SNOHOMISH COUNTY PUD
PUBLIC UTILITY DISTRICT NO. 1

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

September 9, 2005

Submitted online at http://www.bpa.gov/comment

Stephen J. Wright
Administrator & Chief Executive Officer
Bonneville Power Administration
Attn: Communications – DM-7
P.O. Box 14428
Portland, OR 97293-4428

Re: Project Title: Open Comment Period – Decision Point 2

Dear Administrator Wright:

By your letter dated August 4, 2005 you requested comments on "ways to improve operation and management of the Northwest transmission system." BPA set September 9th as the deadline for comments and said that BPA "expects to announce its decision by September 29, 2005" when BPA states that it will choose to pursue Grid West, the TIG alternative, or "adopt the Continue Separate Operations alternative."

The Snohomish County PUD No. 1 Board of Commissioners provided a separate cover letter to you. This letter provides further detailed comments and also addresses the fourteen questions that BPA posed in its request for comments.

I. BACKGROUND

As BPA's single largest power customer and as a customer that must rely on BPA's high voltage transmission system for the delivery of that power, we are vitally interested in what is the most significant and far reaching change proposed for governing and operating the federal transmission system in decades. Snohomish is a public utility and a municipal corporation in the State of Washington, formed by a vote of the people in Snohomish County in 1936 for the purpose of providing electric and water service. Snohomish PUD serves a population of over 656,000 in one of the fastest growing areas of Washington State. We are the second largest publicly-owned utility in the Pacific Northwest and the twelfth largest in the nation, currently serving over 300,000 homes and businesses. Major customers include the Boeing Everett plant, Kimberly-Clark, the U.S. Navy's Everett Homeport and key biotech companies.[1] BPA is the primary source of electric power for Snohomish, supplying over 700aMW of power from the Federal Columbia River Power System.[2] Snohomish is BPA's largest power customer

[1] Additional information about Snohomish can be obtained from the "2005 Quick Facts" document that is attached to this letter as Exhibit 1.

[2] BPA serves more than 100 public agencies (including Snohomish) and rural electric cooperatives, who, by law, have "preference and priority" to power produced at the network of federal dams and other sources. 16 U.S.C. § 832c(a).

purchasing 10% of BPA's power. All of this power is delivered on BPA transmission lines. As a result, Snohomish County PUD and its customers pay approximately ten percent of BPA's power costs.[3]

Snohomish relies as much or more than any other single entity in the Northwest on the reliable operation of the transmission system. We have a point to point transmission contract with BPA in order to deliver power from the Federal Columbia River Power System in eastern Washington across the Cascade Mountains to Snohomish County.

Until five years ago Snohomish PUD customers enjoyed low and competitive power rates. Then in 2001, BPA raised its wholesale power rates to record high levels. In letters to the region, the BPA Administrator said "an extreme market" was largely responsible for the record rate increase.[4] As the facts emerged, it became clear that the record high increase in power rates was driven in large part by a combination of a seriously flawed deregulation experiment in California that created the California Independent System Operator, (Cal ISO) which in turn was systematically and massively manipulated by Enron and others.[5]

Snohomish has spent millions of dollars so far investigating the details of Enron's actions to manipulate the California Independent System Operator, transcribing Enron trader tapes, obtaining Enron emails and in general bringing to light the various schemes to create artificial conditions on the West Coast transmission system in order to exploit what one email called "billion dollar loopholes." Enron's schemes involving the abuse of the transmission system had names such as Death Star, Fat Boy, Ricochet, and Donkey Punch. Books have now been written about Enron's crimes and Snohomish will take Enron into proceedings before the Federal Energy Regulatory Commission ("FERC") in a few months to prevent Enron from taking further money from victims of Enron's illegal market manipulations. Congress, in passing the Energy Act of 2005, included a provision introduced by Washington State's U.S. Senator Maria Cantwell that clarified where that Enron proceeding would take place, estimating that Enron was seeking a "termination fee" that would amount to over $400 from each customer of Snohomish County PUD.

Thus, when BPA proposed to vote in favor of a process to transfer control over the federal transmission system to a private transmission corporation last year ("Decision Point 1"), Snohomish was still uncovering details of Enron's schemes to manipulate the California version of an independent system operator, Cal ISO. We took the position that the first priority and the first principle must be to do no harm.

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[3] In the past four years, BPA has raised its wholesale power rates to record-high levels. Snohomish's ratepayers, particularly low-income and business customers, have been hit hard, and the region has lost a key economic advantage. Our largest customer, Kimberly-Clark, may be forced to close its Everett plant, which employs approximately 860 people, because its power rates, once one of the lowest in the United States among Kimberly-Clark plants, are now among the highest. Our low-income customers continue to struggle to pay their electric bills, resulting in record disconnect rates. With record-high BPA rates and key customers struggling to pay existing bills, Snohomish ratepayers cannot afford further BPA cost increases.

[4] BPA Letter to the Region, Mar. 29, 2001 (Exhibit 2).

[5] FERC, *Final Report on Price Manipulation in Western Markets*, Mar. 2003 (Exhibit 3).

Snohomish PUD and twelve other Washington State utilities commissioned a study from a highly-regarded firm with extensive West Coast modeling capability and experience to perform a cost/benefit study, which showed that costs would exceed benefits by over $100 million a year and that most of the stated reasons for forming an RTO West or Grid West could be met by other reforms that BPA itself could put in place without transferring control to a private corporation.[6]

Snohomish participated in the American Public Power Association efforts to evaluate the experience of public power with other transmission system experiments in other parts of the country, which resulted in a study that came out the day BPA voted in favor of "Decision Point 1."

This background is intended to underscore the fact that Snohomish has studied these issues thoroughly, and we do not come to our conclusions lightly. We have learned about some, but not all, of the ways in which a new transmission operation can produce unintended consequences that will cause billions of dollars of extra costs to citizens of the West Coast. Among other things, we have also reviewed the reports of the failures of a Mid West independent transmission system operator to contain the Northeast/Mid West blackout two years ago. Some say that the Northwest will not make those same mistakes if it moves forward with Grid West, but there is no success story yet for any of the transmission experiments ongoing in other parts of the country. The fact that the Northwest did not adopt a regional transmission system operator when others did has saved consumers from mistakes that are still being uncovered. In the meantime, BPA and Northwest utilities have built more miles of new transmission lines than any other area of the country that has an RTO or ISO.

We have divided our comments into two sections: general comments and answers to the questions posed by BPA.

II. GENERAL COMMENTS

The American Public Power Association Report of December 9, 2004 states:

> APPA members in RTO regions report substantial, across-the-board problems with spiraling RTO costs, unaccountable RTO governance and ever-increasing provision of RTO services through questionable market mechanisms. These APPA members are unable to obtain or even retain long-term transmission service at just and reasonable rates. This is impairing their ability to enter into the long-term generation resource arrangements they need to provide reliable and affordable service to their end-use customers.

There are no success stories for any RTOs. They are costly, risky and unresponsive to the utilities whose job it is to provide power to our citizen customers.

[6] *Study of Costs, Benefits and Alternatives to Grid West*, Henwood Energy Services, Inc. (Oct. 15, 2004) ("Henwood Study") (Exhibit 4).

The major stated reason for RTOs—that they are able to build more transmission than areas without RTOs—is not true. We in the Northwest have been able to build more transmission than any other part of the country, and we have plans for even more. The problems with the Northwest transmission system identified by BPA in March of 2001 have been largely addressed by major construction decisions and actions.

For nearly 70 years, the Northwest has had an enviable transmission system, which is 80 percent owned and operated by the Federal Government. Like the federal highway system, it is open to all, but it was designed first and foremost to serve the need to move power from the Federal Columbia River System to the citizens of the Northwest, secured by long term transmission contracts. When new transmission lines were built extending to California, our Northwest Congressional delegation first secured Northwest preference provisions so that the benefits of Northwest hydroelectric power would stay in the region.

The current Grid West proposal for a private corporation to operate the regional transmission system will risk the successful and long held Northwest traditions of cost based power, priority for citizen customers, and local control through publicly elected officials.

We agree with APPA that RTOs have not worked. They are expensive, risky, and do not serve the interests of those utilities who are obligated to keep the lights on. There are better, more reliable, and more responsive alternatives available using existing institutions.

Although the Transmission Improvement Group concept was initially on the right track with reforms that could take place within existing institutions and with Congressional oversight, it has changed to the point where there is now a proposed plan for "convergence," which appears to be an effort to proceed with a "Decision Point 2" Grid West corporate board of directors that would oversee the details of the "convergence." We are unable to provide comments on the "convergence" proposal because BPA has not opened the meetings it is having on convergence to all of the regional utilities that would be affected by it. Another meeting is set for September 16th, but most of the region's public utilities are again excluded from attendance.

The new talk of convergence raises more questions than answers. It serves to emphasize the need to step back, take a time out, and carefully examine the experience and failures of other regions—and to ask how the major changes in the just enacted Energy Policy Act of 2005 will affect the Northwest. As another example of the need to step back, just this week the Ninth Circuit issued an opinion that said publicly owned utilities are exempt from certain refund liabilities, and news accounts of the decision quoted a BPA attorney saying that this removed a $48 million potential BPA liability. But that protection may well have been lost if Grid West had been in place.

The following are a few of the fundamental issues that have yet to be carefully addressed:

Impact of Energy Policy Act of 2005 – Native Load, Reliability Standards, FERC-Lite, and Order 888

The Energy Policy Act of 2005 includes a number of features that will change the Northwest transmission system, whether that involves the status quo, Grid West, or Transmission Improvements Group. These changes involve mandatory reliability standards applicable to all control area operators, FERC-lite, and native load and contract protections. In addition, the Federal Energy Regulatory Commission has scheduled on September 15, 2005 agenda what appears to be the long-promised re-opening of Order 888. These imminent actions may fundamentally change the scope and schedule for both Grid West and TIG. At the very least, Bonneville and the region deserve the opportunity to review the re-opened Order 888 to determine how it affects both proposals. This strongly argues for deferring Decision Point 2.

Integrated System (Generation, Transmission, and Load Need to be Considered Together)

With the passage of the 1992 Energy Policy Act and ensuing FERC rules, utilities have lost much of their cohesively-planned generation and transmission to meet load. In the Northwest, however, Bonneville retains much of this role for the public power utilities it serves. By shifting transmission control to Grid West, the Northwest gains a single transmission planner, but it loses the only regional planner able to plan for loads, generation, and transmission on a consistent basis.

Native Load versus Power Marketers

Very specific features of the 2005 Energy Policy Act emphasize the priority of native load service over purely commercial transactions. It is not clear how the Grid West proposal will achieve this requirement, nor is it clear how Bonneville interprets this language for its transmission customers.

Environmental Implications

It is beyond question that the activities of Grid West will have a measurable impact on the environment. As the provider of power for 658,000 residents of Snohomish County and Camano Island, Snohomish is concerned that implementation of the Grid West proposal will generate environmental impacts touching all parts of our region. There is very little information in the Grid West proposal about potential environmental impacts, including the construction of additional transmission infrastructure and its possible encouragement of additional generation facilities. For example, increased transmission efficiencies in certain parts of the region (enabling the efficient transmission of power over greater distances) may spur construction of low-cost coal-fired and fossil fuel power plants, generating large amounts of pollutants affecting areas downwind of the plant and influencing global warming trends.[7] Because of the real

[7] For a more complete discussion of the potential environmental impacts of Grid West on the region, including Snohomish County, see the Bridgewater Group, Inc. memorandum, entitled "Air Quality Implications of Grid West" and dated September 8, 2005 ("Bridgewater Memorandum") (Exhibit 5).

potential for significant environmental impacts, BPA should educate itself and the region by conducting an environmental review prior to determining which proposal to support going forward, or whether either proposal is sufficient.

BPA Must Satisfy the Requirements of the National Environmental Policy Act of 1969 ("NEPA")

NEPA requires that BPA prepare a detailed environmental impact statement ("EIS") as close as possible to the time it develops a "proposal" for its actions "significantly affecting the quality of the human environment."[8] BPA has been a participant in Grid West since its inception and helped create a "Regional Proposal" forming the framework for Grid West in 2003.[9] However, BPA failed to prepare the EIS required by NEPA as soon as it developed the Grid West "proposal."

Currently, BPA is preparing to make a decision whether to move forward with one of several alternative proposals, all of which will significantly affect the human environment. NEPA requires that a comprehensive EIS examining the environmental affects of the alternative proposals be a part of that decision.

On December 22, 2003, BPA recognized its NEPA responsibilities when it issued a "Notice of Intent" to prepare an EIS on transmission planning issues, which would have examined the environmental impacts of transferring its transmission duties to an independent entity such as Grid West.[10] BPA acknowledged that it needed to "provide an assessment of the potential impacts on the human environment associated with each of the alternative" policy directions.[11] BPA further admitted it needed an EIS to:

> [L]ook at a broad range of policy options for supporting decisions on issues related to the planning, construction, operation and maintenance of the transmission infrastructure. In addition, it [the EIS] will support decisions on other issues associated with: non-wire options to improve reliability, *the development of a Regional Transmission Organization*, marketing, sales and rate-making obligations.[12]

BPA also acknowledged that an EIS would provide "*a tool for BPA to help meet the intent of NEPA to fully inform the BPA Administrator and the public on transmission decisions* … and … assure National Environmental Policy Act compliance for future BPA actions."[13] BPA highlighted the magnitude of the proposed new entity when it declared: "There are serious problems with Northwest transmission that need to be addressed."[14] As BPA has recognized,

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8 42 U.S.C. § 4332; 40 C.F.R. § 1502.5.

9 *Narrative Description of RRG Platform Group Regional Proposal* (Dec. 24, 2003) (Exhibit 6).

10 68 FR 71101-02 (Dec. 22, 2003).

11 *Id.*

12 *BPA Transmission Business Policy: Environmental Impact Statement* (Jan. 2004) (Exhibit 7) (emphasis added).

13 *Id.* (emphasis added).

14 Decision Point 2 Letter, at 10 (Exhibit 8).

these problems have significant environmental effects that must be examined.[15] However, despite its acknowledgement of the need for an EIS and its importance, and despite extensive involvement in the Grid West "proposal" by BPA, the promised EIS has not been created. In fact, BPA has reversed track and now states that there is no need for such a statement.[16]

As BPA has stated, "In September, BPA will decide whether to provide additional funding to Grid West to seat a Grid West Developmental Board and further develop the *proposal*. Alternatively, BPA could support further development of the TIG alternative."[17] BPA goes on to request that customers "read the *proposals* of the respective organizations carefully" before responding.[18]

There can be no question that BPA has been presented with a choice between two proposals. Furthermore, there can be no question that this choice will have significant environmental affects on the region. As just one example, a 2002 study commissioned by BPA found that establishment of an entity similar to Grid West would cause an increase in coal plants in the region.[19]

A more recent study on the potential environmental effects of Grid West confirms that it could result in "significant displacement of cleaner hydroelectric and gas powered resources, … with coal-fired generation."[20] Grid West's affects on transmission construction may also have environmental consequences to air quality, water quality, noise, flora and fauna habitat, EMF and others.

NEPA requires an EIS examining each alternative prior to making a decision regarding which one to support. A timely EIS will allow BPA to evaluate all aspects of the various proposals, not merely the economic effects. Furthermore, timely preparation of an EIS is mandated by the law, which requires preparation at the earliest possible stage of the agency decision-making process.[21]

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[15] On February 19, 2005, Snohomish filed a Petition for Review with the Ninth Circuit requesting that BPA prepare an EIS before moving forward with Grid West. Snohomish hereby incorporates by reference all documents attached to the briefing in that case. (*Public Utility District No. 1 of Snohomish County, Washington v. Administrator, Bonneville Power Administration* Case No. 05-70928 (Exhibit 9)).

[16] *See* 69 FR 68138-39 (Nov. 23, 2004); BPA Questions & Answers, *An Interview with the Managers for the Supplement Analysis to Bonneville Power Administration's Business Plan Environmental Impact Statement* (Dec. 20, 2004).

[17] Decision Point 2 Letter (emphasis added).

[18] *Id.* (emphasis added).

[19] RTO West Benefit/Cost Study: Final Report Presented to RTO West Filing Utilities (Exhibit 10).

[20] Bridgewater Memorandum.

[21] *See* 40 C.F.R. § 1502.5 (requiring commencement of EIS "as close as possible to the time the agency is developing or is presented *with a proposal*" (emphasis added)); *Defenders of Wildlife v. Andrus*, 627 F.2d 1238, 1243 (D.C. Cir. 1980) (requiring issuance of EIS once agency "reaches the point in its deliberations when it is ready to propose a course of action"); *Idaho Sporting Congress Inc. v. Alexander*, 222 F.3d 562, 567 (9th cir. 2000) (requiring preparation of an EIS early enough to serve an important contribution to the decision-making process, not to rationalize decisions already made); *Save the Yaak Committee v. Block*, 840 F.2d 714, 718 (9th Cir. 1988) (finding that failure to prepare EIS at earliest possible time may lead to inflexibility and after major investment of time and money, more environmental harm will likely be tolerated).

BPA cannot avoid its NEPA obligations by segmenting the implementation of Grid West into four decision points. The Council on Environmental Quality ("CEQ"), which promulgates NEPA regulations, requires that "proposals, or parts of proposals, which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement."[22] Actions are connected if they cannot proceed unless other actions are taken previously or simultaneously.[23] This is precisely what BPA has done in its incremental decision-making process for Grid West.

When asked in November 2004 to prepare an EIS before voting to adopt the Grid West Developmental Bylaws at Decision Point 1[24], BPA responded that "there is no upcoming decision that would constitute a final action [and therefore] BPA has not prepared, nor is it required to prepare, … a NEPA assessment."[25] However, BPA misconstrues its NEPA responsibilities which require that it prepare an EIS as soon as possible to the point at which it has developed a proposal.[26] BPA admittedly has before it proposals for Grid West and TIG and is about to choose between them.

With respect to Decision Point 2, BPA has made it clear that it will "abandon" all other proposals in favor of developing one. BPA is thus making a final decision as to which proposal it will support going forward. Before BPA makes its final selection and abandons all other options, a comprehensive EIS must be generated and evaluated. NEPA requires as much.

The Actions of Grid West Will Likely Fall Outside the Requirements of NEPA

Snohomish is further concerned that Grid West, should it reach its operational stage, will not be subject to the requirements of NEPA in its management of the region's transmission grid. If that is the case, construction and other projects undertaken by Grid West will be permitted to proceed without any Federal environmental oversight, no matter how significant the environmental impact.

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[22] 40 C.F.R. § 1502.4(a); *see also* 40 C.F.R. § 1508.25(a) (requiring "connected actions" to be analyzed in a single EIS). Further, the Courts have repeatedly held that an agency cannot avoid its NEPA obligations by segmenting decisions into smaller parts, each of which the agency claims has no significant impact on the environment. *See Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 894-95 (9th Cir. 2002) (agency may not divide or segment its actions to avoid NEPA obligations); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214-15 (9th Cir. 1998) (quoting 40 C.F.R. § 1508.27(b)(7)) (finding "[s]ignificance cannot be avoided by breaking down [an action] into small component parts," and an agency's attempt to do so is arbitrary and capricious); *see also Kleppe v. Sierra Club*, 427 U.S. 390, 408-09 (1976).

[23] *Id.*

[24] On December 2, 2004, Snohomish filed a Petition for a Writ of Mandamus with the Ninth Circuit requesting that BPA prepare an environmental assessment of Grid West before voting to adopt the Grid West Developmental Bylaws. The District hereby incorporates by reference all of the documents attached to the briefing in that case. (*In re Public Utility District No. 1 of Snohomish County, Washington v. Administrator, Bonneville Power Administration* Case No. 04-76212 (Exhibit 11))

[25] Letter to Stephen Wright, BPA Administrator, from Michael A. Goldfarb, Nov. 9, 2004 (Exhibit 12); Letter to Michael A. Goldfarb, from Randy A. Roach, BPA General Counsel, Nov. 12, 2004 (Exhibit 13).

[26] 40 C.F.R. § 1502.5.

For an action to be subject to NEPA, it must be shown to be "Federal."[27] As a Washington non-profit corporation, Grid West will not be directly subject to NEPA's requirements, including the creation of an EIS prior to undertaking activities likely to have a significant environmental impact.

The Ninth Circuit has yet to formulate clear standards for defining the point at which an agency's participation in a non-Federal project is sufficient to be considered a "major Federal action." Instead the Ninth Circuit has declared that the matter "is simply one of degree," where "marginal" Federal action is not enough.[28] Therefore, there is no guarantee that Grid West would be subject to NEPA's environmental requirements. If BPA fails to retain sufficient influence and control over Grid West's actions, the EIS requirements of NEPA will be inapplicable to Grid West's management of the Northwest transmission grid.

BPA has not disclosed how it will ensure that it continues to meet its environmental protection obligations – including NEPA. Snohomish is concerned that excessive reliance will be placed upon the accountability provisions included in the current Grid West governance structure, which FERC has approved, particularly the alleged right to withdraw from the organization. As Louisville Gas & Electric discovered when it attempted to withdraw from the Midwest ISO, such a right can be extremely difficult and costly to exercise.[29]

Before BPA makes a decision whether to support Grid West, it must take environmental factors into account and ensure that Grid West will take appropriate responsibility for the environmental effects of its actions.

BPA is Required to Issue a Record of Decision on Decision Point 2

BPA's decision to choose to pursue one proposal at the expense of others is a reflection of a major regional power policy determination by BPA to support establishment of a regional transmission organization. BPA recognized this when it began a public comment forum on adoption of the Grid West Bylaws and continued this forum to the current decision. Further,

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[27] *See* 42 U.S.C. § 4332; *Friends of the Earth, Inc. v. Coleman*, 518 F.2d 323, 327 (9th Cir. 1975).

[28] *Ka Makani 'O Kohala Ohana Inc. v. Water Supply*, 295 F.3d 955, 960 (9th Cir. 2002).

[29] As BPA is aware, Louisville Gas & Electric ("LG&E") and Kentucky Utilities ("KU") have been attempting to withdraw from the Midwest ISO ("MISO") since mid-2003 because MISO "charges millions in membership fees, but provides modest benefits." Assoc. Press, *Pullout Could Affect Electric Bills*, LEXINGTON HERALD-LEADER, Apr. 11, 2004, at B3. The cost-benefit analysis performed by LG&E & KU's parent corporation concluded that ratepayers will save more than $65 million over the next five years, even after paying MISO a $23.8 million exit fee. LCG Consulting, *Outlook Questionable for LG&E's Participation in the Midwest ISO*, ENERGYONLINE DAILY NEWS, Dec. 29, 2004, *available at* http://www.energyonline.com/news/articles/ArticleFor122904.asp (last visited Sept. 1, 2005); *Pullout Could Affect Electric Bills*, LEXINGTON HERALD-LEADER. While the process of exiting MISO began in July 2003, it has not yet been completed, and is expected to continue into at least the fourth quarter of 2005. LG&E Second Quarter Form 10-Q (Aug. 12, 2005) (Exhibit 14). Furthermore, the potential exit fee has increased, as LG&E now reports that MISO may seek an aggregate exit fee of up to $40 million, with "most or many of the MISO-related costs to be recovered in [LG&E's] rates charged to customers." *Id.* The drawn-out experience of LG&E, particularly the increasingly exorbitant exit fee, illustrates the difficulties inherent in departing a formed and functioning organization, even if the right to exit technically exists.

BPA's own Policy on Public Involvement mandates that BPA prepare a Record of Decision for all "major regional power policies."[30] Under the policy, which was formulated to address BPA's public involvement duties under the Northwest Power Act, a major regional power policy is:

> An agency statement of future effect and general applicability designed to implement, limit, or prescribe policy which the Administrator identifies as involving major regional power issues.[31]

BPA's decision to pursue and further fund a single proposal clearly reflects a major regional power policy. The proposals are each separate statements of future effect, and BPA is choosing that which it believes will best implement BPA's transmission policy.

Furthermore, BPA recognized that its decision was a major regional power policy when it instituted a public comment forum, as described in its Policy for Public Involvement, on the each of the Decision Points.[32] However, BPA did not continue the process prescribed by its Policy on Public Involvement by issuing a decision document with respect to the adoption of the Grid West Bylaws in Decision Point 1.[33] BPA's Policy for Public Involvement mandates:

> "Following the comment period on a notice of proposed policy, a decision document shall be completed. The decision document shall be signed by the Administrator and made a part of the public record. The decision document shall include:
>
> 1. A description of the proposed action;
>
> 2. A summary of the comments received on the proposed action;
>
> 3. An evaluation of the proposed action and other alternatives which have been recommended or identified by the public or BPA;
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> 4. The Administrator's decision; and
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> 5. A concise summary for the reasons for the decision."[34]

When BPA determines whether to pursue Grid West, the TIG alternative, or "adopt the Continue Separate Operations" alternative, Snohomish PUD believes it must issue a decision document as required by BPA's own policy.

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[30] Bonneville Power Administration, *Policy for Public Involvement*, BPA File No. PI-1 (Jul. 30, 1986) (Exhibit 51).

[31] *Id.*

[32] *Id.*

[33] A decision document is a Record of Decision as requested by the District in its Writ of Mandamus. See BPA Explanation of Policy on Public Involvement: "This document combines and replaces the functions of the evaluation of the record and record of decision which were required by the previous procedure." *Id.*

[34] *Id.*

II. ANSWERS TO QUESTIONS POSED BY BPA

1. Do you agree with BPA's goal of applying the "one utility" vision to the region's transmission system?

This question cannot be answered in isolation. There are other important goals and visions for the Northwest that are embedded in federal and state law that have served the region well for decades:

- Cost-based power including cost-based Federal Columbia River System power
- Regional preference
- Public preference
- Local control and accountability
- Priority for end-use customers rather than power marketers and traders
- Congressional oversight
- State regulatory responsibility
- Environmental stewardship and protection

A BPA published book by Dan Tollefson, "BPA and the Struggle for Power At Cost," documents the struggle of the Northwest to obtain the goals of power at cost, regional priorities and public preference with Congressional oversight and assistance. If a "one utility" grid vision interferes with those existing visions and priorities, then we do not agree with BPA's vision. The trouble is that BPA has not asked the right questions or taken the time to get complete answers.

Some of the questions that need to be asked about whether this separate transmission vision comes at the expense of other more important goals are as follows:

- How exactly will Grid West make a decision between building a new line to a distant coal plant compared to building a project closer to customers or a conservation alternative? Is it first come first serve? Is it based on an evaluation of the cost of generation? Miles of line? Number of Customers served? Does this mean that effectively a Grid West Board also becomes the main decision-making body for the region on where new generation projects get built?

- What if a new line is proposed that would enable significantly more regional power to move out of the Northwest to California or the Southwest under long-term contracts? Would Grid West have to obtain permission from the Congressional delegation or the Regional Power and Conservation Council? What would such a new line do to maintaining Regional Resource Adequacy standards? Would this effectively mean

that California would be competing with Northwest regional utilities for Northwest regional power? Would regional publicly-owned utilities be tempted by added long-term transmission capacity to California to sell power outside the region under long-term market based contracts—instead of selling cost based power within the region?

- How exactly will scarce resource dollars for new transmission projects be allocated? Will native load customers obtain priority for new lines or will market-based decisions determine what new lines get built first?

- How will existing utility customers be protected from the costs of transmission projects that link distant generation projects when those projects go bankrupt? If a coal plant in Wyoming is connected by a regional transmission line but the developer goes bankrupt due to new regulatory requirements or market forces, will the customers of regional utilities be required to pick up the obligation to pay the costs of the line? (BPA recently was evaluating whether to build several G-20 transmission projects to link gas-fired Combined Cycle Combustion Turbines to the grid. Those lines were not built, but if they had been, the lines would have been lines to nowhere because the cost of natural gas has skyrocketed in the last four years, making such plants uneconomic.)

- How will Grid West govern the Canadian part of the "one utility grid"? BCTC announced at a NWPPA conference in Portland this year that it is planning to spend $3 billion dollars on new transmission in the next few years—whether or not Grid West is formed. How will that be integrated into a one grid vision? PowerEx recently argued in court in California that it has sovereign immunity from U.S. regulatory jurisdiction.[35] What would be the effect if the claim of sovereign immunity is eventually upheld for Powerex, BC Hydro or BCTC?

- How will environmental concerns be addressed if Grid West is an independent private corporation? The first question is whether Grid West would be subject to environmental laws that currently protect Northwest citizens? If so, environmental laws require that alternatives be examined. For example, how will Grid West examine conservation alternatives? How will the alternatives of distributed generation or any generation closer to customers be evaluated? If Grid West is not subject to environmental laws, how will Northwest citizens be protected? Does that mean that usual environmental safeguards will be circumvented?

In seeking a one utility grid vision, BPA fails to understand that it is currently able to (and must by law) compare integrated solutions and alternatives to building more transmission. In the past, vertically integrated utilities looked at integrated solutions. BPA must in effect look at integrated solutions today because of environmental laws and the 1980 Regional Power Act that created the Regional Power and Conservation Council. If BPA fails to look at and choose the optimal regional integrated solution, citizens can now request that the Congressional delegation review the BPA decision and provide redirection when necessary.

[35] Energy NewsData, *Clearing Up*, Sept. 5, 2005 (Exhibit 16).

But by splitting BPA power decisions from BPA transmission decisions, the ability to have a true integrated one utility vision will be lost. Power decisions and conservation decisions will be separated from transmission decisions. The desire to keep "a market participant" (e.g., BPA) from a role in Grid West is not a good thing; it is a bad thing in terms of integrated utility planning. The very utilities that must make decisions on new power supplies cannot by definition influence the decision making of a Grid West board that will look at every issue from only one perspective—transmission. Who will integrate the parts into a whole?

In other parts of the county with an RTO or ISO, the goals of local customer priority and integrated generation and conservation planning have been lost. That is why it is so important that the lessons in the APPA report are known and understood.

Transmission is just a means to other important ends. Grid West will result in the transmission "tail" wagging the rest of the integrated utility generation, load service, conservation, and reliability "dog."

We currently have in BPA the ability to integrate decision making. BPA operates nearly 80% of the transmission system and provides 55% or so of the power generation in the region. We already have what other regions would like to have—an integrated system of generation and transmission largely governed by a government agency that should be above market forces and be able to make decisions based on the public interest. To the extent that it is valid, the stated fear that BPA may not be independent can be dealt with separately with a board as is the case with TVA.

The regional Congressional delegation currently serves as the unofficial board of directors for BPA, but that could be made more secure in the form of a Congressionally nominated Advisory board. One wonders what Senator Jackson would think of transferring BPA transmission control and operation to a private corporation with no Congressional oversight.

Ironically, the Pacific Northwest Coordination Agreement ("PNCA"), cited by Administrator Wright and BPA in its August 3 letter asking for comments as an example of the "one utility" concept, provides a strong counter-example. Bonneville points out that PNCA has produced substantial improvements in the operation of the regional *generation* system through coordinated operation of hydro and thermal resources owned by a host of different utilities. These benefits were achieved, however, through contract *without* the creation of a substantial new bureaucracy, and in a manner that is fully accountable to the electric consumers of this region, their elected representatives, and regional regulators.

Snohomish believes Bonneville should now withdraw from Grid West and search for less costly and disruptive avenues to achieve the benefits of a true integrated "one utility" concept. This approach would rely primarily upon bilateral contracts and existing institutions and infrastructure, and thereby obtain whatever benefits are available at the least possible cost. While this was part of the original concept of TIG, Snohomish believes the current TIG proposal has changed from that original concept and requires careful scrutiny before Bonneville elects that option to ensure that the integrated vision of cost based public and regional preference power is not lost.

2. Please describe how well you think each alternative achieves the six benefits described on pages 2-3 of this letter (planning and expansion, reliability, ATC, congestion management, market monitoring and one stop shopping.)

The Northwest region has a history of working together to solve the transmission problems of the region without an outside organization stepping in to force the issues. The TIG proposal takes that pattern and expands it with bilateral contracts to solidify in legal terms what is happening today.

Transmission Planning and Expansion

The TIG proposal formalizes the planning and expansion for the region. There are contractual commitments by utilities to participate in a regional transmission plan. Since TIG's approach still has local control of the process, the planning can include all alternatives and not just transmission solutions. This approach gives the region the most cost effective solutions to the reliable expansion of the region's transmission system. It approaches the transition in increments so that mid-course corrections to the process can be made at the agreement of all of the stakeholders.

Flow-Based ATC Calculation

The TIG proposal again expands what is currently happening in the region. BPA is working on the ATC flow-based calculations. The TIG alternative proposes an independent agent perform system-wide, flow-based approach.

Congestion Management

A Common Oasis is proposed in the TIG proposal. This along with the enhanced planning functions and region wide Flow-based ATC gives the region a large step towards managing the congestion of the Northwest region. They all can be implemented now as an extension of the current contracts that utilities have in the region and should proceed forward rather than be hampered by the regional discussion of the TIG/Grid West.

The Grid West proposal has made a professional effort to describe how it would approach all of the issues in the region, but it has also proposed an independent board that is not bound by contract to follow any of the proposals in the Grid West document.

Both TIG and Grid West propose voluntary Consolidated Control Areas. Both proposals over estimate the benefits and under estimate the costs of the consolidated control areas. This particular aspect of the Cal ISO is where loopholes were created that allowed the western energy crisis of 2000 – 2001. There is still significant work that needs to be done in this area before the Northwest region should venture forward. It is mentioned in the Grid West white paper that Grid West would purchase the system that PJM is currently using. The PJM RTO, among all of the RTOs and ISOs, has one of the largest operating costs and has no similarity to the Northwest region. The TIG proposal could proceed with this work cautiously under regional control so all

stakeholders would have a chance to review each step and approve the financial investments before the consolidation takes place.

Consolidated control areas theoretically provide a better view of the overall system conditions but this does not necessarily result in better reliability as the 2003 Midwest/Northeast blackout dramatically demonstrated. What is needed are systems and tools to monitor the system status, provide meaningful information to operators, and, when ultimately needed, protect from cascading outages. In the end, good information and decision systems, adequate system operator training, appropriate vegetation management, and reserve margins in the system are what provide protection from cascading outages.

The Evidence Demonstrates that Grid West Will Actually Harm Reliability

Bonneville assumes, without evidence, that the centralized operations envisioned in the Grid West proposal will necessarily improve system reliability. The evidence developed during the RTO West process, however, casts serious doubt on this assumption. Indeed, a study commissioned by Bonneville demonstrates that Grid West may well harm electric system reliability rather than improve it.

During the development of the RTO West Stage Two proposal, BPA commissioned an independent study by Schweitzer Engineering Laboratories of the likely impacts of RTOs generally on the reliability of the power and transmission system.[36] The Schweitzer report is described as a "risk assessment" of the potential effects of RTOs, and in particular the centralization of control area and grid management functions, on reliability. The report assumes that RTOs will be established in every region of the country and therefore identifies potential reliability problems and solutions. It is clear, however, that many of the most severe reliability problems identified by Schweitzer are inherent in a new and centralized structure as proposed by Grid West, and can be mitigated only partially, if at all.

Schweitzer evaluated 48 potential impacts of RTO formation on reliability.[37] The risk assessment attempted to rank both the likelihood and the magnitude of the positive and negative effects, giving each effect a value between +25 (most likely and greatest positive effect) and –25 (most likely and greatest negative effect). Of the 48 potential impacts, 36 were given negative scores by Schweitzer, indicating the risk that the RTO will reduce reliability. Of these 36, six were given the most negative score. Among them were: the RTO will not put capital where it does the most good; it will reduce security; and it will be a new entity likely to experience start-up problems. These are not trivial problems. Five more effects were described as "neutral": having a value of zero. This left only seven of the 48 effects as positive, and the highest positive score was only +9. Thus, not only is the number of negative effects greater than the number of positive effects, there is a much higher likelihood of more serious negative effects, according to this analysis.

[36] *See* report prepared by Schweitzer Engineering Laboratories for BPA, dated February 22, 2002.

[37] Table 1 in the Schweitzer report lists 48 characteristics, but the numbering system in the report indicates 47 because line number 31 is duplicated.

In the category of risks inherent to centralized transmission structures, Schwietzer concludes that "[m]oving to a new top-level organization does involve transitional reliability risk, such as new systems, people, and training."[38] This conclusion is shared by the North American Electric Reliability Council:

> The transition period from the existing grid operating arrangements to the new world of RTO-managed grids may create some negative system reliability impacts. New systems and organizational structures will need to be implemented over very aggressive time lines. Operational and reliability issues include intra-RTO congestion management procedures, transfer of security coordination responsibilities, consolidation of control areas, establishment of uniform switching procedures, etc. The scale of the responsibilities being transferred to these new organizations is unparalleled in the history of the industry. . . . It is essential that the pace of transfer of control from utilities to RTOs be managed to ensure that the reliability of the electric power systems in North America are [sic] maintained.[39]

In addition to these transitional problems, Schweitzer reports that "there are some ongoing risks, such as the information and physical security risks that are heightened" because of the centralization of these functions.[40] In addition, "expecting an RTO to solve the capital-attraction problems of today's industry would only delay the solution of this key issue in building, operating, and maintaining a reliable transmission system."[41] Finally, the centralization of functions in the RTO makes it a prime target for influence by financially or politically motivated forces.[42] Voluminous evidence demonstrating that Enron and other power marketers have abused the rules of the California ISO and PX only heighten this concern. Again, NERC and DOE have echoed these concerns.[43]

In other cases, Schweitzer identified risks to reliability arising from the proposal to consolidate existing control area operators into a single control area operator. He concludes that:

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[38] *Id.* at 11.

[39] NERC Reliability Assessment 2001-2010, p. 23, October 16, 2001 (Exhibit 17).

[40] Schweitzer Report at 11.

[41] *Id.*

[42] *Id.* at 10-11.

[43] NERC Reliability Assessment 2001-2010 Page 23, October 16, 2001. ("Will this large size [of RTOs envisioned by FERC] improve reliability, as has been assumed, or will local reliability needs be sacrificed to promote greater economic efficiency? Who will state regulators look to if local reliability is not being maintained and what authority will they have to correct the situation? These are questions without clear answers."). In addition, the Department of Energy's recently released National Transmission Grid Study similarly states that "[e]ffective operation of RTOs will be technically challenging. The tools and technologies originally developed to support centrally planned, vertically integrated operations are inadequate to manage reliability in competitive, region-wide electricity markets where power flows are driven by market participants whose behavior cannot be predicted using only traditional monitoring and dispatch concepts." DOE, "National Transmission Grid Study", May 2002 at 27 (Exhibit 18).

> [I]f sole control lies with an RTO and its resident experts, the system as a whole could lose the benefit of having regional experts and their close understanding of details inside regional systems. The loss of such knowledge and their vested interest in system operation would make the power system more fragile and therefore less reliable.[44]

Similarly, since a single control area operator would receive data from a vast area, "[t]he RTO operator could be overloaded by vast amounts of data from a much larger area and system."[45] The concentration of data in a single control area operator also presents a significant information security risk: "[i]nformation and control actions need to move around a region of 50 million people; thus, the RTO becomes a prime target of information operations, information warfare, hackers, disgruntled employees, frustrated customers, etc." [46]

Finally, Schweitzer warned that the uncertainty associated with RTO formation will further delay essential investment in transmission assets: "There is no reason to expect that establishing an RTO will solve the problem of attracting capital for the new transmission we need right now. Anticipating that an RTO might help solve this problem may delay the real solutions."[47] Again NERC shares this concern: "[I]n the longer term, it is not clear how some RTOs will identify, execute, and pay for necessary transmission system reinforcements…. There is concern that the already slow pace of transmission reinforcement may stop altogether for a period while the new rules are developed."[48] This concern is equally applicable to Grid West – uncertainty about how, when, and whether Grid West would order construction of new transmission facilities and who would pay complicates and retards, rather than encourages, transmission investment.

The Schweitzer report demonstrates that the centralization of transmission control and operation proposed in the Grid West model inherently contains certain risks to electric system reliability, and that the single consolidated control area model in particular poses risks to reliability. While the Schweitzer report assumes that an RTO will be created in the Pacific Northwest, and makes recommendations designed to limit the damage to system reliability created by an RTO, it is clear that these recommendations cannot wholly compensate for the problems created by centralization of system operations.

In short, in assuming that Grid West will improve system reliability, Bonneville appears to have ignored the advice of its own reliability experts in proposing a consolidated control area for the region. Bonneville should therefore reject Grid West in favor of a less-centralized structure that will be less vulnerable to both the transitional and permanent reliability problems identified by Schweitzer. At a minimum, Bonneville should revisit the reliability issues examined by Schweitzer, this time with the assumption that an RTO will not (as has now become manifest) be adopted in the region so that the best structure for ensuring system reliability can be identified.

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[44] *Id.* at 8.

[45] *Id.* at 9.

[46] *Id.*

[47] *Id.* at 10.

[48] NERC Reliability Assessment 2001-2010 Page 23, October 16, 2001.

This is a critical issue because, even under the optimistic assumptions used in the Grid West risk-benefit assessment, only very modest benefits could be identified that would exceed the costs of creating and operating Grid West. If Grid West harms reliability, these modest benefits could be overwhelmed by the costs of even a single broad-scale system outage.

3. How well do you believe the Grid West and TIG proposals meet the goal of effective decision-making that is not unduly influenced by market participants?

Snohomish's evaluation of this question is instructed in large part by the belief that it is not in the long-term interests of the region to establish a new organization that is not directly accountable to transmission owners, transmission users or their end-use customers, and to materially expand the ability of FERC to dictate transmission policy to the region. The ability to make local decisions regarding the Northwest electric system, and particularly the federal power and transmission system, is extremely important to Snohomish and its ratepayers. Both Grid West and TIG provide for decision-making that is not unduly influenced by market participants. However, Grid West goes beyond that and turns over control of the Northwest transmission grid to an independent entity that has no obligation to follow or even consider the needs of the region in its decisions.

Accountability and Decision-Making Must Be Remain With the Region

The Grid West proposal borrows heavily from the FERC RTO model. BPA and other Grid West supporters even went so far as to seek, and ultimately obtain, FERC approval of the independence of Grid West's Board of Trustees.[49] Grid West proposes an independent Board of Trustees with no accountability to any regional regulatory body, or to the regional transmission owners, transmission users or their end-use customers. The Grid West proposal contains a great deal of process through which regional interests can express their sentiments, but ultimately the independent board of Grid West will make the decisions, and it will be accountable only to FERC. The cost of this arrangement is, by definition, greatly diminished regional control over the future of the Northwest transmission grid in general and the Federal Columbia River Transmission System in particular, as well as a major expansion of FERC authority to set transmission policy for the Northwest.

Under the Grid West proposal, the ability of regional transmission owners, transmission users and others to control future policy decisions regarding the regional transmission grid will be greatly limited. Grid West supporters have gone to great lengths to create an entity "truly independent" of the needs or desires of its individual members, going so far as to seek approval from the FERC of the independence standards of Grid West's governing Board of Trustees. *See Grid West Petition* at 38-39. Supporters of Grid West, including BPA, sought FERC approval in April 2005 of certain "issues of critical importance," including the independence of the Board of Trustees.[50] The *Grid West Petition* sought confirmation that the Grid West governance structure met the independence requirements of Order 2000, the relevant portions of which require that

[49] *See Petition of Bonneville Power Administration, et al.*, FERC Docket No. EL05-106 (April 28, 2005) ("*Grid West Petition*") (Exhibit 19); 112 FERC ¶ 61,012 (July 1, 2005) ("*FERC Order*") (Exhibit 20).

[50] *See Grid West Petition*.

(i) the organization, its employees, and non-stakeholder directors have no financial interest in any market participant; and (ii) the decision-making process be independent of control by any market participant or class of participants.[51] The Grid West supporters argued that the governance structure of Grid West "not only meets, but exceeds" the financial independence requirement, and further argued that the Operational Bylaws provide for "an independent non-stakeholder board, balanced member representation, and a Board Advisory Committee open to all members."[52]

In its Order in response to the *Grid West Petition*,[53] FERC staff concluded that the restrictions in the Operational Bylaws created financially independent Trustees and employees.[54] FERC staff also concluded that the decision-making process set forth in the Operational Bylaws is independent of any market participant or class of participants, since the Board of Trustees "has the ability to override the Members Representative Committee with a supermajority vote on matters on the Special Issues list and has final say on these matters."[55] FERC staff noted that "No single class or any combination of two or three classes may force the election or removal of trustees, and no single class may block election or removal of a trustee."[56] While the findings may not bind future FERC Commissioners, FERC has presently endorsed the independence of Grid West from BPA and its other members and market participants.

The provisions in the Grid West proposal providing opportunities to comment, the right to remove board members and the ability of BPA to withdraw from Grid West[57] are no substitute for direct accountability to regional regulators and ultimately to rate payers. As BPA argued to FERC, the decision-makers in the Grid West proposal are truly independent, and are thus insulated from their constituent utilities and ultimately the region's ratepayers.[58] This is bad public policy, and will lead to bad decision-making for the Northwest transmission grid.

In addition, the Grid West proposal will, for the first time, directly subject the federal transmission system within the Northwest to the policy initiatives of FERC. This is a major concern, as the national focus of FERC has resulted in a history of indifference to and misunderstanding of the unique needs of the Northwest and its hydro dominated electric system. FERC policy has consistently been based on the problems and needs of its largest constituency, the eastern electric system. While these FERC policy directives may be perfectly suited for thermal-based systems, they do not take into account the special nature of the hydro-based Northwest electric system, and may actually do harm to the regional power system. Efforts to

[51] 18 C.F.R. § 35.34(j)(1).

[52] *Grid West Petition* at 40-41.

[53] 112 FERC ¶ 61,012.

[54] *Id.* at P 56.

[55] *Id.* at P 57.

[56] *Id.* at P 45.

[57] As LG&E discovered when it attempted to withdraw from MISO, such a right can be extremely difficult and costly to exercise. *See* fn. 29, *supra*.

[58] *See Grid West Petition.*

obtain exceptions to FERC policy directives, in order to fit regional needs, have been met with great resistance at FERC.

The attributes valued most by preference customers such as Snohomish with respect to the federal transmission system – reliable service provided at stable, low cost-based rates – are not especially valued by FERC. Instead, FERC has shown a consistent pattern over the past decade of preferring competition and market mechanisms to price. Further, FERC policies have resulted in allocating the supply of both power and transmission with little regard for price stability or cost-based pricing. It was this approach that immediately preceded the now infamous acts of the Enron Corporation. Snohomish – more than any other utility or agency – knows what Enron did to manipulate the electric restructuring rules in California. We also know how that impacted our customers. Enron's various schemes depended upon their ability to use the transmission systems to their advantage. As the recorded conversations of Enron traders have shown, there is no end to the inventiveness of people who are neither responsible nor accountable to the rate payers. The Northwest has avoided the recent outages and market manipulation schemes largely because the system in place, while not perfect, is effective. The reliance on competition, market mechanisms and selling to the highest bidder are contrary to the interests of load-serving, cost-minimizing preference customers and their end-use customers. Snohomish fears that these valued attributes will not survive in a world where FERC, through an independent entity without direct accountability to the region, sets the policy direction for transmission. The result will be higher costs and perhaps lower reliability for regional ratepayers.

BPA Has Not Shown How It Will Comply With the Subdelegation Requirements of the Energy Policy Act of 2005

The Energy Policy Act of 2005 (the "2005 Act") sets forth specific requirements BPA must meet before subdelegating any of its transmission duties to Grid West. However, Grid West's current governance structure calls into doubt whether BPA will be able to satisfy those requirements. Before spending millions of dollars in regional resources on developing Grid West, BPA should ensure that it will be able to comply with the 2005 Act and describe to the region how that compliance will affect the governance and implementation of Grid West.

The independence of Grid West that BPA has worked to create is in apparent conflict with the recently enacted 2005 Act. Prior to the 2005 Act, BPA could not lawfully transfer control of its transmission system to a private party. Section 1232 of the 2005 Act gives BPA the authority to transfer control or use of all or part of its transmission system to a "Transmission Organization" (broadly defined as an RTO, ISO, independent transmission provider, or other transmission organization approved by FERC). Any contract transferring control must have the following:

- Performance standards which must include (a) recovery of all costs; (b) consistency with BPA's existing contracts; and (c) consistency with BPA's statutory authority, obligations, and limitations;

- Provisions for monitoring and oversight of Grid West's contracts by BPA;

- Provisions that allow BPA to withdraw and terminate its agreement with Grid West.[59]

The 2005 Act also states that it does *not* exempt BPA from any provision of Federal law "including any requirement or direction relating to the use of the transmission system of the Federal utility, *environmental protection*, fish and wildlife protection, flood control, navigation, water delivery, or recreation…."[60]

BPA has not yet informed the region how it plans to address the apparent inconsistency between the independent Grid West it presented to FERC and the "monitoring and oversight" it is mandated to perform over Grid West contracts by the 2005 Act.

Grid West Will Reverse the Gains of *BPA v. FERC* and Expand FERC Authority

Bonneville should reject Grid West because the Grid West end state contemplates organized regional energy markets that would, under the terms of the 2005 Act, subject Bonneville and many of the Northwest's consumer-owned utilities to substantially expanded FERC authority, thereby nullifying Bonneville's important victory earlier this week in the Ninth Circuit in *BPA v. FERC.* [61] In that case, issued on September 6, 2005, Bonneville successfully turned back FERC's attempts to force Bonneville and other consumer-owned utilities that sold into the California ISO and PX markets to disgorge refunds. The Ninth Circuit concluded that FERC had overstepped its jurisdiction under the plain terms of the Federal Power Act ("FPA"), concluding that the statute is "clear and unambiguous" in stating that "FERC does not have refund authority over wholesale electric energy sales made by governmental entities and non-public utilities."[62]

Section 1285 of the 2005 Act, however, contains new language expanding FERC's refund authority over Bonneville and consumer-owned utilities in certain circumstances. Specifically, Section 1285 provides that where an otherwise-exempt utility such as Bonneville "voluntarily makes a short-term sale of electric energy through an organized market in which the rates for the sale are established by Commission-approved tariff (rather than by contract)" the utility will be subject to FERC-ordered refunds. With respect to Bonneville, Section 1285 specifically allows FERC to order refunds in such organized markets if Bonneville's sales are at rates found to be unjust and unreasonable.

Accordingly, under the end state contemplated in the Grid West proposal, which includes organized markets, Bonneville will lose its protection from FERC-ordered refunds in those markets. This is precisely the result Bonneville defeated in *BPA v. FERC.* Worse, because publicly-owned entities such as Snohomish in all likelihood will have to participate in the organized markets as well in order the carry out their basic functions, those entities will also be subject to FERC jurisdiction. In short, Grid West creates a back door by which FERC will assert jurisdiction over both Bonneville and previously non-jurisdictional utilities across the Northwest. This will result in substantial authority being ceded to FERC, a loss of regional autonomy and

[59] 2005 Act § 1232(c).

[60] 2005 Act § 1232(e)(2) (emphasis added).

[61] *BPA v. FERC*, 9th Cir. No. 02-70262 (issued Sept. 6, 2005).

[62] *Id.*, Slip op. at 12271.

control over both the transmission and generation systems, and a breach in the previously unbreached wall protecting Bonneville and other publicly-owned utilities from FERC rate jurisdiction.

4. If BPA supports the TIG proposal, are you committed to all of the elements of the TIG proposal? If not, which ones are troubling? And why?

Snohomish supported the original TIG concept, but is now concerned that BPA's recent efforts on "convergence" of Grid West and TIG have changed the original concept in ways that are not even publicly known, to the point where it is difficult to make meaningful comment.

Snohomish believes that Bonneville can proceed with key features in the original TIG proposal without further delay. These include the development of the Common Northwest Open Access Same-time Information System (Common OASIS) and progress towards a common methodology of determining flow-based ATC. In addition, Snohomish believes that Bonneville should lead an effort to increase the coordination of transmission planning and should develop a plan and cost-benefit study to examine control area consolidation. All of these functions can be accomplished best with Bonneville leadership and without the formation of a new independent transmission entity within the region. This approach is consistent with the TIG concept of implementing needed improvements to the transmission system on an incremental basis. As this work proceeds the region will be able to check the proposals for each segment against the requirements coming out of the new energy bill and related FERC actions.

Finally, both the TIG and Grid West proposals were developed before the Energy Policy Act of 2005 was passed, and both will require changes to scope and schedule driven by re-opening of Order 888, FERC-lite, and mandatory reliability standards. We remain troubled in the case of both TIG and Grid West by the probability of transmission-centric solutions.

5. If the TIG proposal were to be chosen, how likely would it be that the proposal would be successfully implemented?

Again, the recent efforts by some, but not all, of the region's utilities to "converge" Grid West and TIG make this question difficult to answer. Within the region there is support for an approach to transmission issues where "those parties with the most interest in reliability, cost effectiveness and risk make the decisions."[63] The TIG proposal as originally submitted to BPA maintains this approach. The TIG proposal could be successfully implemented if BPA continues it support, involvement and if it took a leadership role in the development of a region-wide methodology of calculating ATC; the formation of a Northwest Common OASIS; and, began to discuss voluntary control area consolidation with other regional transmission owners. The success of such an incremental approach will be contingent on the commitment by BPA to make such changes while opposing the formation of an independent FERC-jurisdictional transmission entity. As long as the idea of an independent FERC-jurisdictional transmission entity (with its increased risk, cost, and loss of regional control) is being considered by Bonneville it will make

[63] Letter to Stephen Wright, BPA Administrator, from Public Power Council, Sept. 2, 2005 (Exhibit 21).

many transmission customers oppose changes that could, absent the independent entity, improve the reliability and efficiency of the system.

The successful implementation will also be assisted by the commitment of existing public and private utilities, and imminent FERC proceedings to address Order 888 and the new federal energy bill. Under past law, BPA could use reciprocal tariff requirements to compel participation by other regional transmission owners. The federal energy bill, FERC-lite, and imminent reliability standards together provide much stronger assurance of consistent implementation.

There is widespread agreement on the value of a common OASIS, a common approach to calculating available transmission capacity, and a transition to flow-based methods. With the imminent re-opening of Order 888, utilities with open access transmission tariffs can commit to a common OASIS, common method for calculating ATC, and eventual transition to a flow-based system. Public owners of transmission would likely file on the same schedule, given passage of FERC-lite. Imminent reliability standards force the same outcome – all on a much faster, and incremental, schedule than the Grid West proposal.

6. If BPA supports Grid West, are you committed to all of the elements of the Grid West proposal? If not, which ones are troubling? And why?

As the cover letter to these comments makes clear, Snohomish PUD and its Board of Commissioners are opposed to Grid West. We have set forth our concerns in detail starting in December 2004 in advance of Decision Point 2 and have consistently opposed the creation of a Grid West/RTO entity.

The comments provided to BPA by the Public Power Council ("PPC") regarding Decision Point 2 state in part:

> **II. Grid West Provokes Serious Concerns About Its Effects And Effectiveness**
>
> In February 2005, PPC's Executive Committee voted to oppose the Grid West proposal. The details of the proposal published this summer confirm the very significant concerns held by Northwest consumer-owned utilities toward the Grid West approach. These concerns involve:
>
> - Creation of a new, FERC-jurisdictional utility with cumbersome governance structure and attenuated lines of accountability
>
> - Risk to the ability of Northwest consumer-owned utilities to obtain affordable transmission rights to move generation to their loads and to meet load growth
>
> - Jeopardy to BPA power and transmission revenues

- BPA's failure to offer an acceptable "contract lock" to protect transmission rights currently under contract with BPA

Snohomish supports these comments and the concerns about Grid West raised by PPC.

Governance and Accountability

It pays to remember that the rules governing the use of transmission determine *how and whether the Northwest receives any benefit from the federal hydro system*. Rules associated with transmission can affect our ability to restore threatened salmon runs or advance other regional goals. For those reasons, we cannot support the creation of a new regional transmission body that reduces existing regional accountability and puts our future in the exclusive jurisdictional hands of the Federal Energy Regulatory Commission.

"Independence" has a nice ring to it, just as "choice" had in the debate over retail competition a few years ago. In both cases, the words are misleading. "Choice" in retail competition implied—especially in California—that all the choices, big and small, customers received would ultimately be less expensive and more reliable than the products and services they would have received under the old rules. This we know now turned out exactly the opposite—more expensive and less reliable. "Independence" is similarly misleading here; it promises a system that gains that independence by being less accountable—some might say unaccountable—to the region's Governors, utility regulators, Congressional delegation, and citizens compared to the checks and balances in place today.

Risks of Cost and Scope Creep and Reduced Reliability

No existing regional transmission organization or independent system operator has managed to get its costs under control or systems ironed out. Over the last four years, all existing operators have averaged 25% per year cost increases. The national average cost is about three times higher than the cost estimated for Grid West.

BPA calculates that Grid West would cost about $103.5 million per year, and yield $106-181 million in annual benefits. Every RTO to date has underestimated costs and over-estimated benefits; if the largest and most dubious category of benefit was removed—that Grid West will eliminate one catastrophic West Coast outage every twenty years—the balance is negative. The most obvious risk is that FERC will require Grid West to develop an installed capacity market, similar in design to the approach being proposed by the New England ISO and the PJM systems. It is worth noting that the former approach would add $1.6 billion per year in retail rate impacts without any assurance of either new capacity additions or reliability improvements.[64]

[64] Press Release, "Ag Reilly Protests ISO-NE Proposal That Would Cost New England Ratepayers $1.6 Billion", Massachusetts Attorney General's Office, Mar. 22, 2004 (Exhibit 22); *see also* Press Release, "28 New England Lawmakers Call On FERC To Reject Anti-Consumer Energy Proposal," Office of Congressman Markey (Jul. 5,

On reliability, the findings of the US-Canadian Task Force on the Midwest-East Coast outage clearly pointed to a number of RTO-related systems—including a malfunctioning computer that incorrectly estimated the status of the transmission system—that contributed significantly to the scope, duration, and impact of the blackout. The creation of a new transmission institution also raises a different reliability risk. Between today and the date Grid West is up-and-running, public and private utilities (and perhaps Bonneville) may postpone transmission system investments. In the first few years of operation, it is unrealistic to expect a smooth transition, with reliable modeling, competent staff, approved tariffs, and trusted business practices. That phenomenon—among others—accounts in large part for the lack of transmission expansion in parts of the country that have RTOs today.

Compatibility with New FERC Initiatives and the Energy Bill

FERC has indicated its intention to re-open Order 888 imminently. The agency has also indicated that it will require market monitors inside and outside RTO regions. Under the new energy bill, heretofore non-jurisdictional publicly owned transmission is subject to "FERC-lite." All public and privately owned utilities (especially control area operators) will be subject to mandatory reliability standards, issued within six months and overseen by FERC. The Grid West approach is not synchronized with FERC's schedule or its likely phased implementation of these rules. The Transmission Improvements Group proposal is much closer to meeting these requirements as they emerge.

Many in the region were pleased by FERC's responses to the request for a Declaratory Order sought by Grid West. With the passage of "FERC-lite" and other provisions in the federal energy bill, those assurances are meaningless. Clearly, FERC does not now "(lack) the authority to order changes to Bonneville's Open Access Transmission Tariff or to any of its transmission agreements that are serviced under Bonneville OATT."

Some might argue the FERC regulation the region has sought to avoid has become moot with the passage of federal energy bill. Not so. By creating a new FERC-jurisdictional organization very similar to other RTOs, legal protections under the current system are vastly reduced, exposing the region more quickly to unforeseen risks.

7. If the Grid West proposal were to be chosen, how likely would it be that the proposal would be successfully implemented?

It is not clear that Grid West can be successfully implemented, given the accountability dilemma described above and the inevitability of incremental rulemakings on a faster schedule than that contemplated by Grid West. The decision by Bonneville to implement Grid West would likely result in a long protracted battle that would likely split the region over transmission issues and inject animosity and mistrust into the dialog regarding other important regional power issues.

2005) (Exhibit 23); Letter from Massachusetts Congressional Delegation to Gordon van Welie, President and CEO, ISO New England, Inc., Aug. 5, 2005 (Exhibit 24).

8. If you are a supporter of the TIG alternative, please explain why adopting the TIG alternative will be in the collective best interests of all of BPA's customers who depend on the Northwest transmission grid and of other stakeholders who have an interest in regional transmission issues.

Snohomish believes that additional work is necessary on the TIG alternative before it can decide if it supports the proposal that was submitted to BPA at the end of July. However, Snohomish believes that TIG envisions substantive improvements in these areas: transmission system reliability and security; common flow-based ATC calculation; unified, regional transmission planning and "backstop" authority for new transmission needed for reliability; a common OASIS; and market monitoring. These are the five key areas identified by BPA (in the negotiations of the TIG Participation and Funding Agreement) as being the key items for the long term success of the regional transmission system. The inclusion of these five areas and the means by which the TIG proposal calls for them to be implemented results in a solution that is of lower risk to BPA and the Region than the Grid West proposal and approach. The reasons for this lower risk are:

The TIG solution Retains Decision making by BPA regarding the FCRTS

Snohomish supports what PPC wrote in its September 2 letter to Administrator Wright on this topic:

> The TIG approach will permit BPA to retain its discretion to make changes to the FCRTS that BPA deems necessary. BPA will be the operator of the transmission system and will retain its tariff and BPA will retain the ability to make decisions as it does today. BPA will continue to set its own rates for new and existing transmission service and will continue to enter into transmission service contracts. This authority is critical to its ability to ensure the fiscal and physical integrity of the federal assets and to ensure full repayment of Treasury debt. Under the TIG approach, BPA will have a greater ability to control its investment in the FCRTS, to control its costs, and to ensure reliable and affordable transmission service for its customers. At a time when BPA is under intense pressure to control its costs and to respond to statutory obligations and court orders, the ability of BPA to chart its own course is important.

TIG has no centralized bid-based energy markets

The formation of bid-based energy markets as envisioned by Grid West are troubling for BPA's preference customers. As PPC wrote in its September 2 letter:

> This proposed arrangement raises a number of questions. First, the must-offer condition is troubling. Under what circumstances may BPA refuse Grid West's "must-offer" requirement and in the event that it does, what happens? A must offer situation for a federal asset raises questions about control of the federal asset, and because the federal hydro system is involved, non-power requirements of the system must be maintained without fail. Second, does the presence of the

> market imply that TBL may be "out of the business" of providing balancing energy and load-following for transmission customers unless their contracts specifically provide that TBL will do so? PPC assumes that BPA must remain involved as the provider of last resort, but this does not preclude BPA's withdrawal from its role as a transmission services provider. Third, currently, PBL receives $60 to $80 million in transfer payments from TBL in exchange for providing TBL power to use in interconnected operations services (IOS).[65] It is unclear whether PBL will continue to receive this transfer payment if Grid West is established – if it does not, that could be a $60 to $80 million loss to BPA, and BPA will raise its power rates to recover that amount.
>
> As a last matter, to the extent that BPA is obligated by a must-offer requirement to provide balancing energy, load following, or ancillary services to the market in excess of its own needs, how will BPA ensure that it complies with its public and regional preference obligations? Public preference customers are entitled to step in front of other customers.

Snohomish supports the PPC perspective that these issues must be resolved prior to Decision Point 2.

TIG has a lower cost and is implemented on an as needed incremental basis

Overall, TIG estimates that its proposals will cost substantially less to implement than Grid West. Without the creation of a new entity, and with a focus on the cost-effective use of existing institutions and resources, less expense will be incurred. TIG estimates that its improvements will cost the region slightly more than $50 million per year. Coupled with the incremental process for making improvements which will allow the region to make decisions after full proposals have been developed, including cost-benefit studies, only those proposals which make economic sense will go forward. This will substantially improve the probability that TIG will produce benefits in excess of costs.

TIG maintains the existing balance of operational and regulatory responsibilities

TIG does not alter any existing relationship between utilities and their regulators, or between Bonneville and the Congressional delegation. Grid West changes those relationships, and leaves the region vulnerable to FERC-driven restructuring experiments or other dubious proposals driven by the staff or board of Grid West. TIG does not require specific findings by at least six state regulatory agencies that transfers of operational transmission control are in the public interest.

TIG avoids additional FERC jurisdiction in the region

Additional FERC jurisdiction is a particular concern for BPA's preference customers, who are heavily dependent on the reliable transmission service they receive at cost based rates from BPA

[65] Those funds are currently attributed to PBL's surplus sales revenues.

to deliver the power needed to serve their end-use customers. The attributes that preference customers value most about the federal transmission system, service provided at stable, low cost based rates are not especially valued by the FERC. The FERC has shown a consistent pattern over a number of years of preferring competition and market mechanisms to price and allocate the supply of both power and transmission, with little regard for price stability or cost based pricing. The reliance on competition, market mechanisms and selling to the highest bidder are contrary to the interests of load serving, cost minimizing preference customers and their end-use customers. Preference customers fear that these attributes will not survive for long in a world were FERC, through an independent Grid West that is not directly accountable to the region, sets the policy direction for transmission.

TIG provides for continued delivery of Transmission Service from Bonneville

Bonneville through the development of the Contract Lock proposal that it issued on August 26 has admitted that the basic characteristics of transmission service will be subject to change under Grid West. The draft agreements are BPA's proposal to assure customers that certain features of existing service will continue into the future. However the agreements are limited in scope and duration. Not all aspects of service are provided for in the contract lock document, putting native load service at risk of being preempted for the benefit of power marketers. Also, at the end of the contract term the customer will face transitioning its transmission service to Grid West. Further under the terms and conditions of the contract lock proposal the BPA Administrator reserves the right to make the final decision as to whether all the locked terms have been preserved after Grid West is implemented. All of this is troubling for BPA's preference customers that use BPA transmission to provide reliable and cost effective service to their customers. All of this concern is avoided if Bonneville rejects the Grid West proposal.

9. If you are a supporter of the Grid West alternative, please explain why adopting the Grid West alternative will be in the collective best interests of all of BPA's customers who depend on the Northwest transmission grid and of other stakeholders who have an interest in regional transmission issues.

Snohomish continues, as does PPC, to oppose the formation of Grid West. As we stated in our December 9th letter to Administrator Wright:

> We do not take this position lightly. Snohomish has carefully studied the arguments for and against RTOs in general and Grid West in particular. We are now more convinced than ever that this idea is expensive, risky and does not serve the interest of those utilities who have the obligation to keep the lights on. There are better alternatives.
>
> We are not alone in our concerns.
>
> On August 23rd, the Public Power Council (PPC), representing over 100 serving utilities, sent an 11 page letter (copy attached) to BPA's Executive Vice President for Industry Restructuring, Allen Burns, about Grid West that said, among other things:

- "PPC does not agree that major policy decisions should be ceded to a Board beholden to FERC."

- BPA should vote no until "BPA has made satisfactory demonstration of progress on "contract lock" and has reached agreement with customers on the scope of replacement agreements."

- BPA should vote no until "BPA has demonstrated end-use consumer benefits in each affected state."

- RTOs and ISOs in the United States "have proven to be expensive propositions." "It is not compelling to assert that Grid West will learn from their mistakes."[66]

We have continued to follow the arguments for and against the various proposals, and we continue to oppose the implementation of Grid West. The following are some of the main reasons for our position:

- **Coordinated Transmission Planning has worked in the past and can work in the future.** BPA is a federal agency that has worked with the utilities in the region to provide power from the Federal Columbia River Transmission System. This has worked well in the past and there is no reason to think it would not work in the future.

- **Grid West would be a FERC jurisdictional entity that would not be accountable to the Northwest consumers.**

- **Grid West does not provide for access to affordable transmission rights.** Grid west would be the provider of all new transmission rights Injection – Withdrawal Rights (IWR's)

- **BPA has not offered an acceptable long term contract lock for its existing customers.**

PPC opposes proceeding with Grid West

In February 2005 PPC voted to oppose Grid West. The Grid West proposal raises significant concerns for PPC's members and the region. The governance structure is unmoored from effective accountability to the public interest. Moreover, the only public entity with oversight of Grid West is FERC, which is an inadequate substitute for local accountability. The proposed markets in the consolidated control area do not appear to be viable or desirable, and the proposed pricing policy would increase costs to BPA customers. BPA's preference customers would likely face higher transmission prices and higher and volatile prices for balancing energy and reserves. And BPA's power and transmission revenues would be jeopardized by implementation of Grid West proposals.

[66] Letter to Stephen Wright, BPA Administrator, from Snohomish County PUD No. 1, Dec. 9, 2004 (Exhibit 25).

10. The RRG recently completed an examination of the benefits of the Grid West proposal. Do you have additional views on the benefits of the Grid West proposal that you have not already brought to our attention?

Snohomish is concerned that the methodology used by the RRG Risk and Rewards Group to examine the benefits of Grid West has numerous flaws. These flaws could lead to significant overstatement of benefits. The concerns include:

- The decision to review the existing studies related to the benefits of Grid West on a piecemeal basis without taking the full context of the study into consideration could lead to some benefits being considered without the impact of related costs or risks. This approach appears to lack the necessary modeling consistency to result in a credible estimate of benefits.

- In calculation of redispatch efficiencies the modeling sample was so small (8 hours) that the effort to extrapolate it to an annual basis (8760 hours) makes the result suspect at best. Another question worth considering is if the lack of data for the cost of congestion and how economic redispatch might reduce cost indicates that the actual problem being addressed is small or non-existent.

- Snohomish believes that the estimated benefits associated with increased reliability are based on an assumption that is unsustainable on a probabilistic basis. Large cascading outages happen on such an infrequent basis that there is no statistical basis to determine what, if any, a change in operating protocol will have on the probability of a cascading outage not occurring.

- Snohomish is concerned that estimates of reduced rate pancaking for transmission service will result in cost shifts rather than actual cost savings.

- Snohomish believes that the analysis neglected to calculate the added costs that could occur if FERC rates of return were adopted under Grid West expansion plans rather than the current methodology where state Commissions determine rates of return. FERC, in our opinion, has offered overly-generous rates of return compared to several NW states, and those generous rates of return have been proposed for all existing transmission rather than new system additions.

- In addition, the Henwood Study, chartered in 2004 by Snohomish and 12 other utilities, indicated that the costs of Grid West would exceed benefits by $122 million per year.

11. Do you have additional views on the estimated costs of the TIG and Grid West proposals.

As the RTO's costs chart (in the Snohomish PUD Commissioner's letter) has demonstrated, three of the six RTOs are over $200 million a year and the cheapest (NYISO at $112 million) is

higher than the Grid West proposal and is 100% higher than NYISO was in 2000.[67] Because of the size of the proposed footprint of Grid West, the Grid West costs are likely to significantly exceed the costs of the smaller ISOs. NEISO has effectively been an operating pool since 1968 due to the New York Blackout and their costs have jumped from $49 million in 2000 to $118 million in 2004. They have just recently announced another 7% increase in their costs. Grid West claims they can learn from these mistakes, but there is little evidence that this is true. The biggest unknown in both of these proposals is the cost of the consolidated control areas, and one lessen we have learned from the most recent Midwest blackout is that the consolidated control areas may have been part of the cause of the cascading outage.

Henwood's final report concludes that Grid West could carry a net cost of more than $122 million annually, and, depending on the cost of unintended consequences such as increased property taxes, the net costs could exceed $300 million a year.

Henwood's report also outlined a work plan for a study of alternatives to Grid West, stating that "other more cost-effective solutions already exist or could be put in place."

We remain convinced that Bonneville, which is larger than many RTOs in other parts of the country, can immediately address many of the regional transmission issues that need to be solved.

By starting small—and proceeding quickly and incrementally under existing regulatory relationships—TIG provides a degree of regulatory and counter-party security that is essential for near-term transmission system expansion. By contrast, Grid West is a new and untested institution that will not be operational for a number of years. Until it is up and running, tested and trusted by utilities, regulators, and the financial community, it is not a credible institution for transmission system expansion or management. Such uncertainties clearly bedevil transmission system expansion in RTO regions today, and we should not expect any fundamental difference with Grid West.

12. What 2-3 improvements might you suggest for each alternative?

The Grid West proposal with its independent FERC jurisdictional organization is fundamentally flawed and further development should be put on hold. Bonneville should not move forward with Grid West at all, and needs to take the time to consider the impacts of the 2005 Act before moving forward with the TIG alternative.

13. The Grid West and TIG alternatives seem to be quite similar. Please suggest how these alternatives may converge?

We are unsure we understand the implications of "convergence." This is a recent development that has not been discussed with all of the utilities in the region.

[67] Rebecca Smith, *Electricity Groups Hit on Fees: 'Grid Runners' Were Designed To Keep Down Costs*, WALL ST. J., Jul. 21, 2005, at B3 (Exhibit 26).