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December 17, 2004

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VIA OVERNIGHT MAIL

Cathy Catterson, Clerk
United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 97119-3939

**Re: In Re PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY,
WASHINGTON V. ADMINISTRATOR, BONNEVILLE POWER
ADMINISTRATION**
Case No. 04-76212

Dear Ms. Catterson:

Please find enclosed for filing the following documents:

1. Declaration of Richard Bayless;
2. PacifiCorp's *Amicus Curriae* Memorandum in Opposition to Snohomish's Petition for a Writ of Mandamus; and
3. PacifiCorp's *Amicus Curiae* Motion for Leave to File an *Amicus Curiae* Memorandum in Opposition to Snohomish's Petition for Writ of Mandamus.

Oregon
Washington
California
Utah
Idaho



Cathy Catterson, Clerk
December 17, 2004
Page 2

Very truly yours,

Pamela L. Jacklin

Enclosure

PLJ:pds

cc: Michael A. Goldfarb
Stephen R. Larson
Terence L. Mundorf
Randy A. Roach
Marybeth Van Buren

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 04-76212

In Re PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH
COUNTY, WASHINGTON,
Petitioner

v.

ADMINISTRATOR, BONNEVILLE POWER ADMINISTRATION,
Respondent

**PACIFICORP'S MOTION FOR LEAVE TO FILE
AN *AMICUS CURIAE* MEMORANDUM IN OPPOSITION TO
SNOHOMISH'S PETITION FOR A WRIT OF MANDAMUS**

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PacifiCorp's Motion for Leave to File an *Amicus Curiae* Memorandum

Pursuant to FRAP 29(b), PacifiCorp respectfully moves the United States Court of Appeals for the Ninth Circuit for leave to file an *amicus curiae* memorandum opposing petitioner Public Utility District No. 1 of Snohomish County, Washington's ("Snohomish's") petition for a writ of mandamus in the above-captioned matter. As was the case when the Court granted PacifiCorp's prior motion for leave to file an *amicus* pleading opposing Snohomish's emergency motion for interim injunctive relief, PacifiCorp has information that it seeks to provide the Court that will inform its decision of this matter.

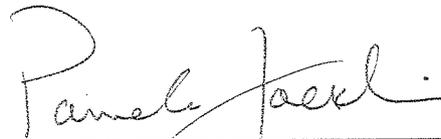
In its petition, Snohomish urges the Court to grant a writ of mandamus requiring the Bonneville Power Administration ("BPA") to issue a record of decision and an environmental assessment addressing its ability and decision to join Grid West. Snohomish claims that it will suffer harm that cannot be corrected later on appeal unless the writ is granted. Snohomish cites three key allegations to support its petition: (1) BPA unlawfully delegated to Grid West its authority for formulating regional power policy; (2) BPA unlawfully failed to issue a record of decision explaining its legal authority to join Grid West; and (3) BPA unlawfully failed to complete an environmental assessment when it participated in the December 9, 2004 vote to adopt Grid West's bylaws.

BPA has a representative on Grid West's board of trustees, as does *amicus* PacifiCorp. As a fellow participant in Grid West, PacifiCorp has a strong interest in ensuring that Grid West is allowed to engage in actions authorized by its bylaws as expeditiously and efficiently as possible. Snohomish seeks to delay Grid West's action. (*See, e.g.*, Snohomish's Petition for Writ of Mandamus, dated December 2, 2004, at 8.) PacifiCorp has moved for leave to file an *amicus* memorandum to demonstrate that BPA has not unlawfully delegated its authority to Grid West and that Snohomish has failed to show facts sufficient to meet the test for an extraordinary writ. PacifiCorp's memorandum is relevant to the Court's disposition of the case because it demonstrates that Snohomish's key argument in support of its petition is ill-founded and fatally flawed.

Pursuant to FRAP 29(d), PacifiCorp requests the Court's permission to file a memorandum of 15 pages in length, which is half the length allowed for petitioner's memorandum pursuant the FRAP 21(d).

DATED: December 17, 2004.

Respectfully submitted,



Pamela L. Jacklin, OSB No. 78255
Of Attorneys for *Amicus Curiae* PacifiCorp

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I served the foregoing **PacifiCorp's Motion for Leave to File an *Amicus Curiae* Memorandum in Opposition to Snohomish's Petition for a Writ of Mandamus** on December 17, 2004 by fax and by overnight delivery of the original and four copies to:

Cathy Catterson, Clerk
United States Court of Appeals for
the Ninth Circuit
95 Seventh Street
PO Box 193939
San Francisco, CA 97119-3939

I further certify that I served the foregoing **PacifiCorp's Motion for Leave to File an *Amicus Curiae* Memorandum in Opposition to Snohomish's Petition for a Writ of Mandamus** on December 17, 2004 by fax and by overnight delivery or hand delivery to:

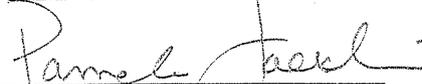
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DATED: December 17, 2004.

STOEL RIVES LLP


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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 04-76212

In Re PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH
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v.

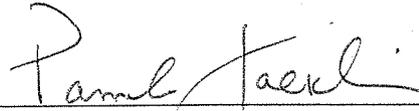
ADMINISTRATOR, BONNEVILLE POWER ADMINISTRATION,
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PACIFICORP'S *AMICUS CURIAE* MEMORANDUM
IN OPPOSITION TO SNOHOMISH'S
PETITION FOR A WRIT OF MANDAMUS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, PacifiCorp states that it is an Oregon corporation with its principal offices in Portland, Oregon, and that it is an indirect, wholly owned subsidiary of Scottish Power plc. PacifiCorp is an investor-owned utility providing retail electric service within the states of California, Idaho, Oregon, Utah, Washington, and Wyoming.



Pamela L. Jacklin
Of Attorneys for *Amicus Curiae* PacifiCorp

TABLE OF CONTENTS

	Page
I. CONCISE STATEMENT OF IDENTITY OF <i>AMICUS CURIAE</i>	1
II. ARGUMENT.....	2
A. Introduction.	2
B. BPA Has Not Unlawfully Delegated Its Planning and Development Authority to Grid West, Because BPA Does Not Have Exclusive and Mandatory Authority to Engage in Transmission Planning or Development.	2
1. The Relevant Statutes Do Not Confer Exclusive and Mandatory Planning and Development Authority on BPA.	4
2. Public and Private Entities Engage in Lawful Transmission Planning at Present.	6
3. The Court Should Defer to BPA’s Own Interpretation of Its Statutory Authority in This Instance.....	8
C. Snohomish Cannot Demonstrate Extraordinary Facts to Satisfy the Key Elements of Either of the Two Types of Mandamus Inquiries.	14
D. Conclusion.....	15

TABLE OF AUTHORITIES

Cases

<i>Bauman v. United States Dist. Ct.</i> , 557 F.2d 650 (9th Cir. 1977)	13
<i>Cal. Energy Comm'n v. Bonneville Power Admin.</i> , 909 F.2d 1298 (9th Cir. 1990)	8
<i>Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.</i> , 467 U.S. 837, 104 S.Ct. 2778 (1984)	7
<i>In re Cal. Power Exch. Corp.</i> , 245 F.3d 1110 (9th Cir. 2001)	13
<i>Pub. Utils. Comm'n of the State of Cal. v. FERC</i> , 814 F.2d 560 (9th Cir. 1987)	12
<i>Puget Sound Energy v. United States</i> , 310 F.3d 613 (9th Cir. 2002)	13
<i>United States Telecom Ass'n v. FCC</i> , 359 F.3d 554 (D.C. Cir. 2004).....	10
<i>Western Systems Coordinating Council</i> , 96 FERC ¶ 61,348 (2001).....	6

Statutes

16 U.S.C. § 824i	4
16 U.S.C. § 824n	10
16 U.S.C. § 825s.....	7
16 U.S.C. § 832a(b).....	3, 4, 7
16 U.S.C. § 837	4
16 U.S.C. § 838	4
16 U.S.C. § 838b	8
16 U.S.C. § 839	4

Other Authorities

<i>Regional Transmission Organizations</i> , Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), <i>order on reh'g</i> , Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), <i>aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish Cty., WA v. FERC</i> , Nos. 00-1174, et al. (D.C. Cir. 2001)	8
S. Rep. No. 106-395, Energy and Water Development Appropriations Act Bill (2000).....	10
S. Rep. No. 95-164, 95th Cong., 1st Sess. at 30 (1977)	7

I. CONCISE STATEMENT OF IDENTITY OF *AMICUS CURIAE*

Amicus curiae PacifiCorp is an electricity company and an Oregon corporation. (See Declaration of John Carr, previously filed in this docket (“Carr Decl.”) ¶¶ 1-2.) Like respondent Bonneville Power Administration (“BPA”), PacifiCorp has been engaged in efforts to create a regional transmission entity in the Pacific Northwest and surrounding states for a number of years. (*Id.* ¶ 3.) Both BPA and PacifiCorp have representatives on the board of trustees of Grid West, which was established when the former RTO West was restructured as a nonprofit corporation on December 9, 2004. (*Id.* ¶ 10.)

As a fellow participant in Grid West, PacifiCorp has a strong interest in ensuring that Grid West is allowed to engage in actions authorized by its bylaws as expeditiously and efficiently as possible. Petitioner Public Utility District No. 1 of Snohomish County, Washington (“Snohomish”) seeks to delay Grid West’s activities. (See, e.g., Petition at 8.) For that reason, PacifiCorp files this *amicus* memorandum in opposition to Snohomish’s Petition for a Writ of Mandamus, dated December 2, 2004 (“Petition”), authority for which is requested in PacifiCorp’s Motion for Leave to File an *Amicus Curiae* Memorandum, filed concurrently.¹

¹ On December 8, 2004, this Court granted PacifiCorp’s motion to appear as *amicus curiae* in opposition to Snohomish’s motion for an emergency injunction.

II. ARGUMENT

A. Introduction.

Petitioner Snohomish argues that BPA's "delegation" of transmission planning authority to Grid West will cause Snohomish irreparable harm, requiring the Court to grant its petition for a writ of mandamus. (*See* Petition at 8-10.)

Snohomish is wrong. Its argument is based on flawed logic and relies on a key assumption that ultimately proves false.² For this reason, as well as the lack of extraordinary circumstances justifying the writ, the Court should deny Snohomish's Petition.

B. **BPA Has Not Unlawfully Delegated Its Planning and Development Authority to Grid West, Because BPA Does Not Have Exclusive and Mandatory Authority to Engage in Transmission Planning or Development.**

Snohomish's delegation argument is based on the assumption that BPA has exclusive and mandatory transmission planning and development³ authority and

² There are a number of other grounds for denying Snohomish's petition, some or all of which may be briefed by respondent.

³ Petitioner's use of the terms "plan" and "planning" appear to refer to two distinct concepts: (1) the actual study and improvement of the transmission system to determine whether the lines and related facilities are sufficient to serve the region's power delivery needs in a reliable and economic manner, and (2) the development of an independent transmission entity. PacifiCorp contends that the development of a regional transmission organization ("RTO") is not transmission "planning" as that term is customarily used. In any event, BPA's statutory

that it has delegated some or all of that authority to Grid West. This assumption is false. There is absolutely nothing in BPA's governing statutes that confers exclusive authority on BPA to engage in transmission planning. Nor is there anything in the statutes that prohibits BPA's participation in either transmission planning or activity to develop an independent transmission entity by a private nonprofit corporation—which is precisely the type of work in which Grid West is authorized to participate. (*See, e.g.*, Petition at 16.) In other words, because BPA never had exclusive or mandatory authority to engage in transmission planning or development, there is no action here that falls within the scope of the delegation doctrine. Snohomish's irreparable harm is a mirage.⁴

authorities permit BPA to engage in such development activities through Grid West, as discussed below.

⁴ It is PacifiCorp's position that, contrary to petitioner's claims of irreparable harm stemming from an allegedly unlawful subdelegation, no delegation concerns have arisen to date with respect to Grid West. To the extent that there are any delegation issues relevant to the post-development activities other than planning activities of Grid West, BPA has acknowledged that any such concerns will be dealt with in due course. (Declaration of Richard S. Bayless, filed concurrently herewith ("Bayless Decl.") ¶ 14.)

1. The Relevant Statutes Do Not Confer Exclusive and Mandatory Planning and Development Authority on BPA.

Nowhere in its petition does Snohomish specify precisely where BPA's alleged exclusive planning and development authority resides. Snohomish does not because it cannot. The closest it comes is its citation to 16 U.S.C. § 832a(b). (See Petition at 10.) Yet Section 832a(b) merely states that BPA is "authorized and directed" to do a number of things related to, *inter alia*, electrical transmission, including maintaining and improving transmission lines, substations, and related facilities. The statute is devoid of any exclusive language conferring on BPA the sole responsibility for transmission planning and development or prohibiting any other entity—including a nonprofit—from doing so. At most, the statute implies that BPA has the authority to plan the maintenance and improvement of the system.⁵ Yet this is a far cry from requiring BPA to do so when reasonable alternatives exist or disallowing any other entity from doing the same.

⁵ In addition to impliedly authorizing BPA to directly engage in transmission planning, the relevant statutes also provide BPA broad authority to develop transmission services and infrastructure that it thinks is necessary. See 16 U.S.C. § 832a(b) ("In order to encourage the widest possible use of all electric energy that can be generated and marketed and to provide reasonable outlets therefor, . . . the administrator is authorized and directed to provide, construct, operate, maintain, and improve such electric transmission lines and substations, and facilities and structures appurtenant thereto, *as he finds necessary, desirable, or appropriate for the purpose of transmitted electric energy . . .*" (emphasis added)). BPA is not precluded from determining that by participating with others that engage in

Nor do any of the other statutes cited by Snohomish—the Pacific Northwest Consumer Power Preference Act, 16 U.S.C. § 837, *et seq.*; the Federal Columbia River Transmission System Act, 16 U.S.C. § 838, *et seq.*; the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839, *et seq.*; and the Energy Policy Act of 1992, 16 U.S.C. § 824i, *et seq.*—mention that BPA has exclusive authority for transmission planning and development that must be exercised regardless of available alternatives. The best Snohomish can do is point to language regarding the scope of BPA’s authority to carry out its statutory mission. Such language, of course, is not the same as a mandatory command to engage in planning and development regardless of other options or a statutory prohibition of other entities to engage in similar conduct.

Without language conferring a mandatory duty on BPA and barring other entities from similar conduct, the activity here does not fall within the scope of the delegation doctrine. The Federal Circuit recently addressed this very issue in *Apotex, Inc. v. Thompson*, 347 F.3d 1335 (Fed. Cir. 2003). There, the appellant argued, *inter alia*, that the Food and Drug Administration (the “FDA”) violated the subdelegation principle by shifting to private drug companies the FDA’s alleged duty to review the scope of certain drug patents. *Id.* at 1347-48, 1349. The court

transmission planning, offer transmission services, or build infrastructure, the need for BPA to do so on its own may be diminished.

rejected this argument, ruling that because “Congress did not impose such an obligation on the FDA in the first place, it follows that the FDA has not unlawfully delegated any congressionally imposed duty to a private party.” *Id.* at 1349.

Applying this principle here, there can be no unlawful delegation by BPA when it never had an exclusive and mandatory duty to engage in transmission planning or development of an independent transmission entity.

2. Public and Private Entities Engage in Lawful Transmission Planning at Present.

This conclusion is buttressed by the extensive lawful involvement of public and private entities in transmission planning at present. BPA has long construed its authority to permit it to support and participate in formal and informal regional transmission planning efforts. (Bayless Decl. ¶¶ 3-12.) For several years, BPA has engaged in interconnection-wide planning work groups, sponsored by the Seams Steering Group—Western Interconnection. BPA also participates as a member in several nonprofit corporations that engage in regional transmission planning. BPA is a member of the Northwest Regional Transmission Association (“NRTA”) and the Western Electricity Coordinating Council (“WECC”), nonprofit membership corporations that, among other things, engage in transmission planning. (Bayless Decl. ¶¶ 7-11.) BPA is also a participant in the Northwest Power Pool (“NWPP”) and a party to its NWPP Agreement, through which parties commit to coordinated

regional transmission planning. (*Id.* ¶ 12.) Interestingly, although Snohomish, too, is a member of NRTA and WECC, and is a party to the NWPP Agreement (*Id.* ¶¶ 8, 10, 12), it has never argued that BPA’s participating in developing these entities, joining as a member, or cooperating in regional planning activities is an unlawful delegation of BPA’s authority under its governing statutes. None of these organizations’ bylaws provide BPA control of the organization. (*Id.* ¶ 13.) And, although the WECC board has stakeholder members, it also has seven members independent of any stakeholder interest. (*Id.*) In reviewing the WECC board structure, FERC found it independent.⁶

Like the FDA’s action described in *Apotex*, BPA’s participation in these organizations is a proper exercise of its discretion within its statutory authority and does not constitute an unlawful delegation of governmental authority. The same is true for its participation in Grid West’s developmental stage, whether or not Grid West seats an independent board or engages in regional transmission planning.⁷

⁶ Thus there is nothing revolutionary (or unlawful) about BPA’s participation in a nonprofit with an independent board. According to FERC, “[I]t is important that WECC’s board be independent in both perception and reality We find that . . . the WECC decisionmaking process is reasonable . . . [and will] prevent the exercise of undue influence over decisions of the board by individual market participants.” *Western Systems Coordinating Council*, 96 FERC ¶ 61,348, at 62,296 (2001).

⁷ The Grid West developmental bylaws provide authorization for Grid West to engage in transmission planning. (Petition ¶ 4.) However, those activities do

3. The Court Should Defer to BPA's Own Interpretation of Its Statutory Authority in This Instance.

By virtue of BPA's December 9 vote in favor of Grid West's bylaws (which authorize transmission planning), and its membership in other nonprofit corporations engaged in transmission planning, it is evident that BPA itself does not believe that it alone is required to engage in transmission planning and development or when reasonable alternatives are available or that nonprofit corporations such as Grid West may not engage in similar work. Because the statutes are silent on the issue of planning and development exclusivity, the Court should assume that Congress implicitly left the issue for BPA to fill and should defer to BPA's own construction of these statutes as it regards these issues.

Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843-44, 104

not constitute an unlawful delegation. During the developmental stage, the bylaws prohibit Grid West from controlling or operating any electric utility facilities, providing any transmission or other utility service, etc. (Developmental Bylaws § 3.2 (SR 029-030).) Therefore, it is premature and speculative to consider whether any subdelegation would occur under an as-yet-undefined future proposal. Only if Grid West successfully contracts with PacifiCorp, BPA and other owners will it be authorized to adopt its operational bylaws and provide coordinated operations or commercial services in the future. (Carr Decl. ¶¶ 17-18.) BPA is not obligated to sign any contract to permit Grid West to offer services over its system. (Bayless Decl. ¶ 14.) BPA has repeatedly told the Regional Representatives Group it intends to complete a record of decision and any necessary environmental review if it proposes to contract with Grid West. (*Id.*) Thus any issues relating to delegation can be addressed at that time.

S.Ct. 2778, 2781-83 (1984); *Ass'n of Pub. Agency Customers, Inc. v. Bonneville Power Admin.*, 126 F.3d 1158, 1169 (9th Cir. 1997) (hereinafter “APAC”).

BPA’s interpretation is eminently reasonable. First, the statutes do not state that BPA has exclusive, mandatory power to engage in transmission planning and development. If anything, they amount to a broad delegation of authority to BPA, giving the agency “substantial discretion” to make decisions it “‘finds necessary, desirable, or appropriate’ to transmit energy.” *Cal. Energy Comm’n v. Bonneville Power Admin.*, 909 F.2d 1298, 1314 n.17 (9th Cir. 1990). This discretion is bounded only by the “implied limitation” that BPA must not act “inconsistent with other congressional decrees.” *Id.*

Second, “Congress endowed the Administrator with broad-based powers to act in accordance with BPA’s best business interests—powers not normally afforded government agencies.” *APAC*, 126 F.3d at 1170. This broad authority is found in a range of federal sources. *See, e.g.*, 16 U.S.C. §§ 825s, 832a(b); S. Rep. No. 95-164, 95th Cong., 1st Sess. at 30 (1977), *reprinted in* 1977 U.S.C.C.A.N. 854, 884 (recognizing congressional “effort to enable [BPA] to operate in a businesslike fashion and to free it from the requirements and restrictions ordinarily applicable to the conduct of Government business”).⁸

⁸ These broad powers are not conferred on BPA alone, but rather on the Secretary of Energy acting through the BPA administration. *See* Federal Columbia

Here, BPA has determined that, from a rational, prudent business perspective, its interests in developing an independent transmission entity are best served by participating in the establishment of Grid West. Similarly, BPA has determined that it is appropriate to authorize Grid West to begin to engage in transmission planning in the conventional sense if a proposal for regional transmission planning wins Grid West member approval and BPA decides to voluntarily participate in any future Grid West planning activities. As the Ninth Circuit commented in another context, “it seems particularly wise to defer to the agency’s actions in furthering its business interests, especially when the agency is responding to unprecedented changes in the market resulting from deregulation.” *APAC*, 126 F.3d at 1171. It is undisputed that FERC, the Department of Energy (“DOE”), and various state regulatory authorities have encouraged or required various changes in the electric utility industry to accommodate deregulation or facilitate more competitive electricity markets.⁹

River Transmission System Act, 16 U.S.C. § 838b. The purpose of the act was to improve BPA’s ability to cooperate with regional utilities.

⁹ See, e.g., *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 810 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County., Wash. v. FERC*, Nos. 00-1174, et al. (D.C. Cir. 2001); National Grid Study, Department of Energy, at 72-74 (2002) (a true and correct copy of which is in ASR 057, 060); Oregon S.B. 1149; Montana S.B. 390. Although Grid West is a regionally focused

Third, BPA's interpretation of the statutes is not novel. It merely recognizes the status quo approved by Congress. As described above, BPA has long participated with other entities in regional transmission planning. The same is true of joint planning efforts. A good example of this reality is the regional Hydro-Thermal Program, which encouraged the cooperative use of transmission facilities and the coordination of generating capacity. *See* S. Rep. No. 93-100, 93d Cong., 2d Sess., at 6-7 (July 25, 1974) (Senate Report addressing bill that became Federal Columbia River Transmission System Act). When Congress endorsed the regional Hydro-Thermal Program, it "recognized the importance of BPA participation" in "planning to meet the growth in electrical demand of the region," *id.*, even though BPA engaged in that planning with other entities. Indeed, that joint effort was the signal achievement of the program:

The Hydro-Thermal program represents an effort by the utilities of the region to plan new generating facilities on a cooperative basis to meet the regional needs. BPA has played a significant role in development of the Hydro-Thermal Program by serving as the catalyst in bringing together the various segments of the industry—investor-owned utilities, public agencies and cooperatives—to review regional as well as individual utilities requirements and to plan the construction of new generation with these dual [*sic*] needs in mind. *Id.*

Given this precedent, it is difficult to understand petitioner's argument that

effort, in contrast to the former RTO West effort (*see* Carr Decl. ¶ 4), the regulatory context cannot be ignored when examining Grid West development.

only BPA may engage in transmission planning and that Grid West may not, particularly in light of Congress's historical endorsement of joint planning efforts that include BPA. There is no delegation issue lurking in the Hydro-Thermal Program, and there is none lurking here.¹⁰

Nor has Congress "specifically rejected" BPA's ability to engage in planning "with a regional transmission organization or similar entity, such as Grid West." (Petition ¶ 15.) Snohomish bases this wrongheaded assertion on Congress's failure to approve an omnibus energy bill in 2004 that included language addressing federal power marketing agency participation in RTOs. (*Id.*) Yet petitioner fails to offer any legislative history pinning the failure of the 2004 bill on the RTO provision; congressional silence in the form of its failure to pass a huge, multifaceted bill simply is not the same thing as a clear congressional proscription of a particular action.

¹⁰ This is true despite Snohomish's reliance on *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), which is inapposite and not controlling precedent in this circuit. (*See* Petition at 12.) *United States Telecom* addresses a situation in which a federal agency (the FCC) attempted to subdelegate to a state government commission certain powers that the state commission never possessed on its own. It does not contemplate a case in which an agency cooperates with another entity in a process in which both are authorized to engage and where the outside entity is not dependent on the agency for such authorization. For this reason, as well as that articulated in *Apotex*, *United States Telecom* does not apply to the facts at hand.

This is particularly true here, where a 2001 Senate Report explicitly recognized that

“[t]he Committee is aware that in response to FERC’s Order 2000 respecting Regional Transmission Organizations (RTO), efforts are underway in the Pacific Northwest to explore and pursue formation of an RTO. The Bonneville Power Administration is actively participating in those efforts.” Energy and Water Development Appropriations Act Bill, 2001, S. Rep. No. 106-395, 106th Cong., 2d Sess., at 140 (2000) (Committee Report authorizing 16 U.S.C. § 824n).

The text of Section 824n is no less clear: federal power marketing administrations are “authorized to engage in activities and solicit, undertake and review studies and proposals relating to the formation and operation of a regional transmission organization.” Snohomish’s argument ignores these clear legislative statements.

In sum, it is not true that BPA “and no one else” may engage in transmission planning and development, or that BPA must undertake such activities even when reasonable alternatives exist. (*See* Petition at 8, 10.) The relevant statutes contain no such mandatory or exclusive language; indeed, they endorse regional planning by non-BPA entities. Because non-BPA entities can and do engage in transmission planning, BPA’s participation in NWPP, NRTA, or WECC’s regional planning efforts are lawful. Similarly, BPA’s vote in favor of Grid West’s bylaws (which authorizes the entity’s development work and enables Grid West’s participation in future regional planning efforts) did not work an unlawful subdelegation and did

not result in irreparable harm to Snohomish. The Court should reject Snohomish's argument to the contrary.

C. Snohomish Cannot Demonstrate Extraordinary Facts to Satisfy the Key Elements of Either of the Two Types of Mandamus Inquiries.

This Court has invoked the drastic remedy of a writ of mandamus only in extraordinary situations. *Pub. Utils. Comm'n of the State of Cal. v. FERC*, 814 F.2d 560, 562 (9th Cir. 1987). Yet there is nothing extraordinary about BPA's participation in a nonprofit organization such as Grid West. Consequently, Snohomish has failed to demonstrate facts that would justify the Court's granting a writ of mandamus. This conclusion is bolstered by a brief look at either of the two alternative tests employed by the Court to determine whether it should grant a writ of mandamus.

Under the test commonly used by the Court to review writs requested against federal agencies, the key inquiry is whether the petitioner's claim is clear and certain. *See, e.g., In re Cal. Power Exch. Corp.*, 245 F.3d 1110, 1120 (9th Cir. 2001). Under the test employed by the Court to review writs requested against inferior courts (and historically used by the Court when a writ is requested against BPA), the critical inquiry is whether the lower court's order is clearly erroneous as a matter of law. *See Bauman v. United States Dist. Ct.*, 557 F.2d 650, 654-55 (9th Cir. 1977); *Puget Sound Energy v. United States*, 310 F.3d 613, 623 (9th Cir.

2002). Regardless of which test the Court chooses to use here, Snohomish cannot demonstrate that either situation exists here.

First, applying the “clear and certain” criterion, Snohomish does not have a legal entitlement to the relief it seeks or a decision from BPA at this juncture.

Second, applying the “clearly erroneous” standard, there is no indication in the record that BPA’s actions are erroneous (much less “clearly erroneous”) as a matter of law. There is no definite or firm conclusion here that BPA has committed a mistake that satisfies the clearly erroneous standard. Given these facts, the Court should decline Snohomish’s request to grant a writ of mandamus.

D. Conclusion.

At the end of the day, BPA has not engaged in any unlawful delegation of its planning and development authority to Grid West. And Snohomish cannot cite any facts demonstrating a need for the extraordinary remedy that it has requested—particularly because it cannot satisfy the key elements of either of this Court’s mandamus inquiries. For the foregoing reasons, PacifiCorp respectfully requests that the Court deny Snohomish’s request to grant a writ of mandamus.

DATED: December 17, 2004.

STOEL RIVES LLP



Pamela L. Jacklin, OSB No. 78255
Of Attorneys for *Amicus Curiae* PacifiCorp

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I served the foregoing **PacifiCorp's Amicus Curiae Memorandum in Opposition to Snohomish's Petition for a Writ of Mandamus** on December 17, 2004 by fax and by overnight delivery of the original and four copies to:

Cathy Catterson, Clerk
United States Court of Appeals for
the Ninth Circuit
95 Seventh Street
PO Box 193939
San Francisco, CA 97119-3939

I further certify that I served the foregoing **PacifiCorp's Amicus Curiae Memorandum in Opposition to Snohomish's Petition for a Writ of Mandamus** on December 17, 2004 by fax and by overnight delivery or hand delivery of one correct copy thereof to:

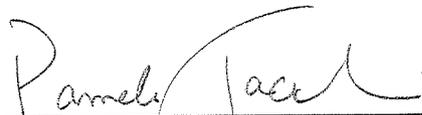
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DATED: December 17, 2004.

STOEL RIVES LLP



Pamela L. Jacklin, OSB No. 78255
Of Attorneys for *Amicus Curiae* PacifiCorp

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 04-76212

In Re PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH
COUNTY, WASHINGTON,
Petitioner

v.

ADMINISTRATOR, BONNEVILLE POWER ADMINISTRATION,
Respondent

DECLARATION OF RICHARD S. BAYLESS

Pamela Jacklin
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204
Phone: (503) 224-3380

DECLARATION OF RICHARD S. BAYLESS

I, Richard S. Bayless, certify and declare as follows: I am a Planning Director in the Major Projects and Strategy Group at PacifiCorp. PacifiCorp is a regulated electric utility and an Oregon corporation. I make the following declaration upon personal knowledge.

INTRODUCTION

1. I am an electrical engineer trained at the University of California, Davis (BSEE 1969) and the University of Pittsburgh (MSEE 1973). I am also a Professional Engineer licensed in the State of California. I have worked in the industry for about 35 years and at PacifiCorp for more than 27 years. During that time, I have been a manager responsible for transmission strategy, transmission systems planning, and resource planning analysis.

2. As noted above, I am presently working on regional transmission organization ("RTO") strategy and development. PacifiCorp has been engaged in efforts to create an independent transmission entity in the Pacific Northwest and surrounding states for a number of years. Since about 2000, I have been working as PacifiCorp's lead technical expert on a project team devoted to the development of an RTO. Our company's effort was originally a response to an order of the Federal Energy Regulatory Commission ("FERC"), directing public utilities such as PacifiCorp to pursue independent, regionwide transmission organizations.

Although I am not a lawyer, I am familiar with the discussion of the characteristics and functions of a regional transmission organization in Order No. 2000, which can be found on FERC's Web site at <http://www.ferc.gov/legal/ferc-regs/land-docs/RM99-2A.pdf>. More recently, PacifiCorp has supported Grid West, a more regionally-focused effort, as a means of addressing transmission problems and gaining efficiencies. (See Web site at <http://www.rto-west.com/>.) I am involved in developing the design for future Grid West operations and also in RTO West's (now Grid West) activities through the Seams Steering Group-Western Interconnection, which I discuss in more detail below.

3. As part of my work at PacifiCorp, I have been involved in many informal and formal regional transmission planning efforts over the years. At present, I am the President and a member of the Board of the Northwest Regional Transmission Association ("NRTA") (more fully discussed below) and also serve on the Steering Committee of the Seams Steering Group-Western Interconnection ("SSG-WI") (more fully discussed below) as a representative of RTO West (now Grid West).

I have also been involved with the Western Systems Coordinating Council ("WSCC") as the PacifiCorp representative to various committees since 1977, and have chaired many WSCC committees, including the Planning Coordination Committee, Joint Guidance Committee, and Regional Planning Task Force. I was

also a WSCC representative to the North American Electric Reliability Council (“NERC”). In that capacity, I served on various NERC planning and operation committees. I have also served on the Western Governors’ Association’s Transmission Planning Task Force and chaired its technical work group. Today, I am PacifiCorp’s liaison to the Western Electricity Coordinating Council (“WECC”) (the successor of WSCC) for purposes of coordinating WECC, SSG-WI, and PacifiCorp’s regional transmission planning activities.

I have been active in the Northwest Power Pool (“NWPP”), serving on many committees and work groups in the past, as well as serving as an officer of the organization. Most recently, I helped established the Northwest Transmission Assessment Committee (“NTAC”), an open forum to address forward looking planning and development for a robust and cost effective NWPP area transmission system, which is one of the planning efforts promoted by SSG-WI.

REGIONAL TRANSMISSION PLANNING

4. Since 2000, PacifiCorp, along with the Bonneville Power Administration (“BPA”) and other regional transmission owners, has funded RTO West, a nonprofit Washington corporation, that served as a vehicle for our joint development effort. Just last week, RTO West formally became Grid West. As part of its past activities, RTO West joined with the California Independent System Operator (“CAISO”) and WestConnect (a group of transmission owners in the

Southwest interested in developing a regional transmission entity) to address common issues for the three emerging regional transmission organizations. SSG-WI was the resulting informal association, funded by in-kind contributions from RTO West, CAISO or WestConnect, or their participating transmission owners. SSG-WI operates in part as a discussion forum made up of representatives for facilitating the creation of a seamless Western market and proposing resolutions for issues associated with differences in RTO practices and procedures.

5. PacifiCorp has had a representative on the SSG-WI Steering Committee since the committee's conception. I have been that representative since 2002. BPA has also had a representative on the SSG-WI Steering Group. Like PacifiCorp, BPA has participated in SSG-WI transmission planning efforts since SSG-WI's inception.

6. The SSG-WI Steering Committee has placed a high priority on facilitating transmission infrastructure development. Consequently, it established a Planning Work Group ("PWG") that is involved in developing a Western Interconnection-wide transmission planning process that furthers the economic expansion of and investment in the West's interstate transmission system. SSG-WI completed its first Westwide regional plan in 2003 and is developing updates to the plan in its 2005 study. Information on the PWG's efforts is available at

http://www.ssg-wi.com/GeneralWorkGroupDetails.asp?wg_id=3&wg_name=Planning.

7. For years BPA has participated as a member in several nonprofit corporations in which PacifiCorp has also been a member.

8. BPA is a member of NRTA, as are PacifiCorp and Public Utility District No. 1 of Snohomish County, Washington ("Snohomish"). NRTA is an Oregon nonprofit membership corporation formed in 1995. I am currently the President, have served as Treasurer, and am a member of the Board. BPA also has a representative serving as a member of the Board. I have previously participated on transmission capacity work groups, the planning committee, and the path allocation task force, which I chaired. BPA participated in all of these activities as well.

9. NRTA's formation was prompted by FERC's Policy Statement Regarding Regional Transmission Groups ("RTGs") (later called "regional transmission associations"). A true and correct copy of excerpts from FERC's policy statement on RTGs dated August 5, 1993, are contained within the Amicus Supporting Record ("ASR") filed herewith and may be found at ASR 24 (ASR 001-023 are attached to the Declaration of John Carr filed previously in this docket, and ASR 024-060 are attached to this Declaration). NRTA was formed to facilitate the efficient use of existing transmission facilities, coordinate the

planning of transmission system expansions, and expedite the resolution of disputes concerning transmission. (NRTA Governing Agreement, Preambles.)

NRTA's function has been to address transmission access, planning, dispute resolution, and tariff issues, as well as other needs that are specific to the Pacific Northwest. NRTA recently contracted with the NWPP to perform planning services for NRTA. These services are being performed by the NWPP's Transmission Planning Committee ("TPC") and NTAC. NTAC is a subregional planning group that coordinates with SSG-WI interconnection-wide efforts. A true and correct copy of excerpts of the NRTA Governing Agreement cited above is filed herewith and may be found at ASR 030-034

10. BPA is also a member of WECC, as are PacifiCorp and Snohomish. WECC is a Utah nonprofit membership corporation. It is an electric coordinating council formed in 2002 through a merger of the WSCC (established in 1967 as a reliability council), the Western Regional Transmission Association ("WRTA") (formerly an RTG), and the Southwest Regional Transmission Association (also formerly an RTG). Before WECC's establishment, BPA and PacifiCorp were both members of two of its predecessors, WSCC and WRTA. I have served on numerous WSCC and WECC task forces, technical committees, and chaired both the Regional Planning Task Force and the Planning Coordinating Committee. BPA has also had representatives actively engaged in WECC activities.

11. WECC serves to coordinate transmission operation and planning in the Western Interconnection, which includes the interconnected electric transmission grid in the states and provinces in western Canada, northern Mexico, and the western United States. (An interconnection is synchronously-connected transmission systems operated by transmission owners, most of which are members of WECC.) As reliability councils, WSCC and WECC have focused historically on planning for reliability rather than planning commercial expansion of the transmission grid. Section 2.1.6 of the WECC bylaws addresses WECC's role in coordinated regional planning. A limitation on WECC's authority that prevented performance of commercial transmission expansion planning studies was removed by the directors in July 2004 and that proposed change has been filed with FERC. A true and correct copy of excerpts of WECC's bylaws and its recent filing with FERC of its amended bylaws cited above is filed herewith and may be found at ASR 035-048.

12. BPA, PacifiCorp, and Snohomish all participate in the NWPP. NWPP was founded in the 1940s and operated as an unincorporated association for many years. See *Northwest Power Pool History*, available at <http://www.nwpp.org/history.html>. In 1995, PacifiCorp, BPA, and other regional parties entered the NWPP Agreement to accomplish various purposes, including "assisting in planning of transmission within the Northwest Interconnected Area." (NWPP

Agreement, art. I.) Under the NWPP Agreement, obligations are imposed on BPA, PacifiCorp, Snohomish, and other members of NWPP's TPC, which includes BPA, to (1) plan the development of its electric facilities in conformance with WSCC and NWPP planning criteria, policies, guidelines, and procedures; (2) provide transmission, generation, and system representation data as requested by the TPC to accomplish the goals of coordinated transmission planning; (3) provide other data as required and agreed to by the TPC to perform regional planning studies; (4) provide long-range transmission and generation plans; and (5) provide individual reliability criteria. (NWPP Agreement, § 3.3.4.) The TPC may conduct periodic assessments of Northwest transmission to facilitate the efficient development and operation of the transmission system and review the benefits of proposed projects. A true and correct copy of sections of the NWPP Agreement cited above is filed herewith and may be found at ASR 049-052.

13. I am familiar with the NRTA, WSCC, WECC and NWPP governance schemes. None of these organizations' bylaws provide BPA control of the organization. Only NWPP virtually guarantees BPA representation on the board of directors. (NWPP Bylaws § 4.3.2.) BPA (like PacifiCorp) often has had a representative on the other boards. However, BPA does not currently have a representative on the WECC board, and this has also been true with respect to the WSCC board at different times. Since the merger of other organizations into

WECC, that board has had seven independent board members. This structure was intended to mitigate stakeholder control of WECC activities. A true and correct copy of excerpts of the NWPP Bylaws cited above is filed herewith and may be found at ASR 053-056.

14. I anticipate BPA will become a member in Grid West, now that the corporation has been restructured as a Washington nonprofit membership corporation. However, by becoming a member of Grid West, neither BPA nor PacifiCorp will be obligated to sign any contract with Grid West to allow Grid West to coordinate, manage, or offer services over their respective transmission systems. Any such obligation would only arise if a transmission agreement is signed. As someone working to create Grid West, I hope BPA, PacifiCorp, and other transmission owners will be able to negotiate acceptable transmission agreements with Grid West to permit it to become an operational transmission organization. However, whether that occurs will depend on the design for coordinated operations and commercial services by Grid West, which is not yet complete. BPA has repeatedly told the Regional Representatives Group and others that it intends to complete a record of decision and any necessary environmental review if it proposes to contract with Grid West for use of its facilities. BPA representatives have also told me and others that BPA will not execute a transmission agreement to become a participating transmission owner in Grid West

unless they are satisfied that concerns raised by Snohomish about unlawful delegation of governmental authority have been resolved.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746. Executed on December 17, 2004.



Richard S. Bayless

AMICUS CURIAE PACIFICORP SUPPLEMENTAL RECORD

ASR 024- ASR 060

RULES and REGULATIONS

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

(Docket No. RM93-3-000)

Policy Statement Regarding Regional Transmission Groups; Policy Statement

Thursday, August 5, 1993

*41626 Issued July 30, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Rule; policy statement.

SUMMARY: The Federal Energy Regulatory Commission is announcing a general policy of encouraging the development of Regional Transmission Groups (RTGs), and providing guidance regarding the basic components that should be included in RTG agreements filed with the Commission.

DATES: This Policy Statement is effective on July 30, 1993.

FOR FURTHER INFORMATION CONTACT:

Janice G. Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Telephone: (202) 208-0921.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a *41627 modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this rule will be available on CIPS for

30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Policy Statement Regarding Regional Transmission Groups

I. Background

When Congress enacted the Federal Power Act (FPA) in 1935, it declared in FPA section 201(a) that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest and that Federal regulation of matters relating, inter alia, to the transmission of electric energy in interstate commerce is necessary in the public interest. 16 U.S.C. 824(a). Congress in FPA sections 205 and 206 gave the Federal Power Commission, and later the Federal Energy Regulatory Commission (Commission), [FN1] the responsibility for regulating the rates, terms and conditions of transmission of electric energy in interstate commerce by public utilities. 16 U.S.C. 824d and e. However, with the exception of certain authority to address war and emergency conditions (now the responsibility of the Department of Energy), 16 U.S.C. 824a (c) and (d), Congress did not give the Commission the explicit authority to order transmission.

FN1 See Department of Energy Organization Act, 42 U.S.C. 7171.

This changed in 1978 when Congress, as part of the Public Utility Regulatory Policies Act (PURPA), added section 211 to the FPA, which gave the Commission general authority to order electric utilities to provide transmission to, inter alia, other electric utilities. [FN2] However, section 211 of the FPA, as enacted in PURPA, was largely unused because the Commission could only order transmission if the Commission determined that the order "would reasonably preserve existing competitive relationships."

FN2 All public utilities, as defined in the FPA, are electric utilities as defined in the FPA. However, electric utilities include entities that are not public utilities, such as cooperative and municipal utilities.

The Energy Policy Act of 1992 (Energy Policy Act) has significantly expanded the Commission's authority to order transmission services under section 211. [FN3] As amended by the Energy Policy Act, section 211 now gives the Commission authority, upon application, to order transmitting utilities, as defined in section 3(23) of the FPA, to provide transmission to electric utilities, Federal power marketing agencies, or any other person generating electric energy for sale for resale, if such action will not unreasonably impair reliability and will be in the public interest. Section 211 allows the Commission to order entities that are not subject to section 205 jurisdiction to provide transmission, and the Commission has authority to review the rate charged by such an entity pursuant to a section 211 order under the standards of section 212.

FN3 Pub. L. 102-486, 106 Stat. 2776 (1992).

During the final stages of Congress' consideration of the Energy Policy Act, which, as noted above, significantly expanded the Commission's authority to order transmission upon application, representatives of the electric utility industry and other interest groups presented "consensus" Regional Transmission Group (RTG) [FN4] legislation for consideration. The consensus proposal would have explicitly required the Commission to "certify" RTGs meeting certain statutory criteria. Included among the criteria were requirements for: Broad membership; an obligation for a member transmission-owning utility to wheel power for others, including an obligation to upgrade its system or build new facilities; coordinated regional transmission planning and information sharing; and fair procedures for decision-making and for dispute resolution. Under the proposal, an RTG that met these (and other) standards for Commission certification would have been entitled to have its decisions receive some degree of deference from the Commission (consistent with the FPA). Moreover, the Commission would have been required to afford some degree of deference to the decisions reached through dispute resolution procedures contained in an RTG agreement. The rates charged for transmission by non-public utilities (i.e., entities not otherwise subject to Commission rate jurisdiction) would have had to meet the substantive FPA rate-making standards and would have been subject to suspension and refund as if they were subject to sections 205 and 206 of the FPA. The consensus proposal set forth procedures for the Commission to impose conditions on certification of RTGs, if necessary, and to exercise continuing oversight. Certification was to be denied if all the affected state commissions unanimously objected to certification. The consensus proposal was presented after the conferees had voted on the provisions of the H.R. 776 Conference Report affecting electric power regulation and was not included in the bill. [FN5]

FN4 The Commission defines an RTG as a voluntary organization of transmission owners, transmission users, and other entities interested in coordinating transmission planning (and expansion), operation and use on a regional (and interregional) basis.

FN5 See 138 Cong. Rec. S.17,616 and S.17,620-22 (daily ed. Oct. 8, 1992).

On November 10, 1992, the Commission issued a Request for Public Comments on the consensus proposal and solicited comments on how the consensus proposal could be adapted into a proposed rulemaking that would address Commission consideration of RTG agreements affecting matters subject to Commission jurisdiction. [FN6] We received 100 comments from a wide variety of commenters. Most of the commenters supported the concept of RTGs. However, the comments presented differing views of exactly what an RTG should be and do. [FN7]

FN6 61 FERC 61,232 (1992).

FN7 As discussed infra, the Commission is adopting a general statement of policy rather than a detailed rule. The comments submitted in this docket have provided a very thorough discussion of the issues. However, we discuss below only those comments that are relevant to this Policy Statement.

The Commission believes that RTGs can be alternative vehicles for attaining the same goals inherent in the new section 211: Promoting competition in generation,

improving efficiency in both short-term and long-term trading in bulk power markets, and reducing the cost of electricity to consumers. RTGs can provide mechanisms for encouraging negotiated agreements and resolving transmission issues without resorting to the procedures under sections 211 and 213 of the FPA. [FN8] As such, RTGs should reduce the need for potentially time-consuming and expensive litigation before the Commission. To that end, the Commission is announcing a general policy of encouraging the development of RTGs, and providing guidance regarding the basic components that should be included in RTG agreements filed with the Commission.

FN8 As the Commission stated in its recent Policy Statement regarding good faith requests for transmission services and responses by transmitting utilities under sections 211 and 213: "we believe that as a policy matter sections 211(a) and 213(a) should be implemented in a manner which encourages negotiation." The Commission also stated that its "guidelines are broad enough to encourage individual initiative and negotiation within a flexible framework, leading to accommodations that will encourage optimum access to this country's transmission system." 58 FR 38964, 38965-66 (July 21, 1993).

*41628 II. Discussion

A. The Expected Benefits of RTGs

A primary purpose of RTGs is to facilitate the provision of transmission services to potential users and voluntarily to resolve disputes over the provision of such services. We believe that RTGs can address disputes over transmission issues in a manner that satisfies the statutory standards of the FPA, and can minimize applications seeking Commission orders for mandatory transmission services under section 211.

Properly functioning RTGs will serve the public interest by enabling the market for electric power to operate in a more competitive, and thus more efficient manner, and by providing coordinated regional planning of the transmission system to assure that system capabilities are adequate to meet system demands. They will decrease the delays that are inherent in the regulatory process, resulting in a more market-responsive industry. RTGs may also significantly enhance regional transmission planning by providing a mechanism for cooperation among state commissions and the utilities they regulate.

Regional transmission needs will change as the generation sector becomes more competitive, thereby affecting many more companies than in the past. Since RTGs bring together both transmitting utilities and their customers (and potential customers) in a region, they can provide a means for companies to coordinate their transmission planning more effectively, avoid costly duplication of facilities, and, in conjunction with their respective state commissions, find more efficient solutions to region-wide problems. This is critical because the transmission network is highly interconnected; thus, the actions of one party often affect many others.

Many transmission issues (e.g., loop flow) are highly technical. As far as possible, those with technical expertise should resolve such issues directly. RTGs

can bring together the technical experts from all interested parties to address technical issues directly. This promises to be more productive than using traditional regulatory approaches, which tend to force parties to polarize their positions, as the primary mechanisms for resolving disputes.

As the generation sector continues to become more competitive, the industry will have many new opportunities to trade power. RTGs can provide a forum in which planning data and other useful information can be compiled and exchanged. [FN9] They can also provide a forum for parties to find workable ways to conduct business with each other. RTGs can develop procedures that make transactions efficient for all--for example, through region-wide trading systems based on electronic bulletin boards. In short, RTGs promise efficient and expeditious solutions to problems that may stem from expanded transmission access.

FN9 As the Commission noted in its Notice of Proposed Rulemaking proposing to implement the information-collection requirement in section 213, making more information available will improve efficiency, expedite negotiations, and reduce the number of section 211 applications. New Reporting Requirements Under the Federal Power Act and Changes to Form No. FERC-714, Proposed Rulemaking, IV FERC Stats. & Regs. 32,493 (1993), 58 FR 17,544 (April 5, 1993).

B. Recent Developments--Why the Time Is Ripe for Commission Action

During the time since the Commission issued the request for public comment on the consensus RTG proposal, there has been considerable activity in various regions of the country concerning the development of RTGs. For example, utilities in New England, California, the upper Midwest, and the Southwest and Northwest regions of the United States have been actively negotiating RTG agreements. [FN10] Utilities in other regions also may be considering such agreements. All of these regions differ with regard to generating resource mix, transmission system integration, and existing institutional frameworks. [FN11] These factors, among others, can affect the resolution of planning, access, and operational issues important to RTG agreements. Differences in important regional characteristics support the view, expressed by many in written comments on the consensus proposal, that considerable flexibility is needed in forming RTGs.

FN10 For example, the Southwest Power Pool is considering RTG-like reforms in its Vision Statement of November 1992. The Western Association for Transmission Systems Coordination and the New England Power Pool are also attempting to form RTGs.

FN11 For example, in New England, NEPOOL, a centrally dispatched pool, and in the upper Midwest, MAPP, a non-centrally dispatched but highly coordinated pool, both already provide for significant sharing of installed and operating reserves of generation resources. Any RTG in these regions may develop as a complement to these power pools.

Although considerable activity is already underway in various parts of the country toward creating regional transmission organizations, recent events in some of the more advanced negotiations indicate difficulties in reaching final agreements. Recent public reports from both California and New England indicate

that negotiations in both of these regions have failed to come to closure. The impasse may be due, in part, to parties' decisions to delay commitment to the RTG process pending action by the Commission. The issuance of this Policy Statement is intended to provide assurance that the Commission encourages these collaborative efforts and to provide guidance as to the basic components that should be included in jurisdictional RTG agreements.

In issuing this Policy Statement, the Commission emphasizes that it intends to use its new transmission authority to ensure that electric generation markets can become fully competitive. However, there are several reasons why we believe that RTGs, as opposed to case-by-case determinations by this Commission, offer the potential to be more effective and efficient in dealing with the complex issues that arise as result of expanded transmission access. First, by including and addressing the needs of all transmission users in a region, RTGs can use the technical expertise of the industry to the benefit of all parties. RTGs can provide a forum for resolving difficult technical issues relating to transmission system operation and planning in a fair and non-discriminatory manner that will benefit all participants. Second, RTGs can provide a practical means for collaboration between the industry and its regulators at both the state and Federal levels. As discussed below, consultation and cooperation with state regulatory authorities are critical to the timely and efficient provision of transmission services. Third, consensual resolution of issues involving transmission in interstate commerce, consistent with the FPA, can lead to enhanced efficiency in both transmission and generation and can reduce expensive and time-consuming litigation before the Commission and possibly state regulatory authorities.

It is important to recognize the Commission's limited authority in the development and success of RTGs. RTGs are purely voluntary associations of transmission owners, users, and others with differing interests. Therefore, the formation of an RTG, by itself, does not insulate its transmitting utility members from proceedings under FPA section 211. However, RTGs that succeed in accommodating all parties' interests, so that members do not feel the need to resort to section 211, will meet the goals intended by the Commission in issuing this Policy Statement. In addition, the Commission will afford an appropriate degree of deference to decisions under an RTG, depending on the degree to which an *41629 RTG agreement mitigates the market power of transmission owners and provides for fair decision-making. The success of RTGs will be determined less by the Commission's approval of RTG agreements than by the consensual resolutions negotiated by the members.

C. Minimum Components for RTG Agreements

The Commission does not have authority to "certify" RTGs. However, under section 205(c) of the FPA, public utilities must file with the Commission the classifications, practices, and regulations affecting rates and charges for any transmission or sale subject to the Commission's jurisdiction, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services. Thus, a governing agreement or other RTG-related agreement that in any manner affects or relates to jurisdictional transmission rates or services must be approved or accepted by this Commission as just,

**GOVERNING AGREEMENT
OF THE
NORTHWEST REGIONAL TRANSMISSION ASSOCIATION**

Revised
September 16, 1999

PREAMBLE

This Northwest Regional Transmission Association (Association) is intended to facilitate the efficient use of existing transmission facilities, coordinate the planning of transmission system expansions and expedite the resolution of disputes concerning transmission. This Association is organized in order to provide a specific Northwest perspective on transmission access issues, including those that arise from the specific statutory approach to the Pacific Northwest embodied in the Federal Power Act as amended by the Energy Policy Act of 1992 pertaining to the Federal Columbia River Transmission System (including House Conference Report 102-1018, 102d Cong., 2d Sess. 388-90 (1992)), within the overall context of statutory requirements and the policies of the Federal Energy Regulatory Commission and the appropriate Canadian Regulatory Authority. Pursuant to this Governing Agreement and within the context of Congressional directives, Members of the Association agree to promote coordinated transmission planning, efficient and nondiscriminatory use of transmission capacity, competition in generation markets, and reasonable terms, conditions, and pricing for transmission services and interconnections.

1. PURPOSE.

This Association is an organization voluntarily entered into by Transmission Providers, Canadian Transmission Providers, Transmission Users, Canadian Transmission Users, End Users, and Northwest Commissions. Members have formed the Association to foster the efficient, equitable and reliable use of existing and future transmission facilities and the expeditious and fair resolution of disputes related to transmission access. The Association shall provide a forum for coordination of transmission planning and for the exchange of information to assist Members in meeting their transmission needs. To the extent practicable, the Association shall pursue the activities contemplated hereunder in a manner which avoids duplicating the activities of other transmission planning organizations such as the Western Systems Coordinating Council (WSCC), the Northwest Power Pool's Transmission Planning Committee or its successor, and other Regional Transmission Groups or Associations. To that end, the Association intends to investigate the potential for the consolidation within the Association of some or all of the functions provided

5. GOVERNANCE.

5.1 Board of Directors. The Association shall have a Board of Directors comprised of 20 Directors. Directors shall be selected from among the four classifications of voting Members and each such classification shall be entitled to elect and be represented by the following number of Directors:

- | | |
|-------------------------------------|---|
| a. transmitting utilities | 5 |
| b. transmission-dependent utilities | 5 |
| c. nonutility entities | 5 |
| d. end use customers | 5 |

5.2 Ex-Officio Directors. Commission Members may select up to three Directors to serve in an ex-officio status on the Board. Such ex-officio Directors shall be invited to attend and participate in all meetings of the Board and Committees but shall not have a right to vote on matters coming before the Board or Committees.

5.3 Diversity of Directors. No more than one Director may be employed by or be affiliated with any single Member.

5.4 Election of Directors. At each annual meeting of the Members, elections shall be held to fill any vacancies on the Board. Directors shall be selected from within each classification for each position by a plurality vote of the Members of that classification attending the meeting. No person may be nominated for a Director position if his or her election would violate the provisions of Subsection 5.3. Except for the initial Board, Directors shall be elected for terms of three years and until a successor is elected and qualified. The initial Board shall determine the length of each Director's term by drawing lots, with two Directors in each classification serving terms of three years, two Directors in each classification serving terms of two years, and one Director in each classification serving a term of one year.

5.5 Removal of Directors and Vacancies. An individual Director may be removed from office by and at the discretion of the Member employing such Director or by majority vote of the classification of Members represented by such Director. Whenever a Board vacancy occurs, a Director's position shall be filled by

majority vote of the remaining Directors from the same classification until the next annual or special meeting at which time it shall be filled for the remainder of the term by a plurality vote of the Members in such classification.

5.6 Annual Board Organizational Meeting. A meeting of the Board shall be held at the conclusion of each annual meeting of the Members for the purpose of electing the officers of the Association for the upcoming year and to transact such other business as may come before the meeting.

5.7 Regular Meetings. Regular meetings of the Board, in addition to its annual meeting, shall be held upon such notice to all Members and at such time and place as the Board may determine. The Board may hold meetings by conference call.

5.8 Special Meetings. A special meeting of the Board shall be held whenever called by the President or, during the President's absence or disability, by the Vice President, on notice to all Members delivered by first class mail or facsimile at least seven days prior to the meeting. Special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of any four Directors.

5.9 Quorum and Voting. A majority of the Directors on the Board shall constitute a quorum necessary to the transaction of business at any meeting of the Board. In order for a measure to be approved by the Board, 60% of the Board members present must vote affirmative. In addition, at least one member from each class must vote affirmative. This requirement is waived if there are less than three Board members in a class or if there are fewer than two Board members present from that class. By providing written notice to the President, a Director may designate an alternate to attend any Board meeting and such alternate shall have full authority to act and vote in place of the absent Director. Alternates must meet the same qualifying criteria as Directors.

5.10 Action Without a Meeting. Any action which may be taken at a meeting of the Board, or of a Committee, may be taken without a meeting if set forth and approved in a writing signed by all Directors or Committee members, and such action shall be effective on the date on which the last signature is placed on such writing, or such different effective date as may be set forth therein. Notice of such action shall be

comparable notice to that described in Subsections 5.7 and 5.8 of this Agreement.

5.11 Organization. The Association shall organize itself as a nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act under the name "Northwest Regional Transmission Association." All acts required to be taken to effect such incorporation shall be taken on behalf of the Association and the Members by Portland General Electric and at least one other entity that is either a transmission-dependent utility or a nonutility entity as classified pursuant to Subsection 3.2. All Members hereby agree to take no actions that would contravene the ability of the Association to maintain its status as a nonprofit corporation existing pursuant to the Oregon Act. The Board shall formally adopt this Governing Agreement as the bylaws of the Association.

5.12 Tax Matters. The Association is intended to qualify as an organization described in Subsection 501(c)(6) of the Internal Revenue Code of 1986. No part of any net earnings of the Association shall inure to the benefit of any Member or individual. Upon liquidation, any assessments paid by Members to cover administrative costs that are not needed to cover costs of the Association shall be rebated to Members in proportion to their payments. Any remaining assets shall be transferred to another organization exempt from tax under Subsection 501(c) of the Internal Revenue Code or to a governmental agency, promoting the same purposes as the Association, as designated by the Board of Directors.

6. DUTIES OF DIRECTORS.

6.1 General Powers. The Board shall manage the business and affairs of the Association, take such actions as it deems appropriate to effectuate the purposes of this Governing Agreement, and exercise all of the powers of the Association except those as are by law or this Governing Agreement conferred upon or reserved to the Members. The Board (i) shall recommend any amendments to this Governing Agreement for approval by the Members and (ii) may adopt such policies, rules, regulations, recommendations, and actions as it may deem advisable which are consistent with law, this Governing Agreement, and this Association. The Board shall also review all proposed contracts by which activities of this Association are proposed to be performed by other entities, and shall provide authorization as necessary to the Manager to sign such



Western Electricity Coordinating Council

BYLAWS
OF
THE
WESTERN ELECTRICITY COORDINATING COUNCIL

April 18, 2002

Revised
April 9, 2003

Revised
April 11, 2003

Revised
July 31, 2003

BYLAWS

Of

The

WESTERN ELECTRICITY COORDINATING COUNCIL

1. **Mission.**

The Western Interconnection is the geographic area containing the synchronously operated electric grid in the western part of North America, which includes parts of Montana, Nebraska, New Mexico, South Dakota, Texas, Wyoming, and Mexico and all of Arizona, California, Colorado, Idaho, Nevada, Oregon, Utah, Washington and the Canadian provinces of British Columbia and Alberta.

The Western Electricity Coordinating Council (“WECC”) is a Utah nonprofit corporation with the mission to do the following consistent with these Bylaws: 1) maintain a reliable electric power system in the Western Interconnection that supports efficient competitive power markets (“Reliability Mission”); and 2) assure open and non-discriminatory transmission access among Members and provide a forum for resolving transmission access disputes between Members consistent with FERC policies where alternative forums are unavailable or where the Members agree to resolve a dispute using the mechanism provided in Section 11 (“Transmission Access Mission”).

2. **Furtherance of the WECC’s Mission**

2.1 **Activities to Carry Out WECC’s Reliability Mission.**

2.1.1 **Regional Coordination.** The WECC will act as a coordinating entity for the entire Western Interconnection for activities of regional organizations with responsibilities for reliability and market functions.

2.1.2 **Standard Setting.** The WECC will develop and adopt reliability, operating, and planning standards, criteria and guidelines necessary to maintain the reliable operation of the Western Interconnection’s interconnected bulk power system, including seeking, as appropriate, variances from standards of the NERC (or any successor organization which may be created by legislation or otherwise), as well as providing a process for regional variances.

2.1.3 **Certification of Grid Operating Entities.** The WECC will certify Grid Operating Entities in the Western Interconnection.

- 2.1.4 Reliability Assessment. The WECC will ensure that interconnected bulk electric system reliability assessments are conducted as needed. The WECC will do this work in conjunction with the Regional Entities to the greatest extent possible. The WECC will also facilitate coordinated reliability assessments among Regional Entities.
- 2.1.5 Compliance Activities. With respect to enforcement of reliability standards, the WECC will:
 - 2.1.5.1 implement the Reliability Management System in effect as of the WECC's formation and as the Reliability Management System may be subsequently modified in accordance with its terms;
 - 2.1.5.2 implement any new enforcement mechanisms developed through national legislative initiatives and corresponding NAERO activities; and
 - 2.1.5.3 administer any other enforcement mechanisms developed through voluntary processes after the WECC's formation, where the WECC is designated to perform administration.
- 2.1.6 Coordinated Regional Planning. With respect to the coordination of regional planning activities, the WECC:
 - 2.1.6.1 will develop coordinated planning policies and procedures for the Western Interconnection, including facilitation of market-based solutions, consistent with WECC/NERC standards, FERC policy, and Section 2.5 of these Bylaws.
 - 2.1.6.2 will review and assess Regional Entity (as that term is defined in Section 3 of these Bylaws) planning processes to determine whether WECC planning procedures have been satisfied;
 - 2.1.6.3 will refer planning matters back to the originating Regional Entity for revision or other corrective actions when the WECC Board determines that WECC planning procedures have not been satisfied; and
 - 2.1.6.4 may perform other interconnection-wide studies as needed, but shall not perform expansion planning studies.
- 2.1.7 Coordinated Operations. With respect to coordinating reliable operating activities within the Western Interconnection, the WECC will develop, coordinate and promote consistent interregional operating policies and

to each member of the public who so requests and who has provided appropriate information regarding delivery of notice.

5.6 Open Meetings.

All Membership meetings are open to observation by the public.

6. Governance.

6.1 Board of Directors.

Subject to those matters expressly requiring approval of the Membership, a Board of Directors elected by the Members will govern the WECC.

6.2 Composition of the Board.

Except as provided in Sections 6.2.1 and 6.2.2, the Board consists of twenty-seven Directors as follows: 1) twenty (20) Member Class Directors elected by the Member Classes (four from each Class); and 2) seven (7) Non-Affiliated Directors elected by the WECC Members as a whole (which may include the Chief Executive Officer).

6.2.1 Canadian Interests. Whenever there are at least two (2) Members whose head offices and principal place of business are in Canada and no person has been elected to the Board by the Classes or Members whose experience or affiliation reflects Canadian interests, the number of Class Member Directors will be expanded by one (1) and the additional Member Class Director will be elected by the Canadian Members. This Director will serve until the earlier of: 1) the end of a three-year term (provided that this provision will remain in effect and may cause the election of an additional Director); or 2) the election by the Members of a person with the experience or affiliation described in this Section.

6.2.2 Mexican Interests. Whenever there are at least two (2) Members whose head offices and principal place of business are in Mexico and no person has been elected to the Board by the Classes or Members whose experience or affiliation reflects Mexican interests, the number of Class Member Directors will be expanded by one (1) and the additional Member Class Director will be elected by the Mexican Members. This Director will serve until the earlier of: 1) the end of a three-year term (provided that this provision will remain in effect and may continue to cause the election of an additional Director); or 2) the election by the Members of a person with the experience or affiliation described in this Section.

6.3 Term of Office.

The Western Interconnection Coordination Forum Steering Committee will determine the initial terms of Directors in a manner which reasonably allocates among Classes and Non-Affiliated Directors the following initial terms: nine (9)

Directors having two (2) year terms, nine (9) Directors having three (3) year terms and nine (9) Directors having four (4) year terms. If an additional Director(s) is required pursuant to Sections 6.2.1 or 6.2.2, or if Director positions are vacant pursuant to Section 6.4.1, the Board will allocate initial terms in a manner which is equitable and as consistent as possible with this Section given the circumstances. Thereafter, each Director will hold office for three (3) years.

6.4 Selection and Compensation of Member Class Directors.

- 6.4.1 Minimum Number of Class Members. Each Class must have at least four (4) Members to be qualified to nominate and elect representatives to the Board of Directors. If a Class contains less than four (4) members, then the Director positions for that class will remain vacant until the first annual meeting at which the Class has the minimum number of members, at which time two of the vacant positions will be filled by election to three year terms and two by election to two year terms. If a Class falls below the minimum number of members after having elected Directors, such Directors will continue to serve out their terms. However, upon expiration of their terms, the Director positions will remain vacant until such time as the Class contains sufficient members.
- 6.4.2 Member Class Director Qualifications. Member Classes may elect any person as a Member Class Director, provided that no Member or group of Affiliated Members may have more than one Director associated with them. Nothing in this Section regarding the election of Directors by Classes of Members is intended to limit, qualify or alter in any manner the fiduciary obligation of Directors to the WECC set forth in Section 6.10.1.
- 6.4.3 Selection of Member Class Directors. Member Class Directors will be elected by Members of their respective Classes of Membership. Each Member Class may develop its own list of Director candidates or it may ask the Nominating Committee to develop a list of candidates. If the Nominating Committee is used, it will select at least two (2) candidates for each vacancy for Member Class Director. In addition, in identifying candidates for Member Class Director positions, the Nominating Committee will seek to produce a slate of candidates who, together with the Directors from all Member Classes standing for election and continuing in office, will reflect the diversity of regional interests and characteristics within the Western Interconnection. The proposed slate of candidates will be mailed to the Members of the Class at least sixty (60) days before each Member Class Meeting at which the elections are to be held. Additional candidates may be added to the slate upon the submittal of a nomination to the Chief Executive Officer signed by three (3) Members of the Class, or ten percent (10%) of the total number of Members of the Class, whichever is greater. The Chief Executive Officer

must receive such nominations at least thirty (30) days before the Member Class Meeting. All candidates identified by the Class (as provided above) or by the Nominating Committee will be submitted to the Class for election at the Member Class Meeting. Candidates will provide reasonable background information regarding their qualifications and a disclosure statement regarding any affiliations with Electric Line of Business Entities in the Western Interconnection to the Members before each election. The Director candidate(s) receiving the highest number of votes cast by Members of the Class will be elected to the position of Director.

6.4.4 Member Class Director Compensation. Member Class Directors will not be compensated for their service by the WECC. The WECC will reimburse Member Class Directors for reasonable and actual out-of-pocket expenses (such as travel and lodging) that are not subject to reimbursement from any Member or other source.

6.5 Selection and Compensation of Non-Affiliated Directors.

6.5.1 Non-Affiliated Director Qualifications.

6.5.1.1 Non-Affiliation. The Non-Affiliated Directors of the Board may not be affiliated with any Entity that is a Member of the WECC or is eligible for membership in Classes 1 through 3 of the WECC, provided that status as a residential electricity customer will not disqualify a person from sitting as a Director. A candidate will not be qualified to serve as a Director if the candidate, or the spouse or a minor child of the candidate, derives any of his or her annual income from a Member of WECC, an entity that is eligible for membership in Classes 1 through 3, or a bulk power user in the Western Interconnection.

6.5.1.1.1 Notwithstanding the provisions of Section 6.5.1.1, a candidate for Non-Affiliated Director will not be disqualified for owning shares in a mutual fund that owns an interest in a Member or an Affiliate of a Member as long as the mutual fund does not specialize exclusively or predominantly in the energy sector. The disqualification standards described in Section 6.5.1.1 will not disqualify a candidate who is receiving payments from a pension plan of a Member or an Affiliate of a Member in a form other than securities of such Member or Affiliate and the pension plan payments bear no relationship to the economic performance of the Member or Affiliate.

6.5.1.1.2 The disqualification standards described in Section 6.5.1.1 will not apply to disqualify a candidate solely by virtue of an employment or contractual relationship with a state that has one or more agencies that are eligible to be Members of Class 5 of WECC, provided that:

1. In the case of a candidate's employment relationship, the employer is not a member of WECC;
2. In the case of a candidate's contractual relationship with a state agency, no member or employee of the state agency is a member of the WECC Board;
3. In the case of a candidate's employment relationship with a contractor to a state agency, no member or employee of the state agency is a member of the WECC Board; and
4. In the case of a candidate's employment or contractual relationship with a state agency which is a WECC member or employs a WECC Board member, if the Nominating Committee determines that the candidate's employment duties do not include significant work for or representation of that state agency.

6.5.1.1.3 Notwithstanding the provisions of this Section 6.5.1.1, a candidate for Non-Affiliated Director will not be disqualified for being affiliated with an organization that represents a substantial number of end users or a substantial number of persons interested in the impacts of electric systems on the public interest or the environment.

6.5.1.2 Expertise. The Nominating Committee will nominate Non-Affiliated Director candidates with the objective of having at least one Non-Affiliated Director with expertise in electric transmission operations and planning. The Nominating Committee will also have the objective of nominating persons with: 1) experience in corporate leadership at the senior management or board of directors level; 2) leadership experience

in law, finance, economics, accounting, engineering, regulation, natural resources or commercial commodity markets and associated risk management; 3) experience representing a substantial number of end users or a substantial number of persons interested in the impacts of electric systems on the public or the environment; and 4) a well-developed understanding of the distinct operational, resource, political, and interest-based characteristics of various regions within the Western Interconnection.

6.5.2 Selection of Non-Affiliated Directors.

6.5.2.1 Selection of Non-Affiliated Directors. After the initial election of Non-Affiliated Directors, the Nominating Committee will make nominations. Before the end of each Non-Affiliated Director's term, the Nominating Committee may select an independent search firm to provide the Nominating Committee with a list of qualified candidates for each vacant position. Incumbent Directors, if qualified and willing to serve, may be considered for nomination by the Nominating Committee. The Nominating Committee will consider each candidate for Non-Affiliated Director to determine whether that candidate is qualified to stand for election to the Board. From the list of candidates accepted by the Nominating Committee to stand for election, the Nominating Committee will select a slate of candidates for the vacant Non-Affiliated Director positions. Additional candidates may be added to the slate upon the submittal of a nomination to the Chief Executive Officer signed by three (3) Members of any Class, or ten percent (10%) of the total number of Members of any Class, whichever is greater. The Chief Executive Officer will place such nominations before the Members for possible election unless he determines in writing that a proposed nominee does not meet the criteria for eligibility to be a Non-Affiliated Director in these Bylaws.

6.5.2.2 Disclosure Statement. Candidates for Non-Affiliated Director will provide to the Nominating Committee and, if nominated, to the Members, a statement describing their expertise and disclosing any present or past affiliations, relationships or associations relevant to their qualification to serve as a Non-Affiliated Director. A candidate for Non-Affiliated Director will be required to disclose any economic interest in any Member of the WECC or any Entity eligible for membership in Classes 1 through 3 of the WECC held by themselves, their spouse or their children as well as any such interest known to the candidate held

by the candidate's parents, siblings, aunts, uncles, or first cousins.

6.5.2.3 Election. The number of Non-Affiliated Director candidate(s) corresponding to the number of vacant positions receiving the highest number of votes cast at the Annual Meetings of the Members will be elected to the position of Non-Affiliated Director.

6.5.3 Non-Affiliated Director Compensation. The Non-Affiliated Directors will receive a level of compensation as determined from time to time by the Member Class Directors.

6.6 Tie Vote.

In the event of an inability to select Directors due to a tie vote, a second vote will be taken to determine the placement of the tied candidates. The second vote will be limited to the tied candidates, with the candidate(s) receiving the highest number of votes being selected. If another tie vote results, additional votes will be taken (after the elimination of any candidate receiving fewer votes than the tied candidates) until a candidate can be selected. If a tie cannot be resolved pursuant to the foregoing procedures, it will be resolved by lot.

6.7 Removal of Directors.

The Members or the Board may remove a Director before completion of the Director's term of office pursuant to the following provisions.

6.7.1 Removal by the Members. Member Class Directors may be removed at will by a vote of at least 60% of the Members of the Class that elected that Director. Non-Affiliated Directors may be removed only for gross negligence, violation of local, state, provincial, or federal laws, gross misconduct, or failure to meet the fiduciary obligations of Directors. Removal of a Non-Affiliated Director will be by a vote of at least fifty percent (50%) of the entire WECC membership, including a vote of at least fifty percent (50%) of each Class.

6.7.2 Removal by the Board. The Board may remove any Director for gross negligence, violation of local, state, provincial, or federal laws, gross misconduct, or failure to meet the fiduciary obligations of Directors. Such removal will only occur upon the affirmative vote of not less than twenty-one (21) Directors.

6.8 Resignation.

Any Director may resign from his or her office or position at any time by written notice to the Board by delivery to the Chair. Pursuant to Sections 4.1 and 4.8.2, a

Director employed by a withdrawing or expelled Member will be deemed to have resigned. The acceptance of a resignation will not be required to make it effective.

6.9 Procedures for Filling Vacant Director Positions.

6.9.1 Member Class Director Vacancies. If the position of any Director elected by a Member Class becomes vacant, the remaining Directors elected by the same Class will promptly choose a successor to that position who will serve until the next annual Members meeting.

6.9.2 Non-Affiliated Director Vacancies. If the position of any Non-Affiliated Director becomes vacant, the remaining Directors may charge the Nominating Committee with selecting a successor immediately. The Nominating Committee will follow the requirements set out in Section 6.5.2.1 in its selection of any successor Non-Affiliated Director. Alternatively, if less than one (1) year remains in the term of that Director, the remaining Directors may choose to leave the position vacant for the remainder of the term.

6.9.3 Holdover to Cure Procedural Vacancies. Whenever a vacancy in any Member Class or Non-Affiliated Director position would be created due to expiration of a Director's term combined with a lack of a quorum or other procedural inability to elect a new Director, the expired Director's term shall be extended until such time as a proper election of a new Director can be conducted.

6.10 Duties of Directors.

The Directors will have the following duties:

6.10.1 Fiduciary Obligation to the WECC: All Directors, including Member Class Directors, will have a fiduciary obligation to the WECC consistent with the requirements for Directors of Utah non-profit corporations. Notwithstanding any affiliation with individual Members or Class of membership, Members of the Board will at all times act in conformance with such requirements, these Bylaws and the Standards of Conduct set forth in Appendix A.

6.10.2 Preserve Non-Affiliated Status: Throughout their terms, Non-Affiliated Directors will have a duty to avoid any affiliation that is inconsistent with the standards for Non-Affiliated Directors in Section 6.5.1.1 of these Bylaws. If a Non-Affiliated Director becomes aware of any such affiliation, he/she must either resign or eliminate the affiliation (e.g. dispose of securities) within six (6) months.

6.11 Powers of Directors.

The management of all the property and affairs of the WECC will be vested in the Board of Directors. The Board will hold annual elections to select a Board Chair and to fill any other Board officer positions that may be created by the Board or required by applicable law. The Board may exercise all the powers of the WECC and do all lawful acts and things (including the adoption of such rules and regulations for the conduct of its meetings, the exercise of its powers and the management of the WECC) as are consistent with these Bylaws and the Articles of Incorporation.

6.12 Delegation of Board Authority.

The Board may delegate to the Chief Executive Officer or to any Board Committee formed pursuant to Section 7.7 any or all of its powers and authority except: 1) any power which it may not delegate pursuant to applicable Utah law; 2) the power to adopt any reliability standard; 3) the power to determine when to exercise the Backstop Authority of the WECC; 4) the power to approve budgets; 5) the power to form committees; 6) the power to amend the Bylaws; 7) the power to elect the Chair and other officers of the Board; 8) the power to enter into contracts exceeding \$50,000; and 9) the power to hire, fire or set the terms of employment of the Chief Executive Officer. Delegation will be by express decision and will require the affirmative vote of not less than twenty (20) Directors. Any Director may call for a vote to rescind such delegation at any time and such delegation will be rescinded if eight (8) or more Directors vote to do so.

6.12.1 Notice to Members. Within seven (7) days of any decision delegated pursuant to Section 6.12, except for routine decisions of the Chief Executive Officer, Members will be notified of the decision by electronic mail, posting on the WECC Web site and any other means determined appropriate by the Board. Routine decisions of the Chief Executive Officer will be noticed in periodic reports to the Board and Members as determined by the Board, which will be sent to Members by electronic mail and posted on the WECC Web site.

6.12.2 Board Review of Delegated Decisions. Decisions delegated pursuant to Section 6.12 will be reviewed by the Board at the request of any Director, provided such request is lodged with the Secretary within thirty (30) days of the notice. Whenever it determines that a matter requires an urgent decision, the Board may shorten the deadline for requests for review, provided that: 1) the notice and opportunity for review will be reasonable under the circumstances; and 2) notices to Members will always contain clear notification of the procedures and deadlines for Board review. A request for review of a decision will stay the effect of the decision pending review unless the Board in making the delegation expressly determines otherwise.

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November 18, 2004

Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street N.E., Room 1A
Washington, DC 20426

Re: Western Electricity Coordinating Council
Docket Nos. EL01-74-00_
ER01-2058-00_
ER04-51-00_

Dear Ms. Salas:

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Section 35.13 of the regulations of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 35.13, the Western Electricity Coordinating Council ("WECC") files this amended version of WECC Rate Schedule FERC No. 1, reflecting changes to the WECC Bylaws adopted by vote of the WECC Board of Directors on July 29, 2004, with additional minor modifications for consistency and formatting purposes.

I. Background

On September 12, 2002, the Commission issued a letter order accepting for filing the Bylaws of the Western Electricity Coordinating Council, and designating the Bylaws as WECC Rate Schedule FERC No. 1, with an effective date of April 18, 2002. The Bylaws have since been amended twice, by the addition of Appendix B, which had been reserved for the Officers and Employee Standards of Conduct, and by amendments to the text of the Bylaws approved by the Board and Membership in April and July, 2003. Both amendments were duly submitted to the Commission and accepted by letter orders dated, respectively, February 13 and December 8, 2003.

WECC is now in its third year of operation under the Bylaws. In reviewing WECC's mission and functions, and dealing with issues arising during day-to-day operation of the organization, the Board has identified several additional areas in which the WECC Bylaws require minor amendments. As described more fully below, these include language changes to eliminate the prohibition against WECC performing transmission expansion planning studies,

make minor adjustments to Member and Board committee provisions, facilitate the election process, and eliminate anachronistic language and/or formatting inconsistencies.

Section 13 of the WECC Bylaws establishes the requirements for amending the Bylaws. Under Section 13.1, the WECC Board of Directors has been empowered to amend the Bylaws by a vote of no less than two-thirds of the Directors in office, except that certain enumerated sections may only be amended upon prior approval of the Membership.¹ Such amendments are to be effective 60 days after approval unless appealed within that period. Upon due notice and opportunity for comment, the WECC Board approved the amendments described below at its regular meeting held on July 29, 2004. Accordingly, WECC respectfully requests that the Commission accept for filing the revised WECC Rate Schedule FERC No. 1 reflecting these amendments to the WECC Bylaws.

II. Description of Amendments

The following describes each amendment adopted by WECC and briefly explains the purpose for the amendment. Attached as Exhibit 2 is a redlined version of the Bylaws showing all changes described below, plus a few typographical and formatting corrections.

1. **Eliminate the prohibition against WECC performing expansion planning studies.**

Section 2.1.6.4 of the WECC Bylaws was amended to eliminate language prohibiting WECC from performing transmission expansion planning studies:

2.1.6 Coordinated Regional Planning. With respect to the coordination of regional planning activities, the WECC: ...

2.1.6.4 may perform other interconnection-wide studies as needed, ~~but shall not perform expansion planning studies.~~

Section 2.1.6 provides a broad mandate for WECC to coordinate regional planning activities within the Western Interconnection. However, Section 2.1.6.4 explicitly precluded WECC from performing expansion planning studies. The WECC Board has determined that this prohibition should be eliminated, in order to avoid unnecessarily limiting WECC's role in coordinating transmission planning activities. The proposed change does not authorize any specific new activity, but simply removes the prohibition that currently prevents WECC from performing expansion planning studies.

¹ Section 13.1 provides that the Board may not amend Sections 6.2 through 6.10, 8.4, 13.1 or Appendix C of the Bylaws without submitting such amendment to the Members for their prior approval.

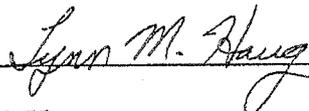
Magalie Roman Salas, Secretary
November 18, 2004
Page 9

Louise McCarren
Chief Executive Officer
Western Electricity Coordinating Council
615 Arapeen Drive
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Salt Lake City, Utah 84108
(801) 582-0353
(801) 582-3918 fax

V. Conclusion

For the reasons set forth above, WECC requests that the Commission accept as filed these amendments to the WECC Bylaws

Respectfully submitted,

By:  _____

Lynn M. Haug
Christopher T. Ellison
ELLISON, SCHNEIDER & HARRIS

Attorneys for Western Electricity
Coordinating Council

NORTHWEST POWER POOL

AGREEMENT

December 22, 1995
Amended November 13, 1996

NORTHWEST POWER POOL

AGREEMENT

PREAMBLE

This Agreement will serve as the agreement among the Members of the Northwest Power Pool (NWPP) with respect to the organization and operation of the NWPP and the Members' rights and obligations with respect thereto. This Agreement shall be executed in counterpart by entities as they become Members of NWPP.

ARTICLE I: PURPOSE

The purpose of the NWPP is to promote cooperation among its Members in order to achieve reliable operation, coordinate power system planning, and assist in planning of transmission within the Northwest Interconnected Area. The responsibility of the NWPP and its Members is to foster coordinated operation of generation, and operation and planning of interconnected transmission facilities without conflicting with the responsibility of Member systems to coordinate and plan in order to maintain reliable service to their own customers and to others.

ARTICLE II: DEFINITIONS

Commission: Any state or provincial utility regulatory commission, state energy commission or regional state or provincial agency in the Northwest Interconnected Area with ratemaking, siting or resource-planning authority in regard to electric energy.

CCC: The Coordination Contract Committee, as described in Article VII.

Electric System: An organization that has, as a prime purpose, the generation, transmission and/or distribution of electric energy for sale within the Northwest Interconnected Area. This definition is intentionally broad, including utilities, municipalities, federal power marketing and generating agencies, state and federal agencies and Non-Utilities.

Electric System Organization: An organization or association that is a group of Electric Systems involved in the planning and/or operating activities of its members in the Northwest Interconnected Area.

Non-Utility: Non-Utility may include exempt wholesale generators, as defined by the Federal Energy Regulatory Commission, non-utility generators, independent power producers, qualifying facilities and other non-utility entities generating, transmitting and/or distributing electric energy for sale for resale.

Member: A Member, when referred to in this Agreement, shall refer collectively to each OC Member, TPC Member and CCC Member, as defined in Article III, Sections 3.2, 3.3 and 3.4.

Northwest Interconnected Area: The Northwest Interconnected Area is the area comprised of the states of Washington, Oregon, Idaho, and Montana, portions of northern California, northern Nevada, Utah, and Wyoming; and the Canadian provinces of British Columbia and Alberta. The Northwest Interconnected Area shall be coextensive with the NWPP Area of the WSCC.

- a. Receive appropriate meeting notices, as well as other reports and information produced by the OC;
- b. Be a member of, introduce motions, debate, and have two-thirds majority based approval rights in the deliberations of the OC, its subcommittees, task forces, and work groups;
- c. Be eligible to be nominated to serve as an officer of the OC, or any of its subcommittees, task forces and work groups;
- d. Exercise such other rights with respect to the OC as the OC Members may from time to time provide.

Section 3.2.4. Obligations of OC Members. Each OC Member shall make all reasonable efforts to:

- a. Ensure conformance with NWPP operating reliability criteria, policies and procedures;
- b. Provide data as required and agreed to by the OC in order to monitor and assess the operating performance and reliability of the Northwest Interconnected Area;
- c. Ensure with respect to generating plants or transmission systems of non-Members located in their control area, that the arrangements with these entities meet NWPP operating reliability criteria and are consistent with adopted NWPP practices.

Section 3.3. TPC Members

Section 3.3.1. Entities That May Become TPC Members. Any Electric System or Electric System Organization or Commission, as well as any other entity eligible for membership in the Northwest Regional Transmission Association, may become a TPC Member. Entities other than Electric Systems and Electric Systems Organizations which would enhance the ability of the TPC to meet its objectives may also become TPC Members with the majority approval of the other TPC Members. TPC Members need not join a Regional Transmission Association with which the TPC may have a planning relationship.

Section 3.3.2. Rights of TPC Members. TPC Members, through their Representatives, shall be entitled to:

- a. Receive appropriate meeting notices, as well as other reports and information produced by the TPC;
- b. Be a member of, introduce motions, debate, and vote in the deliberations of the TPC, its subcommittees, task forces and work groups;
- c. Be eligible to be nominated to serve as an officer of the TPC, or any of its subcommittees, task forces and work groups;

- d. Be eligible to serve as a representative of the TPC on WSCC committees;
- e. Receive copies of the TPC and WSCC data sets;
- f. Attend TPC training programs and conferences;
- g. Exercise such other rights with respect to the TPC as the TPC Members may from time to time provide.

Section 3.3.3. Rights of Participating Commissions. Participating Commissions, through their Representatives, shall be entitled to:

- a. Receive appropriate meeting notices, as well as other reports and information produced by the TPC;
- b. Participate and debate in the deliberations of the TPC, its subcommittees, task forces and work groups;
- c. Attend TPC training programs and conferences;
- d. Exercise such other rights with respect to the TPC as the TPC Members may from time to time provide.

Section 3.3.4. Obligations of TPC Members. Each TPC Member shall make all reasonable efforts to:

- a. Plan the development of its electric facilities in conformance with WSCC and NWPP planning criteria, policies, guidelines and procedures;
- b. Provide transmission, generation and system representation data as requested by the TPC to accomplish the goals of coordinated transmission planning;
- c. Provide other data as required and agreed to by the TPC to perform regional planning studies;
- d. Provide long-range transmission and generation plans;
- e. Provide individual reliability criteria.

Section 3.3.5. Classification of TPC Members. For purposes of selecting directors, selecting and rotating TPC officers, and voting on TPC actions, each TPC Member, except Participating Commissions, shall designate to which one of the following classifications it wishes to be assigned:

- a. Transmitting Utility,
- b. Transmission Dependent Utility, or
- c. Non-Utility.

BYLAWS
OF
THE NORTHWEST POWER POOL,
an Oregon nonprofit corporation

Originally adopted on June 29, 1999.
Amendments are listed on page -i-

**BYLAWS
OF
THE NORTHWEST POWER POOL**

SECTION 1. PURPOSES.{tc "SECTION 1. PURPOSES."}

As provided in Article IV of the corporation's First Amended and Restated Articles of Incorporation (the "Articles"), the purposes of this corporation will be to: (1) provide a forum and support staff to help organizations that engage in activities relating to the production, sale, delivery, or use of electricity to achieve reliable interconnected electric system operations through the coordination of planning, operation, and use of resources and facilities used in connection with generating, transmitting, or distributing electricity and to engage in any other lawful activity related to this purpose; and (2) engage in any other lawful activity approved by the corporation's Board of Directors.

SECTION 2. OFFICES.{tc "SECTION 2. OFFICES."}

2.1 Principal Business Office. {tc "2.1 Principal Business Office. " \ 2} The principal office of the corporation will be located at the address inside or outside the state of Oregon designated in the corporation's most current Annual Report filed with the Oregon Secretary of State, or if an Annual Report has not yet been filed with the Oregon Secretary of State, designated in the corporation's Articles. The corporation may have any other offices designated by the Board of Directors or required by the business of the corporation from time to time. The corporation will maintain at its principal office a copy of each of the records specified in Section 3 of these Bylaws.

2.2 Registered Office. {tc "2.2 Registered Office. " \ 2} The registered office of the corporation, required by ORS 65.111, will be located inside the state of Oregon at the location fixed from time to time by action of the Board of Directors and the filing of any notices required by laws. The registered office may be, but need not be, the same as the corporation's principal office. The address of the registered office may be changed from time to time. The business office of the corporation's registered agent must at all times be identical to the corporation's registered office.

SECTION 3. CORPORATE RECORDS.{tc "SECTION 3. CORPORATE RECORDS."}

The corporation will keep as permanent records each of the following:

- (1) a copy of the Articles and all amendments to them currently and previously in effect;
- (2) a copy of the Bylaws or Restated Bylaws and all amendments to them currently and previously in effect;

- (3) minutes of all meetings of the Board of Directors
- (4) records of all actions taken by the Board of Directors without a meeting;
- (5) records of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the corporation;
- (6) appropriate accounting records;
- (7) copies of all significant agreements and other legally binding documents;
- (8) a list of the names and business addresses of the corporation's current directors and officers; and
- (9) the corporation's most recent Annual Report delivered to the Oregon Secretary of State.

SECTION 4. BOARD OF DIRECTORS.{tc "SECTION 4. BOARD OF DIRECTORS."}

4.1 General Powers. {tc "4.1 General Powers. " \ 2} The management of all the affairs, property, and interests of the corporation, including without limitation hiring, firing, supervising, and evaluating the performance of the corporation's staff and consultants and authorizing all contractual and financial commitments, will be vested in the corporation's Board of Directors.

4.2 Limitations on Scope of Board Authority. {tc "4.2 Limitations on Scope of Board Authority. " \ 2} The Board of Directors will have no power whatsoever, whether by resolution, amendment of the corporation's Articles or these Bylaws, or otherwise, to cause any party other than the corporation itself and its personnel to take any action, expend or contribute any funds, or provide any resources (including without limitation any electric capacity or energy) unless the other party has specifically agreed in a separate written instrument to either (1) be bound by decisions of the corporation's Board of Directors or (2) take the action, expend or contribute the funds, or provide the resources.

4.3 Number, Appointment, and Tenure of Directors. {tc "4.3 Number, Appointment, and Tenure of Directors. " \ 2}

4.3.1 General Provisions. {tc "4.3.1 General Provisions. " \ 3} As provided in Article VI of the corporation's Articles, the number of directors will be as determined from time to time by resolution of the corporation's Board of Directors, provided that the number of directors may not be less than three. Each director in office at the time the Board of Directors adopts these Bylaws will serve from the date these Bylaws are adopted until he or she resigns, dies, becomes unable to perform his or her duties as a director, or is removed as provided in Section 4.3.2. Directors need not be residents of Oregon.

4.3.2 Directors Employed by the Bonneville Power Administration. {tc "4.3.2 Directors Employed by the Bonneville Power Administration. " \ 3} The Bonneville Power Administration ("Bonneville") will have the right, at any time and in its sole discretion, to remove from office any director who is a Bonneville employee. Bonneville may exercise its right of removal under this Section 4.3.2 by providing written notice to the Secretary of the corporation at the corporation's principal office.

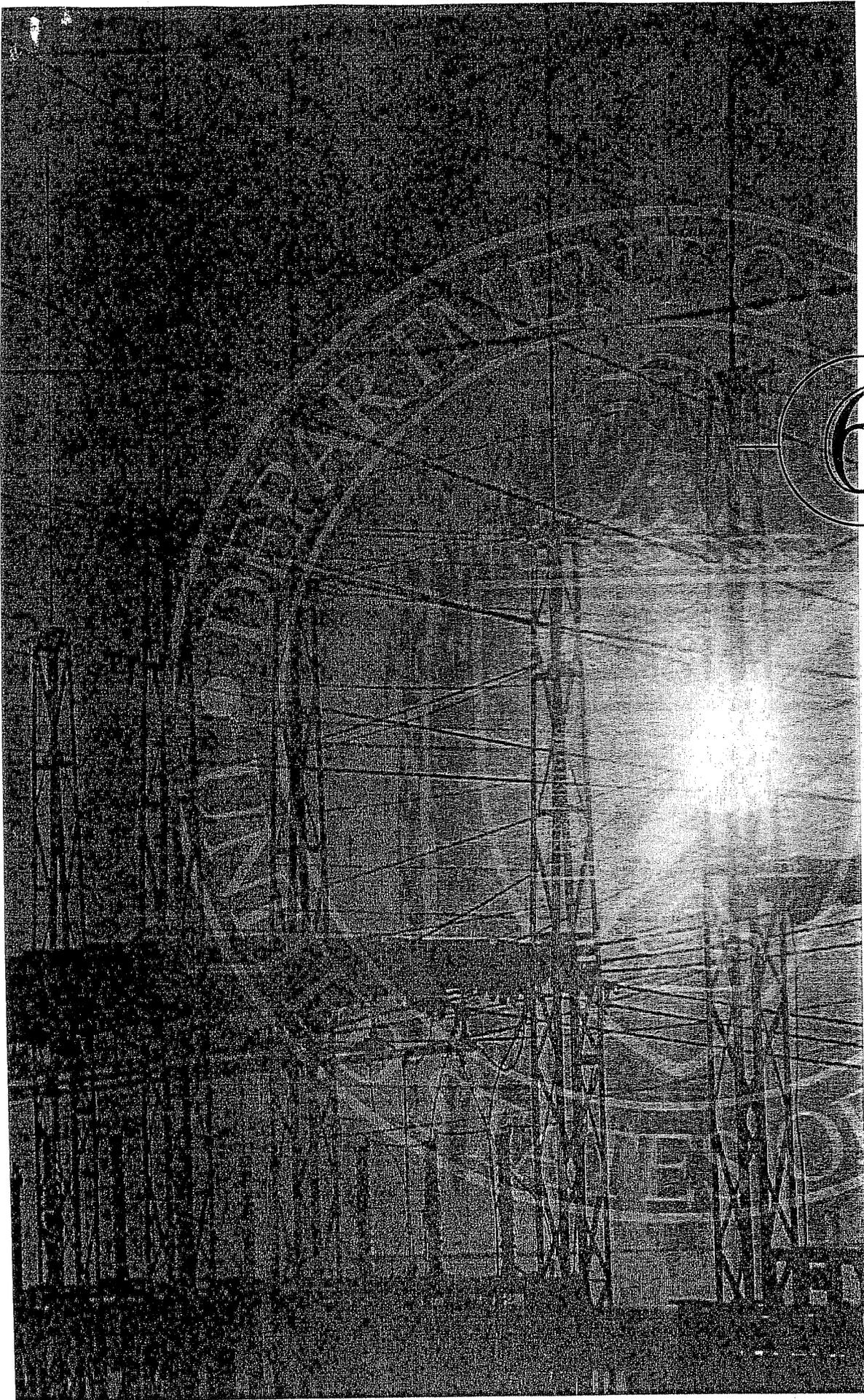
4.4 Vacancies on the Board of Directors. {tc "4.4 Vacancies on the Board of Directors. " \ 2}

4.4.1 Vacancies Other Than Those Resulting From Removal Under Section 4.3.2. {tc "4.4.1 Vacancies Other Than Those Resulting From Removal Under Section 4.3.2. " \ 3} Any vacancy on the corporation's Board of Directors, other than a vacancy resulting from the removal of a Bonneville employee under Section 4.3.2 above, may be filled by appointment made by consensus of all directors then remaining in office, provided that any person so appointed to serve as a director has given his or her consent to do so. The Board of Directors need not fill a vacancy unless failure to fill the vacancy would result in the Board of Directors consisting of fewer than three directors.

4.4.2 Vacancies Resulting From Removal of a Bonneville Employee. {tc "4.4.2 Vacancies Resulting From Removal of a Bonneville Employee. " \ 3} If Bonneville removes a director who is a Bonneville employee as provided in Section 4.3.2 above, Bonneville will have the exclusive right and sole discretion to appoint a replacement for the removed director, provided that the person appointed to serve as a replacement director has given his or her consent to do so. Bonneville may exercise its right to appoint a replacement director under this Section 4.4.2 by providing written notice (including the name and business address, telephone number, and fax number of the replacement director) to the Secretary of the corporation at the corporation's principal office.

4.5 Board Chairperson. {tc "4.5 Board Chairperson. " \ 2} Promptly following the organization of the corporation the Board of Directors will appoint a chairman or chairwoman (the "Chair") from among the members of the Board of Directors by resolution adopted by affirmative vote of not less than 60% of the directors in office at the time the vote is taken. Whenever a vacancy arises in the position of Chair for any reason thereafter, the Board of Directors will appoint a successor in the same manner. The Chair will serve for the term of office specified in the resolution appointing the Chair, or, if no term is specified, until he or she resigns from the office of Chair or ceases to be a member of the Board of Directors. The Chair will preside at all meetings of the Board of Directors. If the Chair is absent from a meeting of the Board of Directors, the Board of Directors may select any director present at the meeting to preside in the Chair's absence.

4.6 Annual Meeting of the Board of Directors. {tc "4.6 Annual Meeting of the Board of Directors. " \ 2} Unless the Board of Directors provides otherwise by resolution, the Board of Directors will hold an annual meeting each year at 9:00 a.m., local time, on the fourth Tuesday in April (or, if the fourth Tuesday in April falls on a United States or Canadian



6

The importance of the interstate commerce that is conducted through our electricity transmission system dictates that there will be a federal role in ensuring reliable transmission systems that support fair and efficient competitive regional wholesale electricity markets. DOE is committed to taking a leadership role in addressing emerging transmission bottlenecks that threaten our national interests. Furthermore, DOE will develop the state-of-the-art tools needed to evaluate the system's operation and efficiency, and will continue to work with industry and Congress to ensure that basic transmission research and development continues.

DOE's Commitment and Leadership

DOE is the lead federal agency responsible for developing sound and secure national energy policy. DOE funds and promotes new transmission technologies, oversees the federal Power Marketing Administrations, issues permits for cross-border transmission lines, and addresses national energy security.

DOE must also take responsibility for identifying and helping eliminate transmission bottlenecks of national importance, and for developing the tools needed to ensure efficient regional markets.

DOE's objective is simple: to provide our citizens with a reliable supply of electricity at the lowest possible cost. During the early 1990s, the department worked closely with the Administration and Congress to support this objective through the Energy Policy Act of 1992, which moved the nation toward competitive electricity markets.

Opening the electricity industry to competitive wholesale markets has resulted in newer, cleaner power plants that cost less and are more efficient than older power plants. Where less than 200 heavily-regulated, vertically-inte-

grated electric utilities used to control more than 80 percent of the industry, non-regulated power producers now account for the majority of new power plant additions. Consumers have benefited from lower electricity bills. But, we cannot stop here; there are many more economies to be gained by completing the transition to competitive electricity markets.

Differences in electricity prices prompted the push for competition. Under monopoly regulation, some consumers used to pay many times more than others for wholesale electricity. Competitive markets give firms incentives to lower costs, improve efficiency, innovate, and provide new services to consumers. The electricity industry is still undergoing substantial change. Although industry participants do not agree on how best to achieve the ultimate objective of reliable supplies at the lowest cost, they do agree that, in order to obtain the full benefits of competitive electricity markets, we need to dramatically improve our electricity delivery system.

Developing and implementing policies that will lead to needed beneficial investments in

the nation's electricity transmission system and support fair and efficient regional wholesale electricity markets will be challenging. The public interest is foremost and the views of consumers, states and industry must be heard and considered. Accommodating diverse interests is imperative because federal transmission policies will only work if they can be supported politically and implemented; the recommendations contained in this study will help guide us.

Some of the recommendations included in this report are not new. Similar recommendations have been made in other DOE reports in recent years.

For example, the Secretary of Energy Advisory Board's 1998 report "Maintaining Reliability in a Competitive U.S. Electricity Industry" recommended that DOE:⁴³

- Develop methods for sharing generation- and transmission-planning data;
- Study and recommend performance-based rates and other transmission pricing methods;
- Help modify reliability rules to reduce congestion;
- Adopt open standards for control centers; and
- Further promote reliability technologies.

In addition, DOE's Power Outage Study Team "Findings and Recommendations to Enhance Reliability from the Summer of 1999" proposed:⁴⁴

- An increased federal leadership role in electricity reliability issues;



- Support for market rules for customer demand response;
- Support for interconnection standards for distributed generation;
- Support for mandatory reliability standards;
- Sharing of "best practices" for distribution;
- Use of uniform definitions and measurements for reliability information;
- Development of real-time system monitoring and control equipment; and
- Improvement of analytic models for load forecasts and power-system simulation.

DOE has acted on some of these recommendations, but it has not followed through on all of them due to limited resources, a lack of focus, and a lack of accountability. DOE will improve on this record in two steps. First, DOE commits to addressing administratively the concerns of

⁴³Download from <http://vm1.hqadmin.doe.gov/seab/esrfinal.pdf>

⁴⁴Download from <http://www.pi.energy.gov/piibrary.html>

focus and accountability. Second, DOE will work with the Administration and Congress to identify and allocate appropriate resources.

The department is committed to implementing the recommendations of the National Transmission Grid Study to ensure needed, beneficial investments in the nation's transmission system. To accomplish this task, the department will reorganize itself to combine its divergent electricity delivery system resources into a single, focused Office of Electric Transmission and Distribution.

This new program office will:

- Fund transmission- and distribution-system R&D;
- Promote and foster the deployment of new transmission- and distribution-system technologies;
- Develop the data and analytical tools necessary to assess the reliability and performance of the transmission and distribution system;
- Conduct research on electricity market designs and evaluation of market performance;
- Designate national-interest transmission bottlenecks;
- Approve cross-border transmission lines; and
- Support the Power Marketing Administrations' efforts to eliminate transmission bottlenecks, introduce new technologies that increase the reliability and efficiency

of the transmission system, and help ensure that best practices are shared.

For DOE to become a leader in shaping electricity policy, this new Office of Electric Transmission and Distribution must be responsible and accountable for our efforts to improve the system.

DOE has many tools at its disposal to carry out these responsibilities. In the fall of 2001, DOE executed two memoranda of understanding to address electricity issues that affect both state and federal interests. These partnerships, with the National Governors Association and the Western Governors' Association, respectively, should provide a solid basis for implementing many of this study's recommendations.

In addition, DOE has the authority to propose rules and forward them to the FERC for debate. Although not often used in the past, DOE will actively review and pursue appropriate opportunities to use this authority in the future.

DOE, in its leadership role for the development of electricity policies, must change its organizational structure, become proactive in FERC rulemakings, encourage the use of new technologies as a solution to transmission system problems, and identify and help eliminate the nation's most significant bottlenecks. DOE must work with regions, states, and localities to ensure that national-interest transmission bottlenecks are remedied appropriately.

RECOMMENDATION

- DOE will create an Office of Electric Transmission and Distribution.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I served the foregoing **Declaration of Richard S. Bayless** on December 17, 2004 by fax and by overnight delivery of the original and four copies to:

Cathy Catterson, Clerk
United States Court of Appeals for
the Ninth Circuit
95 Seventh Street
PO Box 193939
San Francisco, CA 97119-3939

I further certify that I served the foregoing **Declaration of Richard S. Bayless** on December 17, 2004 by fax and by overnight delivery or hand delivery of one correct copy thereof to:

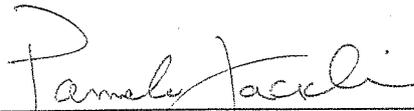
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DATED: December 17, 2004.

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