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May 29, 2002

## Via Electronic Filing

Magalie Roman Salas  
Secretary  
Federal Energy Regulatory Commission  
Room 1A East  
888 First Street NE  
Washington, DC 20426

Re: Avista Corporation, Bonneville Power Administration, Idaho Power Company,  
Montana Power Company, Nevada Power Company, PacifiCorp, Portland  
General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power  
Company  
Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000  
**Docket No. RT01 -35-005**

Dear Secretary Salas:

Enclosed for filing in the above -captioned proceeding, please find the  
Protest of the Industrial Customers of Northwest Utilities. Pursuant to FERC's rules, the  
document is prepared in Microsoft Word 2000.

Please confirm receipt via e-mail to mail@dvclaw.com. Thank you for  
your assistance.

Sincerely yours,

\s\Julia Meier

Julia Meier

cc: Service List (Hard Copy)

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

Avista Corp., Bonneville Power Administration, Idaho Power Co., Montana Power Co., L.L.C., Nevada Power Co., Pacifi Corp, Portland General Electric Co., Puget Sound Energy, Inc., and Sierra Pacific Power Co. )  
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) Docket No. RT01 -35-005  
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**PROTEST OF THE INDUSTRIAL CUSTOMERS  
OF NORTHWEST UTILITIES**

In accordance with Rules 211 and 214 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214, the Industrial Customers of Northwest Utilities ("ICNU") respectfully submit this Protest to the confirmation and approval of Avista, the Bonneville Power Administration ("BPA"), Idaho Power Company ("Idaho Power"), North Western Energy, L.L.C. (formerly The Montana Power Company) ("North Western"), Nevada Power Company ("Nevada Power"), Pacifi Corp, Portland General Electric Company ("PGE"), Puget Sound Energy, Inc. ("PSE"), and Sierra Pacific Power Company's ("Sierra Pacific") (collectively "Filing Utilities") Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000 ("Stage 2 Filing"). In support of this Protest, ICNU states as follows:

**I. BACKGROUND**

On October 16, 2000, as supplemented on October 23, 2000 and December 1, 2000, the Filing Utilities submitted their Stage 1 proposal to form the

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PacificNorthwestRegionalTransmissionOrganization(“RTOWest”)(“Stage1Filing”). TheStage1FilingrequestedadaCommissiondeclaratoryorderapproving:1)theformof RTOWestArticlesofIncorporationandRTOWestBylaws;2)thescopeand configurationofRTOWest;and3)theformofAgreementLimitingLiabilityAmong RTOWestParticipants(“LiabilityLimitationAgreement”).

OnApril26, 2001,theCommissionissuedanorderconditionally acceptingtheStage1FilingandrequiringtheFilingUtilitiestosubmitrevisionsintheir Stage2Filing. ReAvistaCorp.etal.,95F.E.R.C.¶61,114(2001).SincetheStage1 Filingwasincomplete andsubjectorevision,theCommissionorderonly“provide[d] preliminaryguidancewithrespecttoGovernance,ScopeandConfiguration,andLiability ofRTOWest.” Id.at61,324.TheCommissionrecognizedthat,“[a]sfurtherchangesto theseproposals aresubmittedto[FERC]forreview,[FERC]willaffordallinterested partiesanopportunitytocomment,and[FERC]willaddressremainingissuesina subsequentorder.” Id.

OnMarch28,2002,theFilingUtilitiessubmittedtheirStage2Filing requestingthatFERCissueadeclaratoryorderfindingthattheRTOWestfulfillsallof thecharacteristicsandfunctionsrequiredforstatusasanRTOunderFERCOrder2000. Stage2Filingat5.Specifically,theStage2Filingincludes:1)arevisedRTOWest TransmissionOperatingAgreement(“TOA”);2)amendedRTOWestBylaws;3)listsof transmissionfacilitiesincludedundertheRTOWest;and4)theRTOWest’sproposals fortheinitialpricingmethodology,congestionmanagement,ancillaryservices,market monitoringplan,andplanningandexpansionprocess. Id.TheTOAisnotsimplya

contract between the Executing Transmission Owners (“ETOs”) and the RTOWest, but is the cornerstone of the Stage 2 Filing. The TOA contains a significant portion of the substantive provisions that the Commission must review when determining whether the Stage 2 Filing is consistent with Order 2000. The Stage 2 Filing does not include: 1) the RTOWest pro forma open access transmission tariff (“OATT”); 2) validation of key elements of the RTOWest market design; 3) numerous exhibits; 4) a cost benefit analysis; or 5) provisions regarding the rights and responsibilities of parties other than the Filing Utilities. Pursuant to the Commission’s Notice of Filing issued on April 9, 2002, protests are due on May 29, 2002.

ICNU was granted intervention in this Docket on April 26, 2001. Re Avista Corp. et al., 95 F.E.R.C. ¶61,114. ICNU has been an active participant in the RTOWest collaborative process known as the Regional Representative Group (“RRG”) and submitted a Protest to the Stage 1 Filing on November 20, 2000. ICNU’s members represent approximately 2,100 MW of load in the Northwest who purchase power and/or transmission services from publicly owned utilities and investor-owned utilities.

## II. PROTEST

### A. **The RTOWest Stage 2 Filing Should be Rejected Because it is Materially Incomplete and Vague**

The Commission should reject or decline to rule on the Stage 2 Filing until the Filing Utilities present a complete proposal. The Commission has deferred issuing declaratory orders regarding RTOs when the transmission owning utilities have failed to provide necessary information to evaluate the filing. *See, e.g.* Commonwealth Edison

Co.etal., 90F.E.R.C. ¶61,192 at 61,618 (2000); Southwest Power Pool, Inc.etal., 96 F.E.R.C. ¶61,034 at 61,091 -61,092 (2001). The Filing Utilities claim that the Stage 2 Filing, combined with the Stage 1 Filing (collectively the “RTOWest Filing”), fulfills all of the characteristics and functions required for status as an RTO under Order 2000. Stage 2 Filing at 5. Despite this claim, significant provisions in the RTOWest Filing remain incomplete and vague. Provisions of the RTOWest Filing that are incomplete include portions of the TOA, necessary tariff provisions, provisions for the participation of Canadian entities, BPA specific protocols, safeguards regarding incentives to make transmission capacity available for pre-schedules, and Exhibits C, E, K, L, M, N, O, and P. Essential terms are almost entirely undefined. In addition, significant provisions are vague or contradictory, including the market power and price mitigation program, maintenance outage payments, access to dispute resolution, and entitlement to submit bidson upgrades.

The Filing Utilities appear to be delaying completion of the RTOWest Filing in an attempt to avoid or defer making structural decisions regarding the RTOWest and the rights and responsibilities of transmission customers, eligible customers, generation providers and DETOs. The Stage 2 Filing includes a TOA that outlines the relationship between the Filing Utilities and the RTOWest, but does not adequately address the rights of other parties. Consequently, the information contained in the RTOWest Filing is insufficient for the Commission to issue a declaratory order that the filing will produce non-discriminatory, just and reasonable transmission rates. Federal Power Act, 16 U.S.C. § 824d (2000); 18 C.F.R. § 35.34 (2001). The Commission should

decline to issue a declaratory ruling until the Filing Utilities have provided a complete filing, including necessary tariff provisions.

**1. The Incomplete TOA Fails to Identify Who is Eligible for Service from the RTOWest and How Service Will be Provided**

The TOA fails to provide a clear explication of which customers are eligible for service from RTOWest, and what the rights of such customers are. Throughout the TOA, the Filing Utilities use multiple, overlapping terms for customers who will use the RTOWest transmission system. For instance, “Eligible Customer” and “Transmission Customer” appear as capitalized terms whose definition is deferred to a subsequent RTOWest Tariff. <sup>1/</sup>Stage 2 Filing, TOA Exhibit A at A-6, A-19. In several sections of the TOA, however, “transmission customer” appears as a generic term, again undefined, that may or may not be equivalent to the “Transmission Customer” of the Schedule of Definitions. Stage 2 Filing, TOA §§ 8.1, 8.3, 9.1, 14.3.3. <sup>2/</sup>Another undefined term employed in the RTOWest proposal is “wholesale customer.” Stage 2 Filing, TOA §§ 6.1.2.1, 6.1.3. The extent to which “wholesale customer” might overlap with “transmission customer” or “Transmission Customer” — remains unclear. Still another type of customer appears in several sections of the proposal: the “Executing Transmission Owner customer.” Stage 2 Filing, TOA §§ 8.1, 8.4.3, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 9.4.2, 9.5,

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<sup>1/</sup>The significance of this deferral of definition can be seen, for instance, in Section 8.1 of the TOA, where “Executing Transmission Owner transmission function” is defined as “the transmission function... of the Executing Transmission Owner in its capacity as the provider of transmission services... to any Transmission Customer.” Stage 2 Filing, TOA § 8.1 (emphasis added). Since “Transmission Customer” is expressly left undefined until a future tariff filing, any definition which relies on it is vague. With several such foundational terms left undefined, the RTOWest Filing is a semantic house of cards.

<sup>2/</sup>Similarly, “Interconnected Load” is defined, capitalized term in the Schedule of Definitions in Exhibit A, but “interconnected load” is also used as an undefined term. Stage 2 Filing, TOA §§ 6.1.2.1, 6.1.3.

9.5.1, Exhibit H, Exhibit P. What might distinguish this type of customer from the others, and what they may have in common, remains a mystery. This profusion of undefined terms for customers makes it impossible to determine whether the RTOWest proposal meets the characteristics and functions set forth in Order 2000.

**a. The Stage 2 Filing is Incomplete without a Definition of “Eligible Customer”**

The TOA in the Stage 2 Filing does not include a definition of the term “Eligible Customer” and states that the term will be “defined in the RTOWest Tariff, as amended from time to time.” Stage 2 Filing, TOA Exhibit A at A -6. Because the RTOWest Tariff has not been filed, there is no way to know how the term is being used in the TOA document. Despite being undefined, significant sections of the RTOWest Filing discuss and refer directly or indirectly to Eligible Customers. Stage 2 Filing, TOA §§ 6.4.1, 10.3.3. The definition of Eligible Customer is crucial to Northwest direct-access customers and the RTOWest filing is incomplete without an adequate definition.

The definition of Eligible Customer must be consistent with the definition established by the Commission in Order 888. Open Access Transmission Servs., 75 F.E.R.C. ¶61,080, F.E.R.C. Stats. and Regs. ¶31,036 at 31,931 (1996) (“Order 888”), *aff’d*, New York v. FERC, 122 S.Ct. 1012 (2002). The definition in the TOA should refer to the FERC usage of the term, not to the RTOWest Tariff.

**b. The Stage 2 Filing is Incomplete Without a Definition of the term “Transmission Customer”**

The Stage 2 Filing also fails to define the term “Transmission Customer” and states that it will be “defined in the RTOWest Tariff, as amended from time to time.”

Stage 2 Filing, TOA Exhibit A at A - 19. It would not be reasonable for FERC to approve the RTOWest Filing because, without definitions of “Eligible Customer” and “Transmission Customer,” the Stage 2 Filing is vague and contradictory.

It is impossible for affected parties to determine their rights and protections in the Stage 2 Filing without a definition of the term Transmission Customer. For example, it is unclear who has rights and obligations of transmission service under TOA Sections 6.4.1, 8.1 or 14.3.3. TOA Section 8.1 provides a partial definition of “Transmission Customer” in a manner that may narrow or conflict with the rights of existing wholesale and unbundled retail transmission customers. The definition provided in Section 8.1 appears to be different from that used in Sections 6.4.1, 6.11 and 11.3 of the TOA, and defines a “transmission customer” as “third parties and the Executing Transmission Owner’s Merchant Function . . . entitled to receive transmission service from an Executing Transmission Owner transmission function under any Pre-Existing Transmission Agreements And Obligations.”

It is also unclear which “Transmission Customers” can obtain the protections in Sections 6.11 and 11.3 of the TOA regarding defaults of a Scheduling Coordinator and maintenance performance and disputes. Regarding Scheduling Coordinator defaults, Section 6.11 of the TOA does not explain how a particular Transmission Customer will be protected by State or tribal authorities. Regarding maintenance disputes, Section 11.3 of the TOA does not explain how the rights of Non-Converted Customers will be preserved.

Finally, the exhibit regarding exports of power appears to limit the rights of Transmission Customers. Stage 2 Filing, TOA Exhibit I. Exhibit I limits Transmission Customers to “Executing Transmission Ownertaking Non-Converted Transmission Service from Pre-Existing Agreements And Obligations,” but does not apply to other parties taking service. Id. Without a definition of “Transmission Customer,” it is impossible to determine who Exhibit I impacts or if it discriminates against other potential Transmission Customers. Furthermore, Exhibit I does not explain who can resell interface access rights.

**c. It is Unclear Which Customers Have the Right to Adequately Maintained Facilities**

The Filing Utilities address the issue of “maintaining the adequacy of facilities” so that the RTOWest can provide services to “wholesale customers and interconnected load.” Stage 2 Filing, TOA §§ 6.1.2.1 and 6.1.3. However, both terms, “wholesale customers” and “interconnected load,” are undefined. In addition, it is unclear whether these terms will be further defined when the RTOWest proposes definitions of “Eligible Customer” and “Transmission Customer.” Therefore, the Stage 2 Filing may not provide direct access customers the right to adequately maintained facilities. The Commission should demand Sections 6.1.2.1 and 6.1.3 of the TOA because it is imperative that direct access customers have the same right to adequate transmission facilities as ETOs.

**2. The Commission Cannot Determine Whether the RTOWest Filing Meets the Commission's Required Characteristics and Functions Until the "BPA Protocols" Have Been Filed**

BPA operates under a unique statutory framework that dictates how BPA can participate in the RTOWest. Stage 2 Filing at 61 -62. Section 6.4.4 of the TOA describes how the RTOWest meets BPA's unique statutory requirements. The TOA proposes that BPA and the RTOWest develop "protocols" to determine how BPA will meet the joint objectives of Order 2000 and its own statutory provisions. Stage 2 Filing, TOA §6.4.4. The independence, scope and configuration, operational authority and short-term reliability of the RTOWest may be adversely impacted by these protocols.

As Northwest customers of BPA and the Filing Utilities, Northwest industry has an interest in how the protocols will affect the RTOWest and BPA. The RTOWest cannot realistically or effectively operate without BPA participation because BPA controls approximately 80 percent of the high -voltage transmission in the Pacific Northwest. Therefore, resolution of the protocol issue is crucial to assessing whether the RTOWest proposal is just, reasonable and consistent with BPA's and FERC's statutory obligations.

Section 6.4.4 of the TOA poses another complication in that it refers to the "RTOWest and Bonneville" using their "best efforts" to resolve issues, including the resolution of the RTOWest Tariff. According to the Illustrative Summary of an RTOWest Implementation Plan, the TOA will be signed one month after the RTO is set up. Stage 2 Filing, Attachment L. It is not practical for the independent board to make and negotiate material changes to the TOA and the BPA protocols in one month. The

Commissions should decline to issue a declaratory ruling regarding Section 6.4.4 of the TOA until the BPA protocol has been submitted.

**3. The RTOWest Filing is Not Just and Reasonable without Provisions for Real Power Losses**

The TOA does not include provisions regarding real power losses. Real power losses are important considerations in the efficiency of any transmission system, and are particularly important in the West because of the distance between generation sources and load centers. The Commission cannot determine that the RTOWest Filing is consistent with Order 2000 until the Filing Utilities include provisions regarding real power losses.

The treatment of losses affects where generating resources are located and how they are dispatched, and, thus, impacts the development of a competitive market. The treatment of losses also may result in cost shifts for end use customers. In the West, utilities have widely different loss factors and the melding of loss factors will impact the benefits or costs associated with the RTOWest.

Real power losses are nearly as important as the congestion management provisions. The value of real power losses can significantly exceed the cost of embedded transmission. Unlike the congestion management system that charges customers only when transmission capacity is constrained, real power losses are charged during all hours of all days. The charges for real power losses affect both generation location and dispatch.

Therealpowerlossesproposalwillraiseadditionalissuesthatmay preventtheRTOWestfrommeetingtheCommission’srequiredfunctionsand characteristics.Forexample,thepancakingormeldingofrealpower lossesmaydistortmarket prices,particularlyintheRTOWestcontrolarea.Inaddition,meldingofrealpower lossesmayunfairlysubsidizethegenerationfunctionsoftheFilingUtilities.Lossesfrom distantgenerationsourcesuchastheColstrip facilitiesinMontanaandtheBridgerand WyodakfacilitiesinMontanaareproperlyallocatedtothegenerationfunction,notthe transmissionfunction.Otherlossmethodologies,suchasmarginallossproposals,have significantlydifferentimpacts onlocationanddispatch.

FERCshoulddeclinetoissueadeclaratoryorderregardingtherequired functionsandcharacteristicsuntiltheFilingUtilitiesincludearealpowerlosses proposal.ItisinsufficienttoaddressrealpowerlossesintheRTOWestTariffFiling. Utilitytariffsdealwiththepercentageamountofrealpowerlosseschargedtoenduse customers,butdonotaddresshowrealpowerlossesareintegratedintotheRTOWest congestion-management/pricingsystem.

**B. The Filing Utilities Have Not Demonstrated that the Benefits of the RTOWest Exceed Its Costs**

TheFilingUtilitieshavenotestablishedthatthebenefitscreatedbythe formationandoperationoftheRTOWestwillexceeditscosts.TheCommissionhas addressedgenericnationalcost-benefitsassociatedwithRTOformation,buthasnotreviewed thecostsorbenefitsassociatedwiththeformationoftheRTOWest. See Regional

Transmission Orgs., 89 F.E.R.C. ¶61,285, F.E.R.C. Stats. and Regs. ¶31,089 at 31,017 -28

(1999) (“Order 2000”). To ensure just and reasonable transmission rates, the Commission should require that the Filing Utilities demonstrate that the RTOWest will produce demonstrable benefits that exceed the costs associated with its formation and operation.

The Commission must ensure that all electric transmission rates charged by public utilities are just and reasonable. Federal Power Act, Section 205, 16 U.S.C. § 824d(a). The Commission has clarified that it will process applications by public utilities to participate in RTO pursuant to Section 205 of the Federal Power Act. Order 2000 at 31,046. Under Section 205, the Commission may not permit public utilities to charge consumers unnecessary or illegitimate costs. NAACP v. Federal Power Comm’n, 425 U.S. 662, 667-68 (1976). If the formation and operation of the RTOWest will result in transmission rates that are based on unnecessary and excessive costs, including costs that exceed the benefits associated with RTO formation, then Section 205 mandates that the Commission reject the RTOWest.

The Commission has not addressed the issue of whether the costs associated with the RTOWest outweigh its estimated benefits. The Commission’s order on the Stage 1 Filing did not preclude a cost-benefit analysis and specifically refused to address the issue because the Filing Utilities were in the process of performing a cost-benefit analysis. Re Avista Corp. et al., 96 F.E.R.C. ¶61,058 at 61,183 (2001). The Filing Utilities have performed a cost-benefit analysis, which they have informed ratepayers in the region that they intend to revise, and the Commission should defer its final order on the RTOWest until the

Filing Utilities have established that the benefits associated with the RTOWest exceed its costs.<sup>3</sup>/Stage 2 Filing at 15 n.12.

The initial RTOWest cost benefit analysis performed by Tabors, Caramanis and Associates has come under severe criticism. <sup>4</sup>/First, the cost benefit analysis overstates the cost of the existing transmission system. Second, the cost benefit analysis counted cost shifts among rate payers as benefits created by the RTOWest. Third, the cost benefit analysis did not accurately address some RTOWest costs including taxes and operational expenses. In addition, RTOWest introduces a number of new risks and potential unintended consequences that have not been quantified. Therefore, corrections to the Filing Utilities' cost benefit analysis may demonstrate that there is no benefit to the RTOWest formation.

**C. The RTOWest Will Not Operate Independently of the Filing Utilities**

The Stage 2 Filing, especially the TOA, prevents the RTOWest from meeting the Commission requirement that the RTOWest operate independently of the control of the Filing Utilities. To fulfill the independence characteristic the RTOWest must, *inter alia* :1) have decision-making authority independent of any market participant or class of market participants; and 2) have exclusive and independent authority to propose rates, terms and conditions of transmission service provided over the transmission facilities it operates with the Commission. 18 C.F.R. § 35.34(j)(1). The RTOWest will not have independent decision-making authority because the TOA allows the ETO to retain significant control over

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<sup>3</sup>/At least two Filing Utilities (BPA and North Western) have conditioned their ultimate participation in the RTOWest upon a mature cost benefit analysis showing net benefits. Stage 2 Filing at 14 -15.

<sup>4</sup>/RTOWest Cost Benefit Study, Final Report presented to the RTOWest Filing Utilities, March 11, 2002.

transmission facilities, thereby interfering with the decision-making authority of the RTOWest. The Stage 2 Filing, especially the TOA, also limits the authority of the RTOWest to independently propose terms, rates and conditions of transmission service over the transmission facilities it will operate. The Commission should reject the provisions of the Stage 2 Filing that allow the Filing Utilities to retain control over the RTOWest.

The Filing Utilities erroneously claim that the Commission has already found that the RTOWest meets the Commission's independence criteria. The Filing Utilities request that FERC "confirm its determination issued in its April 26, 2001 Order that the proposed governance structure and authority of RTOWest complies with the independence characteristics . . . ." Stage 2 Filing at 31-32. The Filing Utilities' request ignores the fact that the Commission has not reviewed the provisions limiting the RTOWest Filing, especially the TOA, to determine whether the RTOWest will have independent decision-making authority. Re Avista Corp. et al., 95 F.E.R.C. ¶61,114 at 61,324. The TOA initially filed in the Stage 1 Filing was incomplete, with six of the filing utilities stating that they required additional time to review the TOA and all nine Filing Utilities stating they would propose a final TOA at a later date. Stage 1 Supplemental October 23, 2000 Filing at 93-94; Stage 1 Supplemental December 1, 2000 Filing at 23. The Commission explicitly recognized the incomplete nature of the TOA and declined to rule on the TOA, stating that it "will be addressed in a future order except as noted below." Re Avista Corp. et al., 95 F.E.R.C. ¶61,114 at 61,322, 61,324. Consistent with the incomplete TOA in the Stage 1 Filing, the Filing Utilities have now proposed a substantially revised and updated TOA. See Stage 2 Filing at 19-21.

**1. The RTOWest Filing Interferes with the Ability of the RTOWest to Independently Propose Transmission Rates**

In order to ensure that the RTO is independent from any market participant, the RTOWest must have exclusive and independent authority to propose rates, terms and conditions of transmission service over the facilities it operates. 18 C.F.R. §35.34(j)(1)(iii). The Filing Utilities have proposed a number of revenue recovery mechanisms to transition from the current transmission system. These mechanisms require the RTOWest to adopt specific rate designs. Some transition mechanisms are necessary, including maintaining revenue-requirement recovery at the existing utility level; but others prevent the RTOWest from having independent rate-setting authority.

An RTO is not simply the vehicle to propose predetermined transmission rates to FERC, but must have independent authority “to seek changes in rates, terms or conditions of transmission services . . . .” Order 2000 at 31,076 (emphasis added). In orders approving RTOs the Commission has reaffirmed that “Order No. 2000 requires that the RTO have independent and exclusive authority to make section 205 filings under the FPA that apply to rates, terms and conditions of transmission service provided over the facilities the RTO operates.” *See, e.g. PJM Interconnection, L.L.C. et al.*, 96 F.E.R.C. ¶61,061 at 61,243 (2001). The Commission has specifically rejected RTO proposals that allowed transmission-owning utilities to retain veto power over the RTO’s authority to propose rates, terms or conditions of transmission service. *See, e.g. Bangor Hydro-Elec. Co. et al.*, 96 F.E.R.C. ¶61,063 at 61,259 (2001) (the RTO “must have the sole authority to make . . . any of the changes it deems necessary without being required to seek approval from [the transmission-owning utilities]”).

Therefore, an RTO that can propose transmission rates to FERC, but does not have the ability to modify those transmission rates, does not meet the independence characteristic.

The Stage 2 Filing prescribes the charges, terms and conditions for transmission service that the RTOWest can charge, unless the RTOWest receives the consent of the Filing Utilities. The TOA specifically enumerates the transmission services that the RTOWest will lack authority over, including imbalance energy charges for certain customers, the design of the recovery of tax allocations, and rated design decisions for the collection of Company Rates, Grid Management Charges and the External Interface Access Fee. Stage 2 Filing, TOA §§ 10.2.1, 17.2, 17.3. The RTOWest lacks the power to amend the TOA without the approval of the Filing Utilities. Stage 2 Filing, Attachment C § 6.1; Stage 2 Filing, TOA § 2.1. In addition, if the RTOWest independently propose transmission rates inconsistent with the TOA, then any Filing Utility can withdraw from the RTOWest. Stage 2 Filing, TOA § 2.3.2. Therefore, according to the Stage 2 Filing, the RTOWest will lack the authority to propose transmission charges that are inconsistent with the TOA.

## **2. The RTOWest Filing Allows the Filing Utilities to Retain Control over the Decision Making Ability of the RTOWest**

The Stage 2 Filing violates the Commission's independence, planning and expansion rules by providing ETOs with *de facto* veto authority over third party sponsors of transmission projects. Specifically, third-party sponsors of transmission projects are at a severe disadvantage to the ETO with respect to the terms and conditions of each upgrade or expansion. Stage 2 Filing, TOA § 14.6. Section 14.6 of the TOA violates the requirement that the RTOWest's decision making authority over planning and expansion be independent

of market participants, including ETOs. 18 C.F.R. § 35.34(j)(1). Section 14.6 of the TOA also is inconsistent with the Commission requirement that the RTOWest must be responsible for planning and expansion necessary “to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities.” Id. § 35.34(k)(7).

Consistent with Order 2000, the Stage 2 Filing allows third-party transmission sponsors to propose projects on the transmission systems of existing ETOs. Order 2000 at 30,996. However, it would be a violation of FERC’s standards to allow a third-party transmission proposal to be held hostage to an ETO. 18 C.F.R. §§ 35.34(j)(1) & (k)(7). Section 14.6 of the TOA provides ETOs with the power to veto third-party expansion projects by withholding their agreement. The Commission should condition approval of the RTOWest Filing by requiring unresolved disputes between third-party transmission owners and an ETO must be subject to the dispute resolution procedures afforded in Section 20 of the TOA.

### **3. The Stage 2 Filing Budget Approval Process Interferes with the RTO’s Independence and Discriminates Against Eligible Customers and Other Affected Parties**

The Stage 2 Filing is discriminatory and violates the independence of the RTOWest because it provides an early opportunity for ETOs to advise and comment on the adoption of the RTOWest annual budget. Stage 2 Filing, TOA § 18.2. ETOs have the opportunity to review and comment on the RTOWest budget. This allows ETOs to influence which transmission facilities are planned or constructed, perhaps to the detriment of third-party transmission facilities, generation options or load-interruption

alternatives. In addition, only ETOs have the right to be consulted when a budget “materially exceeds” the annual expense total for the fiscal year last audited. Stage 2 Filing, TOA § 18.2.2.

The provisions in Section 18.2.2 of the TOA also differ from those in Section 7.5.3 of the RTOWest Bylaws. The RTOWest Bylaws require the RTOWest to provide the Board Advisory Committee an opportunity to comment on a specific annual budget. The comment period is “not less than thirty (30) days prior to any final action thereon by the Board of Trustees; provided, however, that the Board of Trustees shall endeavor to provide the annual budget to the Board Advisory Committee at least ninety (90) days prior to any final action thereon by the Board of Trustees.” Stage 2 Filing, Attachment C § 7.5.3 (emphasis added). If a budget is available 90 days in advance for the ETOs, it can be made available to the Board Advisory Committee and any other interested party. The Commission should require that all interested parties have the same opportunity to review the RTOWest budget as the ETOs.

#### **4. ETOs Must Have the Identical Bidding Rights as Third Parties**

Section 14.2 of the TOA unreasonably favors ETOs at the expense of transmission rate payers in the development of upgrades or expansion of the existing system. The RTOWest will arrange for upgrades or expansions of the ETO’s RTOWest Controlled Transmission Facilities under certain conditions. Stage 2 Filing, TOA § 14.2. The TOA provides that the ETO “shall be entitled to submit a bid to construct any upgrade or expansion” carried out pursuant to Section 14.2. It is unclear whether this right to submit a bid is an exclusive right or a right to participate along with others in a competitive -bidding

process. While it is appropriate for ETO to bid on expansion and upgrades, an exclusive right will not result in the lowest-cost solution to transmission construction. The Commission should condition approval of Section 14.2 of the TOA upon the requirement that third parties have the same bidding rights as ETOs.

**5. Certain Provisions Are More Appropriately Included in the Tariff and Should be Removed from the TOA**

Many provisions in the TOA restrict RTOWest's right to administer and design tariffs and prevent the RTOWest from having independent authority to propose transmission rates. These provisions should be removed from the TOA. In particular, issues of cost allocation and rated design should not be included in a TOA. These provisions would restrict the RTOWest's ability to design rates that provide appropriate price signals, recover costs and minimize financial exposure.

Section 10.2.1, Treatment of Wind Generation, should be removed from the TOA. This section prohibits the imposition of punitive charges on just one form of generation. The issue of generation imbalance charges for wind generation should be addressed in the RTOWest Tariff, not locked in the TOA. The circumstances surrounding the RTOWest and related issues will no doubt change in coming years. As a result, the provisions of the TOA related to resources, including intermittent resources, should be made as flexible as possible to account for development of new technologies. Issues such as the level of imbalance charges and punitive penalties to be assessed, if any, should be a tariff matter.

FERC acknowledges that ETO should recover their revenue requirement from the RTOWest but it insists that the RTO “must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities.” 18 C.F.R. § 35.34(k)(1). Locking provisions into the TOA that involve tariff rates design and hinder the ability of the RTOWest to set rates will restrict the RTOWest from performing the functions outlined in Order 2000 and is inappropriate. As a result, the following terms should be removed from the TOA and included in the tariff:

- Section 17.2(1) of the TOA: The phrase “payable by Company Loads” should be removed. The manner of collection of Company Rate charges (revenue requirements) is more appropriately included in the tariff filing. Restricting collection to Company Loads may be unworkable for the RTOWest.
- Section 17.3 of the TOA: The term “Billing Determinants” should be removed from the phrase “Interconnected Load Billing Determinants” so that collection of costs will be based on Interconnected Loads. The Billing Determinants should be decided in the tariff.
- Exhibit A of the TOA: The definition of “Interconnected Load Billing Determinants” should be eliminated because cost collection is a matter of rate design, which is the responsibility of the RTOWest.
- Exhibit G of the TOA: The following should be removed from the Company Rate formula: “/(Company Billing Determinants)” and “/(ETO Interconnected Load Billing Determinants).” With these modifications, the Company Rate becomes a cost-recovery amount rather than a rate. The billing determinants should be included in the tariff because they affect the rate design.
- Exhibit I of the TOA: The last sentence of Section I and the means of calculating Annual, Monthly, Weekly, Daily and Hourly Services should be removed from the TOA to the tariff. The issue of how these rates are set and how discounting might be minimized is a tariff matter that should not be pre-determined in the TOA.
- Exhibit I of the TOA: The table of External Interface Facilities should be moved to the tariff because these facilities may change over time. Locking in these

facilities in the TOA inappropriately restricts the RTOWest's right to decide the specifics of interregional -oriented facilities, particularly as they may change over time.

- Exhibit J of the TOA: The following should all be moved to the tariff to ensure that rated design falls under the exclusive control of RTOWest: 1) the second sentence of the opening paragraph, "The GMC will be a dollar -per-megawatt hour (\$/mWh) charge levied on all schedules submitted to RTOWest." 2) the formula for setting the Grid Management Charge; and 3) the definitions of "Loads" and "Exports."

**D. The RTOWest Filing Does Not Demonstrate that It Will Maintain Operational Control or Short -term Reliability**

The Filing Utilities have failed to establish that the RTOWest has operational or short -term reliability authority. FERC requires all RTOWest to demonstrate that they will: 1) have operational authority for all transmission facilities under their control; and 2) have exclusive authority for maintaining short -term reliability of the grid it operates. 18 C.F.R. §§ 34.35(j)(3) & (4). The Stage 2 Filing is incomplete and cannot meet these required characteristics.

The Filing Utilities request that FERC approve provisions in Section 4.2 of the TOA regarding a Seamless Market Structure with Independent Operator, including the "allocation of functions described in Exhibit O." Exhibit O, however, consists of a title and the bracketed phrase "To be developed." FERC cannot find, nor can intervenors determine, that the operational authority and short -term reliability characteristics are met without a review of the proposed seamless market structure with an independent operator. The Commission should withhold its ruling regarding these functions until the Filing Utilities file Exhibit O.

**E. The RTOWest Hinders State Retail Access**

The RTOWest must accommodate retail access by providing unbundled retail access to customers with non-discriminatory transmission access consistent with state and federal law. Order 888 at 31,689. ICNU opposes and respectfully requests that the Commission remove the obstacles to retail access included in the RTOWest's Stage 2 Filing. The Stage 2 Filing hinders retail access by: 1) narrowing the rights of Eligible Customers; and 2) requiring the RTOWest to assist ETOs in violating state and federal law.

In its order requiring public utilities to file open access non-discriminatory transmission tariffs, the Commission rejected attempts to allow public utilities to discriminate against end-use customers in providing transmission services. Order 888 at 31,689. The Commission specifically held that:

It is irrelevant to the Commission's jurisdiction whether the customer receiving the unbundled transmission service in interstate commerce is a wholesale or retail customer. Thus, if a public utility voluntarily offers unbundled retail access in interstate commerce or a state retail access program results in unbundled retail access in interstate commerce by a public utility, the affected retail customer must obtain its unbundled transmission service under a non-discriminatory transmission tariff on file with the Commission.

Id. (emphasis added). The Commission subsequently found that providing unbundled retail transmission service on non-discriminatory terms also facilitates competitive retail electric markets. Midwest Indep. Transmission Sys. Operator, Inc., 99 F.E.R.C. ¶61,112 (2002).

Since Order 888, the Commission has consistently rejected the efforts of public utilities to restrict retail customers' existing rights to unbundled transmission service. See id.; Rochester

Gas&Elec.Corp., 78F.E.R.C.¶61,262(1997), *reh'gdenied* RochesterGas&Elec.Corp., 82F.E.R.C.¶61,250(1998).

The Commission adopted Order 2000 to require open access transmission service that will facilitate a robust wholesale power market and to “help achieve retail access . . . .” Order 2000 at 31,026. The Commission recognized that successful state “retail access depend[s] on the Commission fulfilling its RTO objectives.” Id. Several states in the RTOWest control area have restructured, or are currently restructuring, their retail electric industry. In 1997, Montana enacted retail choice legislation that currently provides customers market access. Beginning March 1, 2002, all Oregon industrial and commercial customers of investor owned utilities have had the option of purchasing their power supplies on the market. In Washington, pursuant to a voluntary retail access program, the majority of PSE’s large industrial customers purchase their power supplies from third parties. In addition, Washington does not have exclusive service territories and retail competition may occur for all utilities under current law. Therefore, legislation or administrative action resulting in retail access is occurring for many of the customers within the boundaries of the RTOWest.

FERC adopted Order 2000 under its authority to improve transmission grid reliability and eliminate discrimination in transmission services. Order 2000 at 31,017, 31,024-26. Likewise, FERC’s authority to order open access transmission tariffs derives from its responsibility to remedy undue discrimination. Order 888 at 31,669. FERC’s authority to remedy undue discrimination and anti-competitive effects does not authorize the Commission to approve an RTO that prevents competition existing under current federal and state law. The

RTOWest hinder existing and future state retail access legislation by limiting end user access and limiting the rights of Eligible Customers.

**1. The RTOWest Inappropriately Restricts the Physical Interconnection Rights of Direct Access Customers**

The RTOWest restricts rights of Eligible Customers to obtain new physical interconnections to the facilities of ETOs. The Stage 2 Filing explicitly provides only Generation Owners and Electric Utilities, but not Eligible Customers, with the right to request and obtain new physical interconnections. Stage 2 Filing, TOA § 5.3. The RTOWest proposal will prevent direct access customers, in states without exclusive service territories or who are otherwise permitted, from exercising their right to obtain transmission access from any entity willing to provide service. The Commission should reject Section 5.3 of the Stage 2 Filing TOA because it: 1) discriminates against Eligible Customers; and 2) violates state law.

The limitation of physical connection rights to Electric Utilities and Generation Owners discriminates against Eligible Customers. The Commission has ruled that if a retail customer has the right to unbundled retail access, then the retail customer must receive non-discriminatory transmission service. Order 888 at 31,689. However, Section 5.3 of the TOA allows Electric Utilities to decide which retail customers, including those with rights to unbundled transmission service, can obtain new physical interconnection. There should be no distinction between utility and non-utility wholesale transmission customers and both should have the same rights of access.

Section 5.3 also overturns state law by denying otherwise eligible direct access to customer's estate -permitted right to obtain physical interconnection comparable to other wholesale customers. Specifically, customers in Washington, Oregon and Montana would lose any right to new physical interconnections that they now enjoy under state law. If FERC were to approve Section 5.3, the Commission would be reversing its direction toward broadening the market, thereby allowing Electric Utilities to stand between the RTOWest and those customers who have the right to access transmission directly.

The Commission should remedy this discrimination by extending physical interconnection rights to all Eligible Customers. Providing Eligible Customers the right to new physical interconnections would not provide any additional rights, but allow direct access to customer's ability to exercise their existing right to direct connection to transmission services.

**2. The Stage 2 Filing Discriminates Against Eligible Customers' Rights to Dispute the RTOWest's Decisions Regarding Available and Total Transmission Capacity**

The Stage 2 Filing fails to protect the rights of non-ETOs regarding the calculation of Available and Total Transmission Capacity ("ATC" and "TTC"), implicitly providing other affected parties only a second-class role in determining transmission capacity. Stage 2 Filing, TOA § 6.75. RTOWest has the exclusive right to establish ATC and TTC. Id. Section 6.75 of the TOA allows only ETOs to dispute the RTOWest's calculation through Dispute Resolution provisions of Section 20. The

Commissions should ensure that all affected parties — loads, generators, other transmission providers — have the ability to dispute RTOWest’s calculation of ATC and TTC.

**3. The Stage 2 Filing Requires the RTOWest to Assist ETOs in Violating State and Federal Law**

The RTOWest Filing allows ETOs greater ability to prevent end user access and retail competition than currently provided under many of the prospective RTOWest jurisdictions. The RTOWest TOA allows an ETO to elect to adopt language in Section 26, Retail Power Delivery on Transmission Facilities. The RTOWest will be required to implement what may be anti-competitive and illegal actions of ETOs. Stage 2 Filing, TOA § 26. Section 26 allows the ETO to refuse to offer service to end users unless:

1. Unbundled retail transmission access to such customer is required by an authority of competent jurisdiction under federal, State, local or tribal law;
2. Such end-use customer is [a Direct Service Industrial Customer of BPA]; or
3. Unbundled retail transmission access to such customer has been agreed to by the retail utility that formerly served the end-use customer.

Stage 2 Filing, TOA § 26. This provision is significantly narrower than end use customers’ current rights and gives the transmission owner broad discretion that is inappropriate in the context of an RTO. *See, e.g.* BPA OATT § 1.11; Order 888, OATT § 1.11. It is also unclear under what authority Direct Service Industrial Customers are given complete access while such access is denied to other industrial customers. In

addition, Section 26 may expose the RTOWest to significant liability under state and federal antitrust and retail access statutes. *See, e.g.* RWC § 80.04.440; ORS § 756.185.

Including Section 26 in the RTOWest TOA provides significant new rights to any ETO seeking to limit existing retail competition and to use the RTOWest to enforce those rights. Subsection 3 gives the transmission owner broad discretion over any and all retail customers whom it might have been served by the ETO. This level of discretion and control over end use customers limits their current state and federal rights and is inappropriate, particularly in the context of an RTO.

Subsection 1 of Section 26, allowing an ETO to limit retail access unless ordered to provide access to the specific customer, arbitrarily discriminates against end use customers. First, before obtaining transmission service, retail customers that already have the legal right to unbundled transmission access may have the additional burden of seeking a judicial or administrative determination of their rights. Next, each specific retail customer, not class or group of customers, would be required to jump over this additional judicial or administrative hurdle before obtaining the services they are entitled to receive. Finally, the requirement to seek authorization to access the RTOWest will prevent retail customers from exercising their existing rights to bypass an ETO's facilities to take service under another transmission owner's facilities.

FERC should not approve an RTO that allows the Filing Utilities to obstruct end use customers from exercising their state and federal rights to non-discriminatory, unbundled transmission services. The RTOWest should not be exercised

as a new tool by transmission owners to restrict or narrow end use customers' existing state and federal rights to direct access.

**F. The RTOWest Filing Modifies Existing Retail and Wholesale Stranded Cost Obligations**

ICNU strongly objects to the RTOWest's exercising control over, and modification of, existing stranded cost obligations because they are contrary to FERC precedent and its rules and regulations. The Stage 2 Filing TOA stranded cost provisions are substantively unchanged from the Stage 1 Filing and continue to alter existing stranded cost obligations and provide the RTOWest with the authority to resolve certain stranded cost disputes. Stage 1 Filing, TOA § 13.4; Stage 2 Filing, TOA § 16.4. FERC declined to address the substantive merits of most of the TOA in the Stage 1 Filing, including the stranded cost provisions, because the Filing Utilities claimed they would subsequently propose substantive modifications. Re Avista Corp. et al., 95 F.E.R.C. ¶ 61,114 at 61,322, 61,324.

The RTOWest would define stranded cost obligations, have the authority over which individual loads have stranded cost obligations, and the ability to charge "an automatic adjustment clause or other provision [to provide] recovery of such Stranded Costs as a surcharge for Transmission Service...." Stage 2 Filing, TOA § 16.4. The obligations of customers whom may be required to pay stranded costs should not be prejudged with the RTOWest Filing, but should be determined at the time of the request for payment. Further, it is inappropriate to assume that all stranded costs should be collected from transmission loads connected to the RTOWest.

The RTO formation process is not the proper forum in which stranded cost obligations and rights should be determined. The Filing Utilities are utilizing the RTO West approval process to predetermine future FERC investigations regarding both the extent of stranded cost obligations and which customer loads are subject to these obligations. ICNU specifically opposes the RTO West: 1) determining which loads have stranded cost obligations; 2) shifting the burden of proof on stranded cost liability from the utilities to certain loads; and 3) classifying certain generation assets as transmission assets.

**1. The RTO West Should Not Have Authority to Determine Stranded Cost Liability**

FERC approval of an RTO granting itself authority over stranded costs is inconsistent with the requirement that the Commission retain the authority to resolve wholesale stranded cost issues and remain neutral regarding state retail stranded cost issues. Order 888 at 31,788 -91. Pacific Northwest utilities typically do not file wholesale power tariffs schedules with FERC. They have relied on bilateral contracts to provide service to transmission customers. While FERC has recognized that wholesale stranded costs are small relative to retail stranded power costs, the Commission has determined that resolution of wholesale stranded cost issues is “critical to the successful transition of the electric industry to a competitive, open access environment.” Id. at 31,789. Subsequently in Order 2000 FERC rejected the arguments of one of the Filing Utilities and declined to modify its existing stranded cost recovery policies. Order 2000 at 31,196. In addition, FERC’s authority over stranded costs may not be delegated to an

RTO. See, e.g. Cajun Elec. Power Coop. v. FERC, 28 F.3d 173 (D.C. Cir. 1994); Western Resources, Inc. v. FERC, 72 F.3d 147 (D.C. Cir. 1995).

The RTOWest TOA modifies existing wholesale stranded cost obligations and creates stranded cost obligations for customers who otherwise would not be liable for those costs. In particular, the TOA resolves and creates stranded cost obligations for any utility customer load that “as of the date of [the] Agreement, or any time hereafter” is linked, or would have been linked, to an ETO’s transmission facilities, irrespective of the customers’ rights under state or federal law. Stage 2 Filing, TOA § 16.4. Therefore, any load that ever was, or might have been, linked to an ETO will be subject to the RTOWest’s determination of its stranded cost liability. FERC should only consider broad modification in the scope of potential liability for stranded costs in the context of a specific stranded cost proceeding that will provide a more searching analysis of its potential impacts. The broad scope of stranded cost liability in the RTOWest Filing may allow ETOs to recover stranded costs from loads: 1) that never will or would have had access to the ETOs’ transmission facilities; 2) with retail but not wholesale stranded cost obligations; 3) that may have already negotiated their stranded cost obligations; and 4) that may have no stranded cost obligation whatsoever.

## **2. The RTOWest Inappropriately Shifts the Burden of Proof on Stranded Cost Liability From the Utilities to Loads**

Section 16.4 of the RTOWest TOA violates FERC policy and is impractical. FERC policy states that wholesale stranded cost recovery “should not insulate a utility from the normal risks of competition,” but is allowed only when

stranded costs are “legitimate, prudent and verifiable.” Order 888 at 31,789. FERChas placed the burden upon the utility to “make the necessary evidentiary showings [to be] eligible for stranded cost recovery.” Id. at 31,790. This is consistent with the requirement that the transmission owning utility has the burden of proving its transmission tariffs, including stranded cost tariffs, are non-discriminatory, just and reasonable. Federal Power Act, 16 U.S.C. § 824d(e). The Filing Utility’s stranded cost provision violates federal law and FERC policy by placing an unreasonable burden upon customer load to demonstrate that they are not liable for stranded costs.

Loads which will not be connected to the RTOWest prior to its formation, but would have been connected to an ETO, will have the burden of proof as to stranded cost liability. Stage 2 Filing, TOA § 16.4. A load which has never been connected to an ETO would have to “[demonstrate] sufficient transmission interconnections with other transmission providers” to avoid stranded cost liability. Id. The only way a load would be allowed to demonstrate these sufficient connections is by proving: 1) there is an available “alternative path(s) [with sufficient] transmission capacity;” and 2) “the cost of wheeling over the alternative path(s) would have been economical when compared to the total cost of wheeling over the Executing Transmission Owner’s Transmission Facilities, including the payment of Stranded Costs.” Id.

The provision regarding stranded cost obligations for loads that have never been connected to an ETO is also unworkable and does not contain reasonable standards. Stranded costs are merely the above-market cost of resources. FERChas not yet clearly established how stranded cost obligations will be allocated between utilities and customer

loads, and between different customer loads. However, the RTOWest methodology for determining whether a customer load has any stranded cost obligation requires the customer to first calculate their stranded cost obligation. Id. This task is virtually impossible for any customer, and it may hold customers responsible for stranded costs for which they are not liable under current law.

### **3. The RTOWest Filing Inappropriately Classifies Certain Generation Costs as Transmission Costs**

The RTOWest Filing modifies existing FERC policy regarding the allocation of costs between transmission and power functions. FERC policy states that facilities “used to meet generation needs through the importation of power from other systems... should be allocated to [the utilities’] power sales customers.” Northeast Utilities Serv. Co., 86 F.E.R.C. ¶61,161 at 61,569 (1999). FERC has segmented transmission costs into different rates for non-contiguous lines. *See, e.g.* PSE, 88 F.E.R.C. ¶63,001 at 65,002 (1999). FERC recognizes that costs for transmission assets tied to the delivery of remote generation must be allocated to the generation function of utilities. This is especially important in the Northwest because of certain utilities’ decision to “ship coal by wire” (*e.g.*, PSE’s ownership interest in Colstrip) by building transmission lines to remote power plants, rather than shipping coal to centrally located power plants. The proposed RTOWest Filing does not appropriately separate those transmission facilities tied to remote generation, and may allow their inclusion as wholesale transmission-related stranded costs.

**G. The RTOWest “Backstop Authority” Harm the Planning and Expansion Functions**

FERC requires the RTOWest to have the authority to plan for operational security and fulfill transmission adequacy standards for transmission facilities over which it exercises control. 18 C.F.R. §§ 35.34(j)(3) & (4). The RTOWest’s authority cannot harm reliability, or result in inefficiently priced or discriminatory transmission service. Id., RTO West will arrange for transmission expansions, additions, upgrades, and exercising its “backstop authority.” Stage 2 Filing at 53. The RTOWest will plan for expansions and upgrades if: 1) the RTOWest Board of Trustees, after consulting with the market monitoring unit, demonstrates market failure; or 2) any participating transmission owner fails to maintain sufficient assets to provide all transmission services necessary to fulfill load service and transmission agreement obligations. Id., at n. 61.

RTOWest’s “backstop authority” may undercut market solutions to transmission problems and result in inefficiently priced transmission service. The “backstop authority” allows generation location, load management, and interruptible load decisions to become administratively determined by the RTOWest. In addition, the RTOWest Filing provides the RTOWest with the ability to build generation resources. Stage 2 Filing at 9, Attachment I at 9, 12. It is inappropriate to grant the RTOWest the power to construct generation resources because the RTOWest will effectively become a market participant. As a market participant, the RTOWest would lose its independence and violate FERC requirements to not provide market participants with competitive advantages and offer non-discriminatory rates. 18 C.F.R. §§ 35.34(j)(1), (3) & (4).

## **H. The RTOWest Congestion Management Proposal is Incomplete and Inconsistent with FERC Standards**

FERC requires that the RTOWest “must ensure the development and operation of market mechanisms to manage transmission congestion.” 18 C.F.R. § 35.34(k)(2). These market mechanisms “must provide all transmission customers with efficient price signals that show the consequences of their transmission usage.” Id. § 35.34(k)(2)(i). However, the congestion management provisions in the Stage 2 Filing are incomplete, and, thus, fail to ensure that congestion will be managed consistent with FERC requirements.

The Filing Utilities seek approval of the proposed congestion management system. Stage 2 Filing at 64. However, the TOA requires that the RTOWest “implement, as of the Transmission Service Commencement Date, a congestion management system consistent with [the TOA] and with the Congestion Management Proposal, as it may be further defined.” Stage 2 Filing, TOA § 7.1 (emphasis added). This provision appears to give the RTOWest carte blanche to make changes to the Congestion Management Proposal after FERC approval.

The TOA proposal regarding Catalogued Transmission Rights is also unreasonable. The provision to implement part of the congestion management proposal includes incentives to release Available Transmission Capacity entitlements held under Catalogued Transmission Rights. Stage 2 Filing, TOA § 9.5. The incentives may be set inappropriately high and raise transmission costs to end users. In addition, the TOA is

inadequate because it does require Commission approval of the incentives, and fail to include arbitration provisions to resolve incentive-related disputes.

Similarly, there are no controls on payments for changes in maintenance outage schedules. The TOA allows the RTOWest to compensate ETOs when it directs a change in an approved maintenance schedule. Stage 2 Filing, TOA § 6.8.5. The RTOWest may also charge those who requested the schedule changes. The language of Section 6.8.5 of the TOA fails to control costs and limits whom may be compensated for schedule changes. First, there are no controls on the payments to be made. Section 6.8.5 of the TOA calls for payment of “costs incurred,” irrespective of the ability of the ETO to mitigate such costs. The language should read “prudent costs incurred, if any, after reasonable effort to mitigate such costs.” Second, ETOs are not the only entities harmed by changes in maintenance outages. Generators and loads that have power schedules during outage hours may face additional congestion charges or be forced to change maintenance schedules on generation units as a result of the directive. The Commission should reject the RTOWest Filing unless the TOA recognizes the rights of all entities.

### **III. CONCLUSION**

WHEREFORE, for the reasons set forth herein, ICNU respectfully requests that the Commission:

- (1) Decline to issue a declaratory ruling until the filing is complete;
- (2) Send back the RTOWest Stage 2 Filing to the Filing Utilities with instructions to correct the above listed deficiencies;
- (3) Order such other relief as the Commission deems appropriate.

DATED this 29th day of May, 2002.

Respectfully submitted,

\s\Irion A. Sanger

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Of Attorneys for the Industrial Customers of  
Northwest Utilities

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Portland, Oregon, this 29<sup>th</sup> of May, 2002.

\s\Emily B. Meier

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Emily B. Meier