

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

Avista Corporation,)	
)	
Bonneville Power Administration,)	
)	
Idaho Power Company,)	
)	
Montana Power Company,)	
)	Docket No. RT01 -35
Nevada Power Company,)	
)	
Pacific Corp,)	
)	
Portland General Electric Company,)	
)	
Puget Sound Energy, Inc., and)	
)	
Sierra Pacific Power Company)	

**PROTEST OF NORTHWEST REQUIREMENTS UTILITIES
REQUESTING THE COMMISSION TO DENY, IN PART,
THE PROPOSED RT01 WEST “STAGE 2 FILING AND REQUEST FOR
DECLARATORY ORDER PURSUANT TO ORDER 2000”**

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I. PROTEST OF NORTHWEST REQUIREMENTS UTILITIES.

Northwest Requirements Utilities hereby protests in part the March 29, 2002, “Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000”, and the “Errata Filing Relating to the Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000” (April 22, 2002) (collectively, the “Stage 2 Filing”); and respectfully asks the Commission to deny the requested declaratory order as to those protested portions of the Stage 2 Filing. The Stage 2 Filing is proffered by Avista Corporation, Bonneville Power Administration, British Columbia Hydro and Power Authority, Idaho Power Company, North Western Energy, L.L.C. (formerly the Montana Power Company), Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company (collectively referred to herein as the “Filing Utilities”). The Filing Utilities submit the Stage 2 Filing to form RTOWest, a regional transmission organization (“RTO”) for the Northwestern United States. Northwest Requirements Utilities submits its Protest pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (“Commission’s”) Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2000), and pursuant to the Notice of Extension of Time dated April 17, 2002, in this docket.

Northwest Requirements Utilities (“NRU”) represents consumer -owned electric utilities located in California, Idaho, Montana, Nevada, Oregon and Washington. ¹NRU’s Motion to Intervene in this proceeding was granted by Commission Order on April 26, 2001; see Avista Corp., 95 FERC ¶ 61,114 at 61,323 (2001).

¹A listing of NRU utilities is found at Exhibit 1 hereto.

II. INTRODUCTION.

The Filing Utilities intend their Stage 2 Filing “to provide all remaining information necessary for the Commission to issue a declaratory order concerning the filing utilities’ proposal to form a regional transmission organization known as ‘RTO West.’” They conclude that “[t]he Commission should find that the RTO West proposal, as completed through this Stage 2 filing, is fully compliant with the requirements of Order 2000.” Filing Letter at 2, 8.²

The Stage 2 Filing cannot fulfill the sponsors’ avowed intent “to provide all remaining information” necessary for such a Commission decision because the Stage 2 Filing does not satisfy the characteristics and functions required by the Commission of Regional Transmission Organizations.³ The Commission should reject those portions of the Stage 2 Filing that harm wholesale transmission customers (and then native retail loads they are legally bound to serve) and thus violate the public interest. Therefore, and as demonstrated below, NRU protests in part the Stage 2 Filing, and requests that the Commission deny the declaratory relief sought by Filing Utilities regarding the protested portions of the Stage 2 Filing.

All NRU utilities are located within the geographic footprint proposed for RTO West. Each of them is transmission dependent, and all use wholesale transmission

²The Stage 2 Filing consists of a 66 page Filing Letter and attachments A through L thereto. For purposes of this Protest, citations to the filing in general are “Stage 2 Filing”; and specific references are to the Filing Letter or Filing Letter Attachments.

³ See *Regional Transmission Organizations*, Order 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶31,089 (1999), *order on reh’g*, Order No. 2000 -A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶31,092 (2000), *aff’d subnom. Pub. Util. Dist. No. 1 of Snohomish Cnty., WA v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

service from one or more of the RTOWest sponsoring Filing Utilities. Each NRU Utility has a long-term Open Access transmission contract with the Bonneville Power Administration, the dominant transmission owner among the Filing Utilities. In addition, many NRU Utilities also depend upon non-Open Access transmission service provided by third parties to Bonneville Power Administration under "General Transfer Agreements" to meet their native retail loads; *see infra* at section III.B.2. Such Open Access and third party transmission services are necessary for NRU Utilities to satisfy their power supply requirements with wholesale power purchases from the Bonneville Power Administration.

All NRU Utilities meet their firm wholesale power supply requirements with power purchases from the Bonneville Power Administration; most of them purchase one hundred percent (100%) of their power requirements from Bonneville. No members of NRU own or control transmission facilities sufficient to move their power requirements from Federal generating resources to their native retail loads. To the contrary: the wholesale power supply of all NRU Utilities is transmitted via one or more Filing Utility-owned transmission system(s) from Federal generating resources that are often located great distances away from the native retail loads served by NRU Utilities.

NRU has participated actively in the development of RTOWest and in related Commission proceedings where transmission market design is undergoing review.⁴

Nonetheless, we must protest those aspects of this Stage 2 Filing that directly impair the

⁴ See, e.g., *Petition for Rehearing of Idaho Consumer-Owned Utility Association et al.* (May 25, 2001); *Consumer-Owned Utilities' Comments* (January 16, 2001) and *Protest and Comments of Idaho Consumer-Owned Utility Association et al.* (November 17, 2000), in *Avista Corp.*, No. RT01-35. See also *Northwest Requirements Utilities and PNGC Power Comments Regarding Options Paper* (May 1, 2002) and

adequacy and reliability or increase the cost of transmission service necessary to the wholesale power transfers of NRU utilities. The Stage 2 Filing is not ripe for Commission approval at this time, for it fails the test of Commission requirements under Order 2000; and because it will violate the public interest by harming smaller, predominantly rural consumer-owned electric utilities that depend upon wholesale transmission service from the Filing Utilities to serve native retail loads. The Commission should deny the requested declaratory ruling as to those portions of the Stage 2 Filing identified below, and instead order the Filing Utilities to make such corrections as necessary to meet the Commission's requirements while protecting wholesale transmission customers such as NRU's members.⁵

III. THE COMMISSION SHOULD DENY, IN PART, THE RELIEF REQUESTED.

A. RTO WEST FAILS TO SATISFY ORDER 2000'S REQUIREMENTS FOR RTO CHARACTERISTICS AND FUNCTIONS.

In Order 2000, the Commission established an RTO baseline that requires each RTO to embody four characteristics⁶ and perform eight key functions.⁷ The

Comments of Northwest Requirements Utilities and PNGC Power (April 9, 2002) in Electricity Market Design and Structure, No. RM01-12.

⁵NRU has reviewed the Protest and Comments of PNGC Power filed this day in these proceedings, and adopts the PNGC Power comments as to planning and pricing as its own.

⁶Order 2000 establishes four characteristics of an RTO, including: **Independence**: independent of market participants; **Scope and Regional Configuration**: RTO must serve region of sufficient scope and configuration to maintain reliability, support efficient and non-discriminatory power markets, and perform its required functions; **Operational Authority**: RTO must be security coordinator for the region, but the Commission did not require a single control area at this time; and **Short-term Reliability**: RTO has exclusive authority regarding interchange schedules; the right to dispatch interconnected generation if necessary for reliable operation of RTO facilities.

⁷In summary, the eight functions of an RTO under Order 2000 include: **Tariff Administration and Design**: RTO is sole provider of transmission service and sole administrator of its open access tariff; sole

Commission's theory of "open architecture" encourages regional transmission organizations to evolve over time --improving structure, geographic scope, market support and operations to meet market needs. Sufficient flexibility to meet regional needs is also a tenet carried forward in the Commission's Standard Market Design proceeding.

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Thus, the Stage 2 Filings should be evaluated against the standards articulated by the Commission in the context of Order 2000, as well as subsequent Commission precedent.

The Stage 2 Filing correctly makes use of the Commission's proffered flexibility in order to meet Order 2000 goals within the unique setting of the Northwestern United States. However, the Commission should not grant the requested final approval because the Stage 2 Filing fails to satisfy the requirements of Order 2000.

A key infirmity of the Stage 2 Filing is the lack of RTO authority over those facilities necessary for wholesale power transfers in the Northwest. The Stage 2 Filing compounds the problem by obscuring whether a given transmission facility is under RTO West authority for all, some, or none of its operation.

authority to approve or deny all requests for transmission service, to approve requests for new interconnections; **Congestion Management**: RTO must ensure development of a market mechanism to manage congestion, mechanism to be operated by RTO or an independent entity; **Parallel Path Flows**: RTO procedure to address parallel path flows between its region and others; **Ancillary Services**: RTO must serve as provider of last resort for ancillary services required under Order 888, through a RTO tariff; market participants must have option to self supply ancillary services or obtain same from market; RTO decides minimum required amounts of each ancillary service, ensures customer access to real-time balancing market (either RTO or independently run); **OASIS**: RTO is single OASIS site administrator but may contract out responsibilities; RTO independently calculates available transmission capacity and total transmission capacity; **Market Monitoring**: RTO provides for objective monitoring of markets it operates, looking for design flaws, market power abuses, opportunities for efficiency improvements; **Planning and Expansion**: RTO responsible for planning and directing necessary transmission system upgrades and expansions, coordinated with state authorities; RTO must encourage market-motivated operating and investment actions for preventing and relieving congestion, accommodate state commission effort to create multi-state agreements to review and approve new transmission facilities; and **Interregional Coordination**: RTO will be required to develop mechanisms to coordinate activities with other regions, and ensure the integration of reliability and market interface practices among regions.

First, a limited subset of assets are proposed to be within the authority of RTO West. The remaining (and undefined set of) facilities currently used for wholesale power transfers are allegedly included only at the individual Filing Utility's discretion and then only for limited purposes. See Filing Letter at 35 -38. As described in the Filing Letter, RTO West would have pricing authority and operational control over "Class A" facilities; pricing authority but no operational control over "Class B" facilities; limited planning authority (for the purposes of transmission adequacy and congestion management) over "Class C" facilities; and would provide access but no planning or pricing authority or operational control over "Class D" facilities. *Id.* at 33 -38; see also Protest at Section III.B.2, *infra*.

Second, and despite the Filing Letter indication that such facilities will be under RTO authority for some limited purposes, the operative provisions of the Stage 2 Filing unambiguously contradict the Class A -D schema just described. The Filing Utilities acknowledge that facilities in each of these classes serve wholesale transmission customers and will have an impact on RTO West's ability to perform the functions required by Order No. 2000; see Filing Letter at 33 -34. Nonetheless, while Attachment D to the Filing Letter lists the proposed RTO West Transmission Facilities, that same Attachment omits these assets entirely from RTO West. See Filing Letter Attachment D at 1 -49. The Filing Utilities, by retaining control over certain transmission facilities needed to transmit power in the wholesale market, violate Commission requirements for the functions and characteristics of an RTO.

⁸ See, e.g., April 10, 2002, "Options for Resolving Rate and Transition Issues in Standardized Transmission Service and Wholesale Electric Market Design" and the March 15, 2002, "Working Paper on Standardized Transmission Service and Wholesale Electric Market Design", issued by the Commission.

The just described infirmity goes to the heart of the Commission's requirements for an RTO. If the Filing Utilities themselves can classify or reclassify facilities as they see fit, they've viscerated the Commission's authority under Order 2000. And yet, that is precisely what they appear to appear to have asked the Commission to approve in the Stage 2 Filing. They have created different classes of facilities that serve both retail and wholesale functions; *see* Filing Letter at 35 -36. At the same time, they have submitted Attachment D to the Filing Letter which excludes hundreds of miles of 115 -kV lines and other facilities that are used in part to serve wholesale customers. ⁹

Therefore the RTOWest of Stage 2 cannot be considered to possess an appropriate scope and regional configuration, despite the Commission's previous conclusion in its April 26, 2001, Order that the geographic scope of the Stage 1 RTO West may be sufficient. The scope contemplated by Order 2000 is not satisfied because the scope in Order 2000 is not limited to geography alone. The Stage 2 Filing fails

⁹ Consider the example of the Canby Utility Board ("Canby"), a municipal utility in Oregon that is a full requirements wholesale power customer of the Bonneville Power Administration. Canby's territory is surrounded by Portland General Electric ("PGE"), a Filing Utility. Canby receives its wholesale power through a Network Integration Transmission Service Agreement with Bonneville. Bonneville, in turn, has a General Transfer Agreement with PGE to deliver that power over PGE's lines to Canby's point of delivery. The same PGE facilities also deliver power to PGE's retail customers.

It is impossible to say whether the PGE facilities needed to serve Canby are in or out of RTOWest by looking at the Stage 2 Filing. On one hand, the PGE facilities used for wholesale delivery would seem to fall in either Class C or Class D, as described at pages 34 -35 of the Filing Letter. Class C purports to cover "Certain Distribution Facilities" that are subject to RTO tariffs and pricing but are subject to interconnection standards developed by the Participating Transmission Owner ("PTO") -- in other words, the Filing Utility, pursuant to state control. In contrast, Class D covers "Local Distribution Facilities." Those facilities, however, are subject to PTO, not RTO pricing.

On the other hand, Attachment D of the Filing Letters suggests that all the 57 -115-kV lines needed to serve Canby are completely *excluded* from RTOWest; *see* Filing Letter Attachment D at 43 -44. If the facilities used to serve Canby's load are Class C or D, then the RTOWest filing would preclude pancaked rates. (Although there would be an additive Commission -approved access charge, it would not exceed the PTO's transmission rate if all facilities were classified as a transmission. *See* Filing Letter at 36, note 3.) On the other hand, if the facilities were completely *excluded* from either Class C or D (as Attachment D contemplates), no such rate protection would be offered, and the Commission's statutory authority over facilities used to deliver wholesale power would be negated.

because RTOWest lacks authority over wholesale transmission facilities within its territory that are necessary to ensure reliability, support efficient and non-discriminatory power markets, and perform the RTO's required functions.

Because the Stage 2 Filing fails the scope and operational authority requirements of Order No. 2000, this aspect of the proposal should be rejected. In addition, the Stage 2 Filing does not satisfy those other characteristics and functions required by Order 2000. Facilities necessary for wholesale power transfers are not under pricing, planning, expansion or other authorities of the RTO. The omission of necessary facilities would harm the RTO's ability to perform the congestion management and planning functions and to ensure short-term reliability. Nor does the Stage 2 Filing include either load or generation integration agreements; *see* Filing Letter Attachment A at § 5.2. One wonders how the Commission could judge reliability, absent such key components, when there is no extant mechanism by which RTOWest would control, directly or indirectly, either generation or transmission facilities (assuming the appropriate transmission facilities were included, which they are not).

Finally, the proposed RTO cannot be considered independent. Transmission owners (many with competitive power market and supply functions) have withheld from RTOWest authority many facilities necessary for wholesale power transfers to entities including members of NRU. *See* Filing Letter at 33-38; and Filing Letter Attachment D. Although the Commission has elsewhere indicated that an independent transmission company may share in some RTO functions, the RTOWest Filing Utilities do not qualify as independent transmission companies. Rather, these vertically integrated utilities could favor their own generation and retail loads; and may do so by withholding wholesale

transmission facilities necessary for service to a competitor (such as load serving, transmission dependent utilities) from RTOWest authority.

Because the Stage 2 Filing excludes necessary assets from the RTO's authority, the proposed RTOWest cannot satisfy the minimum characteristics or functions of an RTO as prescribed by Order 2000. ¹⁰ Indeed, the Stage 2 Filing approach to facilities exclusion would encourage the balkanization of four Northwest transmission systems by allowing individual transmission owners to limit unilaterally RTOWest's authority over certain transmission assets. The Commission should reject this portion of the Stage 2 Filing and require the Filing Utilities to modify the proposal by consistently including all transmission facilities necessary for wholesale power transfers within RTOWest.

B. PORTIONS OF THE STAGE 2 FILING HARM WHOLESALE TRANSMISSION CUSTOMERS AND THUS VIOLATE THE PUBLIC INTEREST.

NRU has not endorsed the RTOWest model to date, because that proposal harms critical interests of transmission dependent utilities and is inconsistent with Commission policy. In order for NRU to endorse the Stage 2 Filing, when implemented, RTOWest must provide the following attributes:

- Preserve and Protect Pre -Existing Transmission Rights.
- RTOWest Authority Over Facilities Necessary For Wholesale Power Transfers.
- The "Company Rate Period" Is Implemented for 10 Years.
- Transmission Adequacy For Load Service Not At Risk.
- A Completed Cost Benefit Study Shows Net Benefits.

¹⁰In the face of Order 2000's plain language, even the most flexible of interpretations cannot justify such an outcome.

NRU commends the Filing Utilities for listening to several of the critical interests of regional stakeholders. However, the RTOWest proposal does not yet memorialize a satisfactory package from our point of view. As such, NRU protests those aspects of the proposal that do not meet our critical interests, as follows.

1. The Stage 2 Filing Inadequately Protects Existing Transmission Rights Of Wholesale Transmission Customers.

With or without an RTO, the transmission dependent utilities represented by NRU require reliable transmission service adequate to meet their service obligations to native retail loads, at a cost -based price not in excess of the status quo. With RTOWest, the Filing Utilities developed a regionally tailored proposal that attempts to accommodate the wholesale purchasers of transmission (such as NRU utilities) that rely on the Northwest's hydro-electric generating resources to serve native retail loads far removed from Federal generation projects. Thus, the Filing Utilities have tried to implement the Commission's RTO initiative in a manner that preserves and protects pre-existing wholesale transmission rights. Nonetheless, the Filing Utilities cannot assure us that the instant proposal does no harm to such rights, and there is no enforcement mechanism available to current rights holders in the event their existing rights have been harmed.

Just as state regulators have admonished the Commission that "RTOWest" to "first do no harm" in its efforts to implement an RTO initiative, NRU advises the Commission and the Filing Utilities that the Stage 2 Filing must be revised in order to do no harm to pre-existing transmission rights necessary to serve native retail loads. In order to do no harm, the Commission must protect existing transmission rights for wholesale

transmission customers with load service obligations, no less than the transmission rights held by the Filing Utilities.

In response to the foregoing, the Filing Utilities state liberally throughout the Stage 2 Filing that the proposal requires RTOWest to preserve pre-existing transmission rights. *See, e.g.*, Filing Letter at 43; Filing Letter Attachment A at § 6.4.1 (RTOWest obligated to provide transmission service for non-converted contracts and for converted pre-existing transmission contract rights); Filing Letter Attachment A at § 9.4.2 (RTOWest may not alter transmission customers' pre-existing transmission agreements, including Network and Point-to-Point service, in providing non-converted service); Filing Letter Attachment F at 4, 19-23; and Filing Letter Attachment E-1 at 6. Indeed, the Bonneville Power Administration responded to its transmission-dependent utility customers by affirming its intention to protect wholesale transmission customers' rights in an RTOWest future; *see* Exhibit 2 hereto, Letter to Transmission Customers from Stephen J. Wright, Administrator and Chief Executive Officer, Bonneville Power Administration (April 19, 2002).

Good intentions notwithstanding, the Filing Utilities' affirmation of pre-existing rights cannot be reconciled with certain operative provisions of the Stage 2 Filing. As described in detail below, aspects of the proposed contract rights "cataloging" process; the superior protections afforded transmission owners' pre-existing rights versus those of transmission customers; and the disparate dispute resolution provisions, are each among the evidence undermining the Filing Utilities' avowed intention to protect pre-existing rights of wholesale transmission customers.

The Stage 2 Filing describes a “cataloging” process, whereby the Filing Utilities and RTOWest account for existing contract rights through the use of “Catalogued Transmission Rights.” Prior to the implementation of RTOWest, each Filing Utility must calculate Catalogued Transmission Rights associated with its existing transmission contracts (as well as those rights necessary to serve its own retail native load). Such rights are then to be identified in an attachment to that Filing Utility’s TOA; *see* Filing Letter Attachment A at Exhibit F. Upon commencement of RTOWest, the Filing Utility may then apply Catalogued Transmission Rights to serve unconverted existing contract customers, or use the rights to offset congestion charges arising from service to the Filing Utility’s retail native load. *See* Filing Letter Attachment F at 16, and at Appendix B thereto. If a wholesale transmission customer chooses to suspend a pre-existing contract and “convert” to RTOWest service, it then chooses to receive either Catalogued Transmission Rights or Financial Transmission Options corresponding to its pre-existing contract. *See* Filing Letter Attachment A at §9.3.1: Filing Utilities (and subsequent parties to the TOA) are “Executing Transmission Owners” and each shall make a “good faith offer to each Executing Transmission Owner customer” to convert to RTOWest service in return for “either (i) receipt by the [customer] of Financial Transmission Options from RTOWest or (ii) receipt by the [customer] of Catalogued Transmission Rights from RTOWest” (among other things). *See also* Filing Letter Attachment F at 16.

NRU strongly supports protection and preservation of pre-existing transmission rights; the wholesale customer’s choice to retain or convert pre-existing transmission

rights¹¹; and its choice upon conversion, to obtain and hold onto its own Catalogued Transmission Rights or Financial Transmission Options corresponding to the converted rights¹². In short, the proposed use of Catalogued Transmission Rights, albeit complicated, appear to be a valid means to accomplish such protection. The proposal fails, however, when the cataloging process does not involve (and ultimately may not protect) transmission customers in the identification and allocation of Catalogued Transmission Rights. We urge the Commission to permit wholesale transmission customers to retain the essential rights to transmission service available under existing contracts, tariffs and business practices, without discrimination.

Neither equity nor comparability are reserved if wholesale transmission customers of Filing Utilities are excluded from the initial determination of transmission rights necessary to fulfill their load service obligations under pre-existing contracts. We assume the Filing Utilities have planned for and are recommencing the process of listing contract rights to be cataloged and recorded. However, NRU is unaware of any Filing Utility transmission customers that are presently involved in that process; nor does such a collaborative process appear in the Stage 2 Filing.

The Stage 2 Filing endows only the Filing Utilities with the explicit right to calculate, much less revisit, initial Catalogued Transmission Rights allocations. See Filing Letter Attachment A at § 8.3 (“if the *Executing Transmission Owner determines* or,

¹¹ The proposal appropriately attempts a “no action” alternative, whereby non-converted customers have no direct relationship with RTOW and pay the company rate of the owner (plus overheads).

¹² Voluntary conversion from existing transmission rights to RTO rights is a good attribute; but NRU is concerned about the intent and effect of purported “encouragements” to convert. Suffice to say that the “encouragements” should not be used to compel, force or otherwise coerce conversion to RTO service.

pursuant to a dispute resolution process, it is determined that the catalogues set forth in Exhibit F does not satisfy a transmission customer's rights, that the Catalogued Transmission Rights shall be modified to satisfy such rights." (Emphasis added). Thus, should the cataloging process produce a result disputed by the transmission customer, this proposal puts the customer at an extreme disadvantage relative to the Filing Utility owner when in fact, the customer is most directly impacted by the cataloging process decisions.

For pre-existing contract rights to be adequately and equitably catalogued, all parties to those contracts – the Filing Utility transmission owner and its wholesale transmission customer alike – should be involved in the identification and allocation of transmission rights arising from such contracts. ¹³ The public interest is violated when consumer-owned wholesale transmission customers are prohibited from the cataloging process, or at best represented by a third (and potentially adverse) party. Because the Commission must ensure that consumers are not harmed pursuant to its responsibilities under the Federal Power Act ¹⁴, this portion of the proposal should be rejected.

Dispute resolution under RTOWest provides scant remedy to wholesale transmission customers with a grievance concerning identification and allocation of pre-existing transmission rights, should those rights be placed at issue; *see* Filing Letter Attachment A at §20 and at Exhibit P thereto. Only an Executing Transmission Owner or RTOWest may initiate or apply to intervene in arbitration proceedings; *see* Filing Letter

¹³ In the case of service under General Transfer Agreements (*see* sections III.A and III.B.2, herein), the party receiving service is the transmission dependent utility customer of Bonneville. Thus Bonneville and the Filing Utility providing General Transfer Agreements service must be joined in the cataloging process by the wholesale transmission customer actually receiving service pursuant to that agreement.

¹⁴ *See, e.g.*, Tejas Power Corp. v. FERC, 908 F.2d 998, 1003 -04 (D.C. Cir. 1990); Public Service Comm'n of New York v. FERC, 866 F.2d 487, 488 (D.C. Cir. 1989).

Attachment A at §§ 20.2.1, 20.3.5, and Exhibit P thereto (describes Executing Transmission Owner and RTOWest as parties to disputes over the adequacy of a transmission customer's service over non-RTOWest controlled transmission facilities).¹⁵ Transmission customers' interests may not be shared by the transmission owners, yet customers must rely on owners as advocates because a customer cannot initiate or intervene in arbitration. Elsewhere, the TOA clearly states that the TOA will have no third-party beneficiaries, making enforcement of the intended "protections" ephemeral at best; see Filing Letter Attachment A at § 25.12.

Thus, this aspect of the Stage 2 Filing creates a no-win scenario. Wholesale transmission customers are excluded from the cataloging process as an initial matter, and then have no available means to challenge and remedy disputes over identification and allocation of pre-existing transmission rights. Add to this injury the following insult: Catalogued Transmission Rights definitions and protections are memorialized in Exhibit F of the TOA, and the TOA is a contract exclusively between each Filing Utility and RTOWest. TOA § 8.3 provides that Exhibit F will be modified if, "pursuant to a dispute resolution process, it is determined that the catalogue set forth in Exhibit F does not satisfy a transmission customer's rights." Filing Letter Attachment A at § 8.3. Yet the wholesale transmission customer is clearly not party to the TOA, and lacks the TOA-created right to initiate dispute resolution regarding cataloging. How can a wholesale transmission customer procure and protect its rights in the cataloging process, when the

¹⁵ TOA Exhibit P also sets forth the dispute resolution process for cataloging the Catalogued Transmission Rights prior to a transmission customer's conversion to RTOWest transmission service. However, transmission customers' rights therein (if any) are extremely limited; see Filing Letter Attachment A Exhibit P, at P -2, P -3.

TOA further states that it “shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein”? Filing Letter Attachment A at §25.12.

If the customer “elects to suspend” and convert a pre-existing contract, its ability to protect its rights is equally weak. The TOA, Filing Letter Attachment A at §9.3.2, provides:

RTOWest shall provide notice to the Executing Transmission Owner if the [customer] disputes the Catalogued Transmission Rights developed by RTOWest and the Executing Transmission Owner. The Executing Transmission Owner... agrees to make a good faith effort to resolve differences with the [customer].... If full agreement is not reached, the Executing Transmission Owner... agrees to bear responding party with RTOWest in an RTOWest Arbitration Process to resolve any dispute concerning the conversion of any Pre-Existing Agreements and Obligations into Catalogued Transmission Rights or the conversion of Catalogued Transmission Options consistent with the terms and procedures set forth in Exhibit P.

Thus, it seems that even the customer’s right to challenge “the Catalogued Transmission Rights developed by RTOWest and the Executing Transmission Owner” upon conversion to RTOWest service is not secure. Again, the TOA specifies (in § 25.12) that it does not “create rights in, or grant remedies to, any third party,” and wholesale transmission customers would not ordinarily be able to rely upon, or challenge a violation of, the TOA’s terms.

Given these limitations of the TOA, wholesale transmission customers cannot ensure that their Catalogued Transmission Rights (or Financial Transmission Options) will adequately represent the rights encompassed by their pre-existing contracts. In sum, only the Filing Utilities (and subsequent TOA signatories) obtain the means to directly procure and protect the pre-existing transmission rights and service upon the

implementation of RTOWest. At best, the wholesale transmission customer's corresponding rights are implied (and then in the TOA, to which the customer is not a party and has no third party beneficiary rights).¹⁶

When applied to the operational and business backdrop of the Northwest, the proposed Stage 2 treatment of pre-existing contracts is deficient, discriminatory, and the Commission should require the Filing Utilities to correct the deficiencies. In the RTOWest geographic footprint, over 150 consumer-owned electric utilities with legal obligations to serve native load consumers have long term, pre-existing transmission rights via contracts with RTOWest Filing Utilities. Such contractual rights must translate into equivalent and equitable transmission service rights in RTOWest in order for the Commission policy objectives in implementing RTO to be fulfilled, and its public interest obligations satisfied.

An illustrative case in point: in the Columbia River drainage basin and contiguous areas served at wholesale by the Bonneville Power Administration (and within the proposed RTOWest footprint), over 100 consumer-owned, transmission dependent utilities obtain generation from distant Federal hydro-electric projects. The vast majority of these utilities do not own generation, and thus require transmission service from these

¹⁶The TOA specifically guarantees the preservation of existing rights for the Filing Utilities. Section 8 of the TOA provides that “[t]he Executing Transmission Owner shall have rights to Transmission Services over the RTOWest Transmission System... on a basis comparable with rights held before the Transmission Service Commencement Date.” Filing Letter Attachment A at § 8 (emphasis added). Similarly, section 8.2 permits RTOWest to “implement changes to its pricing or congestion management methods, provided that the Executing Transmission Owner shall continue to have rights as set forth in Section 8....” *Id.* at § 8.2 (emphasis added). There is no corresponding guarantee for wholesale transmission customers that are not Executing Transmission Owners.

remote Federal projects that is adequate and reliable to meet consumers' load.¹⁷ Further, these load-serving entities have paid for the existing transmission assets through their long-term transmission contracts. As a result, load-serving entities with pre-existing transmission contracts should obtain transmission rights in the RTO environment that are sufficient to permit continuing reliable and adequate service to their native load consumers. If some wholesale transmission customers of the Bonneville Power Administration choose not to "convert" to RTO service, their unconverted transmission rights must retain equivalent and equitable overall value relative to converted, or RTO rights. Otherwise, decades of resource planning and decisions will be undermined; wholesale transmission customers will be harmed contrary to Commission policy and federal law; and Bonneville's contractual and statutory obligations will be violated.

NR Utilities are acutely dependent on the transmission rights they have secured with the Bonneville Power Administration. Such pre-existing rights are embodied in several allocations: Bonneville's Transmission Service Agreements, its Open Access Transmission Tariff ("OATT") for Network and Point-to-Point services, Bonneville's multiple Business Practices and non-OATT agreements (such as the General Transfer Agreements described at sections III.A and III.B.2 herein). Key characteristics from this bundle of existing long-term transmission rights were, and remain, among the vital business interests negotiated by these wholesale transmission customers of Bonneville.

¹⁷The majority of Northwest consumer-owned utilities are partial or full requirements power purchasing customers of Bonneville. Such not-for-profit, rural and small entities must have reliable, adequate and economic transmission service to meet native retail load service obligations. They do not rely on the regional transmission grid for through-wheeling or export, e.g. into California and the desert Southwest. Service to loads should be the Commission's premiere consideration in protecting, as it must, the public interest of all persons served by this nation's transmission facilities.

We do not believe that each such contract, tariff, term and condition, and business practices should be “locked down” for the term of four members’ pre-existing contracts, much less into perpetuity. To the contrary: the essential characteristics of pre-existing transmission service (including Network Integration and Point-to-Point Transmission Service, and service over General Transfer Agreements) must be preserved in order to “protect” those rights. If those essential elements of Bonneville’s transmission service are memorialized for the term of those pre-existing transmission agreements, the wholesale transmission customers’ rights for transmission necessary to serve native retail loads will be protected. Implementation of RTOWest should not result in the degradation of these key characteristics and the rights they confer. ¹⁸

In conclusion, the Commission has a legal obligation to protect the rights of consumers of wholesale transmission customers upon the implementation of RTOWest. It therefore must protect the pre-existing rights of those wholesale transmission customers. This objective can be met if the Commission requires the Filing Utilities to: (1) memorialize the rights of their wholesale transmission customers, as represented by the essential characteristics of existing services, in a manner that customers may enforce; (2) include customers in the initial and ongoing “cataloging” and allocation of transmission rights; and (3) include appropriate provisions in the RTOWest TOA, tariff and elsewhere as necessary, to ensure that customers retain their existing rights and

¹⁸For example, the Stage 2 Filing provides that “[a]ny new service to a nonconverting customer must therefore come from RTOWest.” Filing Letter, Attachment E1 at 12, 15. Bonneville’s Network service provides for future load growth. If load growth service under existing Network agreements will now be procured from RTOWest rather than Bonneville, Network rights have been diminished.

service, and that customers will be able to challenge their transmission right allocations (once catalogued).

2. RTOWest Lacks Authority Over Facilities Necessary For Wholesale Power Transfers, In Violation of Commission Precedent And Harming Wholesale Transmission Customers.

A critical interest of NRU, and one squarely at issue before the Commission in this proceeding, concerns the specific facilities that will be transferred to the RTO's authority for operational, planning and pricing purposes, and dispute resolution. Despite Commission regulations and precedent, the Stage 2 Filing Utilities have arbitrarily withheld facilities from RTOWest's authority, even though these facilities are used for wholesale power transfers within the RTOWest geographic footprint. By doing so, the Filing Utilities are impeding the Commission's ultimate determination of whether the facilities should be under the RTO's authority.¹⁹

Neither Order 888, Order 2000 nor Commission precedent permit discriminatory treatment. Rather, wholesale transmission facilities must be considered under Commission jurisdiction and subject to the Commission's ultimate determination to include them under the operational control of an RTO. Therefore, NRU protests the attempt by certain Filing Utilities to limit the Commission's determination by preemptively removing facilities from the Stage 2 Filing. We request that the Commission order the Filing Utilities to correct this deficiency immediately by including all facilities necessary for wholesale power transfers within the RTO's authority.

¹⁹This scope of authority is critical where, as here, transmission owners may be argued to have market power and interest, and may disadvantage wholesale utility competitors for load.

We do not dispute the Filing Utilities' oft-repeated contention that Order 888 allows the Commission to defer to state regulatory authorities regarding certain transmission/local distribution matters that arise when retail wheeling occurs. *See* Filing Letter at 33-35. However, it appears that some Filing Utilities justify the withholding of facilities from RTO West authority by, among other things, excluding facilities that have been or are proposed to be reclassified from transmission to distribution or local distribution. *Id.* at fn. 39. The pattern thereafter is as follows: once the Commission approves the state's classification of certain facilities as "distribution" or "local distribution," the utilities argue that the Commission has effectively acted and that such facilities are excluded from the Commission's requirement that "transmission" facilities must be under RTO control. Thus, certain Filing Utilities appear to believe they have appropriately withheld the subject facilities from RTO authority for some or all purposes.

The just described argument is not persuasive. The Commission has clearly articulated the relevant standard in Order 888. Facilities owned by a Commission-jurisdictional "public utility" that are "used to deliver electric energy to a wholesale purchaser, whether labeled 'transmission,' 'distribution,' or 'local distribution,' are subject to the Commission's exclusive jurisdiction under Sections 205 and 206 of the [Federal Power Act]." ²⁰ *Accord, Nevada Power Co.*, 88 FERC ¶61,234, at 61,768 (1999). Moreover, transmission service in interstate commerce by such public utilities,

²⁰ *Promoting Wholesale Competition through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Reg. ¶31,036 at 31,969 (1996) (emphasis added), *order on reh'g*, Order No. 888 -A, 61 Fed. Reg. 12,274 (March 14, 1997) FERC Stats. & Regs. ¶31,048 (1997), *order on reh'g*, Order No. 888 -B, 81 FERC ¶61,248 (1997), *order on reh'g*, Order No. 888 -C, 82 FERC ¶61,046 (1998), *aff'd in part, sub nom. Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted in part and denied in part*, 121 S. Ct. 1185 (2001).

including rates, terms and conditions for such service, are within the Commission's exclusive jurisdiction. 16 USC §§ 824, 824d, 824e; Order 888 A at 30,339 -41.

Recent Commission precedent compels the same outcome. In a proceeding where applicants requested approval of state regulators' classification of facilities from transmission to local distribution, the Commission said:

Although we are accepting the state commissions' classification, we reiterate our finding in Order 888 that to the extent that any facilities, regardless of their original nominal classification, in fact, prove to be used by public utilities to provide transmission service in interstate commerce to deliver power and energy to wholesale purchasers, such facilities become subject to this Commission's jurisdiction and review.... Further, our deference in this proceeding does not affect the Commission's separate determination of what facilities must be under the operational control of RTOs, including ISOs and Transcos.

Mid American Energy Co., 90 FERC ¶ 61,105, at 61,337 (2000).

See also Cinergy Services, Inc., 97 FERC 61,142, at 61,628 (Letter Order, 2001), where the Commission again held that:

“regardless of the classification of facilities as local distribution or transmission, the Commission has jurisdiction over those facilities and can order access over them if they are used by public utilities in interstate commerce to a wholesale purchaser. Further, our action in this proceeding does not affect the Commission's separate determination of what facilities must be under the operational control of RTOs, including Independent System Operators and Independent Transmission Companies.”

Accord, Cincinnati Gas & Electric Co., 97 FERC ¶ 61,142 (Nov. 7, 2001); Mansfield

Municipal Electric Department and North Attleborough Electric Department v. New

England Power Company, 97 FERC ¶ 61,134 at 61,614 n.7 (Nov. 7, 2001) (observing

that the 7-factor test was designed for the limited purpose of establishing what facilities

are used for local distribution in the context of unbundled retail service, and may not

apply in other contexts).

The Filing Utilities have received analogous direction from the Commission. The Commission indicated in a prior order in the RTOWest docket, that some “distribution” facilities will have to be placed under RTOWest’s control:

As a part of our review of this Stage 1 filing, we are neither reviewing nor determining the facilities that will be controlled by RTOWest and those that will remain with the companies. At this time, we are reviewing only the general parameters of RTOWest’s scope and configuration. We will review and comment on the details of the facilities that will be under RTOWest’s control when the details of what facilities are to be under its control have been determined as a part of RTOWest’s Stage 2 filing. That being said, as RTOWest is working on its Stage 2 application, we emphasize that for an RTO to satisfy your scope and configuration characteristics, most or all of the transmission facilities in a region should be operated by the RTO, as well as those necessary for operational control and management of constrained paths, regardless of the voltage. Some of these facilities may currently operate as high voltage distribution lines while others may be a low voltage radial line that is considered essential for wholesale transmission service.

Avista Corp., 95 FERC ¶61,114 at 61,345 (April 26, 2001) (emphasis added). See also Puget Sound Energy, Inc., No. ER02 -605-000 (Feb. 15, 2002) at fn. 6.

If an RTO is to provide one-stop shopping for reliable, non-pancaked transmission service and to engage in appropriate planning within its geographic footprint, it must have authority over all transmission facilities within that territory that are necessary to serve wholesale or resale customers. All NR Utilities are wholesale transmission customers that rely on wholesale transmission service purchased from the Filing Utilities proposing to form RTOWest. The requirements powers supply of many NR Utilities is transmitted entirely over the Bonneville Power Administration’s federal transmission system. However, the requirements powers supply of almost half of the NR Utilities is first transmitted over Bonneville’s transmission system, and then over transmission facilities owned by one of the remaining RTOWest Filing Utilities. Such Filing Utility

transmission facilities intervene between the Bonneville transmission system and the point(s) of receipt for the individual NRU member. In these cases, Bonneville contracts with the relevant Filing Utility in order to obtain transmission service necessary to deliver the transmission dependent utility's wholesale power. Such transmission contracts between Bonneville and the individual Filing Utility are known as "General Transfer Agreements".

In the Northwest, RTOWest facilities should encompass those assets, including facilities utilized for General Transfer Agreements, necessary to transmit wholesale power to utilities within the geographic scope of RTOWest. The Stage 2 Filing, however, is deficient in that regard. Under the Filing Utilities' proposal, a transmission facility is subject to RTOWest authority for pricing, planning and expansion, control and dispute resolution only if such facility meets the TOA definition of an "RTOWest Controlled Facility"; *see* Filing Letter at 34; Filing Letter Attachment A, Exhibit A at A - 15. This, despite the fact that the Filing Utility facilities used to provide wholesale transmission service under General Transfer Agreements are of the type that would not qualify as "RTOWest Controlled Facilities". *See, e.g.*, Filing Letter Attachment A, Exhibit A at A - 2 ("Certain Distribution Facilities") and at A - 19 ("Transmission Facilities"). Thus, facilities necessary for wholesale power transfers were omitted by most Investor Owned transmission owners in the Stage 2 Filing from RTOWest pricing, planning and/or control. ²¹

²¹In contrast, the Bonneville Power Administration has included all necessary and appropriate facilities under RTOWest authority.

Bonneville's historic rate treatment of costs arising from General Transfer Agreements has eliminated rate-pancaking over the past few decades. The cost of these third-party transfer agreements is rolled into Bonneville's rates. NRU and Bonneville representatives have worked to avoid establishing an RTO that would result in utilities served over General Transfer Agreements experiencing pancaked rates under RTOWest for the "Company Rate" term²². Nonetheless, rate pancaking may return at the end of that period in those cases where facilities used for wholesale transmission are not included in RTOWest (for control or pricing). There is also the possibility that expansions or upgrades needed before the end of the Company Rate Period might result in vertical rate pancaking; i.e., the payment by the transmission dependent utility of an RTO access charge plus a transmission charge from the company holding the residual transmission that is beyond the RTO's authority (having been excluded from the RTO). Facilities inclusion needs to be recognized in pricing—if facilities are recurrently included in transmission or transfer contracts for wholesale service, there should be no additional charges for use of those facilities, indefinitely if a load service obligation exists.

Furthermore, omitting wholesale transmission facilities from RTOWest threatens reliable service and efficient transmission planning and expansion. For example, assume

²²The Commission should reject the Stage 2 Filing concerning RTOWest authority over wholesale transmission facilities. However, if the Commission approves this portion of the Stage 2 Filing, NRU believes that the RTOWest Filing Utilities have agreed among themselves regarding cost treatment of facilities that are likely to be excluded from RTOWest, but are used to provide transmission pursuant to General Transfer Agreements. In consideration for a Bonneville transfer payment (to the third-party transmission owner), load serving entities that obtain wholesale power deliveries over the Bonneville transmission system and a General Transfer Agreement will continue to receive wholesale power deliveries over such facilities without the incursion of an additional distribution or transmission charge during the Company Rate Period. We further understand this agreement to avail, regardless of whether all the facilities needed to affect the delivery are in RTOWest or not. However, we are unable to locate this agreement in the proffered Stage 2 Filing.

an asset is used to provide general transfer service (transmitting bulk power) to Utility X. If that asset is not included in RTOWest, Utility X has no voice in the planning, maintenance or expansion of the excluded asset. Planning for transmission facilities that are not included in RTOWest but that provide wholesale transmission service within RTOWest's geographic scope will involve regulatory and planning forums separate from RTOWest (assuming such forums would even exist) to resolve issues regarding the residual transmission necessary to native load service. The proposed "independent transmission company" TransConnect will further complicate the process by inserting another planning body and forum in the loop; see.g., *Motion to Intervene and Protest of Northwest Requirements Utilities, Avista Corp.*, No. RT01- 15 (December 13, 2001). Thus there might be three forums, or four if more than one Filing Utility is involved, where a load serving entity would need to engage in order to insure reliable transmission service to its load.

Many utilities would be harmed by the proposed exclusion of facilities used for wholesale transmission service from RTOWest authority. Bonneville provides wholesale power for resale to 128 consumer-owned utilities in the RTOWest geographical area. Of those 128 utilities, 60 are served over General Transfer Agreements for all, or a portion of their load. Under the Stage 2 Filing, of these 60 utilities more than half would be served over facilities that would be excluded from RTOWest for pricing, planning and/or control.

To further understand the dimension of this problem, it is instructive to look at two consumer-owned utilities: Inland Power and Light and Wells Rural Electric.

Inland Power and Light serves 31,000 customers in eastern Washington. Bonneville provides General Transfer Agreements service to Inland over facilities owned by Avista Energy. Inland, NRU staff and Bonneville have urged Avista to include these facilities in RTOWest for planning, control and pricing purposes, but so far Avista has refused to do this. Inland Power and Light obtains 54 percent of its energy requirements over Avista transmission facilities through General Transfer Agreements. Of this 54 percent, Avista is proposing to exclude or may exclude 84 percent of these facilities from RTOWest.

Wells Rural Electric in Northeastern Nevada serves 5,500 customers. Sierra Pacific Power provides General Transfer Agreements service to Wells through agreements with Bonneville for the transfer of power at wholesale for resale purposes. Wells receives 64 percent of its power deliveries over facilities that Sierra Pacific is proposing to exclude for planning, pricing and/or control. As with Inland, Bonneville, NRU and utility staff have all urged Sierra Pacific to include these facilities in RTOWest. The response from the utility has been that their hands are tied; the state has already approved the facilities used to serve Wells as distribution related.

In conclusion, it is clear that Filing Utilities have withheld wholesale transmission facilities from RTOWest authority, and have pre-empted Commission decision-making authority by doing so. The Commission should order the Filing Utilities to correct this deficiency immediately by including all facilities necessary for wholesale power transfers within the RTO's authority.

3. The Northwest Cost Benefit Study Does Not Show Net Benefits to Consumers.

The Commission is charged under the Federal Power Act with protecting the public interest. Consistent with this Commission mandate, NRU concluded that the benefits of RTOWest must be shown to outweigh the costs before we can be assured that it is worthwhile to move ahead with the establishment of RTOWest. This test is especially important in the Northwest where many of the purported benefits of an RTO are already realized in a system that is efficiently run and does not exhibit the characteristics that formation of an RTO is supposed to ameliorate.

RTOWest has completed a cost-benefit study. Its findings do not give us comfort. That Study indicates a savings of only \$295 million in the year 2004 as a result of RTOWest. Certain wholesale transmission customers have reviewed the Study and have made a number of corrections to it, which show that the benefits calculated in the Study are overstated. In addition, the Study does not include most of the costs of establishing and implementing RTOWest operation. When the Study results are revised and costs added in, those savings rapidly diminish.

For example, the start-up and operations cost of RTOWest has been estimated to be between \$127 and \$240 million per year. In addition, it is necessary to add the cost of schedule coordinator services, metering, regulatory services, potential increases in return on equity by filing utilities and the potential for increased taxes as a result of RTOWest. We understand that an analysis of the costs and benefits of RTOWest is provided in the Comments and Protest of the Public Generating Pool and Washington PUD Association in this proceeding. That study shows that under the most favorable analysis, the costs of RTOWest are \$80 million per year greater than the benefits.

In fact, the Commission's own cost-benefit study shows this result for the state of Montana, which will be within RTOWest territory. This finding is consistent with the RTOWest Study. In addition, a follow-on benefit-cost study has been completed for Bonneville. This study shows that the costs of Bonneville participation in RTOWest exceed the benefits by \$38 million in 2004.

We are forced to conclude therefore that the costs of RTOWest will likely outweigh the benefits. NRU respectfully requests that the Commission take this critical fact into account when it evaluates whether the public interest is met by the instant proposal.

4. The "Company Rate" Pricing Structure is Appropriate, But Should Be Revised to Extend For Ten Years and Prevent Cost Shifts.

In general, NRU members believe the RTOWest proposal for "Company Rates" is appropriate. Company rates are essential to meet the objective stated by the Filing Utilities: "[t]o avoid cost shifting during the Company Rate period, RTOWest Transmission Customers will continue to pay their share of the RTOWest Transmission System cost used to supply their loads within RTOWest." Filing Letter, Attachment E1 at 2.

Nonetheless, we have one overriding concern about the pricing proposal: the length of the Company Rate Period, which is now limited to eight years from the startup of RTOWest. As negotiated in Stage 1 of RTOWest development, the Company Rate Period should extend for a full ten years in order to transition from the status quo to the RTOWest environment. See *Protest and Comments of Idaho Consumer-Owned Utility Association et al.*, (November 17, 2000), in Avista Corp., No. RT01-35. That outcome

was unilaterally amended by the Filing Utilities upon the filing of Stage 1 with the Commission. Here, the Filing Utilities propose to further amend the Company Rate Period with their Stage 2 Filing, and would permit Company Rates for eight years from the RTO's start-up. Filing Letter, Attachment A at A-4.

Current estimates are that RTOWest will not be up and running until 2005, at the earliest. The Stage 2 Filing does not obligate RTOWest to move away from Company Rates after a transition period of only eight years from 2005. However, there may be great pressure to levelize transmission rates in the future, raising the cost shifting issue anew. Therefore, the Company Rate Period must extend ten years from the date of RTOWest operation. The Filing Utilities should resort to the original consensus agreement for the Company Rate Period: it should extend for no less than ten years after RTOWest operations begin.

Even though NRU agrees in general with the Company Rate concept, it is important to note a number of problems with the pricing proposal contained in the Stage 2 Filing. First, even with the attempt to avoid cost shifts, the cost to Bonneville Power Administration's transmission customers will increase by at least 15 percent as a result of Bonneville's participation in RTOWest. See Filing Letter, Corrected Attachment E2 at 1-2. This increase is before consideration of the various costs that will come with RTOWest and the potential tax liabilities that Bonneville and others may incur. As a result of the inconclusive cost benefit study (discussed *supra* at section III.B.3), a 15 percent rate increase is a heavy price to pay for an uncertain benefit to transmission dependent

customers of the Bonneville Power Administration.²³ Second, there are a number of instances where cost shifting may occur within the Company Rate Period as a result of the non-recovery of system losses, and of the pricing “Backstop Recovery Mechanism.” Third, while the “External Interface Access Fee” concept does have merit, we are concerned that the proposed elimination of the fee at some point in the future could also lead to cost shifts. Each problem is discussed in turn, below.

A fundamental tenet of the RTOWest pricing proposal is to avoid the potential for cost shifts; Filing Letter, Attachment E1 at 5. The institution of Company Rates advances this goal, but the potential for cost shifts still exists in a number of significant areas.

For example, NRU supports the use of company loss factors for those customers that do not convert to RTOWest service, consistent with the Company Rate proposal. However, RTOWest may assess system-wide losses on the Bonneville Power Administration that are in excess of Bonneville’s loss factors (which are presently among if not the lowest in the Northwest). This may occur since it will be impossible to track the losses that each transaction causes over the broad scope of the RTOWest system. This concern is amplified by the fact that losses are not specified. Indeed, not specifying loss factors may prove to be an impediment to converting one’s pre-existing contract to RTOWest service. Given the enormous geographic scope of RTOWest, losses need to

²³ The RTOWest Pricing Proposal contains multiple references attempting to define and describe the applicability of “Transfer Charges.” See, e.g., Filing Letter Attachment E1 at 12-13, 18. Despite this, the Stage 2 Filing does not appear to consider how, if at all, Transfer Charges may change over time. Such consideration is merited especially in light of the already significant cost increase anticipated by wholesale transmission customers as just described.

be very carefully considered and customers should only be assessed those losses that they are responsible for.

Second, the RTOWest Pricing Proposal contains a “Backstop Recovery Mechanism.” See Filing Letter, Attachment E1 at 7 (fn.8), and at 22-23. This mechanism is a vehicle capable of producing cost shifts. The proposal claims that, “in establishing charges, RTOWest will determine the potential cause of the shortfall and design the new charges to align cause and effect if possible”. But the proposal goes on to say that, “it is also possible that RTOWest may be unable to trace the shortfall to any major cause or set of causes, in which case a more general charge may be required.” *Id.*

NRU is concerned that the Backstop Recovery Mechanism will become an escape hatch for costs that can't be assigned to individual actions or entities. It will become a handy dumping ground for costs borne by all transmission customers. In fact, the mere existence of such a mechanism may well lead to little interest in tracking down the entities that are causing these additional costs in the first place. Such a mechanism could well turn into a catch-all for unassigned costs and NRU suggests that such a blanket authority should not be allowed because it is inconsistent with Commission policy.

Similarly, those costs that are allowable for recovery through the Grid Management Charge need to be clearly defined so that it does not become a vehicle for recovery of unidentified costs. We expect that the Grid Management Charge will be used to recover only the cost of start-up and operation of RTOWest, and will not include unrecovered lost revenue or short-term transfer payments. Then non-converted customer should be responsible only for its allocated portion of the transmission owner's share of the Grid Management Charge.

The third potential cost shift area is the proposed elimination of “External Interface Access Fee” (“EIAF”). We support exploring the concept of the EIAF. The EIAF is proposed as a way of recovering the costs to RTOWest that occur as a result of transactions that move from or through RTOWest into another RTO. However, the EIAF is also proposed as an interim step until a transfer payment type of reciprocity agreement is set up with the other Western RTOs; see Filing Letter, Attachment E1 at 7. We are concerned that the elimination of the EIAF without imposition of the transfer payment approach could lead to major cost shifts and will be attuned to pressure that could force this unacceptable approach.

5. Transmission Adequacy Standards Remain To Be Developed.

NRU generally supports the proposed transmission planning and expansion mechanism detailed in the Stage 2 Filing. However, we are concerned that the proposed mechanism is incomplete absent the transmission adequacy standards to which it will operate. RTOWest’s commitment to keeping the lights on will be achieved through transmission adequacy standards – yet such standards (for an RTO environment) have not been developed by, in or for the Northwestern United States; and are not part of the Stage 2 Filing. Rather, RTOWest is to develop, “in an open stakeholder process... Transmission Adequacy Standards (RTOWest will use applicable WECC, NERC and regional criteria, guidelines, and standards until such time as it chooses to supplement or develop such criteria, guidelines or standards as are provided for in the Transmission Operating Agreement).” Filing Letter, Attachment I at 3.

Because transmission adequacy standards will determine whether adequate and reliable transmission services to all wholesale transmission customers are being planned

and provided, the scope and content of such standards are critical. In fact, it is difficult to evaluate the proposed transmission planning and expansion mechanism without adequacy standards to define and frame it.

The transmission adequacy standards for RTOWest must be developed in advance of the RTO implementation to ensure that the RTOWest planning and expansion mechanism will indeed operate as expected. Moreover, transmission adequacy standards must be developed in collaboration with customers especially where wholesale transmission service is not obtained off of the region's main high-voltage transmission grid.

Therefore NRU believes that the requested declaratory order concerning RTOWest's proposed transmission planning and expansion mechanism is premature. For the reasons just stated, the requested orders should be denied in part pending collaborative regional development of transmission adequacy standards for implementation by RTOWest and regional transmission owners.

C. RTO WEST'S "OWNER-CENTRIC" STAGE 2 FILING IS INCOMPLETE.

The Stage 2 Filing records in great detail the rights of and relationships between RTOWest and the Filing Utilities, and between RTOWest and future participating transmission owners. In contrast, the Stage 2 Filing is an incomplete documentation of the relationships and rights of wholesale transmission customers. NRU believes that an equitable and non-discriminatory transition from status quo to the RTO future can not, on the one hand, lock in rights of transmission owners; and on the other hand, omit to protect the rights of wholesale transmission customers that are not owners.

The Stage 2 Filing understandably represents the self-interests of the Filing Utilities. It consists primarily of the TOA and exhibits thereto. The TOA is a bilateral contract between RTOWest and the transmission owner that sets forth the rights and obligations of each in lengthy detail.

The rights and obligations of wholesale transmission customers are left open-ended in the Stage 2 Filing (which lacks, for example, tariff terms or conditions, and load or generation integration agreements). At worst, the rights of transmission customers are defined within the TOA (a contract to which wholesale transmission customers are not party and under which they have no beneficial or enforcement rights).

Thus, the Stage 2 Filing fails to comply with Order 2000 requirements not only for the reasons discussed in this Protest, but also because it is not complete. The Commission should not give “final” approval to the RTOWest proposal until such time as all transmission customers’ rights and obligations are memorialized, not just those of Filing Utilities. Because the RTOWest proposal is incomplete and does not yet comport with Commission requirements, the sponsors of the Stage 2 Filing must have the ability not to join RTOWest until the RTOW package is complete.

IV. CONCLUSION

The Stage 2 Filing does not satisfy the required characteristics and functions of an RTO established in Order 2000. In addition, certain aspects of the proposal harm wholesale transmission customers, and thus violate the public interest. For the reasons stated above, NRU protests certain portions of the filing and requests that the Commission deny, in part, the declaratory order requested by the Filing Utilities. The proposal should be remanded for further regional development. In the alternative, the Commission's approval should be conditional subject to further review and subsequent approval of additional submissions by the Filing Utilities.

Respectfully submitted this 29th day of May, 2002.

--s --

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Attorney for Northwest Requirements Utilities

I hereby certify that I have this day served the foregoing *Protest of Northwest Requirements Utilities* upon each person designated on the official list compiled by the Secretary in this proceeding.

Dated this 29th day of May, 2002.

--s --

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Attorney for Northwest Requirements Utilities

Exhibit1

NorthwestRequirementUtilitiesMembership

Ashland, City of	Ashland, OR
Benton REA	Prosser, WA
Big Bend Electric Co -Operative, Inc.	Ritzville, WA
Canby Utility	Canby, OR
Cascade Locks, City of	Cascade Locks ,OR
Central Lincoln PUD	Newport, OR
Columbia Basin Electric Co -op	Heppner, OR
Columbia Power Cooperative	Monument, OR
Columbia REA	Dayton, WA
Columbia River PUD	St. Helens ,OR
Emerald Peoples Utility District	Eugene, OR
Ferry County PUD #1	Republic, WA
Flathead Electric Cooperative	Kalispell, MT
Forest Grove, City of	Forest Grove ,OR
Glacier Electric Coop, Inc.	Cut Bank, MT
Harney Electric Cooperative	Burns, OR
Hood River Electric Co -op	Odell, OR
Idaho Falls, City of	Idaho Falls ,ID
Inland Power & Light	Spokane, WA
Lincoln Electric Coop, Inc.	Eureka, MT
McMinnville Water & Light	McMinnville, OR
Midstate Electric Cooperative	LaPine ,OR
Mission Valley Power	Pablo, MT
Missoula Electric Coop, Inc.	Missoula, MT
Nespelem Valley Cooperative	Nespelem, WA
Northern Wasco County PUD	The Dalles ,OR
Okanogan County PUD	Okanogan, WA
Orcas Power & Light	Eastsound, WA
Oregon Trail Electric Co -op	Baker City ,OR
Ravalli County Electric Coop, Inc.	Corvallis, MT
Richland, City of	Richland, WA
Salem Electric	Salem, OR
Skamania County PUD	Carson, WA
Surprise Valley Electrification Corp.	Alturas, CA
Tanner Electric Cooperative	North Bend ,WA
Tillamook PUD	Tillamook, OR
United Electric Cooperative	Heyburn, ID
Vera Water & Power	Veradale, WA
Vigilante Electric Coop, Inc.	Dillon, MT
Wasco Electric Cooperative	The Dalles ,OR
Wells Rural Electric	Wells, NV

WesternMontanaElectricG&TCoop.

Missoula,MT



DEPARTMENT OF ENERGY

Bonneville Power Administration
 P.O. Box 3621
 Portland, Oregon 97208 -3621

EXECUTIVE OFFICE

April 19, 2002

In reply refer to: T/Ditt2

Dear Transmission Customer:

Bonneville Power Administration (BPA) has benefited greatly from the input received from its transmission customers on development of the RTOWest Stage 2 filing proposal. Because of your input, a key attribute of the RTOWest proposal is preserving the pre-existing transmission rights of the participating transmission owners' transmission customers.

Recently, you asked BPA for assurance that your pre-existing transmission rights with BPA will be preserved under the RTOWest proposal. You also asked that BPA preserve the fundamental characteristics of its current transmission service, including fundamental characteristics of Network and Point-to-Point service under BPA's open access transmission tariff (OATT) because of your concern that key attributes of your current rights are described by BPA's OATT, and not the service agreements.

With this letter, I want to provide you with the assurance that BPA intends to preserve pre-existing transmission rights in the context of an operational RTO. As an RTOWest filing utility, BPA can assure you that the proposal requires RTOWest to preserve pre-existing transmission contract rights. The Transmission Operating Agreement (TOA) contains at least twenty-five (25) provisions concerning these rights. Under section 6.4.1, for example, RTOWest is obligated to provide transmission service for non-converted transmission contracts and for converted pre-existing transmission contract rights. Section 8.3 provides that RTOWest shall provide a catalog of transmission rights that match up to the rights under pre-existing transmission contracts. And under section 9.4.2, in providing non-converted service, RTOWest shall not alter our transmission customers' pre-existing transmission agreements including the rights of network and point-to-point customers.

I stated in my last town hall meeting with customers that I also have concerns about the transmission rights cataloging process. Cataloging will be a critical step in preserving your pre-existing transmission rights. I recognize that it will be a very complex exercise that has to undergo very careful validation and testing before I would feel comfortable unconditionally signing the TOA. The cataloging process must accurately and thoroughly capture and represent pre-existing transmission rights, including the fundamental

attributes and flexibilities of those rights, through the term of your pre-existing agreements.

The cataloging process is more than just a BPA concern. The filing utilities made this concern known to the Federal Energy Regulatory Commission (FERC) in our Stage 2 filing letter. See page 12 and footnote 50 of the filing letter. The filing utilities will be discussing ways to have the cataloging process proceed effectively and efficiently, and we hope you will assist us in that effort. Exhibit P to the TOA is a start on the filing utilities' thinking about how this process would work.

With respect to preserving certain characteristics of BPA's OATT in anticipation of RTO West, I believe that we can work together to define those attributes that are fundamental to BPA's transmission service to its customers. As you know, BPA's Transmission Business Line (TBL) may change our OATT upon a determination by FERC that certain standards are met. I do not think it would be appropriate to provide assurance that would, in effect, change the OATT. My goal, however, is to make sure our customers' quality of transmission service is maintained or enhanced in the context of an operational RTO.

We do not know what changes to the pro forma open access tariff FERC may seek to make in the future that may necessitate changes in BPA's OATT. BPA will seek to continue to provide you transmission service that will retain what we agree are the fundamental service characteristics of existing transmission service, including fundamental characteristics of Network and Point-to-Point service, for the term of your existing transmission contracts. We will work with you in the future to define these service characteristics.

I want to thank you for continuing to work with BPA in its effort to develop an RTO that meets the needs of this region. I hope that you know that my interest is ensuring that BPA's customers are not harmed by the RTO West proposal. I hope this letter is evidence of that commitment.

Sincerely,

Stephen J. Wright
Administrator and
Chief Executive Officer