

PETER A. DeFAZIO
4TH DISTRICT, OREGON

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INFRASTRUCTURE

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PIPELINES, RANKING

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RESOURCES

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FORESTS AND FOREST HEALTH



Congress of the United States
House of Representatives

September 28, 2005

PLEASE RESPOND TO:

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Mr. Stephen J. Wright
Administrator
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

Dear Steve:

I am writing to share my views on Decision Point 2 with respect to Grid West. I cannot support Grid West as it is currently constructed, and encourage Bonneville to continue discussions on crafting a proposal that would generate broader regional support. It is my understanding that these discussions are expected to take weeks, not months, to complete.

As you will recall, then-Rep. George Nethercutt and I wrote to the Grid West Filing Utilities on September 13, 2004, suggesting a number of reforms to the Grid West bylaws. We wrote at the time, "BPA is accountable to the region via federal laws and regulations, oversight from the congressional delegation, and public and legal pressure from stakeholders. Given this existing multi-layered accountability, any proposal in which BPA turns over the operation and effective control of its transmission system to a private entity must put regional accountability above all else."

I continue to be concerned that regional accountability with respect to Grid West remains too weak. The areas that are of particular concern to me are preventing "scope creep" and imposing tough cost controls on the Grid West budget.

While I await the conclusion of discussions in the region on developing a proposal that could generate broad regional consensus before making a final decision about which of the options to support, I can say that I do not support the current Grid West proposal and urge Bonneville to push for additional accountability features should Grid West remain one of the options on the table. For example:

- The votes of the Member Representational Committee (MRC) remain advisory. Even if the MRC votes against a given proposal from the Grid West Board of Trustees, the Grid West Board can ignore the wishes of the MRC if 7 of 9 Board members vote to do so. Member votes should be binding, not merely advisory.

- If the Board chooses to ignore an MRC vote against a Board proposal, the proposal is remanded back to the Board. But, the Board needs only to wait 30 days to go forward with implementation of its original plan if 7 of 9 members continue to support it. My previous letter suggested that a negative MRC vote trigger a remand for a much lengthier time period during which the Board would be prohibited from considering the issue again and any effort to move on the proposal after the remand time had expired would require another MRC vote.
- The threshold for voting to move from the developmental to the operational stage, which requires a simple majority vote of the MRC (16 votes), is too low. By contrast, the vote threshold for removing members of the Board of Trustees is higher, 20 votes (2/3rds of the MRC). At a minimum, the threshold for moving to the operational stage should be raised to 20 votes.
- Similarly, the threshold for approving Board action on special issues list is too low (16 votes, a simple majority). At a minimum, the threshold should be raised to 20 votes.
- Further, as I mentioned in my September 2004 letter, the special issues list is too narrow. Significant additional issues not yet foreseen could come up that would fall outside these six specific areas. The bylaws should broaden the instances in which the additional procedural/vote hurdles would apply to include any proposal that is expected to increase total transmission costs to any class by 5%.
- The threshold for the MRC expressing concerns about scope changes proposed by the Board is 18 votes. This should be lowered to a simple majority, 16 votes, and as proposed earlier, a vote of the MRC against a Board proposal should be binding on the Board, not subject to override with 7 votes. A further hurdle to scope creep - blocking a Board proposal if a single class unanimously votes against a proposal even if the 16 vote threshold is not met - should also be considered.
- The threshold for removing Board members is too high (20 votes, 2/3rds of MRC). To increase regional accountability, the threshold to remove members of the Board for cause or without cause should be lowered to a simple majority of the MRC.
- While the budget controls are much improved over earlier iterations, they are not strong enough. The threshold for triggering additional procedural hurdles (MRC advisory vote, supermajority Board vote) is if the budget exceeds by 15% or more the lowest projection for that year in the previous 3-year budget forecasts. That threshold is too high. My previous letter recommended a 5% threshold.

I also remain concerned about the implications of additional FERC jurisdiction under Grid West both for Bonneville and its public utility customers. Advocates of Grid West have argued that the fear of FERC jurisdiction is no longer justified because (1) Grid

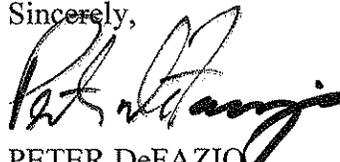
West will not be an RTO and will file under Order 888 (which BPA already voluntarily complies with and IOUs must comply with) rather than Order 2000, (2) FERC has issued a declaratory order that expressed the regulators intention to allow Grid West to develop without unnecessary interference from FERC (3) the Energy Policy Act of 2005 already includes expanded FERC jurisdiction over the transmission service of public power entities, including Bonneville, and (4) a recent ruling of the Ninth Circuit in *BPA v. FERC* limits FERC's jurisdiction over governmental entities.

However, I have also been briefed by opponents of Grid West who take no comfort in the aforementioned developments with respect to FERC and Grid West because (1) Grid West, as a jurisdictional entity would be forced to comply with whatever future dictates FERC puts out regardless of what Order its filed under and regardless of the declaratory order from the current commissioners (which is not legally binding on future commissions), which is of understandable concern given FERC's abysmal performance of the last several years including during the 2001 energy crisis and it's crazy standard market design scheme, (2) FERC is currently considering rewriting Order 888 and it's not clear what will come out of that process, and (3) the jurisdiction provided under the EPA of 2005 is qualitatively different than the jurisdiction that would be granted to FERC by Grid West.

I would appreciate it if BPA could provide me with your view on the FERC jurisdictional issues raised by these parties.

Thank you for your careful consideration of the issues raised in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter DeFAZIO". The signature is stylized and cursive.

PETER DeFAZIO
Member of Congress