proposes to require each transmission provider’s OATT to be amended to “explicitly provide for consideration of public policy requirements established by State or Federal laws or regulations that may drive transmission needs.”³⁰

²⁸ NOPR at P 51.

²⁹ *Id.* at P 63.

³⁰ *Id.* at P 64 (Emphasis added).

State participation in NTTG has ensured the consideration of public policy requirements in the transmission planning process from its beginning. The NTTG Commenters therefore support the Commission's proposal to include the consideration of public policy requirements in the transmission planning process. However, the Commission should clarify the "consideration" responsibilities it intends to impose on transmission providers. For example, unless State law mandates otherwise, the NTTG Commenters support adopting flexible criteria, as opposed to "bright line" metrics, for determining which public policies are relevant for consideration in the transmission planning process, how public policy requirements are considered, and how a project is affected by such policies. The incorporation of any additional public policy objectives should be at the discretion of the sub-regional planning groups. Further, the sub-regional transmission planning groups should have the discretion to determine how to avoid conflicts between State and Federal law as well as the discretion to resolve conflicts between State and Federal law.

Furthermore, to the extent that a transmission provider maintains an obligation as a load-serving entity to serve retail load, its merchant/load-serving function will identify and quantify the relevant public policy requirements which will then be accounted for in its local transmission plan. For non-native load, the Commission should indicate that those load-serving entities, which are or anticipate becoming transmission customers of the transmission provider, have an obligation to inform the transmission provider as to what needs will result from their compliance with these public policy requirements and for the transmission provider to appropriately account for these needs as part of its local transmission planning in a non-discriminatory manner. The transmission provider should not be obligated to independently assess these needs, except as they pertain to its own native load. NTTG believes that its existing transmission planning process implicitly if not expressly provides the vehicle for non-native loads and other stakeholders to directly submit their comparable needs and planning with respect to any public policy requirements for consideration by the NTTG planning committee.

Thus, the Commission should remain cognizant that State laws and regulations are not necessarily consistent with Federal laws and regulations, between States, or between legislative sessions. As a result, the relevant planning entity (either local or sub-regional) should be

allowed flexibility to resolve potential competing policy objectives that arise in the transmission planning context.

3. **Sponsors of any transmission project intending to become part of the bulk electric system must be required to participate in pertinent local, sub-regional and regional transmission planning processes.**

In the NOPR, the Commission proposes “to require each public utility transmission provider to coordinate with its customers and other stakeholders to identify public policy requirements established by State or Federal laws or regulations that are appropriate to include in its local and regional transmission planning process.”³¹ While the transmission providers are required to coordinate with customers and stakeholders, the Commission does not require all proposed projects to be part of the planning process so that the planning process may evaluate all potential transmission options. Rather, the Commission allows developers to include a project in the transmission plan only when the project developer desires sub-regional cost allocation consideration.³² Allowing a project sponsor to withhold information regarding its plans for a transmission facility undermines the purpose and goal of transmission planning: to ensure the transmission system supports the reliable, cost-effective planning and operation of sub-regional energy supplies. In the NOPR, the Commission cites no rationale, or benefit, for such exclusion. Participation is not financially burdensome and would require a minimal commitment of personnel to compile and submit information as to the proposed design and rating of facilities, path, timing and/or conditions for construction, etc.

Absent timely information regarding all transmission projects being pursued, the planning process cannot fully and accurately account for potential interactions between projects, need for projects, or cost-effective modifications to potential projects. All inter-sub-regional and intra-sub-regional projects attached to the transmission grid, either locally or regionally, impact transmission facility operation, rating, and energy flow. Therefore, at a minimum, all projects should be considered in the transmission planning cycle, regardless of the intent or desire to be

³¹ *Id.* at P 66.

³² *Id.* at P 99 (“We do not propose here to require a transmission developer that does not seek to use the regional cost allocation process to participate in the regional transmission planning process.”).

considered for sub-regional cost allocation. If no such requirement exists, and a project developer has the right to build, it is possible that duplicative projects or projects that negatively affect each other could be planned (and perhaps constructed) without the benefits of each project being considered in the sub-regional plan. This situation could negatively affect reliability and would likely yield errant cost allocation results because any project that connects to the transmission system will change the transmission topology, which can change the transmission flows and dispatch patterns, thereby affecting costs and benefits. A project not in the plan could reduce or eliminate benefits of one or more projects in the plan, leading to cost allocations without commensurate benefits. Furthermore, legitimate commercial concerns of project sponsors can be protected through confidentiality agreements. If the sponsor has concerns regarding disclosure of commercially-sensitive information (*e.g.*, to a competitor, or for fear it may affect real property negotiations), confidentiality agreements can be used to limit disclosure to those entities directly involved in evaluating alternative projects.

4. **The Commission should clarify the extent to which it proposes to remove the right of first refusal, and clarify how to implement the Commission's proposal allowing the sponsor of a facility that is selected through the sub-regional planning process to have a right to construct and own the facility.**

In the NOPR, the Commission proposes to remove any Federal right of first refusal from a transmission provider's OATT or from agreements subject to the Commission's jurisdiction.³³ As an initial matter, none of the Attachment Ks of the NTTG transmission providers' OATTs contain a right of first refusal. Furthermore, a right of first refusal is irrelevant to non-RTO or ISO transmission plans because these transmission plans are not equivalent to construction plans and provide no approved cost recovery. There are no legal rights created by such transmission plans.

The Commission therefore should either remove the right of first refusal prohibition from the NOPR discussion, or clarify its context and narrow the scope of the proposed measure to prevent ambiguity. Its relevance may be limited to the context of RTOs and ISOs. In addition, clarifying its context will also prevent it from unnecessarily affecting other pre-existing rights.

³³ *Id.* at P 93.

For example, rollover rights, as set forth in Section 2.2 of the OATT, are, effectively, a right of first refusal. Similarly, grandfathered transmission agreements on file with the Commission may also contain rights of first refusal. The Commission has not provided an adequate record in the NOPR to justify terminating a transmission provider's right of first refusal in these contexts. In addition, if a transmission provider or its merchant is relying upon another entity to develop a transmission line to provide for service to its native or network load and the developer either abandons the project or materially delays the project, the transmission provider (or its merchant) needs the ability to develop the line or a similar line in order to satisfy its load service obligations.³⁴

At a policy level, the NTTG Commenters support a "competitive right" to construct and own transmission facilities but note that the proposed right should not affect a load serving entity's legal obligation to serve load and its ability to develop projects necessary to do so. However, again without providing an adequate record, the Commission proposes that the sponsor of a facility selected for inclusion in a sub-regional transmission plan have an "exclusive right" to construct and own that facility.³⁵ The NTTG Commenters do support the proposed requirement that the right to construct and own transmission facilities must be "...consistent with State or local laws or regulations..."³⁶ State law may require load serving entities to build to fulfill their service obligations.

At an operations level, the NTTG Commenters support including a priority right to develop if a project is resubmitted in the future,³⁷ but they also believe that additional requirements must be satisfied before the priority may apply. The priority should apply only if: (a) the original project sponsor, or its successor(s), has continued to develop the project since the

³⁴ Section 28.2 of the OATT requires in relevant part that, "The Transmission Provider shall include the Network Customer's Network Load in its Transmission System planning and shall, consistent with Good Utility Practice and Attachment K, endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own generating and purchased resources to its Native Load Customers."

³⁵ NOPR at PP 93-95.

³⁶ *Id.* at P 93.

³⁷ *Id.* at P 95.

time it was not included in the sub-regional transmission plan, and (b) the resubmitted project must have similar performance characteristics and costs, as were reflected in the original submittal. The Commission merely provides that "... sponsor would have the right to develop that project under the foregoing rules even if one or more substantially similar projects are proposed by others in the future transmission planning cycle." ³⁸

Furthermore, if inclusion of a project within a transmission plan confers construction rights on the project proponent, then such rights effectively require the creation of a new planning queue(s) to manage these rights. The Commission should clarify how such a queue will operate, including which entity is obligated to maintain it, how enforcement will occur, and how Interconnection-wide coordination will occur. In addition, the Commission should clarify how modified projects will be addressed in such a planning queue. The Commission must be mindful of the fact that sub-regional planning entities such as NTTG are made up of multiple independent transmission providers, rather than a single transmission provider, as is the case in areas served by a RTO or ISO. NTTG, therefore, lacks a mechanism that can be used to create a single planning queue for its footprint.

From a customer perspective, if inclusion of a project within a transmission plan means that costs will be imposed on beneficiaries, the NTTG Commenters support the Commission's proposal, in Paragraph 90 of the NOPR, for transmission providers to include in their OATT the necessary requirements (technical and financial) that must be satisfied by a project developer to submit a project. NTTG's open and collaborative transmission Planning Committee will be able to develop the detailed requirements for use in determining whether a developer has the resources and ability to actually construct the project on schedule and, once constructed, operate the project. If beneficiaries will be obligated to pay for those projects included in the transmission plan, then to avoid cost shifts and minimize gaming opportunities, the developer must assume the legal responsibility for developing the project(s) it submits into the transmission planning process, and those beneficiaries will want enforceable assurances that their payments will in fact result in diligent pursuit of construction of the transmission they are required to pay for. The transmission provider should not be obligated to complete any developer-initiated

³⁸ *Id.*

project that for whatever reason is not completed. More importantly, the Commission should be mindful of and address the fact that it fails to define in the NOPR the type of rights the beneficiary receives in consideration for paying imposed costs. Again, today there are no legal rights created by a sub-regional/regional transmission plan and NTTG lacks the authority to create such rights. (See related discussion in Section C.2 below)

C. Proposed Reforms: Cost Allocation

The following comments relate to the Commission's proposed cost allocation reforms in Section V of the NOPR:

1. A transmission plan is informational and not a construction plan or a legal vehicle to impose transmission costs.

In NTTG, transmission plans provide investors with information that is taken into consideration when making investment decisions.³⁹ In the NOPR, the Commission proposes to require that a transmission provider include in its Attachment K a cost allocation methodology that allocates, by formula (or formulae), the cost of every project included as part of the regional transmission plan to those entities that are estimated to benefit from the project, irrespective of an entity's willingness to participate in the project.⁴⁰ The NTTG Commenters have serious concerns regarding the NOPR's impact on NTTG's existing transmission planning process, since transmission planners and investors are not likely to be the same. Likewise, at least in NTTG's footprint, a transmission plan is not a contractual or tariff commitment by beneficiaries to accept costs of improvements.

a. Transmission plans provide investors with information that is taken into consideration when making investment decisions.

The NTTG Commenters interpret the intent of the Commission's cost allocation requirement in the NOPR as a methodology to transform a transmission plan into a construction plan, since a project's developer would, presumably, need no more than inclusion of its project in

³⁹ NTTG strives to facilitate the construction of transmission projects by willing participants. As evidenced by the number of construction projects currently being considered in the NTTG planning process, NTTG's approach is effective and is working as the Commission intended. Please refer to the map at Appendix C.

⁴⁰ NOPR at PP 159 and 161.

the sub-regional transmission plan to financially support a project. If this was the intent, the NTTG Commenters request that the Commission not take such a position. If it was not the Commission's intent to enable a project developer to go forward with a project once the project is included in the transmission plan because inclusion in the transmission plan guarantees that 100% of the planned costs of the project would be recovered/recoverable by involuntary as well as voluntary participants, the Commission needs to clarify its intentions.

Transmission planning in NTTG is an open, transparent process that involves the collection, analysis and dissemination of information. It involves forecasts of future conditions, creation of alternative scenarios of future development, and modeling of alternative transmission projects to serve projected needs. NTTG's transmission planning process examines all data made available to it, and examines options requested by stakeholders.⁴¹ In a nutshell, planning, at least through NTTG, impartially evaluates information without favoring any options, thus facilitating cooperative data sharing.⁴²

As a result, NTTG's planning process may suggest which transmission projects provide appropriate solutions to particular future conditions, but our planning process is not designed to designate which lines should be built in the future; there is no fundamental mechanism to cause construction on a sub-regional basis. In NTTG, a transmission plan can evaluate the transmission providers' local transmission plans in the sub-regional setting along with projects proposed by other stakeholders in the NTTG process. NTTG's plan is coordinated within the Western Interconnection through WECC. Thus, NTTG's sub-regional transmission plan represents the best available information regarding transmission needs at the local, sub-regional, or regional levels. This information is then taken into consideration by the business managers of transmission providers and independent transmission companies, their investors and, in some instances, State and local regulatory agencies, to determine whether or not (and when) a transmission project will proceed. While NTTG's transmission planning process provides the

⁴¹ NTTG's position is to allow any stakeholder to submit data to be evaluated as part of the preparation of the regional transmission plan, and similar requirements are included in the local planning process in each member transmission provider's Attachment K. NTTG's transmission planning process is inclusive rather than exclusive.

⁴² See *Id.* at PP 52 and 53. NTTG's position is to allow access to data and models to those who are eligible to receive this information without violating confidentiality and CEII.

information as to needs and projected uses, it does not ultimately produce the decisions as to which alternatives best balance function and risk in meeting needs and serving users. Specifically, it is not a process by which business decisions are made as to which specific projects will be built vis-à-vis the universe of generation, demand-side, and transmission alternatives.⁴³

b. A transmission plan is not a contractual or tariff commitment by beneficiaries to accept costs of improvements.

As referenced previously, in a bilateral market without a single RTO or ISO-wide tariff, a transmission plan cannot serve as a construction plan because there is neither a self-actuating cost allocation methodology to distribute costs to non-participants, nor the legal and institutional mechanisms to impose such formulaic costs. In contrast to the Commission's assertions in the NOPR that a transmission plan would effect cost allocation to ensure the project can be built,⁴⁴ in NTTG (and other regional planning entities in a bilateral market), a transmission provider has no authority to impose costs on or require transmission improvements from other member transmission providers. (This point is explained in Section C.2 below.)

c. The transmission planning process is not designed to consider commercial and financial issues associated with project development.

The Commission raises additional business-related issues by transforming the transmission planning process into a construction planning mechanism via a self-actuating cost allocation methodology. NTTG's current transmission planning process is designed to receive information as to a transmission project's physical, electrical, and, to a limited extent, cost characteristics, and then produce certain economic studies of relative operational performance regarding loading and congestion relief. Neither the information received, nor the planning process itself is designed to assess the financial and commercial feasibility of the project or the financial and credit resources, managerial competence, etc. of the project proponent. More

⁴³ The NTTG Commenters note, as indicated previously, that this process has not impeded the consideration and construction of transmission projects.

⁴⁴ NOPR at P 168 ("If the facility is included in the regional transmission plan, the costs of that facility must be eligible for allocation pursuant to the Commission-approved method for allocating the cost of a new transmission facility in that plan.")

importantly, the transmission planning process is not designed to legally establish costs and impose those costs on beneficiaries.

d. Beneficiaries need a mechanism to pay for the imposed costs as they become due, and need to understand the rights received in consideration for paying imposed costs.

Before implementing a policy that imposes costs upon a beneficiary,⁴⁵ there must be a mechanism for beneficiaries to generate the cash necessary to pay the costs imposed upon them as they become due. Such a mechanism does not always exist. Many steps may be required to obtain the right to pass costs on to retail rate payers. Such steps include but are not limited to: state acceptance or acknowledgement of a transmission investment within an integrated resource plan, contractual decisions, and recovery through rate cases. An imposition of costs, as contemplated in the NOPR, creates significant disallowance risk by the State public utility commissions if the allocated costs are not recoverable from the local load. An obligation to pay costs without first satisfying these requirements could place that entity (*e.g.*, non-utility and utility alike) in a position of bearing costs that are not recoverable from customers who are deemed beneficiaries. Furthermore, State regulators are unlikely to allow for cost recovery through a rate case prior to transmission construction. Adding to the difficulty of cost recovery is the fact that the Commission fails to define in the NOPR the type of rights the beneficiary receives in consideration for paying imposed costs.

e. There is no factual basis to conclude that a process based on involuntary project participation will result in the construction of more or better transmission projects than is occurring today through NTTG's cost allocation process that relies on voluntary participation.

The Commission proposes in the NOPR that a transmission provider must include in its tariff a cost allocation methodology to allocate the costs and benefits of each transmission project in the regional transmission plan.⁴⁶ As discussed above, in NTTG, the purpose of the

⁴⁵ *Id.* at P 164.

⁴⁶ Specifically, for intraregional facilities, the Commission stated that “[t]he cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits.” *Id.* at P 164(1). For interregional facilities, the Commission stated that “[t]he costs of a new interregional facility must be allocated to each transmission planning region in

transmission plan is to provide planning information to enable informed decision-making, and not to serve as a construction plan that imposes costs. The NTTG cost allocation structure is based upon participants voluntarily paying for the costs of transmission projects they desire. This decision was intentional. NTTG's cost allocation process is based upon the premise that facilitating or removing barriers for willing parties increases the probability that transmission will be developed.⁴⁷ The transmission planning process is being used by investors to gather information about various investment options to augment other critical factors such as market maturity for their project, location of potential power needs and financing information. Facilitating willing parties to make rational business decisions has a higher probability of causing the construction of new transmission than does a situation where costs could be forced upon unwilling parties, as is contemplated by the NOPR. Unwilling parties will take every opportunity possible to avoid the imposition of costs, including resorting to litigation to oppose project development. Transmission planning and construction are difficult enough without having to address road blocks and delay created by those that are rejecting imposed costs.

Further, the Commission has accepted the NTTG member transmission providers' tariffs where costs are allocated by agreement and evaluated against the principles set forth in the tariffs.⁴⁸ The NOPR presents no justification that warrants modifying the existing NTTG cost allocation process, and no evidence exists to justify the invocation of Federal Power Act Section 206. Specifically, the Commission has neither stated, nor is NTTG aware of, any facts that would demonstrate that the process set forth in the transmission providers' OATT is: (1) causing discrimination; (2) limiting or delaying needed transmission projects; (3) causing the rates to recover the cost of new transmission facilities to be unjust, unreasonable, or unduly discriminatory or preferential, or (4) resulting in informal or formal disputes initiated by sponsors or proponents of potential transmission projects. Furthermore, the orders discussed in

which that facility is located in a manner that is at least roughly commensurate with the estimated benefits of that facility in each of the transmission planning regions." *Id.* at P 174(1).

⁴⁷ *Contra Id.* at P 168 ("a cost allocation method that relies exclusively on a participant funding approach, without respect to other beneficiaries of a transmission facility, . . . would not satisfy the proposed principles.").

⁴⁸ *Supra*, n9.

the NOPR⁴⁹ apply in the context of allocating costs in rate cases rather than in a Section 206 proceeding. As noted above, a Section 206 proceeding requires facts supporting a finding of discrimination.⁵⁰

In recognition of these issues, NTTG's current cost allocation process encourages: (1) the development of cost/benefit/risk analyses for projects, and (2) more importantly, the development of voluntary agreements allocating those benefits, costs, and risks among affected parties. The Commission has already accepted NTTG's approach, and the NTTG Commenters strongly urge the Commission to abandon the approach set forth in the NOPR.

2. **The Commission, NTTG, and the States do not have the authority to impose or receive costs through a transmission plan either within a sub-region or between sub-regions.**

The NOPR does not explain or reference the legal authority that would allow the Commission or a transmission provider to impose costs, associated with regional transmission planning, upon another entity (except, of course, when such entity takes and/or receives service from that transmission provider).⁵¹ The Commission cannot confer authority upon itself; it is limited to implementing the authority granted by Congress. As such, without Congressional authorization, the Commission cannot impose an obligation on an unwilling entity to pay for new transmission facilities when that entity has taken no action. This is not analogous to the situation where the Commission imposes a transmission service charge upon an entity affirmatively taking transmission service without paying for it. In Paragraphs 145 and 147 of the NOPR the Commission provided an explanation of its authority. However, this explanation does not identify the specific statutory provisions and analysis necessary to demonstrate that the Commission has the authority that is alleged.

⁴⁹ *E.g.*, NOPR at P 140.

⁵⁰ *Nat'l Fuel Gas Supply Corp.*, 468 F.3d at 841.

⁵¹ *See* NOPR at P 159. At this time, it is unclear how a transmission provider could develop such regional cost allocation methods other than through a regional transmission organization, independent system operator or an interstate compact.

Likewise, before imposing this cost recovery obligation upon transmission providers, the Commission must affirmatively delegate such authority to the transmission providers. As stated above, Congress must authorize such delegation by the Commission. At this time, Congress has not delegated such authority to the Commission.⁵² Even if the Commission has the requisite authority, the Commission has not complied with the common law requirements otherwise necessary to delegate its authority.

The States participating in NTTG are also limited in their ability to impose costs. First, the States are participating in NTTG on the express condition that their participation cannot pre-decide any matter that may come before them in subsequent proceedings, such as during a rate case. Second, States do not have authority to impose intrastate obligations or policies on other States.⁵³ To do so, the States would have to enter into an agreement, such as an interstate compact, which requires ratification by Congress, to avoid violating the United States Constitution.⁵⁴ At this time, the States participating in NTTG are not ready to explore that difficult option.

3. The Commission should require consistency between inter-regional cost allocation agreements, and provide a mechanism for resolving impasses between sub-regional planning entities in the negotiation process.

In the NOPR, the Commission allows a minimum of two sub-regions to enter into an agreement defining an inter-sub-regional cost allocation methodology.⁵⁵ This proposal will result in multiple, bi-lateral arrangements with no guarantee of consistent cost allocation

⁵² On a related point, the Commission states that if transmission providers cannot develop intra-regional and inter-regional cost allocation methods, the Commission would develop a cost allocation method. NOPR at P 163. It appears that, in doing so, the Commission would be superseding the States' ratemaking authority, an act for which the Commission lacks jurisdiction.

⁵³ For example, within the NTTG planning area, the States' policies differ regarding renewable energy development; some have renewable portfolio standards ("*RPS*") and others do not. Under a "beneficiary pays" cost allocation structure, as suggested by the Commission, a non-RPS State would bear the financial burden of contributing to the transmission of renewable energy to an RPS State. This result does not further State policy.

⁵⁴ U.S. Const., Art. 1 § 10; See Robin Kundis Craig, *Constitutional Contours for the Design and Implementation of Multistate Renewable Energy Programs and Projects*, 81 Colo. L. Rev. (forthcoming Summer 2010).

⁵⁵ NOPR at P 173.

provisions. The Commission fails to explain and justify in the NOPR why an intra-sub-regional project requires cost allocation to willing and unwilling participants while cost allocation for an inter-sub-regional project is strictly voluntary. To the extent the Commission presumes that the inter-sub-regional cost allocation methodology will be underpinned by agreements between sub-regional entities as a rationale for limiting involuntary participation in sub-region entities, the Commission oversimplifies the likelihood that such agreements can be timely negotiated, if at all, and the similarity of such agreements.

In the case of NTTG, WestConnect, and Columbia Grid in the Western Interconnection, any agreements underpinning cost allocation methodologies must be bilateral arrangements between individual transmission providers. As discussed earlier, Attachment K is implemented through the OATT of the FERC jurisdictional transmission providers. For sub-regional planning entities that are composed of multiple FERC jurisdictional transmission providers and, in some cases, also include non-jurisdictional transmission providers and non-transmission providers, each member of a sub-regional entity must enter into a multi-party agreement with the members of the other sub-regional entities. Such a process will be time consuming and difficult. Thus, for a substantial portion of transmission providers in the Western Interconnection, the ability to impose intra-sub-regional cost allocation methodologies on an involuntary basis will be difficult and slow. And the cost and difficulty in completing one intra-sub-regional cost allocation agreement is only one facet of the undertaking contemplated by the NOPR; reconciling all intra sub-regional agreements, once completed, into single intra-sub-regional framework that respects all principals' principles is a formidable if not unattainable task.

Furthermore, project developers are likely to exploit any inconsistencies between inter-sub-regional agreements by designing projects to make use of the most advantageous inter-regional cost allocation agreement, rather than a project that maximizes interconnection-wide benefits. More bluntly, differences between agreements create opportunities that can be exploited. If the Commission determines that it will impose inter-sub-regional cost allocation methodologies as part of each transmission provider's Attachment K – which the NTTG Commenters oppose – the Commission should also require substantive consistency among all such inter-sub-regional methodologies.

4. **The Commission should remain consistent with Order No. 890 and not apply new cost allocation principles to existing transmission projects already covered by existing procedures.**

In Order No. 890, the Commission adopted a specific principle regarding cost allocation for projects that are not covered by existing processes, but emphasized that it was not upsetting existing mechanisms for cost allocation. Specifically, the Commission stated that “[t]he cost allocation principle discussed herein is intended to apply to projects that do not fit under the existing structure, such as regional projects involving several transmission owners or economic projects that are identified through the study process described above, rather than through individual requests for service.”⁵⁶ These are a sub-set of the projects contained in a transmission plan.

However, in the NOPR, the Commission appears to require cost allocation for every project contained in a regional transmission plan.⁵⁷ The NOPR states that “the Commission proposes to require that every public utility transmission provider have in place a method, or set of methods, for allocating the costs of new transmission facilities that are included in the transmission plan produced by the transmission planning process in which it participates.”⁵⁸ This proposal represents a radical change from the current cost allocation process. The NOPR does not present a factual basis for expanding the scope of the cost allocation requirement.⁵⁹ Further, there has been no experience with OATT implementation or the NTTG transmission planning process to indicate that such a radical change is warranted.

The NTTG Commenters request that the Commission confirm that the NOPR is not intended to apply to existing transmission projects covered by existing tariff-based and contract-

⁵⁶ Order No. 890 at P 558.

⁵⁷ NOPR at P 159; *see also Id.* at PP 164 and 174.

⁵⁸ *Id.* at P 159.

⁵⁹ *See, e.g., Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 841 (D.C. Cir. 2006) (vacating standards of conduct for natural gas pipelines because the Commission provided no evidence of a real problem, did not include a single example of abuse, and the record disclosed no complaints).

based cost allocation procedures. If the NOPR is intended to apply to all new transmission projects included in a region's transmission plan, the NTTG Commenters strongly believe this proposal should be rejected.

The NTTG Commenters are additionally concerned that shifting the burden of cost allocation of each and every project onto the regional transmission planning process will create an unnecessary and unproductive burden on a region's collective transmission providers. Since a regional transmission plan may consist primarily of projects internal to a single system, having little effect on other transmission providers within a region, issues of cost allocation for these single-system projects are also of little effect, administratively and otherwise, on other sub-regional transmission providers. By bringing each and every project, including these single-system projects, into a sub-regional cost allocation process, what are essentially local decisions best settled between the transmission provider, its customers, and its stakeholders become sub-regional decisions, which would necessarily, but unwisely, consume the time and personnel resources of all transmission providers and stakeholders in that sub-region.

5. The NTTG Commenters do not support a benefit-to-cost ratio as a precondition for a project to be considered in the sub-regional plan.

NTTG works within a universe of finite resources. The NTTG Commenters detect no recognition by the Commission in the NOPR of the need to select just those projects which make the best use of limited regional ratepayer derived resources. Logically, depending on how difficult-to-quantify benefits are assigned values, there may be numerous beneficial projects which, if all built, would create rate shock.⁶⁰

In addition it may be necessary to build some projects which are precursors that make future projects more beneficial. Without incurring the risk of the prior project, other dependent projects lack the requisite connectivity to pass a benefit-to-cost test. Yet, that earlier project may not, itself, pass a benefit-to-cost test in integrated resource planning if it is subject to future burdens. Again, cooperative voluntary arrangements can best identify willing transmission

⁶⁰ *Id.* at PP 164 and 174.

project participants. Finite resources that might otherwise go into litigation can instead go into engineering and construction to the region's benefit.

6. The NOPR ignores cost allocation dynamics of interconnecting generators.

While the Commission raises concerns about the free-rider issue with utilities, the Commission ignores the more likely and troubling free-rider issue with generation developers. For proposed transmission lines where there are no contracts or commitments for transmission and where the purpose of a transmission line is to provide access for generation to reach markets, the generation developers and distant loads are both benefited by the new transmission line. However, in the absence of an executed generator interconnection agreement and/or transmission service agreement, the transmission provider has no mechanism to assess costs upon either the generator or one or more associated load-serving entities. What ensues is something of a financial game of “chicken” in which the generator is financially unable or simply unwilling to develop generation if it has to pay for transmission, and load-serving entities are unable to justify a commitment for new transmission facilities that is, in effect, longer term than the potential power purchase opportunity. The result is that parties may exert political pressure to evade cost responsibility. Yet, other than the developer with a conceptual plan for constructing new generation, there is no specific load-serving entity or entities to which costs can be allocated at that time. Unless there are agreements from all beneficiaries prior to construction, there will be a different allocation of costs in a rate case, possibly resulting in cost under-recovery, bad debt expense, and cost shifting. To the extent the Commission chooses to address this practical issue, it should be done in the context of the Commission's generator interconnection procedures and not in the context of transmission planning.

7. The Commission should clarify the meaning of allocating costs to “beneficiaries” and to “those within the transmission region that benefit.”

The Commission's requirement of allocating costs to “beneficiaries” and “those within the transmission region that benefit” is unclear.⁶¹ Only direct benefits associated with the use of the transmission system should be considered. Leaving “benefits” undefined may allow for the spreading of costs to other parties based upon questionable and unproven economic development

⁶¹ *Id.* at P 164.

or societal benefits. For example, benefits to load from accessing preferred generation sources for that load and benefits to generation developers from being able to access load are appropriate benefits to consider, as are reliability benefits and congestion relief benefits. However, asserted benefits associated with multiplier impacts of construction, employment, or the economic activity facilitated by access to electric power, are not. The NTTG Commenters therefore urge the Commission to narrow the boundaries on allowable types of benefits.

In addition, the Commission should clarify the extent to which the transmission provider must be considered the surrogate beneficiary for allocated costs. For example, regarding generation across a congested path, the beneficiaries are either load-serving entities, merchant generators, or both. If the Commission intends for the transmission provider to become a “surrogate” beneficiary for the load-serving entities and/or merchant generators, there will be equity issues among new and existing customers. While the surrogate beneficiary’s costs would normally be incorporated into the rates of the transmission provider and recovered as part of its normal network and point-to-point rates, the benefits of congestion relief will differ among transmission customers and will generally be unrelated to the level of transmission service used on the transmission provider’s system.⁶² When, traditionally, project costs are allocated among transmission providers based upon project capacity allocated to and used by each transmission provider (*e.g.*, additional service required by their transmission customers), there is the likelihood that rate impacts to existing transmission customers will be mitigated by a proportional increase in billing units of transmission service. Conversely, if a project’s costs are, instead, allocated to a surrogate transmission provider based upon estimated economic benefits of reduced congestion, billing units of transmission service may or may not increase in proportion to allocated costs and additional billing units of service. In these instances, the transmission provider is a poor surrogate for the true beneficiaries of reduced economic congestion. The Commission should clarify it did not intend the transmission provider to become the surrogate beneficiary in such circumstances.

⁶² For example, if a transmission customer has lower variable cost generation located exclusively on the transmission system of a single transmission provider, there is little or no benefit to relieving congestion between its transmission provider and other transmission providers. In fact, there may be “dis-benefits” associated with the congestion relief.

Finally, in the Commission's proposed construct, it is only reasonable to expect that the relationship between actual costs and actual benefits will, on average, be stretched beyond that resulting from current practices based on voluntary participation and beyond the plain meaning of ensuring that costs are roughly commensurate with benefits. The Commission should, therefore, clarify whether allocating costs based upon benefits that will occur in a "likely future scenario," is a static, one time process, or an ongoing calculation reflective of actual metrics (*e.g.*, load, transmission service, etc.). It is unclear to the NTTG Commenters how allocating costs based on benefits allocated from a "likely future scenario" is intended to lock in costs allocated to an entity irrespective of actual use or benefits. The Commission should also clarify any methods that may be used to subsequently revise cost allocations that were derived based on future benefits, to reflect the actual costs that are eventually incurred (the benefits should reflect actual use over time).

While one may argue that uncertainty as to future use (*i.e.*, by whom and how much) is the nature of transmission planning, the Commission's proposal in the NOPR is markedly different from what is currently anticipated by a transmission provider and its customers. Transmission providers plan and participate in transmission projects today based on: (1) load and resource forecasts provided by network and native load transmission customers who are under contract to purchase transmission service during the term for which the transmission provider incorporates their forecasts in its transmission planning; and (2) specific levels of service contracted for by point-to-point transmission customers. Thus, transmission customers are financially exposed, to some degree, to the transmission provider's participation in projects that may not be fully utilized or utilized as planned. However, unlike the proposal set forth in the NOPR, transmission customers are not exposed to potential costs accruing from assumptions as to benefits and beneficiaries that take no current service from, and have no contractual relationship with, their transmission provider. Nor are transmission customers burdened with representing their interests in a sub-regional process to ensure that the assumptions and future scenarios associated with activities one or two systems removed from their own transmission provider's system do not adversely impact their rates through the sub-regional cost allocation methodology.

8. **The Commission should clarify how costs should be allocated among different classes of beneficiaries, how benefits should be calculated for purposes of project development, and focus its efforts on defining the types of benefits to measure and defining how those benefits are measured.**

If the Commission requires the imposition of costs on beneficiaries, which the NTTG Commenters do not support, the Commission should clarify that a transmission facility need not be categorized as exclusively serving one purpose, but may serve multiple purposes when applying a cost allocation methodology. The NOPR explicitly requires distinct consideration of projects that satisfy reliability needs, versus economic or congestion relief, versus satisfaction of or compliance with State or Federal statutes or regulations.⁶³ It appears from this requirement that there could be at least three distinct classes of beneficiaries, ranging from load-serving entities, to independent power producers, to power marketers, or to the public as a whole and each class may benefit differently from projects that are intended to satisfy reliability needs versus those designed to address economic or congestion relief. It is not uncommon for a particular project to serve the purpose of addressing two or more functions (e.g., reliability and congestion relief). As a result, it appears appropriate to evaluate each project against all three of these functions and then apply an appropriate cost allocation methodology associated with that particular function to allocate costs to each group of beneficiaries, depending on the benefits they receive.

The Commission should also clarify the benefits which should be considered in allocating costs. For example, if benefits include future operational savings, what time period should be evaluated, and what is the requirement for certainty (*e.g.*, is the estimate based on existing facilities and agreements, or simply a future scenario resting on innumerable assumptions?), and how should the discount rate be established (*e.g.*, should the discount rate somehow account for uncertainty in assumptions regarding the future?)? Further, the Commission does not address whether “benefits” are only positive factors, or whether they are permitted to also measure “net benefits,” which would reflect any system costs or negative impacts incurred by an entity as a

⁶³ NOPR at P 160.

result of a transmission project (*i.e.*, reduced transmission service due to additional “loop flow,” lower market rates, etc.).

Therefore, instead of rigidly setting a maximum threshold for the benefit-cost ratio of 1.25 for the overall project economics, the Commission should continue recognizing the high degree of uncertainty of the benefits calculation and the difficulty in measuring benefits with a high degree of uncertainty. The term “roughly commensurate with estimated benefits” used in the NOPR appears to accomplish this idea.⁶⁴ Thus, at this point, the Commission’s focus should be to define the types of benefits to measure and to define how those benefits are measured.

V. CONCLUSION

Following the issuance of Order No. 890, NTTG has diligently implemented the Commission’s transmission planning and cost allocation requirements. In doing so, NTTG employs a planning and cost allocation process that is specifically suited to address transmission issues within its footprint in the Western Interconnection. In the NOPR, the Commission proposes to make significant revisions to the existing planning and cost allocation processes when it is not apparent that such revisions are warranted.

The transmission planning processes put in place in response to Order No. 890 are working. As evidenced by NTTG’s November 25, 2009 Biennial Transmission Plan and by its December 1, 2009 Cost Allocation Report, NTTG is facilitating the construction of significant quantities of 230 kV, 345 kV and 500 kV transmission lines that not only serve native load under a plethora of possible future conditions, but also uniquely connect remote high capacity factor Wyoming and Montana wind resources to West Coast load centers. The projects seeking State acknowledgement are the precursors for a more robust transmission grid. Without the connectivity these foundational lines represent, future transmission lines will have greater difficulty demonstrating benefits in excess of cost. These projects are the result of the NTTG planning process and demonstrate that its planning process, as currently authorized, is working as intended. Therefore, an assumption that transmission is not being built is wrong.

⁶⁴ *Id.* at PP 164(1) and 174(1).

The Commission has not adequately justified its presumption that existing transmission planning processes and cost allocation methodologies are failing, or how the proposed processes and cost allocation methodology overcome these failings without the likelihood of creating their own. The NTTG Commenters ask the Commission to consider these comments, respond to specific problems, and refrain from making generic changes. The uncertainty created by new Federal regulatory requirements, such as those set forth in the NOPR, may cause transmission projects within NTTG's footprint to be delayed or deferred. The potential for such a result outweighs the possible benefits offered by the Commission in the NOPR.

Thank you for considering these comments, submitted this 29th day of September, 2010
by the staff representative for each NTTG participant below:

**Deseret Generation & Transmission
Co-operative, Inc.**

By *Craig Silverstein*
Craig Silverstein – Attorney

Idaho Power Company

By *Richard Garlish*
Richard Garlish – Attorney

Idaho Public Utilities Commission

By *Neil Price*
Neil Price – Attorney

Montana Consumer Counsel

By *Robert A. Nelson*
Robert A. Nelson – Consumer Counsel

Montana Public Service Commission

By *James Paine*
James Paine – Attorney

Northwestern Energy

By *Jason Williams*
Jason Williams – Attorney

PacifiCorp

By *Ryan Flynn*
Ryan Flynn – Attorney

Portland General Electric Company

By *Cece Coleman*
Cece Coleman – Attorney

Public Utilities Commission of Oregon

By *Jason Jones*
Jason Jones – Attorney

Utah Associated Municipal Power Systems

By *Marshall Empey*
Marshall Empey – Mgr Operations

Utah Public Service Commission

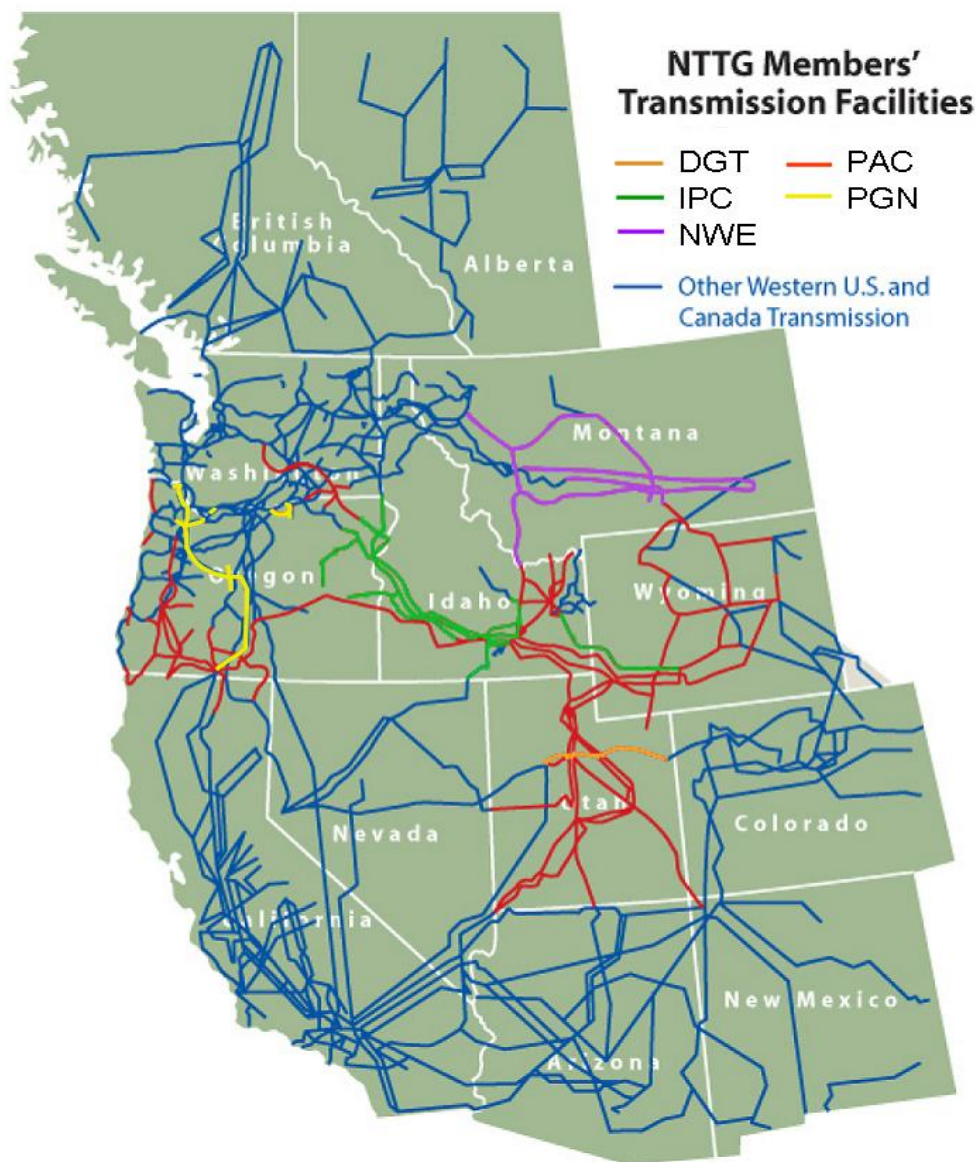
By *David Clark*
David Clark – Attorney

Wyoming Public Service Commission

By *Chris Petrie*
Chris Petrie – Attorney

Appendix A

Transmission Facilities of Northern Tier Transmission Group's Funders



Key: “*DGT*” means Deseret Generation & Transmission Co-operative; “*IPC*” means Idaho Power Company; “*NWE*” means NorthWestern Energy; “*PAC*” means PacifiCorp; and “*PGN*” means Portland General Electric Company. Not listed is Utah Associated Municipal Power Systems (“*UAMPS*”). UAMPS is a funder of the Northern Tier Transmission group even though it does not own transmission facilities.

Appendix B

Sub-Regional Planning Groups in the Western Interconnection

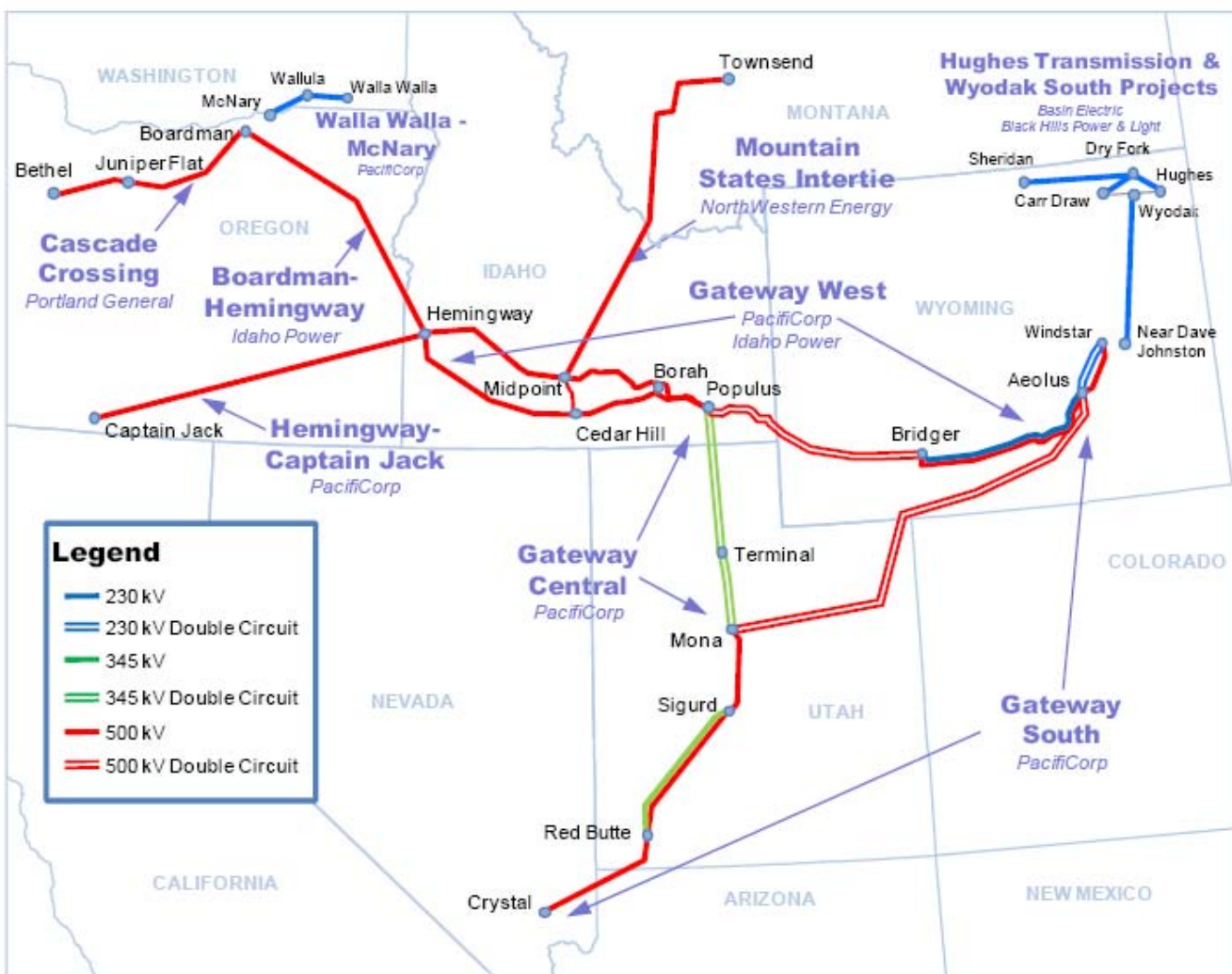
Western Interconnection Sub-Regional Transmission Planning Groups (SPGs) August 2010



Source: Western Electricity Coordinating Council, *SPG Coordination Group (SCG) Foundational Transmission Project List*, page 2 (August 11, 2010), available at <http://www.wecc.biz/committees/BOD/TEPPC/SCG/Shared%20Documents/SCG%20Foundational%20Transmission%20Project%20List%20Report.pdf>

Appendix C

Northern Tier Transmission Group Planned Transmission Additions



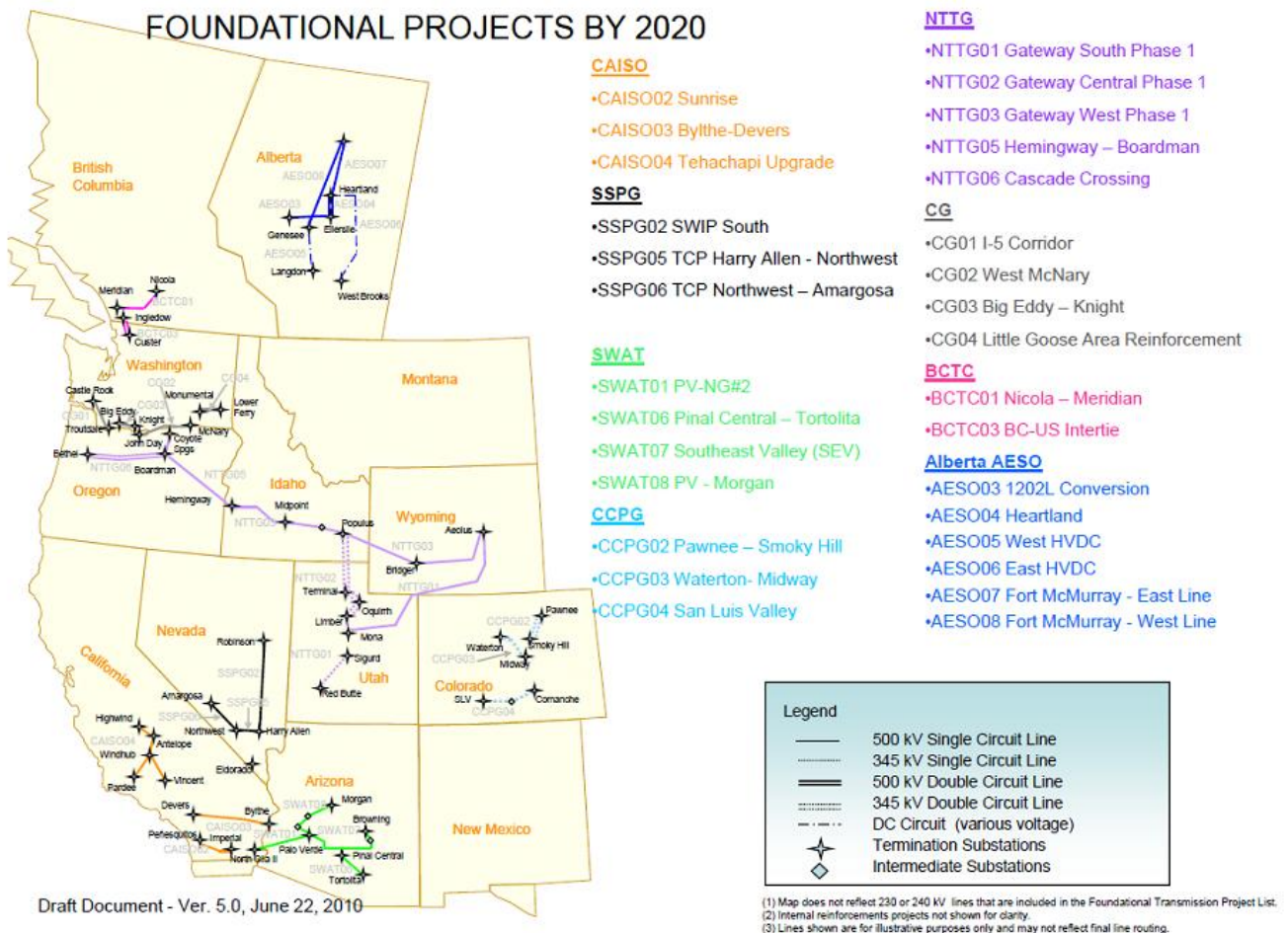
Source: Northern Tier Transmission Group 2008-2009 Biennial Transmission Plan, Final Report, Figure 2 at 9 (November 25, 2009), available at:

http://nttg.biz/site/index.php?option=com_docman&task=cat_view&gid=220&Itemid=31.

(Since the publication of this map some of the projects have been enhanced.)

Appendix D

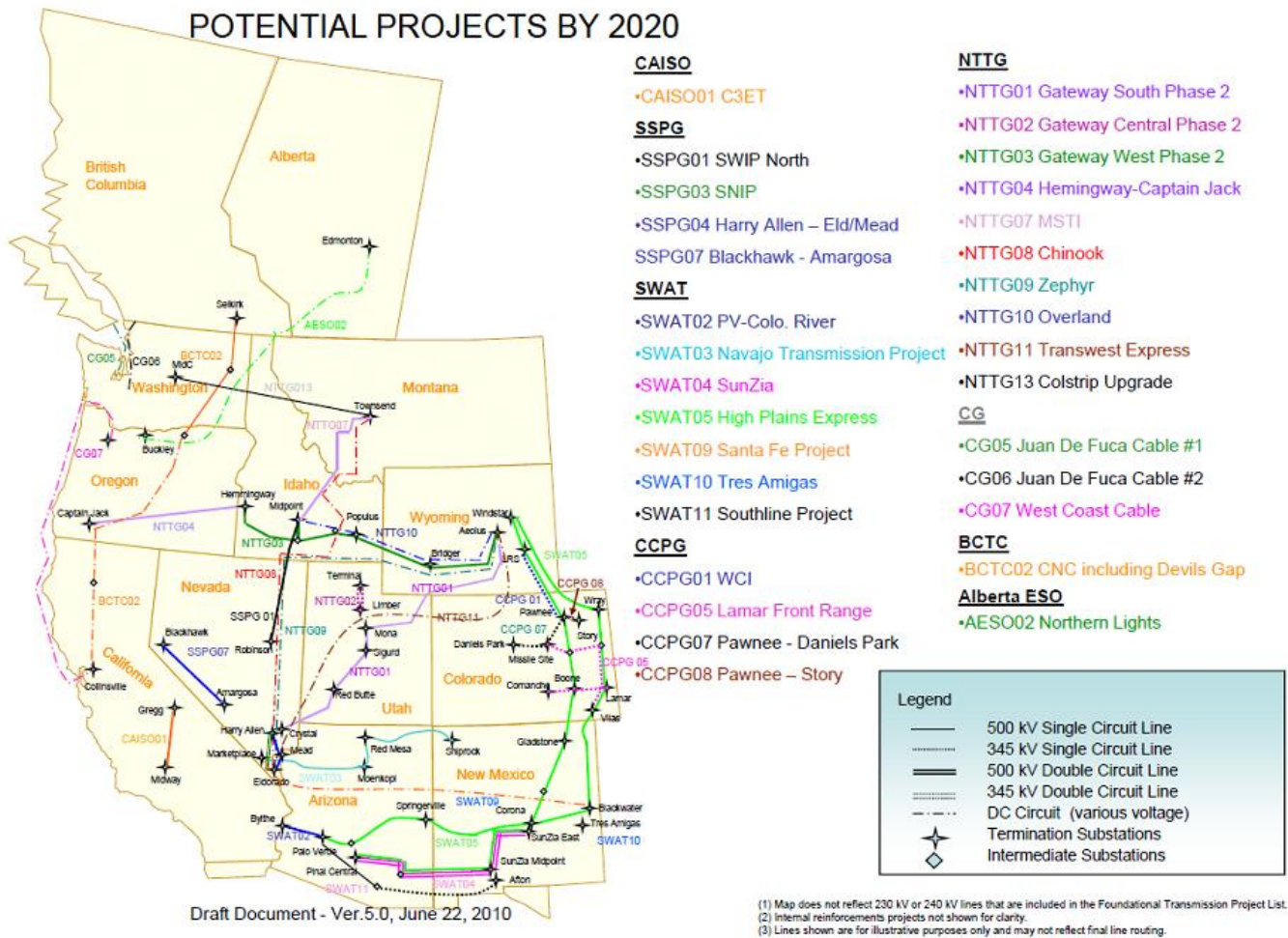
Western Electricity Coordinating Council SPG Coordination Group (SCG) Foundational Transmission Project List



Source: Western Electricity Coordination Council, *SPG Coordination Group (SCG) Foundational Transmission Project List* (August 11, 2010) at page 3, available at: <http://www.wecc.biz/committees/BOD/TEPPC/SCG/Shared%20Documents/SCG%20Foundational%20Transmission%20Project%20List%20Report.pdf>. (Foundational transmission projects mean those “projects that have a very high probability of being in service in the 10-year timeframe.” *Id.* at 1)

Appendix E

Western Electricity Coordinating Council SPG Coordination Group (SCG) Potential Project List



Source: Western Electricity Coordination Council, *SPG Coordination Group (SCG) Foundational Transmission Project List* (August 11, 2010) at page 6, available at: <http://www.wecc.biz/committees/BOD/TEPPC/SCG/Shared%20Documents/SCG%20Foundational%20Transmission%20Project%20List%20Report.pdf>. (Potential projects mean those “projects that have been identified in SPG 10-year plans but do not meet the foundational transmission project criteria.” *Id.*)