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VIA FACSIMILE AND CERTIFIED MAIL

November 9, 2004

Stephen J. Wright, Administrator
Bonneville Power Administration
Routing: A
PO Box 3621
Portland, OR 97208-3621

Re: BPA's Decision to Proceed with the Grid West RTO

Dear Administrator Wright:

We represent BPA's largest public agency customer, Public Utility District No. 1 of Snohomish County, Washington ("the District").

In the past four years, BPA has raised its wholesale power rates to record-high levels. The District's ratepayers, particularly low-income and business customers, have been hit hard, and the region has lost a key economic advantage.

When BPA said it would not examine the cost-benefits and alternatives to the Grid West regional transmission organization ("RTO") before it voted on Grid West's proposed Bylaws, the District and 12 other utilities requested an independent professional study from Henwood Energy Services, Inc. The study, which the District provided to BPA, concluded that Grid West will likely result in a net increase in costs of over \$122 million a year – and potentially over \$300 million a year. With record-high BPA rates, the District cannot afford further BPA cost increases.

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We understand that BPA has set December 9, 2004, as the date for adopting Grid West's Developmental and Operational Bylaws. BPA has characterized this threshold action as "Decision Point 1," marking the official start of Grid West as an independent entity.

By this letter, the District requests that BPA immediately stop all activities, including but not limited to the expenditure of funds and the participation in any vote in furtherance of subdelegating BPA's responsibilities to Grid West. Adopting the Grid West Bylaws is the first incremental step in the unlawful delegation to Grid West of BPA's duties under the Federal Columbia River Transmission System Act of 1974, 16 U.S.C. § 838 et seq., and other statutes.

As described in more detail below, BPA has no statutory authority to subdelegate to Grid West the responsibilities to manage federal transmission assets that Congress has explicitly delegated to BPA. BPA therefore should not expend funds or take any step, including the threshold step of approving bylaws for Grid West.

FACTS

The District as well as a number of other parties have repeatedly placed BPA on notice of their legal and other objections to BPA's plan to delegate its statutory obligations to Grid West.

Although BPA has failed to issue a Record of Decision concerning its involvement with Grid West, BPA has acknowledged the importance of these unresolved legal issues in comments submitted to the Federal Energy Regulatory Commission ("FERC").

On February 28, 2003, for example, in response to FERC's *Notice of Proposed Rulemaking on Standard Market Design*, BPA identified a number of subdelegation issues concerning RTOs, including: BPA's environmental responsibilities; its ratemaking obligations under the Northwest Power Act; and its duties under the Columbia River Treaty, the Pacific Northwest Coordination Agreement and the Mid-Columbia Hourly Coordination Agreement. See, BPA comments in FERC Docket No. RM01-12-000, *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*.

On September 3, 2004, the District sent a letter to BPA, requesting that BPA not support the Grid West Bylaws at the scheduled Regional Representatives Group meeting. The Washington Public Utility Districts Association and the Western Public Agencies Group (“WPAG”), of which the District is a member, sent similar letters, citing public policy issues, such as the cost and lack of accountability of Grid West.

Despite those letters, BPA has neither ceased its activities in furtherance of Grid West nor has BPA properly responded to those objections by preparing a Record of Decision and a Supplemental Environmental Assessment. Examples of comments by various parties objecting to BPA’s proposed support of Grid West are attached for your reference.

Under Grid West’s proposed Developmental Bylaws, BPA will begin the process of unlawful subdelegation of its statutory responsibilities. Grid West’s proposed Developmental Bylaws provide that the membership of Grid West will select the Membership Representatives Committee (“MRC”). Voting for the MRC, however, is based on five classes of customers. The MRC will in turn “elect” a five-member Developmental Board of Trustees that is designed to be autonomous from the membership. Amending the Developmental Bylaws at a later date would require an affirmative vote of two-thirds of the Developmental Board of Trustees *and* a vote of the MRC. See, Developmental Bylaws, section 7.26.

WPAG’s recent objection aptly described the situation: “The Grid West board is not just independent, it is for all intents and purposes beyond the reach of the members of the organization.” See, WPAG comments, September 3, 2004, page 4.

BPA’s “Decision Point 1” action on the proposed Grid West Bylaws is therefore a critical decision. The Bylaws will determine the *structure* of Grid West, whose mission, among other things, is to develop and negotiate new Transmission Agreements, draft tariff provisions and take other actions to further the objectives of Grid West. See, Developmental Bylaws, section 3.1.

BPA – without answering the many legal objections and without preparing a Record of Decision or Supplemental Environmental Assessment – has apparently decided to endorse the Bylaws on December 9, 2004. BPA’s actions in this regard have region wide consequences. BPA’s current schedule delays publication of a Record of Decision until 2006 or 2007 to coincide with the release of Grid West’s proposed Transmission Agreements. By then, however, many parties will have relied on the expectation that BPA will subdelegate

its duties to Grid West, and they will have made major strategic and capital decisions. BPA's obligation to the region should be to ensure that the threshold issues concerning the legality of its subdelegation to Grid West, and the environmental consequences of Grid West, are addressed immediately.

ANALYSIS

Federal courts have long recognized and enforced the "subdelegation doctrine," which prohibits federal agencies from assigning their statutory responsibilities and duties to outside parties.

The most recent statement of the rule was set forth several months ago by the U.S. Court of Appeals in *U.S. Telecom Ass'n. v. F.C.C.*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied*, WL 2071195 (2004) (invalidating delegation to a state regulatory commission).

There, the Court said:

[T]he cases recognize an important distinction between subdelegation to a *subordinate* and subdelegation to an *outside party*. The presumption that subdelegations are valid...applies only to the former. There is no such presumption covering subdelegations to outside parties. Indeed, if anything, the case law strongly suggests that subdelegations to outside parties are assumed to be improper absent an affirmative showing of Congressional authorization. (Italics in original text.) *Id.* at 565.

The Court went on to say that statutory silence on the subject of delegation does not constitute an implied grant of authority. "[T]he failure of Congress to use 'Thou Shalt Not' language doesn't create a statutory ambiguity of the sort that triggers...deference [to the agency by a court]." *Id.* at 566.

We presume that BPA is aware of this recent decision, which, on its face, prohibits subdelegation in the manner BPA is attempting to do in connection with Grid West. Nonetheless, BPA has continued to press forward with the unlawful subdelegation in apparent disregard of the *U.S. Telecom* decision, as well as a long line of earlier cases which similarly prohibit subdelegation.

Finally, it appears that BPA has not taken any steps to prepare a Record of Decision on Grid West and the proposed Bylaws prior to making a threshold determination to join the organization.

BPA's failure to prepare a Record of Decision or to answer the legal objections of the District and other parties is all the more troubling in light of statements from FERC that BPA should evaluate its own legal limitations.

In 2000, FERC said:

Bonneville's participation in RTO West [now renamed Grid West] is voluntary, and concerns as to whether Bonneville is adequately protected are more appropriately addressed in proceedings that Bonneville will initiate pursuant to the Pacific Northwest Electric Power Planning and Conservation Act ["Northwest Power Act"]. We further recognize that Bonneville is subject to limited Commission jurisdiction as a federal power marketing agency.

100 FERC ¶ 61,274, para. 59 (September 2000).

Despite FERC's order, now four years old, BPA has initiated no such proceedings. Instead, BPA has moved in incremental steps to support the creation of Grid West.

A Record of Decision should have at least addressed: 1) the subdelegation issues raised in the *U.S. Telecom* and earlier decisions; 2) the legal issues identified in BPA's February 28, 2003 comments to FERC; 3) the legal implications of delegating BPA's duties to a not-for-profit corporation that includes one or more Canadian crown corporations (i.e, British Columbia Transmission Corporation); and 4) other legal and policy issues raised in the many objections BPA has received to date.

Similarly, BPA should have prepared a Supplemental Environmental Assessment to analyze the likely environmental ramifications of participating in Grid West *prior* to the December 9, 2004 vote.

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BPA apparently recognizes that a Supplemental Environmental Assessment is required, given BPA's statement earlier this month that it intends to prepare a Supplemental Environmental Assessment for its 1995 Business Plan Environmental Impact Statement (*BPA Journal*, November 2004, page 3). BPA's Supplemental Environmental Assessment must include a discussion of transmission issues, such as BPA's proposed participation in an RTO.

BPA, however, is proceeding prematurely with the development of Grid West before this crucial environmental review is completed. BPA's decision to move forward with the adoption of Grid West's Bylaws during the review process violates the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4321 et seq. The purpose of preparing a Supplemental Environmental Assessment is to analyze options, including a no-action alternative, *prior* to making a decision.

NEPA requires agencies to take a "hard look" at their planned actions. "[T]he critical agency decision must, of course, be made after the supplement has been circulated, considered and discussed in light of the alternatives, not before. Otherwise the process becomes a useless ritual, defeating the purpose of NEPA, and rather making a mockery of it." *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 92 (2nd Cir. 1975).

Furthermore, an agency that has prepared an EIS – as BPA did in the 1990s on its Business Plan – cannot "simply rest on the original document. The agency must be alert to new information...". *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000).

For these reasons – and the other reasons identified in the various objections filed with BPA by the District and other parties – BPA as a matter of law is precluded from moving forward *in any matter* with the subdelegation of its transmission assets to Grid West.

CONCLUSION

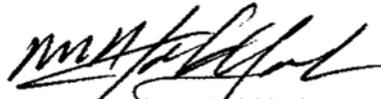
The District hereby requests that BPA immediately stop all activities including, but not limited to the expenditure of funds and the vote scheduled for December 9, 2004 regarding Grid West's Bylaws.

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The District further requests that BPA confirm in writing, received in our office by fax or email, by no later than close of business, Friday, November 12, 2004, that BPA will comply with this request.

Thank you for your attention to this urgent matter.

Very truly yours,



Michael A. Goldfarb

Enclosures
cc: Randy Roach, General Counsel



Providing quality water, power and service at a competitive price that our customers value

GWB-036

SEP 07 2004

September 3, 2004

Via email, U.S. mail and facsimile

Mr. Allen Burns
Executive Vice President for
Industry Restructuring
Bonneville Power Administration, R-3
P.O. Box 3621
Portland, Oregon 97208-3621

Re: Snohomish County PUD No. 1 Comments on Proposed Developmental and
Operational Grid West Bylaws – Reference No. R-3

Dear Mr. ^{Allen} Burns:

Snohomish County PUD No. 1 agrees with the WPAG response to your letter of July 14, 2004 requesting comments on the draft Developmental and Operational Bylaws for the proposed Grid West. We agree with WPAG's conclusion that BPA should not vote for the bylaws at the RRG meeting scheduled for October 14th (which we now understand will not be until November). We have the following additional comments:

Governance is a serious concern; the draft bylaws raise Constitutional and other legal concerns.

Fundamental questions include: 1) Who has the right to vote on the Grid West proposed bylaws?; 2) Who has the right to vote to elect board members?; 3) How will one-person/one-vote principles be assured?; and 4) Should board members be selected by a slate established by an executive search firm? The bylaws will determine who has future control over a major federally-owned asset.

Up until now, that federal asset, which provides over 75% of the region's transmission, is subject to the ultimate control of Congress and the Administration. Under the proposed bylaws, that will no longer be true. The bylaws would begin a process that would replace Congressional and Presidential control over a major federal transmission asset with a board that is, by definition, independent of Congress and the region's citizens. Ceding control of federal, publicly-owned, assets-- before extensive policy and legal review-- is a mistake and may be illegal. This issue must be carefully reviewed before any vote on the bylaws.

Snohomish County PUD No. 1 submitted comments to the National Academy of Public Administration (NAPA), who BPA asked to review the proposed governance structure of Grid West. Our comments to NAPA raised the concerns we have with removing or reducing Congressional control over BPA's transmission assets. The NAPA report will not be published until October 29th. We believe that Congress and the region should have time to thoroughly review the comments and report from NAPA. Prudence dictates that a broadly and fully reviewed NAPA report along with a full review of the legal and constitutional questions be accomplished before any vote by BPA or RRG on the bylaws. Otherwise, what was the point of commissioning the NAPA review?

Our comments to NAPA on their staff draft report entitled "Grid West: A Review of the Proposed Governance Structure," are attached for your convenience.

There is no regional consensus for the formation of Grid West.

The overwhelming core of BPA's public utility customers are opposed to the formation of Grid West--as WPAG, PPC and the Washington PUD Association have made clear. We are not convinced that the formation of Grid West is the best way to solve the transmission issues in the Northwest. Until BPA is able to convince the Northwest Congressional delegation and its preference customers that a regional RTO such as Grid West is: (1) consistent with law; (2) good regional policy; (3) cost-effective; (4) accountable to the citizens of the Northwest; and (5) would not harm its publicly-owned preference customers, it should not support a vote on bylaws.

Alternatives to Grid West must be identified and considered before any vote.

Alternatives to Grid West-- using existing institutions and alternatives that do not involve radical change-- must be considered prior to a vote on the bylaws. The Transmission Issues Group (TIG), a group which includes representatives from public power utilities, certain investor owned utilities, and utility regulators, made recommendations last July that provide one such alternative. Those recommendations are a "package of practical, cost-effective and incremental changes that the region can implement in the next two to three years." They also address most of the transmission issues facing the region such as excess transaction costs for use of multiple transmission systems (use of a common OASIS), lack of regional transmission planning and expansion (use of Northwest Transmission Assessment Committee), enhanced reliability and security (use the Pacific NW Security Coordinator), and complexity of transmission access over multiple transmission systems (use of a single regional transmission queue through a common OASIS). These solutions do not require the formation of a costly new and untested organization with controversial governance questions and legal issues.

There should be a complete cost benefit and alternatives study before a vote on the bylaws.

Snohomish, with the participation of several other regional utilities, requested Henwood Energy Services to prepare a Cost Benefit Study of Grid West. This is underway with the assistance of PPC. We remain concerned that BPA is proceeding with a vote on bylaws before the completion of any such study. We understand that the RRG may also prepare a "risk/reward" study on Grid West, but that it will not be completed until 2006 or 2007.

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No vote should be considered until Congress and the region have had the opportunity to review and consider a complete and detailed cost/benefit and alternatives study.

PPC's initial analysis on the cost of existing RTO's, presented at the American Public Power Association's national conference in Seattle, show that existing RTOs have been significantly more expensive and have provided far fewer benefits than expected--and the operational costs of existing RTOs continue to grow out of control. The experience of other RTOs indicates that the operating cost of Grid West will be between \$184 million to \$221million per year and will cost from \$130 to \$180 million to establish.

Critical information is missing before the Region votes on the bylaws.

BPA must provide key information before any vote to proceed. This includes the pricing structure, congestion clearing mechanisms, physical versus financial rights, dispatch rights, and preference of load serving entities. This information is critical in order to allow utilities and their consumers to judge whether the region should proceed with such a proposal. The fact that they are difficult and time consuming to prepare is not sufficient reason to put them at the end of the decision process.

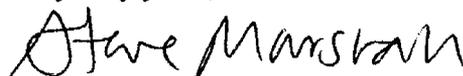
BPA should not vote in favor of the bylaws unless two-thirds of its preference customers agree that Grid West should be established.

The proposed vote on the bylaws is in the nature of a constitutional vote because it will lead to a fundamental governance change in the region over a major federal asset. Apart from the legal and Constitutional requirements, BPA should not vote for the bylaws unless two-thirds of its preference customers favor moving forward with Grid West. BPA was primarily formed to assist its preference customers, and it has certain legal and fiduciary duties not to compromise those customers in favor of five new arbitrary classes of "voters" that the bylaws would establish.

For the reasons expressed by WPAG and for the additional comments above, we urge BPA to vote no on the bylaws.

If there are questions regarding these comments please feel free to contact me at (425) 783-8015.

Very truly yours,



Steve Marshall

Assistant General Manager
Power & Transmission Services

Enclosure: E-Mail addressed to Ken Ryder

This letter was sent via email @ www.bpa.gov/comment; fax 503-230-3285; and mail to addressee and BPA, Attn Communications-DM-7, P O Box 14428, Portland, OR 97293-4428



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September 3, 2004

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SEP 07 2004

Via Federal Express

Allen Burns
Executive Vice President for
Industry Restructuring
Bonneville Power Administration, R-3
905 NE 11th Avenue
Portland, Oregon 97232

Re: Comments of the Western Public Agencies Group in Response to the Letter of
July 14, 2004

Dear Allen,

Attached you will please find the comments submitted by the utilities that comprise the Western Public Agencies Group (WPAG) in response to your letter of July 14, 2004. The WPAG utilities appreciate BPA's effort to reach out and understand the concerns of its preference customers with regard to Grid West, and the draft Developmental and Operational Bylaws, and look forward to working with BPA on the issues raised in the comments of WPAG and other preference customers.

Yours truly,

MARSH MUNDORF PRATT SULLIVAN + MCKENZIE

Terence L. Mundorf
Attorney for the Western Public Agencies Group

TLM:ps
encs.

9/3/04

COMMENTS OF THE WESTERN PUBLIC AGENCIES GROUP
ON THE
DRAFT DEVELOPMENTAL AND OPERATIONAL BYLAWS FOR GRID WEST

1. Introduction

The following comments are offered by the utilities of the Western Public Agencies Group ("WPAG") in response to Allen Burn's letter of July 14, 2004, requesting comments on the draft Developmental and Operational Bylaws that would govern the operation of the proposed Grid West. These comments are offered to assist BPA in forming its position whether the draft Developmental and Operational Bylaws should be approved by the Regional Representative Group and ultimately adopted by the Grid West board of directors.

In the July 14th letter, the following three questions were posed:

1. Have the draft bylaws addressed the governance concerns expressed earlier in the region?
2. Do the draft bylaws appropriately balance regional accountability with independence and workability?
3. Are there other matters BPA should consider in making this decision?

Because the most important matters for BPA's consideration are those implicated in the third question posed by BPA, the following comments will address the third question first, followed by the first and second questions.

2. Are there other matters BPA should consider in making this decision?

There are a number of factors that BPA should consider when it is deciding whether to support the adoption of the draft Developmental and Operational Bylaws. The WPAG utilities believe that it is premature to adopt the Developmental and Operational Bylaws at this time, and that BPA should vote no for the adoption of the draft bylaws, for the following reasons.

A. The Costs and Benefits of Grid West Have Not Been Assessed

To date, there has been no effort to assess whether the benefits of adopting the Developmental and Operational Bylaws, and permitting Grid West to commence operations, will outweigh the costs of doing so. A frequent response to requests to complete such an analysis is that the details of how Grid West would operate in the

“beginning state” have not been sufficiently developed to permit such an analysis. If it is the case that there is not presently sufficient information on how Grid West would operate to determine whether it will deliver a net benefit or a net cost, then it is far too early to adopt bylaws and commence the effort to identify and seat a board of directors. Such a costly and time consuming effort at institution building should not be undertaken unless and until the development of the Grid West beginning state has progressed to such a level that an assessment of whether the costs of doing so will deliver benefits that equal or exceed such costs.

B. BPA Has Provided No Contractual Assurance of Service Under Grid West

There is great uncertainty regarding what portions of BPA’s current transmission service to preference customers under NT and PTP tariffs will be retained, and which portions will be sacrificed in order to make capacity available for Grid West to sell to new users. To date, BPA has initiated no process nor made any effort to provide preference customers with contractual surety that the current transmission business relationship under the NT and PTP tariffs will survive under Grid West.

Further, the experience of the preference customers on this topic only adds to their concerns. For over a year, BPA and its customers worked to define a contract to “lock in” the characteristics of their current BPA transmission service so they could be assured that an RTO would not be free to impose changes on them. This effort produced no agreement, and in fact only served to demonstrate that at least at that point in time, BPA was not willing to contractually guarantee the transmission service currently enjoyed by its preference customers. There is no evidence to date that BPA would be anymore willing to provide a meaningful contractual guarantee than it was during the contract lock process.

It is premature to take the first step towards putting Grid West in operation, by adoption of the Developmental and Operational Bylaws, when preference customer have no contractual assurance about the nature of transmission service they will receive should Grid West commence operations. Resolution of this matter is a necessity before there is a decision on the adoption of the Developmental and Operational Bylaws.

C. There Are Lessons To Be Learned From Other Regions

A number of other regions have implemented regional transmission organizations (“RTO”) of various types, and have some track record in their operations and costs. To date, available data suggests that RTOs are both time consuming and costly, and there little substantiation that they have delivered the benefits claimed. However, the experience of these other regions, in terms of organizational costs, benefits derived, mistakes made and lessons learned, is available to the region. Unfortunately, the rush to adopt the draft Developmental and Operational Bylaws has pre-empted any opportunity to learn from the experience of other regions. Making a decision to adopt the Developmental and Operational Bylaws will effectively lock in the terms of those

documents, and preclude any realistic ability to make changes based on the experiences of other regions.

This is a serious error, and is likely to be a costly one as well. The decision on whether to adopt the Developmental and Operational Bylaws should not be made until there is an adequate opportunity to investigate how other regions that have implemented RTOs have fared, whether they have found any ways to control costs, whether the RTOs have delivered expected benefits, and whether they would take a different approach if they could start again.

3. Have the draft bylaws addressed the governance concerns expressed earlier in the region?

There are a number of areas in which the draft Developmental and Operational Bylaws have not adequately addressed governance concerns that have been expressed in the region, as described below.

A. The Bylaws Do Not Address FERC Intervention

If it becomes operational, Grid West will be a FERC jurisdictional entity, and will be required to comply with FERC orders. And while FERC is currently soft-pedaling its drive for a single market design for electricity throughout the country, there is no indication that it has abandoned that objective as a long-term goal. Further, there is no assurance that in the future the FERC will acknowledge the differences between the Pacific Northwest and other regions of the country when it issues orders, nor that the Northwest will be able to protect itself from the unintended consequences of FERC imposed solutions that work well for New Jersey but are disastrous for the Northwest.

While the Developmental Bylaws do make provision for the FERC ordering changes to the bylaws, there is no provision in the Operational Bylaws that gives the region a means of responding to an FERC order that is inimical to the interests of the region. In essence, once Grid West becomes FERC jurisdictional, the region will be stuck with whatever FERC orders Grid West to do. For preference customers, this is a major change, since currently BPA is essentially exempt from FERC jurisdiction, and only complies with FERC orders on a voluntary basis.

The Operational Bylaws should be revised to include a mechanism by which Grid West can be dissolved in the event that FERC issues an order that requires Grid West to take an action that is determined to be adverse to the interests of the region. Similarly, the transmission agreement should contain a provision permitting a transmission owning member (such as BPA) to withdraw from Grid West membership when it wishes to do so. Such provisions may be sufficient to deter the FERC from taking actions that are unacceptable to the region.

B. The Members Have No Significant Power

Aside from electing the Members Representative Committee, the members of Grid West have no significant role in the governance of Grid West. The members cannot remove board members, they cannot veto any action by the Grid West Board, they have no role in the budget process and they cannot present a slate of board candidates. In all matters, the authority of the board trumps the power of the members of Grid West. The Grid West board is not just independent, it is for all intents and purposes beyond the reach of the members of the organization.

At a minimum, the members of Grid West should have a stronger voice in the operation of an organization whose purpose is to provide better, more efficient and less costly transmission service to its members. This should include the ability of members to remove board members with and without cause, the ability to nominate candidates for board positions, and the right to veto board actions with a super-majority. These changes would strike a better balance between the independence of the Grid West board from market influences and ability to the members to ensure that Grid West is actually serving the interests of its members.

C. The Decision to Consolidate Control Areas Should be in the Bylaws

The draft Operational Bylaws permits two or more utilities to decide independently to consolidate their control areas. Once they have unilaterally made that decision, the role of Grid West is substantially expanded to include the operation of the consolidated control area, the offering of ancillary services and the establishment of additional markets. All of this takes place without consultation or approval by the Grid West members. It is inappropriate for the role of Grid West to be materially expanded in this manner due to the decision of two transmission owners without a public process, and without the involvement of the Grid West members.

The operation of a control area and the facilitation of new markets by Grid West is a major expansion of its responsibility, and more importantly of its liability. Since it is the members of Grid West that have the ultimate financial responsibility for these expanded activities of Grid West, they should not be undertaken without the consultation and consent of the membership. The decision by Grid West to become responsible for the operation of any consolidated control area should be added to the Special Issues list, and should be subject to the same approval requirements as the matters currently on the special issues list.

D. The Member Class Voting Structure Needs Revision

The transmission dependent utility ("TDU") class voting structure is currently unacceptable to a major portion of that class. The current draft of the Developmental and Operational Bylaws has the TDU class operating on a one-member-one-vote basis. This approach ignores the significant difference in interests between generating public utilities

and those without significant non-federal generation. The voting structure of this class must be revised to reflect these differences in interests.

The TDU voting structure should be revised to divide the six votes available to that class equally (three votes to each sub-class) between the smaller, non-generating preference customer subclass and the larger, generating preference customer subclass. This approach will recognize the differing interests within the TDU class, and give each an equal voice in decisions.

Additionally, the current definition of a TDU would permit a transmission owning investor owned utility to become a member of the TDU class. This is not an appropriate outcome, as there is a major difference of interests between the generating and non-generating preference utilities, which own no significant transmission assets, and the interests of an investor owned utility which has elected, for whatever reason, not to execute a transmission agreement with Grid West. The Developmental and Operational Bylaws must be revised to eliminate the possibility of a transmission owning investor owned utility becoming a member of the TDU class.

4. **Do the draft bylaws appropriately balance regional accountability with independence and workability?**

The draft Developmental and Operational Bylaws do not strike the appropriate balance between independence and regional accountability in the following areas.

A. **The Special Issues List Does Not Provide Accountability**

The special issues list has a number of serious defects that prevent it from providing meaningful accountability. First, the issues themselves are stated so vaguely that it is impossible to predict what actions if any, will trigger the special process. For example, a departure from the "company rate approach" requires use of the special process, but what constitutes the company rate and what constitutes a departure are left unstated. Second, the special issues list, and the procedural requirements it imposes, only operates the first time the particular issue is raised. After that, the Grid West board is free to take whatever action it wishes with regard to that issue without further consideration of the opinions of the members. And third, the Grid West board can overrule a super-majority of the Members Representative Committee ("MRC") that has disapproved the proposed action, meaning that the Grid West board can disregard the overwhelming wishes of the members.

If the special issues list, and the attendant procedural requirements it mandates, are to provide any meaningful accountability, a number of revisions must be made. First, all of the special issues must be more clearly defined so that there is a reasonable understanding of what action by the Grid West board will trigger the special approval procedures, and what actions do not. Otherwise, the whole exercise is futile, and it will not provide any meaningful accountability over Grid West for the members or the region.

Second, the procedural requirements triggered by the special issues list should not be a one-time event, but should be required each time one of the special issues is acted upon by the Grid West Board. These issues do not become less important the second or third time they come up. They are important enough to warrant the procedures to determine if the proposed action of the Grid West board has sufficient regional support.

And third, the Grid West board must be required to act unanimously to overrule a veto by the MRC. Such a requirement is warranted where the Grid West board seeks to take an action that was rejected with near unanimity by the MRC. This change will restore some of the balance between the board and the wishes of the membership as expressed by the MRC.

B. The Bylaws Do Not Provide Meaningful Cost Control

Perhaps the greatest fear among preference customers is that a Grid West will impose on the region's ratepayers the same run-away cost escalation that has been seen in other regions with RTOs. To date, there has not been a serious effort to understand why other RTOs have had this experience, nor what can be done to avoid this outcome if Grid West goes operational.

As noted in section 2(C) above, part of the problem is that the rush to adopt the Developmental and Operational Bylaws has severely restricted the ability to learn from the experience of other regions. That said, there are some structural changes that could be made that would likely help avoid the cost escalation experienced by other regions. The first would be to require a budget committee, composed of three board members and five individuals representing the members that would have the responsibility of presenting an annual budget to the Grid West board. This would ensure that members have input on the budget at the formative stage. The second would be to require the Grid West board to present its annual budget to the members, and that they have the opportunity to vote to support the budget presented, or to modify the budget and recommend adoption of an alternative budget. In the event the Grid West board does not adopt the budget recommended by the members, then the FERC filing by Grid West would be required to contain the budget recommended by the members.

These provisions are not perfect, and other cost control ideas may be gleaned from discussions with other regions that currently have operating RTOs. However, at the present time the above suggestions are a necessary minimum to improve the cost control provisions of the bylaws.

C. The Bylaws are Biased Towards Adopting the Financial Rights End State

While preference customers hold varying opinions on certain aspects of the draft Developmental and Operational Bylaws, there is unanimous opposition to the financial rights end state that is advocated by some members of the Regional Representatives Group ("RRG"). In spite of this opposition, the draft Operational Bylaws requires that

the question of whether to adopt this approach must be considered every two years in perpetuity. This provision constitutes a clear bias in favor of ultimately adopting the financial rights end state.

Given the nearly unanimous public power opposition to this outcome, a couple of changes are required. First, the requirement that this issue be revisited every two years should be eliminated. There is no justification for giving this one issue special treatment that is not accorded other items on the special issues list. Second, if the MRC votes against implementation of financial rights, then there must be a unanimous Grid West board vote to override the MRC veto. This will provide preference customers assurance that the financial rights end state will not be adopted without their approval.

D. A Binding Member Vote Should be Required

There has been some discussion about requiring a membership vote before the Grid West developmental board of directors adopts the operational bylaws, which is the final step before Grid West becomes a FERC jurisdictional entity. The question about whether such a vote should be binding or advisory has also been discussed.

If the development of Grid West follows its current trajectory, the region will only have a clear picture of all of the characteristics of Grid West after the transmission agreement has been negotiated and offered to the transmission owning utilities. The execution of an offered transmission agreement gives the Developmental board of directors authority to adopt the Operational Bylaws and commence offering services. These actions will place Grid West squarely under the jurisdiction of FERC, which will materially reduce the ability of the region to make changes to this organization.

It is therefore appropriate, and necessary, that once the region has a clear picture of how the Grid West development process turned out, it be given the opportunity to decide whether the effort was a success and implementation should proceed, or whether the resulting organization is flawed and should not go operational. There can be no serious argument in opposition to the idea that the people who will be subject to an organization they have called into being should have the ultimate say as to whether they wish to proceed.

The question of whether the Grid West Operational Bylaws should be adopted by the developmental board must be put to a binding vote of the membership.

5. Conclusion

The WPAG utilities have made a considerable investment in participation in the RRG and Grid West process, including direct participation in the RRG, Bylaws Group and the Transmission Services Liaison Group. Based on this participation, the WPAG utilities believe it would be premature to adopt the Developmental and Operational Bylaws at this time, for two reasons. First, we do not know enough about what Grid West would provide to us to make a informed judgment about whether this is a good idea



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October 25, 2004

Mr. Allen Burns
Executive Vice President for Industry Restructuring
Bonneville Power Administration, R-3
P.O. Box 3621
Portland, Oregon 97208-3621
503.230.3285

Dear Allen:

The Washington PUD Association has been closely watching the discussions relating to the proposed establishment of Grid West. As you know, we have opposed such establishment efforts on the grounds that less risky and more cost-effective solutions can be found that will preserve regional control over our energy future.

Notwithstanding, Grid West has reached another critical point. November 4 is quickly approaching, the date that has been arbitrarily set as Decision Point 1, which requires an up or down vote of approval from the Regional Representatives Group on the current version of the Bylaws package. Independent of our assessment of the viability of Grid West as proposed, we are extremely concerned that there is insufficient information available at this time to support a rational decision to adopt or not adopt these Bylaws.

We strongly urge you to delay the RRG action until such time as the following information gaps are filled:

1. **Issues Identified in the DeFazio/ Nethercutt Letter of Sept 13, 2004.** These Northwest legislators posed numerous specific questions to BPA and the Filing Utilities that have not been answered.
2. **Incomplete Market Design.** The market design should be proposed in sufficient detail to conduct and present a legitimate cost-benefit analysis for review, discussion and ultimate acceptance and approval, or at least understanding, by the region.
3. **National Academy of Public Administration (NAPA) Study and Response.** The region needs sufficient time to review and analyze the final NAPA study of the Grid West Bylaws and any proposed amendments.
4. **Henwood Study Response.** The region needs sufficient time to review and analyze the recently published Henwood Study of the economic impacts of Grid West on the region.

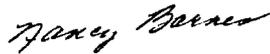
5. **Voting Rights.** Revisions to voting rights for certain membership classes need to be drafted, reviewed and accepted.

6. **Incremental Costs of Grid West Development.** Bonneville states that it can exercise one of several off ramps during the developmental phase, if necessary, but incremental costs incurred by BPA and its customers by moving to the developmental phase should be clearly quantified and justified prior to moving forward.

Again, WPUDA strongly urges BPA to delay moving forward with Decision Point 1 unless and until sufficient, more complete information is available to BPA and its customers to allow a more informed, reasoned decision. In addition, we firmly believe that, during your deliberations, it is important that BPA consider and compare a reasonable range of possible solutions to existing transmission problems, including alternatives to Grid West.

We again thank you and your staff for making yourselves available to us and continuing this dialogue. If you have any questions please call Dave Warren, WPUDA Government Relations Director, at 360.943.0932 or Jim Sanders, Chair of the WPUDA Managers Section, at 509.582.1225

Sincerely



Nancy Barnes
President

Cc: Steve Wright, Bonneville Power Administration
Bud Krogh
Jerry Leone, Public Power Council
John Saven, Northwest Requirements Utilities
Washington Congressional Delegation
Oregon Congressional Delegation
Montana Congressional Delegation
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