112 FERC ¶ 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Bonneville Power Administration
PacifiCorp
Idaho Power Company

Docket No. EL05-106-000

DECLARATORY ORDER PROVIDING GUIDANCE CONCERNING GRID WEST PROPOSAL

(Issued July 1, 2005)

Introduction

1. In this order, we address a petition for a declaratory order filed by Bonneville Power Administration (Bonneville), PacifiCorp and Idaho Power Company (Idaho Power) (collectively, Petitioners) seeking guidance with respect to certain issues they identify as being of critical importance to the further development of Grid West, a proposed independent transmission provider. Specifically, they ask the following questions:

> (1) Assuming Grid West seeks approval under section 205 of the Federal Power Act to offer regional transmission service pursuant to an open access transmission tariff (OATT), but not as a regional transmission organization (RTO) under Order No. 2000,[1] will the Commission treat Grid West's application as one that must satisfy the open access requirements of

[1] *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000), *aff'd sub nom. Public Utility District. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

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Order No. 888[2] (that is, offering services consistent with or superior to the pro forma OATT requirements) rather than the requirements for RTO status?

(2) Does Grid West's governance structure as embodied in its Operational Bylaws allow it to satisfy the independence requirements of Order No. 2000?

(3) What is the Commission's position regarding transmission owners' withdrawal rights? (a) Will the Commission approve a contract between Grid West and Bonneville that allows Bonneville to withdraw as a participating transmission owner without Commission approval? (b) Will the Commission clarify that a participating transmission owner that is a public utility would be able to terminate its contractual arrangements with Grid West under conditions that the Commission determines are just and reasonable?

(4) If Grid West becomes a public utility that sells transmission service but not as an RTO, will the Commission provide assurances that it will not thereafter require Grid West to comply with Order No. 2000 requirements or Standard Market Design approaches?

(5) As a matter of policy, will the Commission accept a provision in Grid West's agreements with Bonneville and other transmission owners providing that certain terms identified as critical to transmission owners' participation will be protected from subsequent Commission-mandated change based on, in Bonneville's case, Bonneville's statutory requirements and the doctrine of sub-delegation, and for all transmission owners the application of the *Mobile-Sierra* standard to certain contract provisions?

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[2] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and rev'd in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

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(6) If Grid West becomes a public utility that sells transmission service but not as an RTO, is Commission policy sufficiently flexible to accommodate participating transmission owners continuing as transmission providers for their pre-existing transmission agreements, including OATT service, while new service is made available only through Grid West?

(7) Will the Commission acknowledge that Bonneville's participation in Grid West, as a participating transmission owner, does not provide the Commission with any authority to modify Bonneville's existing transmission agreements?

(8) Will the Commission support implementation, for an indefinite duration, of license plate rates and the application of charges to through and out transactions?

2. This order benefits customers by providing guidance to Petitioners, which, in turn, should help them in the development of Grid West.

Background

A. Description of Petitioners

3. Bonneville is a self-financed federal power marketing administration within the United States Department of Energy. Pursuant to its own statutory framework, it owns and operates a significant portion of the bulk electric transmission system in the Pacific Northwest. It is not a public utility under section 201(e) of the Federal Power Act (FPA),[3] although the Commission does have limited authority under other law to approve Bonneville's rates[4] and certain limited authorities under the FPA such as ordering the agency on a case-by-case basis to provide transmission service.[5] Bonneville has received

[3] While Bonneville meets the definition of "public utility" contained in FPA section 201(e), section 201(f) of the FPA provides that governmental entities such as Bonneville are not subject to part II of the FPA except as specifically provided.

[4] *See* 16 USC § 839e (2000).

[5] *See* 16 USC § 824k(i) (2000).

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the Commission's approval of its OATT under the "safe harbor" provision of Order No. 888.[6] Bonneville has been an active participant in previous efforts, described below, to establish a regional transmission organization in the region, both as an ISO (IndeGO) and as an RTO (RTO West).

4. PacifiCorp is an investor-owned utility providing retail electric service within the states of California, Idaho, Oregon, Utah, Washington, and Wyoming. PacifiCorp is a public utility under section 201 of the FPA, a transmission provider, and a wholesale marketer of electric power. PacifiCorp also operates more than 15,000 circuit miles of transmission, making it one of the largest investor-owned open-access transmission systems in the United States. PacifiCorp is an active participant in the development of Grid West and also supported previous efforts to establish a regional transmission organization in the region.

5. Idaho Power is an investor-owned utility providing retail electric service within the states of Idaho and Oregon. Idaho Power is a public utility under section 201 of the FPA, a transmission provider, and a wholesale marketer of electric power. Idaho Power is an active participant in the development of Grid West and also supported previous efforts to establish a regional transmission entity in the Northwest.

B. <u>The Northwest's Efforts to Create an ISO and RTO</u>

6. Petitioners state that for more than eight years, they and other transmission owners[7] in the Pacific Northwest and adjacent areas have been exploring proposals to form an independent regional transmission organization. The purpose of such an organization would be to manage and operate the multiple transmission systems as a single system in order to gain commercial and operational efficiency, improved planning and grid expansion, and increased reliability of the interconnected grid.

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[6] *See United States Dept. of Energy - Bonneville Power Administration*, 80 FERC ¶ 61,119, *order on reh'g*, 81 FERC ¶ 61,165 (1997); *United States Dept. of Energy - Bonneville Power Administration*, 86 FERC ¶ 61,278 (1999) (accepting reciprocity compliance filing); *United States Dept. of Energy - Bonneville Power Administration*, 106 FERC ¶ 61,125 at P 1, P 9 (2004) (clarifying that Bonneville's OATT continues to maintain its reciprocity status).

[7] Avista Corporation (Avista), British Columbia Transmission Corporation, NorthWestern Energy, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific/Nevada Power Company.

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7. Petitioners state that after the first proposal called IndeGO collapsed for lack of support in 2000, the transmission owners formed and funded RTO West, a nonprofit Washington corporation that served as a vehicle for the joint effort to develop an RTO. The Commission issued declaratory orders approving significant portions of the RTO West conceptual proposal.[8] However, some regional stakeholders criticized the RTO West proposal as being too concerned with meeting the Commission's requirements and with problems that did not exist in the RTO West region to any significant degree, and divorced from the region's operational characteristics. They argued that some of the proposed solutions to those problems were not appropriate to the region's unique hydro-thermal power system and would consequently impose unnecessary costs and threaten pre-existing arrangements. Some stakeholders expressed strong reservations about a perceived lack of accountability of an independent RTO West board to regional interests. Based largely on their experience with the California energy crisis, they feared the imposition of problematic market mechanisms and uncontrolled costs by trustees who lacked any significant connection to the region. Consequently, the transmission owners decided in 2003 that they lacked the necessary public support to move forward with the RTO West proposal.

8. According to Petitioners, significant customer anxieties persist concerning (i) mandatory, centralized energy markets and their potential manipulation; (ii) the use of financial transmission rights in the Pacific Northwest; (iii) the exposure of existing (often non-jurisdictional) transmission service to cost-shifting and other changes ordered by the Commission; (iv) the likelihood of implementation costs overwhelming any potential benefits; and (v) increased jurisdictional reach of the Commission over currently non-jurisdictional facilities and entities.[9] Based on the experience to date, Petitioners have chosen to pursue Grid West rather than continuing efforts to establish an RTO because they expect that any filing of an Order No. 2000 compliant RTO proposal would be adamantly opposed by multiple utility transmission customers.

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[8] *Avista Corp.*, 100 FERC ¶ 61,274 (*RTO West Order*), *order on reh'g*, 101 FERC ¶ 61,346 (2002) (*RTO West Rehearing Order*).

[9] Petitioners have different perspectives about the concerns raised by regional parties. However, Petitioners agree that their ability to move forward with an independent transmission entity has been substantially affected by these concerns.

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9. Petitioners state that they are at a point in the development process where they wish to obtain guidance from the Commission before they decide whether to commit resources to further develop the Grid West proposal.[10] A critical factor will be their assessment of whether the Grid West proposal is likely to be workable and produce net benefits to the area encompassed within the proposed Grid West footprint. Although other transmission owners are not part of the instant petition, the Grid West footprint (Geographic Area) is comprised of the portions of Alberta and British Columbia and of the states of Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming that are electrically within the Western Interconnection, together with any additional geographic territory within the State of California that is encompassed by the control areas of the Bonneville Power Administration, PacifiCorp, and Sierra Pacific Company as of the effective date of the Operational Bylaws.

C. Description of Grid West

1. Governance

10. Petitioners state they are providing their description of the governance structure for Grid West to permit the Commission to determine whether the governance structure set forth in the Operational Bylaws would satisfy the independence requirements for Order No. 2000. They state that the Commission's determination "is a condition precedent for Grid West to begin offering transmission and related services in the operational stage but is needed now to determine whether additional funds should be dedicated to development of Grid West."[11] The Grid West governance structure is modeled on the RTO West governance structure that was previously approved by the Commission.[12] The changes made to the RTO West bylaws were the result of a

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[10] Petitioners state that the development of Grid West is subject to four decision points. At Decision Point 1, in December 2004, the RTO West Board of Directors adopted the Grid West Articles of Incorporation and Developmental Bylaws and restructured RTO West into Grid West. Decision Point 2 relates to seating an independent Grid West Developmental Board and funding its work. That decision is expected to occur in September 2005. Decisions Points 3 and 4 involve the Developmental Board negotiating transmission agreements for use of the transmission owners' systems (Bonneville and at least two contiguous investor-owned transmission owners must accept the offer) and adopting Operational Bylaws.

[11] Petition at 18.

[12] *RTO West Order* at P 36; *Avista Corp*., 95 FERC ¶ 61,114 at P 15-21 (2001).

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productive collaboration among the members of the Regional Representatives Group.[13] The governance structure for Grid West is discussed in more detail in the discussion of Petitioners' Question No. 2, below.

2. Operation and Services

11. Petitioners state that their description of Grid West's operational characteristics and services is based on the work of the Regional Representatives Group to date and is therefore still in a preliminary stage. For purposes of this order, we include Petitioners' description of several of the currently contemplated operational characteristics and services of Grid West as background information.

12. Petitioners state that, as currently envisioned, the proposal for initial operations for Grid West includes voluntary consolidation of control areas by some transmission owners in the region and the provision of new regional transmission service over the larger Grid West footprint.[14] Grid West will have three key roles: (i) control area operator for consolidating transmission owners;[15] (ii) transmission provider with respect to the new regional service(s) for the larger Grid West footprint; and (iii) central scheduling entity for the Grid West managed transmission system. Petitioners state that, as the control area operator for the anticipated consolidated control areas, Grid West would serve as the

[13] The Regional Representatives Group is an advisory group that has met on a monthly basis to develop the Grid West proposal and assess progress of various work groups. It consists of transmission owners, transmission-dependent utilities, generators, power marketers, end-use customers, state and provincial regulators, and environmental and energy conservation groups.

[14] The regional transmission service will include transmission over those transmission facilities in the consolidated control area as well as the facilities of transmission owners that choose to participate in Grid West but retain their own control area operations.

[15] At least three transmission owners – the Petitioners – anticipate that they may consolidate their control areas, which would place the vast majority of the area's transmission facilities into a common control area operated by Grid West.

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Balancing Authority and Reliability Authority and would be responsible for maintaining reserve margins, calculating Area Control Error, and accepting generation offers to clear congestion and balance the system, among other things.[16]

13. Petitioners state that with respect to non-control area services, Grid West would serve as the exclusive provider of new regional transmission rights over the entire Grid West managed transmission system, *i.e.*, both inside and outside the consolidated control area, and would be granted authority from participating transmission owners to enable it to provide such services. Grid West would: (i) retain a physical transmission rights approach but would implement a system-wide, flow-based method for determining available flow capacity; (ii) provide for centralized decision making for access requests, scheduling and determination of available flow capacity; and (iii) establish a centralized OASIS site. Grid West would also be the scheduling entity for the entire system. Users would be required to have physical transmission rights to schedule transmission services and must submit balanced schedules.[17] Grid West would implement a regional planning and expansion program with back-up authority for reliability purposes, and would establish an independent market monitor function. According to Petitioners, Grid West would not, however, sell ancillary services or operate an ancillary services market outside of the consolidated control area. Ancillary services would continue to be provided by the existing control area operator.

14. Petitioners envision the creation of a "Reconfiguration Market," which is intended to address two of the problems identified by regional stakeholders: (i) rules and practices that prevent full utilization of transmission infrastructure; and (ii) absence of organized market structures that produce efficient use of the system.

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[16] Balancing Authority is the responsible entity that integrates resource plans ahead of time, maintains load-resource balance, interchanges and generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time. Reliability Coordinator is the entity that is the highest level of authority who is responsible for the reliable operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. Area Control Error is the instantaneous difference between a Balancing Authority's net actual and scheduled interchange, taking into account the effects of Frequency Bias and correction for meter error.

[17] The working proposal requires balanced schedules in order to avoid reliance on real-time energy markets.

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15. The Reconfiguration Market will provide an opportunity and incentive for holders of physical transmission rights, whether under pre-existing agreements or new service arrangements, to bid their unused rights into an auction, for periods no longer than one year, to be available to others seeking additional transmission service. Reconfiguring these offers into flow-based injection and withdrawal points and combining them with available flow capacity, Grid West will determine the amount and location of capacity which it can provide to those bidding into the Reconfiguration Market for new injection/withdrawal rights. Offers of unused rights that are accepted would receive the market clearing price. Though it would not prohibit bilateral trades, this centralized Reconfiguration Market should facilitate and encourage the trading of unused transmission rights in the region. In addition, capacity made available by failure to schedule transmission rights at pre-schedule will be made available in the post-Day Ahead market. Petitioners believe these two mechanisms will discourage hoarding of transmission rights.

16. Petitioners indicate that new services offered by Grid West would include: (i) auctioned transmission service of one year or less comprised of a blend of available flow capacity, if any, and existing transmission rights or scheduling flexibility offered by customers into a "Reconfiguration Market" (for service of one year or less); (ii) long-term rights from existing capacity (if sufficient) or from capacity made available through the expiration of contracts or added to the system through upgrades and construction; and (iii) a first come, first served post-Day Ahead service serving a function similar to non-firm or secondary service. The proposal would preserve existing transmission arrangements without requiring transmission owners to purchase new service from Grid West to serve such contracts.[18] Embedded costs would be recovered from pre-existing agreements as they are now by the original service providers. Embedded costs would be recovered from additional long-term transmission rights provided by Grid West through application of non-pancaked license plate rates to the extent practicable.

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[18] Grid West is expected to schedule all service over the participating owners' combined systems, but unlike the RTO West proposal, transmission owners will not purchase a service from Grid West to serve pre-existing obligations. The transmission owners will continue to serve as the transmission providers for service to their existing customers under existing contracts. According to Petitioners, this design is one attribute of Grid West that is distinctly different from the design of Commission-approved RTOs.

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17. The pricing proposal being evaluated anticipates that each participating transmission owner would have a license plate rate (Company Rate) for new transmission service to load on that particular owner's system.[19] An owner's Company Rate would be based upon its system revenue requirement (as included in the transmission owner's agreement with Grid West). The proposal currently being developed would allow each owner to elect whether to have Grid West develop and propose its Company Rate or to develop and propose its own Company Rate.[20] Petitioners state that, because each transmission owner currently expected to bring facilities to Grid West must obtain the Commission's approval of its transmission rates, the Commission would continue to maintain the same level of oversight of wholesale transmission rates as exists today, even if an owner elected to develop and propose its own Company Rate.

18. Petitioners also envision Grid West applying a Grid Management Fee to schedules (including transmission owners' schedules for pre-existing service they provide) to recover Grid West's operating costs and a Revenue Recovery Rate Adjustment charge to new services if necessary to make up for participating transmission owners' revenue losses resulting from termination of their own short-term and non-firm transmission contracts. And, the Grid West proposal envisions export transactions, whether under pre-existing rights or purchased rights, contributing to embedded cost recovery.[21]

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[19] The issue of implementation, for an indefinite period, of license plate rates is addressed below concerning Petitioners' Question No. 8.

[20] While Grid West will establish a Grid Management Fee, Bonneville plans to continue to establish its own transmission revenue requirement and transmission rates, including the Company Rate, subject to Commission review under the applicable standards contained in Bonneville's statutes.

[21] Those wishing to obtain new rights to facilitate exports could purchase them either on a short-term basis through the Reconfiguration Market or on a long-term basis by requesting new long-term transmission rights through the general Grid West process for obtaining new long-term service.

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Notice of Filing and Responsive Pleadings

19. Notice of Petitioners' filing was published in the *Federal Register*,[22] with motions to intervene and protests due on or before May 27, 2005. Timely motions to intervene, raising no substantive issues, were filed by: Northwest Independent Power Producers; Public Power Council (PPC); Public Utility District No. 1 of Snohomish County, Washington; Washington Public Utilities District Association; PPL Montana, LLC and PPL EnergyPlus, LLC; Sacramento Municipal Utility District; Northern California Power Agency; Cities of Santa Clara and Redding, California and M-S-R Public Power Agency; Modesto Irrigation District; Transmission Agency of Northern California; Powerex Corporation; the Nevada Attorney General's Bureau of Consumer Protection; and the Utilities of the Western Public Agencies Group (WPAG).

20. Timely motions to intervene and comments were filed by Avista Corporation (Avista), Utah Municipal Power Agency (UMPA) and Pacific Northwest Generating Cooperative (PNGC). Timely comments were filed by PPC and Washington Public Utility Districts Association (WPUDA) (collectively, PPC/WPUDA), Northwest IPP/Marketers Coalition (IPP/Marketers), the Oregon Public Utility Commission (Oregon Commission) and the Wyoming Public Service Commission (Wyoming Commission). On May 31, 2005, WPAG filed a motion to intervene out of time and comments. On June 2, 2005, Northwest Requirements Utilities (NRU) filed a motion to intervene out of time and comments. On June 14, 2005, Petitioners filed a response, clarifying their petition and arguing that the Commission need not address issues not raised by them.

Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[23] the timely motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of this proceeding and the absence of any undue prejudice or delay to any party, we will grant WPAG's and NRUs' motions to intervene out of time and accept their comments. Petitioners' response to the comments is permitted under Rule 213(a)(3) of the Commission's Rules of Practice and Procedure.[24]

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[22] 70 Fed. Reg. 29,299 (2005).

[23] 18 C.F.R. § 385.214 (2004).

[24] 18 C.F.R. § 385.213(a)(3) (2004).

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B. Substantive Matters

1. Legal Framework Within Which Grid West Would Operate

Petitioners' Position

22. Petitioners explain that they and others participating in the development of the Grid West proposal have not determined the form of the eventual filings they and Grid West must make and the relief sought before Grid West can sell transmission services. They state that this cannot be completed until the Developmental Board of Trustees establishes the Grid West design. They state that, at a minimum, they anticipate filing and seeking approval of the Grid West tariff and transmission agreements with transmission owners. For purposes of their petition for a declaratory order, Petitioners state that they have certain assumptions regarding the legal framework within which Grid West would operate, which they have set forth in the petition as an aid to understanding the eight questions that they pose. They also ask the Commission to correct any mistaken assumptions they may have. Petitioners' assumptions are as follows:[25]

1) Grid West will be a "public utility" within the meaning of the FPA;

2) because RTO formation is voluntary, the Commission may approve a regional transmission provider that offers transmission service under an OATT and that does not have to satisfy the Commission's requirements under Order No. 2000;

3) a non-jurisdictional utility, or an entity over which the Commission has only limited authority, that allows its facilities to be used by Grid West for the provision of regional transmission service will not itself become subject to Commission jurisdiction, or any expansion of the scope of Commission jurisdiction, over its activities as a consequence of its participation in Grid West;

4) a non-jurisdictional utility, or an entity over which the Commission has only limited authority that acquires transmission-only services from Grid West, will not itself become subject to Commission jurisdiction;

[25] Petition at 33-34.

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5) mere membership in Grid West by non-jurisdictional entities will not result in any way in their becoming subject to the Commission's jurisdiction;[26] and

6) if Grid West is a public utility, it must file its tariff and related protocols prior to commencing service, it would need to file a pro forma OATT or a tariff that is determined by the Commission to be comparable or superior to the pro forma OATT, and Grid West would thereafter be subject to Commission orders that apply generically to all public utilities with Commission-approved open access tariffs.

Comments

23. PPC/WPUDA dispute that the declaratory order requested by Petitioners can provide the certainty that Petitioners seek because Petitioners have not presented a proposal for approval, and the Grid West concept is an incomplete and uncertain proposition that is continuing to evolve in significant respects. Thus, PPC/WPUDA contend that the declaratory order can be only an advisory opinion. They also argue that a Commission cannot bind future Commissions and that the addition of new, pertinent facts would permit the Commission to reassess its answers to Petitioners' questions and change them if it sees fit. PPC/WPUDA also ask the Commission to state whether its declaratory order would bind non-petitioning filing utilities and whether entities that are not parties to this proceeding would be barred by principles of res judicata or collateral estoppel from raising issues addressed in the declaratory order.

24. WPAG argues that the Commission should address each of Petitioners' assumptions. WPAG further requests that, in responding to each of Petitioners' questions, the Commission state: whether its answer will bind subsequent Commissions to act in a consistent manner; whether subsequent Commissions will be bound by the answer, regardless of the nature of the actual filing(s) subsequently made by Grid West; whether the answer will be treated as res judicata or subject to the doctrine of estoppel for subsequent Grid West filings; and whether the answer will remain binding even if a subsequent Commission adopts a policy that is inconsistent with the answer.

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[26] Petitioners state that, under the Grid West Bylaws, membership is separate from signing a transmission agreement and does not commit a utility to provide its facilities for Grid West's use.

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25. Petitioners respond that PPC/WPUDA and WPAG ask questions that the petition does not ask and that the Commission need not address them. They further argue that the intervenors' questions related to the scope and effect of the requested declaratory order are issues about the effect of Commission orders in general and not the Grid West conceptual proposal.

Commission Determination

26. Although Petitioners do not believe that it is necessary to address their assumptions, unless we disagree with an assumption, we will address them at this time because intervenors express concern about the assumptions.

27. We agree with Petitioners' first assumption that Grid West would be a public utility under the FPA because it would be providing jurisdictional services. We also agree with Petitioners' second assumption that the Grid West proposal does not have to satisfy the requirements of Order No. 2000 (except regarding governance, as requested by Petitioners), as discussed in our responses to Petitioners' Question Nos. 1 and 2 below.

28. With respect to Petitioners' third assumption, if a non-jurisdictional utility, or an entity over which the Commission has only limited authority, allows its facilities to be used by Grid West for the provision of regional transmission service, that would not, by itself, cause such non-jurisdictional utility or limited jurisdiction entity to become a public utility subject to the full range of the Commission's jurisdiction under Part II of the FPA.

29. With respect to intervenors' concern with Petitioners' fourth assumption, neither Petitioners nor intervenors identify circumstances in which they believe that acquiring transmission service would make an otherwise non-jurisdictional, or limited jurisdictional, utility subject to the Commission's jurisdiction or increased jurisdiction, but as a general matter, we do not believe that a non-jurisdictional entity's purchase of transmission services would by itself make that entity jurisdictional.

30. We agree with Petitioners' fifth assumption that mere membership in Grid West would not result in an otherwise non-jurisdictional utility becoming jurisdictional, based on Petitioners' representation of the current Grid West Bylaws (i.e., distinguishing membership from signing a transmission agreement).

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31. We agree with Petitioners' sixth assumption that if Grid West is a public utility, it must file its tariff and related protocols prior to commencing service, it would need to file a pro forma OATT or a tariff that is determined by the Commission to be comparable or superior to the pro forma OATT, and Grid West would thereafter be subject to Commission orders that apply generically to all public utilities with Commission-approved open access tariffs.

32. As the intervenors acknowledge, the Commission cannot bind future Commissions.[27] However, we provide this guidance based on our precedent and our analysis of the issues raised by Petitioners and the intervenors. With respect to whether parties to this proceeding would be bound by the Commission's guidance, we hold here, as we held in the *RTO West Rehearing Order*, that if a party to this proceeding has concerns with the guidance that we provide in this order, it should express those concerns on rehearing. They should not wait until Grid West makes its filing to raise issues that they could have raised earlier.[28]

33. Moreover, if, in the future, Grid West seeks and is granted RTO status, Grid West would have to comply with any applicable requirements.[29]

2. Petitioners' Questions

34. As noted above, Petitioners seek the Commission's guidance on a number of questions. In general comments, UMPA, while understanding Petitioners' desire to obtain information and assurances from the Commission, notes that many of the details of the Grid West proposal remain undeveloped, including the terms of an agreement

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[27] *E.g.*, *Wyoming-California Pipeline Co.*, 45 FERC ¶ 61,234, 61,678 (1988) (*Wyoming-California*); *Union Pacific Fuels, Inc. v. FERC*, 129 F.3d 157 (D.C. Cir. 1997) (*citing Wyoming-California*).

[28] *RTO West Rehearing Order*, 101 FERC ¶ 61,346 at P 67 ("To allow such untimely challenges would undermine the value of a declaratory order as an advisory opinion.").

[29] *See, e.g.*, *Southwest Power Pool*, 89 FERC ¶ 61,284 at 61,889 (1999), *order on reh'g*, 98 FERC ¶ 61,038 (2002), *aff'd in part and remanded in part on other grounds sub nom. East Texas Electric Cooperative, Inc. v. FERC*, 331 F.3d 131 (D.C. Cir. 2003), *order on remand*, 108 FERC ¶ 61,078 (2004) (*Southwest Power Pool*). The Commission's determination that Southwest Power Pool would have to comply with applicable requirements if it sought RTO status was not the subject of the court appeal.

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between Grid West and participating transmission owners. UMPA contends that because it is impossible to determine whether any of the provisions of the yet undeveloped agreement are just and reasonable, the Commission should not prejudge such agreement when considering the petition.

35. IPP/Marketers argue that there is a danger in creating a Grid West so constrained and limited that it will not be successful. They believe that Grid West should be established, its independent board seated, and the entity and stakeholders given the opportunity to justify further development and evolution. IPP/Marketers also request that the Commission minimize special exceptions or terms necessary for Bonneville's participation and assure that such exceptions or terms are not extended to other filing utilities, which are vertically-integrated and Commission-regulated utilities. PNGC supports the petition.

36. Petitioners' eight questions are addressed below.

(1) Assuming Grid West seeks approval under section 205 of the Federal Power Act to offer regional transmission service pursuant to an open access tariff, but not as an RTO under Order No. 2000, will the Commission treat Grid West's application as one that must satisfy the open access requirements of Order No. 888 (that is, offering services consistent with or superior to the pro forma OATT requirements) rather than the requirements for RTO status?

Petitioners' Position

37. Petitioners request the Commission to commit to reviewing a Grid West filing under Order No. 888 rather than under the requirements of Order No. 2000. They ask that the Commission not condition implementation on satisfaction of Order No. 2000 characteristics and functions.

38. Grid West will sell transmission service under an OATT, but the Grid West proposal is not intended to create an Order No. 2000 RTO. While Petitioners believe the Grid West working proposal would provide protections against discrimination, and economic efficiencies and reliability improvements superior to those provided under Order No. 888, they also acknowledge that the proposal would not meet all the requirements of Order No. 2000. Petitioners believe that the working proposal represents the most change that could be accepted by a significant portion of the region at this time while providing a platform for potential future evolution brought about by the region's needs and aspirations. They also cite the Commission's order in *Entergy Services, Inc.*

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(*Entergy*),[30] in which the Commission conditionally approved a proposal for an independent coordinator of transmission (ICT), which would not be an RTO, and called the proposal a step beyond the pro forma OATT.

39. Petitioners argue that their working proposal is superior to the pro forma OATT, representing an innovative attempt to provide not only independent transmission decision-making but also the benefits of centralized operation and planning while respecting the concerns of regional constituencies concerning Order No. 2000 and the Commission's Standard Market Design. Petitioners state that the Grid West working proposal represents a significant step beyond the Order No. 888 standards under which transmission providers operate their separate systems under separate tariffs and separate rates. Under the working proposal, Grid West would: (i) determine system-wide available flow capacity; (ii) operate a single OASIS for all participating systems; (iii) provide services that can reconfigure available flow capacity and released transmission rights into flow-based injection/withdrawal rights to enable trading of non-identical transmission rights over all participating systems; (iv) make access determinations for all participating systems; and (v) coordinate transmission planning on a single-system basis. According to Petitioners, Grid West's Operational Bylaws provide for decision-making that is, both in perception and in reality, entirely independent from the transmission owners and market participants, while adding innovative accountability and cost control mechanisms to better serve the interests of the stakeholders.

Comments

40. PPC/WPUDA argue that Petitioners are, in effect, asking the Commission to forego issuing any future order requiring compliance with ISO or RTO standards unless it is invited to do so by Grid West. They believe that future Commissions will still be able to alter the decision of the current Commission based on the details of a proposal, the facts presented at the time and the Commission's then-current policies and statutory obligations. They seek clarification as to how the Commission would implement an affirmative answer to Question No. 1.

41. IPP/Marketers do not believe that the Commission must choose to apply either Order No. 2000 or Order No. 888. They oppose applying Order No. 2000, citing the lack of consensus for an Order No. 2000-compliant RTO. But, they contend that the open access requirements of Order No. 888 seem improper for evaluating a proposal that fundamentally is a regional transmission organization, because Order No. 888 was

[30] 110 FERC ¶ 61,295 (2005), *order on clarification*, 111 FERC ¶ 61,222 (2005), *reh'g pending*.

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primarily intended to set the requirements for the provision of service by a single transmission provider operating as a vertically-integrated utility outside the framework of an independent market structure. According to IPP/Marketers, service provided under separate and multiple tariffs can encourage discriminatory behavior, or at least create conditions for unequal service among otherwise similar market participants. They suggest that the Grid West proposal, when fully defined, could be tested against the ISO principles of Order No. 888. They contend that in approving a number of ISOs, the Commission has allowed special contractual and tariff provisions to accommodate regional differences and the public power authorities.

42. Petitioners respond that any Grid West proposal will be filed for approval under the Order No. 888 open and non-discriminatory access provisions applicable to all transmission providers, not as an ISO or RTO or as an entity measure by Order No. 888's ISO principles. Because changes to the pro forma OATT are expected to be necessary to accommodate new services over multiple transmission owners' facilities, Petitioners assume that Grid West's transmission tariff will require Commission approval as being superior to the pro forma OATT.

Commission Determination

43. Since the petition represents that the initial Grid West proposal will not seek RTO status for Grid West, we would not require Grid West to meet the requirements of Order No. 2000. Rather, we would evaluate the proposed independent transmission provider under Order No. 888, as requested by Petitioners, based on the representations in the Petition.

(2) Does Grid West's governance structure as embodied in its Operational Bylaws satisfy the independence requirements of Order No. 2000?

Petitioners' Position

44. Even though it is not planned for Grid West to initially seek RTO status, as discussed above, Petitioners state that, at some future point, transmission owners could decide to request a declaratory order seeking RTO status and that stakeholders desire certainty that such a request would not require a change in the governance structure. Therefore, Petitioners request that the Commission determine that Grid West would satisfy the independence requirements of Order No. 2000.

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45. As noted above, Petitioners state that the Grid West governance structure is modeled on the RTO West governance structure that was previously approved by the Commission.[31] Grid West, its employees and non-stakeholder directors do not have financial interests in any market participant. 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. However, the Members Representative Committee may remove a trustee at any time, with or without cause, by the affirmative vote of 20 members at a duly held meeting of the Members Representative Committee.[32]

46. The executive search firm selected by the Developmental Board of Trustees shall develop a slate of qualified candidates for the Operational Board of Trustees. The Developmental Board of Trustees, in consultation with the Members Representative Committee, may direct the firm to provide a specific number of candidates. The slate of qualified candidates identified by the executive search firm should include individuals possessing, collectively, knowledge of the operational characteristics of the Pacific Northwest power system and executive management experience or board experience with electric utilities and personal abilities and qualities, such as integrity, leadership, problem-solving, facilitation, and consensus-building. In screening potential candidates the executive search firm shall be instructed to exclude any candidate likely to have a conflict of interest with the duties of a Trustee. The executive search firm shall also be instructed to obtain appropriate disclosures by candidates (covering themselves and Related Persons to such candidates) regarding financial interests in or other potential conflicts of interest with Market Participants, Members, and major contractors of the Corporation. The Members Representative Committee will elect a total of nine persons to serve on the Operational Board of Trustees.[33]

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[31] *See Avista Corp.*, 96 FERC ¶ 61,058 at 61,175 (2001).

[32] The Members Representative Committee is a committee of either 30 or 31 representatives of the member classes where each member class may generally elect six representatives to the Members Representative Committee. Operational Bylaws section 7.3.

[33] Operational Bylaws, section 7.2

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47. The five-member classes that comprise the Members Representative Committee in Grid West are: (a) Major Transmitting Utilities; (b) Transmission-Dependent Utilities; (c) Generators, Power Marketers, Large Generating End-Use Consumers, and Others; (d) End-Use Consumers; and (e) State and Provincial Energy Authority/Tribes/Certain Public Interest Groups. Petitioners state that, in general, each of the five member classes in Grid West has the same voting power as the other member classes.

48. Grid West members are provided significant control over corporate costs because they will constitute a majority on the Grid West Budget Committee that prepares and recommends to the Operational Board the proposed annual budget and forecast of out-year funding and commitments.[34] Members also participate in mandatory advisory votes when the Grid West budget proposed by the Operational Board exceeds prior projections by 15 percent,[35] other advisory votes called by the Operational Board and Board Advisory Committee activities.[36]

49. Petitioners state that the Grid West bylaws provide members with another board accountability mechanism. Grid West members may determine that an Operational Board decision, or proposed decision, constitutes a major change in the scope of Grid West's activities or policies that must be authorized by at least seven out of the nine trustees, *i.e.*, a supermajority, in order to be implemented.[37] The members may impose this requirement on the Operational Board through an affirmative vote at a members' meeting of at least 18 of the class votes cast by the member classes and subclasses. The duration of this process would be approximately 70 days.

50. Finally, Grid West members are provided a right to dissolve the corporation if the Commission "orders a change to or issues an order or rule that preempts or otherwise renders inoperative a provision of the Articles of Incorporation or these Operational Bylaws" and the members do not approve the change or do not approve a decision by the

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[34] Operational Bylaws, section 8.4.1.

[35] Operational Bylaws, section 5.15.2.

[36] Operational Bylaws, section 8.2.

[37] Operational Bylaws, section 7.17. Certain types of Operational Board decisions are excluded from this member authority, including proposed budgets and bylaw amendments. Operational Bylaws, section 7.17.5.

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Operational Board to accept the effect of the Commission's order.[38] The members must approve such changes by the same supermajority vote as is required for amending the Operational Bylaws, *i.e*., a margin of at least two-thirds of the class vote in at least four out of the five member classes.

51. In addition, the Members Representative Committee is responsible for reviewing, consulting with the Operational Board about, and voting on "Special Issues", e.g., backstop measures to relieve chronic congestion, that have been identified as being so significant to the region that the Operational Board can only implement them through a special consultation and interaction process with the Members Representative Committee, unless the proposed action is within the scope of a previous authorization.[39] The duration of this consultation process, including a remand by the Members Representative Committee, would be approximately 145 days.

52. Petitioners further indicate that they intend to negotiate an allocation of section 205 filing rights between public utility transmission owners and Grid West and file it for approval by the Commission, consistent with Bonneville's statutory authorities. Finally, Petitioners state that the Grid West governing structure does not provide for representation of market participants on the Board of Trustees and assert that it does not provide any other mechanism through which market participants may prohibit a board vote or limit the board's discretion. Thus, Petitioners argue that it is unnecessary to provide a compliance audit of the independence of the organization's decision-making process.

Comments

53. IPP/Marketers assert that the element with the greatest potential to compromise the Board's independence will be the transmission agreements between Grid West and the transmission owners. They express concern that the transmission owners may seek to place tariff provisions or excessive restrictions on the operational responsibilities of Grid

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[38] Operational Bylaws, section 12.4.3

[39] Operational Bylaws, section 7.16. Special Issues are: (1) authorization for Grid West to exercise backstop measures (authority to arrange for transmission construction) with respect to chronic, significant, commercial congestion; (2) departure from using the "Company Rate approach"; (3) authorization to issue financial transmission rights; (4) authorization for Grid West's market monitor to impose penalties or actively intervene in markets; and (5) authorization to change a transmission owner's loss methodology.

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West in the transmission agreements. Such restrictions, if they are negotiated and signed in a bilateral contract between transmission owners and Grid West, may not later be modified by other stakeholders. Thus, IPP/Marketers assert that Grid West transmission customers may be significantly affected by the transmission agreement and should have the right to seek modifications of them when they are filed with the Commission. They contend that, in addition to the transmission agreements, Grid West's independence will also be determined by the enabling agreements, tariffs and other organizational documents, as well as the bylaws.

Commission Determination

54. Order No. 2000 requires that an RTO's governing board's decision-making process be independent of any market participant or class of participants.[40] The RTO must include, as part of its demonstration of independence, a demonstration that its employees, and any non-stakeholder directors must not have financial interests in any market participant. The Commission has said that the RTO must be independent in both perception and reality.

55. Below, we evaluate per Petitioners' request, the proposed governance against the requirements of Order No. 2000.

56. The proposed Bylaws in brief state that except as set forth in section 7.10.2,[41] no individual may be nominated for election to or become a member of the Board of Trustees, or at any time serve on the Board of Trustees, if such individual (or the spouse, the domestic partner, or any legal dependent of such individual) (i) has a direct or indirect financial interest in (including the ownership of securities of) a Market Participant or Member (or any Affiliate of any of such Persons); (ii) is connected as an owner, director, officer, employee, partner, principal, or member of a governing board or council, or in

[40] 18 C.F.R. § 35.34(j)(1) (2004).

[41] Provides that an individual shall not be deemed to be in violation of the restrictions set forth in section 7.10, and shall not be prohibited from serving merely because such individual is (i) a residential retail consumer of electric energy or (ii) receives post employment benefits from a Market Participant or Member, providing that those benefits are not tied to the economic performance of the Market participant or Member.

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any similar capacity, to a Market Participant or Member, (iii) has a Related Person that is an officer, chief executive or general manager, director or trustee or member of a governing board or council, or that occupies a position of similar capacity of a Market Participant or Member.[42] Thus, with regard to the financial independence of trustees and employees, we find that the Bylaws provide satisfactorily restrictions.

57. We now turn to the RTO's decision-making process. As stated above, the Commission's regulations require a demonstration that the decision-making process is independent of control by any market participant or class of participant. There is no express article of the Bylaws that, on its own, conveys control to any market participant or class of market participant that would directly undermine the independence of Grid West.[43] In fact, the proposed Bylaws are written to include additional stakeholder processes so that no market participant or class of participants has control of the decision-making process. We conclude that decision-making by Grid West will be independent of any market participant or class of market participant since the Board 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.

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[42] Operational Bylaws Article VII, section 7.10.

[43] While the Grid West Board would have to consult with the Members Representative Committee (which may, in turn, require a supermajority vote by the board) prior to taking action regarding Special Issues (Operational Bylaws, section 7.16.7), e.g., a departure from using the Company Rate approach, it is not unusual for RTOs to have limitations on the ability of their boards to require filings, such as FPA section 205 filings. For example, the Commission approved a settlement agreement between Midwest ISO and the Midwest ISO Transmission Owners concerning the allocation of section filing rights among and between those entities. Their settlement agreement allocated some filing rights exclusively to the Transmission Owners, allocated other filing rights to Midwest ISO, and for other matters provided for shared filing rights among the Transmission Owners collectively or between the Transmission Owners and Midwest ISO. Where filing rights are shared, the settlement agreement requires coordination between Midwest ISO and the Transmission Owners, including a requirement for notification of filings and procedures for pre-filing meetings, if requested by the other party. *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,380 at P 7, P 11 (2005).

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58. We agree with Petitioners' claim that a compliance audit of the independence of the organization's decision making process is unnecessary. The independent compliance audit established in Order No. 2000 was established to provide assurance to all market participants that passive ownership interests by market participants in an RTO remained passive over time and provide assurances of continued RTO independence. Because the Operational Bylaws do not anticipate passive ownership in Grid West, the compliance audit required by Order No. 2000 would be unnecessary.

59. With respect to IPP/Marketers' concern about the potential effects of provisions of the various enabling documents for Grid West, interested parties will have an opportunity to comment on the justness and reasonableness of documents such as the proposed transmission agreements between the transmission owners and Grid West and Grid West's tariff when those documents are filed.

(3) What is the Commission's position regarding transmission owners' withdrawal rights? (a) Will the Commission approve a contract between Grid West and Bonneville that allows Bonneville to withdraw as a participating transmission owner without Commission approval? (b) Will the Commission clarify that a participating transmission owner that is a public utility would be able to terminate its contractual arrangements with Grid West under conditions that the Commission determines are just and reasonable?

Petitioners' Position

60. Petitioners argue that Bonneville, like any other public utility district or municipal transmission owners who elects to execute participation agreements with Grid West, is not a public utility subject to the Commission's section 205 rate authority. Thus, they assert that Bonneville is not obligated to make a section 205 filing to withdraw. Even assuming that Grid West would have to file Bonneville's notice of termination of its transmission agreement with Grid West, this filing would not create Commission jurisdiction over Bonneville's decision to withdraw, according to Petitioners. Bonneville will not participate if it cannot withdraw without prior Commission approval. However, Petitioners further state that they anticipate that Grid West will want contractual provisions governing a withdrawal by Bonneville, including a requirement to support any pre-withdrawal contracts executed by Grid West. Thus, Petitioners ask the Commission to assume that Bonneville's transmission agreement will contain negotiated termination provisions.

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Comments

61. No party disputes Petitioners' argument regarding Bonneville's right to withdraw from Grid West. However, IPP/Marketers argue that no party should be allowed to withdraw from Grid West without observance of some procedures and adequate notice, and acceptance of consequences directly attributable to withdrawal. Avista believes that implicit in Petitioners' request is that Bonneville's withdrawal would be pursuant to contractual termination provisions. According to Avista, the Commission would have authority to interpret termination provisions contained in a contract for service from a jurisdictional utility and such interpretation would be binding on Bonneville as it would be on any other non-jurisdictional party voluntarily taking service from a jurisdictional utility under contracts filed with the Commission. Petitioners respond that they only ask whether the Commission would accept a contract that allowed Bonneville to implement a withdrawal right with prior Commission approval. They argue that it is not necessary for the Commission to address the potentially controversial issue of how contractual disputes between the parties would be resolved. Further, they argue that the Commission's assertion of such authority with respect to an operational agreement between Bonneville and Grid West would prematurely define such an agreement to be a contract for service from a jurisdictional utility.

62. PPC/WPUDA argue that the Commission has authority over the contracts of governmental utilities to the extent that they subject themselves to ISO tariffs, as members or participants.[44] NRU cites a more recent *City of Vernon* case for the proposition that the Commission concluded it had authority to review the rates of a non-jurisdictional entity contributing facilities to the operational control of an ISO using a strict section 205 review if it felt such a review was necessary in order to review the justness and reasonableness of the ISO's rates.[45] Petitioners respond that City of Vernon would not be applicable to Bonneville's Company Rate for Grid West service. They state that the Company Rate approach would use each Petitioner's Commission-approved rate as a license plate rate for recovery of the wholesale revenue requirement of that petitioner's portion of the Grid West managed transmission system. Each owner's Company Rate would be separately reviewed under the standards applicable to that owner, according to Petitioners. They assert that the Commission would be required to

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[44] PPC/WPUDA cite *City of Vernon*, 93 FERC ¶ 61,103 at 61,285 (2000), *reh'g denied*, 94 FERC ¶ 61,148 (2004), *rev'd on other grounds sub nom. Pacific Gas and Electric Co. v. FERC*, 306 F.3d 1112 (D.C. Cir. 2002).

[45] NRU cites *City of Vernon, California*, 111 FERC ¶ 61,092 (2005), *reh'g pending*.

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review Bonneville's rates under statutory standards applicable to Bonneville. Petitioners also argue that whether there might be other rates that are jurisdictional and would incorporate all or a portion of Bonneville's revenue requirement is not yet known. With respect to withdrawal rights of investor-owned public utilities, Petitioners clarify that they seek a declaratory order that the terms and conditions of withdrawal would be established under the just and reasonable standard of section 205 of the FPA at the time the contract is filed and approved.

Commission Determination

63. In *Avista*, the Commission held that "Bonneville is subject to limited Commission jurisdiction as a federal power marketing agency. Consequently, Bonneville's decision to join RTO West is not subject to review by this Commission."[46] The Commission reaffirmed this point with respect to Bonneville in the *RTO West Order*, adding that "concerns as to whether Bonneville is adequately protected are more appropriately addressed in proceedings that Bonneville will initiate pursuant to the Pacific Northwest Power Planning and Conservation Act [(Northwest Power Act)]."[47] The same rationale would apply regarding the Commission's authority to review Bonneville's decision to withdraw from Grid West. Therefore, Bonneville does not need prior Commission approval to withdraw from Grid West.[48] Notwithstanding that, Petitioners, including Bonneville, indicate that they expect to negotiate withdrawal terms with Grid West, and

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[46] *Avista Corp.*, 95 FERC ¶ 61,114 at 61,345 (2001). *See also, e.g.*, *TRANSLink Transmission Co., L.L.C.*, 99 FERC ¶ 61,106 at 61,457-58, *order on reh'g*, 101 FERC ¶ 61,140 at 61,587-88 (2002) (public power entities such as the Nebraska Public Power District and Corn Belt Electric Cooperative are not Commission-jurisdictional public utilities); *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 at P 150 (2004), *order on reh'g*, 111 FERC ¶ 61,042 (2005) (*Grandfatherd Agreements*) (carving out the grandfathered agreements that involved utilities that were not "public utilities" as defined in section 201 of the FPA).

[47] *RTO West Order*, 100 FERC ¶ 61,274 at P 59.

[48] *See also, e.g.*, *California Independent System Operator Corp.*, 109 FERC ¶ 61,391 at P 58 & n.29 (2004), *reh'g denied*, 111 FERC ¶ 61,363 (2005), *citing Pacific Gas and Electric Co.*, 109 FERC ¶ 61,255 at P 120 (2004).

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the Commission and interested parties will have the opportunity to review the withdrawal terms when Grid West makes its filing. Further, we clarify, as requested by Petitioners, that a participating transmission owner that is a public utility would be able to terminate its contractual arrangements with Grid West under conditions that the Commission determines are just and reasonable.

(4) If Grid West becomes a public utility selling transmission services but not as an RTO, will the Commission assure that it will not thereafter require Grid West to comply with Order No. 2000 or Standard Market Design approaches?

Petitioners' Position

64. According to Petitioners, the most significant obstacle to broader regional support for the Grid West proposal is the fear of many stakeholders that either the Grid West Operational Board or the Commission will in the future impose inappropriate, costly, damaging or inequitable changes on the region regardless of regional views.[49] They state that Regional Representatives Group has addressed the first fear by incorporating effective accountability mechanisms into the Grid West bylaws discussed concerning Question No. 2 above. Petitioners are aware of limitations that restrict the ability of members of a regulatory body to make commitments for future members. Nevertheless, it is unlikely that the Grid West proposal could move forward at Decision Point 2 if the Commission is unable to ease the stakeholders' fears that this Commission or a future Commission may order Grid West to implement significant changes seen as adverse to stakeholder interests. The Commission should declare that it has no authority to require a public utility whose tariff has been approved under one rule (Order No. 888) to subsequently comply with the requirements of another rule (Order No. 2000) that applies only to organizations that have voluntarily applied for RTO status. They also request that the Commission reaffirm that transmission solutions for the Grid West footprint must be "appropriate to the unique needs of the Pacific Northwest"[50] and that the Commission will defer to Grid West and its stakeholders to determine the best solutions to any problems the Commission may discover.

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[49] The Petitioners state that they are concerned about the Commission taking action to force a unique evolution of Grid West simply because Grid West is a public utility subject to the Commission's jurisdiction.

[50] Petitioners cite *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, Docket No. RM01-12-000, White Paper (April 28, 2003) at 4 (Standard Market Design White Paper) available at http://www.ferc.gov/industries/electric/indus-act/smd/white-paper.pdf.

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Comments

65. IPP/Marketers interpret the request as seeking assurances that the Commission does not intend to rigidly apply Order No. 2000 or Standard Market Design approaches to Grid West. They support the view that the Grid West proposal should be considered on its own merits, granting the region substantial deference to settle differences. However, they suggest that the initial design of Grid West may require later modification for any number of reasons, including the application of lessons learned from RTOs and ISOs, which may improve Grid West's markets and operations. IPP/Marketers express concern that there also may be a generally recognized problem or defect in Grid West's design for which Grid West is unable to find the consensus necessary to propose a solution. In such a case there would be no avenue for parties to seek relief, according to IPP/Marketers. They argue that the Commission must be able to remedy any shortcomings that are not addressed by Grid West directly in order to ensure that all users of the transmission system and market participants in the region are protected. They oppose the broad exclusion from further Commission review or action that Petitioners seek.

Commission Determination

66. As contemplated in this Petition, Grid West will not be an RTO. As such, application of Order No. 2000 would not be appropriate. While this Commission cannot bind future Commissions,[51] we can provide as much direction as possible to Petitioners (and the region) to help them make the decision as to whether to move forward with Grid West. As with many other regions of the country, Grid West is contemplating a stakeholder process through which problems and solutions will be vetted. We have also, in the context of an RTO[52] and an experimental program,[53] not been prescriptive in the approach to managing regional markets.

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[51] *See, e.g., Wyoming-California Pipeline Co.*, 45 FERC ¶ 61,234 at 61,278 (1988) (*Wyoming-California*); *see also, e.g., Union Pacific Fuels, Inc. v. FERC*, 129 F.3d 157 (D.C. Cir. 1997) (citing *Wyoming-California*).

[52] *See Southwest Power Pool*, 111 FERC ¶ 61,118 (2005).

[53] *See Entergy, supra* note 29.

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(5) As a matter of policy, will the Commission accept a provision in Grid West's agreements with Bonneville and other transmission owners providing that certain terms identified as critical to transmission owners' participation will be protected from subsequent Commission-mandated change based on, in Bonneville's case, Bonneville's statutory requirements and the doctrine of sub-delegation, and for all transmission owners the application of the *Mobile-Sierra* standard to certain contract provisions?

Petitioners' Position

67. Petitioners state that certain protection provisions will be required in the agreements between the transmission owners and Grid West in order to obtain their participation in Grid West. Petitioners submit that these provisions could include restrictions on the facilities in order to protect transmission owners' capital investment in those facilities; the physical integrity, reliability and safety of those systems; pre-existing contracts and obligations of market participants; the method of collection and allocation of Grid West's revenues to the owners of the transmission systems; and Grid West's compliance with laws, treaties, standards, licenses and non-power requirements applicable to these facilities. Petitioners add that there may be provisions that various owners believe are necessary to win support for the proposal from shareholders and state or provincial authorities. Petitioners conclude that the transmission agreement between Grid West and the transmission owners may be replete with provisions that reflect fundamental compromises necessary to permit one or more of the owners to participate in Grid West.

68. Petitioners therefore request that the Commission issue a clear statement that it will allow the protection of provisions essential to the participation of transmission owners from being modified by changes to the Grid West tariff. Citing *Midwest Independent Transmission System Operator, Inc.*,[54] Petitioners further request the Commission state that: (i) Grid West and a transmission owner may agree that they may not amend their contract unless the amendment is signed by both parties; (ii) neither party alone may petition the Commission under sections 205 or 206 of the FPA to modify specified provisions; and (iii) absent the parties' agreement, the standard of review for amendments to those specified provisions proposed under section 206 by a non-party, or by the Commission acting *sua sponte*, is the *Mobile-Sierra* "public interest" standard.[55]

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[54] 110 FERC ¶ 61,177 (2005) (*Midwest ISO*).

[55] *See United Gas Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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Finally, Petitioners request that, regardless of *Mobile-Sierra* protection, the Commission recognize that a required contractual change to Grid West's authority to use non-jurisdictional facilities, such as Bonneville's, would either be ineffective or would terminate Grid West's permission to use the facilities if the change does not have the owner's agreement.

Comments

69. PNGC states that the Commission should approve and clarify that any future Commission or third-party actions seeking to change the terms will be based on the statutory requirements and the *Mobile-Sierra* public interest standard, particularly the issue of sub-delegation for Bonneville. PNGC reiterates that many of the provisions identified for special protection reflect a carefully crafted compromise amongst the stakeholders.

70. IPP/Marketers Coalition state that the Commission has previously ruled on requests to ensure *Mobile-Sierra* protections for contracts and various provisions in transmission agreements related to RTOs/ISOs. They add that the Commission also ordered that certain provisions in the agreements be removed from the transmission agreements and placed in the tariff, rendering the need for *Mobile-Sierra* protection moot as to those transferred provisions.[56] They conclude that guidance for the protection of contract terms from later modifications, subject to a *Mobile-Sierra* test can not be given until the actual transmission agreements are filed for acceptance. UMPA argues that if the Commission is inclined to protect certain provisions, it should only do so in such a way that does not prejudge the justness and reasonableness of the agreement and without foreclosing discussion of issues.

71. PPC and WPUDA do not oppose the Petitioners' attempt to obtain the Commission's agreement that certain core provisions be protected, but they do not believe that the Commission's assurances can or should be extensive since the Commission does not currently have before it a list of provisions to be protected. PPC and WPUDA add that it would assist stakeholders if the Commission could describe specifically what types of provisions would be considered protected and on what facts the Commission's determination might turn.

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[56] IPP/Marketers cite *ISO New England Inc.*, 106 FERC ¶61,280, *order on partial settlement, on compliance filing, and on reh'g*, 109 FERC ¶ 61,147 (2004) (*ISO New England*).

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Commission Determination

72. Petitioners request that the Commission allow the protection of certain provisions in the agreements between transmission owners and Grid West from being modified. Several interveners maintain, however, that because Petitioners have not filed and specified the provisions for which they request protection, the Commission should not provide any extensive assurances. Since the instant order is in response to a request for guidance only, we believe that our response must remain broad in scope. That said, we agree in concept that parties to agreements between transmission owners and Grid West could, through the use of a *Mobile-Sierra* clause, guard against future changes to those agreements by the Commission as well as prevent unilateral changes from being proposed by any of the parties, as discussed in more detail below.[57]

73. Petitioners first request that the Commission allow the protection of certain provisions from being modified by changes to the Grid West tariff. Consistent with our determination in the *RTO West Rehearing Order*,[58] we will allow Petitioners to submit a list of specific provisions that they believe are essential to meeting their legal obligations or affect their ability to participate in Grid West. Once we have this list and the Grid West tariff, we will allow all interested parties to comment before we make a determination. In this regard, we are not looking to trump legal obligations, but are looking for a greater understanding of these obligations and how they can be accounted for within the framework that Petitioners seek.

74. Petitioners further request that the standard of review for amendments to specified provisions proposed by a non-party or by the Commission acting *sua sponte* be the *Mobile-Sierra* "public interest" standard. We note that our order in *ISO New England* accepted specific *Mobile-Sierra* provisions, and held that the Commission is required to "balance the needs of the Transmission Owners for contractual certainty with the interests properly represented by an RTO."[59] We emphasize that the Commission will consider

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[57] The *Mobile-Sierra* "public interest" standard is more difficult to meet than the "just and reasonable" standard under the FPA. *See, e.g., Northeast Utilities Service Co. v. FERC*, 993 F.2d 937 (1st Cir. 1993). *See also, e.g., Northeast Utilities Service Co. v. FERC*, 55 F3d 686 (1st Cir. 1995) (the *Mobile-Sierra* "public interest" standard is not practically insurmountable in all cases).

[58] *RTO West Rehearing Order*, 101 FERC ¶ 61,346 at P 15.

[59] *ISO New England*, 106 FERC ¶ 61,280 at P 128.

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proposed *Mobile-Sierra* provisions in the context of the effect the provision for which *Mobile-Sierra* protection is sought has on non-parties to the agreement or the operation of the area's facilities as a whole. Thus, Grid West may seek the same considerations.

75. Petitioners cite *Midwest ISO* in also requesting that the Commission permit (1) Grid West and a transmission owner to agree that they may not amend their contract unless the amendment is signed by both parties; and (2) neither party alone to petition the Commission under sections 205 or 206 of the FPA to modify specified provisions. We note that in *Midwest ISO*, the Commission accepted a filed agreement. We believe it is premature at this point to offer such assurances, given that Petitioners have not filed any transmission agreements or a Grid West tariff; and we would not want to, in a vacuum, change the terms of any contracts by our actions here.

76. Finally, Petitioners request we recognize that a required contractual change to Grid West's authority to use non-jurisdictional facilities would be ineffective or would terminate Grid West's permission to use the facilities, if the change does not have the owner's agreement. Petitioners have referred to only one entity owning non-jurisdictional facilities in the proposed Grid West service area, Bonneville. We will therefore address this request in the context of Bonneville. As we have previously stated, we recognize that Bonneville's obligations and operational responsibilities with respect to such matters as irrigation, flood control, treaties, and environmental rules are not jurisdictional to the Commission. Accordingly, we find that our jurisdiction does not extend to any changes in the contract between Bonneville and Grid West which would affect Bonneville's statutory requirements.[60] We encourage, however, Grid West and Bonneville to inform the Commission in any subsequent filings, of the particular concerns it has in this regard. In this manner, the Commission will be better informed and possibly prevent any actions that would undermine our decision here.

(6) If Grid West becomes a public utility that sells transmission service but not as an RTO, is Commission policy sufficiently flexible to accommodate participating transmission owners continuing as transmission providers for their pre-existing transmission agreements, including OATT service, while new service is made available only through Grid West?

[60] We address Bonneville's right to withdraw its facilities from Grid West above in our discussion of Petitioners' Question No. 3.

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Petitioners' Position

77. The Grid West working proposal envisions a new, region-wide transmission service offered by Grid West while participating transmission owners continue to provide service to their pre-existing transmission arrangements under their own contract terms and tariffs. Petitioners state that the proposal would establish Grid West as a region-wide, independent transmission provider that will take increasing transmission provider responsibility from existing transmission providers through transmission grid expansions or the expiration of pre-existing transmission agreements.

78. Petitioners envision that Grid West's transmission owners will determine the amount of transmission capacity required to serve pre-existing contracts, after which Grid West would determine the amount of flow capacity on the entire Grid West system available for additional transactions under its new flow-based, multi-system service. Participating transmission owners would be limited to serving pre-existing contracts and obligations. Grid West would establish a tariff for the new services envisioned in the working proposal and would have responsibility for all decisions about new access requests to the Grid West system. Grid West would also be responsible for determining the amount of rights associated with new transmission construction.

79. Petitioners state that continuing responsibility of transmission owners to carry out their contractual responsibilities to existing customers is a critical component of the working proposal's acceptability to many customers and simplifies the proposal's implementation. Petitioners claim that the Commission has often indicated its support for preserving existing transmission arrangements, even in the RTO context.[61] Continuation of the transmission owner's role as transmission provider to existing arrangements while a different entity is responsible for new service should be allowed in the context of Order No. 888.

Comments

80. IPP/Marketers state that it is premature for the Commission to comment on this aspect of Grid West's conceptual proposal, but state that the Commission should respond affirmatively once sufficient information is provided and the Commission has an opportunity to review Grid West's prospective documents, tariff, and agreements. IPP/Marketers strongly support the provision of transmission services under a single regional tariff and desire that the Commission encourage such movement with exceptions, as necessary, to accommodate services provided by Bonneville.

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[61] Petitioners cite the *Grandfathered Agreements* order.

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81. PNGC states market participants in the Pacific Northwest have been working on a regional transmission organization for almost a decade and that protection of existing transmission rights was instrumental in achieving a regional compromise which has allowed Grid West to continue evolving. PNGC states that the Commission should grant the Petitioners request limiting Grid West's operations to new transmission services provided that existing contracts will continue to be served by the transmission owners and that Bonneville's existing contracts will not be modified.

82. PPC/WPUDA state that the Commission should provide explicit guidance that the transmission owners participating in Grid West may establish and implement a tariff for transmission service that supports all of the rights provided by the current contracts and tariffs, including roll-over rights. PPC/WPUDA's are concerned that their transmission providers will no longer offer a tariff service that supports their roll-over rights.

Commission Determination

83. We find that Order No. 888 provides sufficient flexibility to accommodate Petitioners request that transmission owners may continue serving as transmission providers for their pre-existing transmission agreements, including OATT service, while new service is made available only through Grid West. In Order No. 888 we noted that because we were not abrogating existing requirements and transmission contracts generically, and because the functional unbundling requirement in Order No. 888 applies only to new wholesale services, the terms and conditions of the pro forma tariff do not apply to service under existing requirements contracts. However, if a customer's existing bundled service (transmission and generation) contract or transmission-only contract expires, and the customer takes any new transmission service from its former supplier, the terms and conditions of the OATT would then apply to the transmission service that the customer receives.[62] Here, according to Petitioners, Grid West will offer a new, region-wide transmission service for all new transmission service which we assume may include participating transmission owners' pre-existing contracts that have expired.

(7) Whether to acknowledge that the Commission has no authority to require Bonneville to modify its transmission agreements?

[62] Order No. 888 at 31,665.

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Petitioners' Position

84. Petitioners request that the Commission confirm its lack of authority to order changes to Bonneville's OATT or to any of its transmission agreements even if Bonneville is a full participant in Grid West. Petitioners state that there is significant concern among public power stakeholders that an election by Bonneville to become a participating transmission owner in the Grid West system will grant the Commission authority over Bonneville that it lacks in the absence of such participation. In this context, Petitioners note that many of the stakeholders are particularly concerned with maintaining the benefits of existing Bonneville transmission agreements.

85. Petitioners argue that the Commission has clarified its lack of authority over pre-existing transmission agreements of non-jurisdictional transmission owners, even when the transmission owners elect to participate in a Commission-jurisdictional RTO. Petitioners note the Commission has specifically stated that "[w]hile the Commission has limited jurisdiction over Bonneville's rates under the Northwest Power Act, the contracts between Bonneville and its customers do not require Commission review or approval."[63] Petitioners cite further precedent in *Grandfathered Agreements*, where the Commission required the Midwest ISO to carve out of the energy markets existing transmission agreements for which the transmission provider was not a public utility as defined in section 201 of the FPA. Petitioners submit that the Commission concluded in *Grandfathered Agreements* that it has no authority to make any modifications to these contracts.[64]

Comments

86. IPP/Marketers, PNGC and PPC/WPUDA all agree with the Petitioners in regard to this issue. PNGC adds that many public power systems have made major economic decisions based on their long-term contracts with Bonneville, and that in order to adequately continue serving their loads, it is essential that these contracts not be modified, undermined, limited or lessened in any way in the process of forming and operating Grid West.

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[63] Standard Market Design White Paper at 4.

[64] *Grandfathered Agreements*, 108 FERC ¶ 61,236 at P 150 (2004).

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87. PPC/WPUDA argue that it is uncontroversial that the Commission lacks jurisdiction over Bonneville's existing transmission agreements. However, PPC/WPUDA indicate that they are concerned with the Commission's use of its "conditioning authority" to force non-jurisdictional transmission providers to renegotiate contracts or make substantive changes to the exercise of rights provided by those contracts. PPC/WPUDA explain that although the Commission disclaimed jurisdiction of non-jurisdictional transmission providers in *Grandfathered Agreements*, the Commission went on to state that it does have jurisdiction over the service that the transmission owners must take under the Midwest ISO Tariff to meet their obligations in existing transmission agreements. PPC/WPUDA therefore request clarification that, to the extent the transmission providers in Grid West serve their existing transmission contracts with capacity withheld from Grid West, the Commission will not have an opportunity to place conditions on this service.

Commission Determination

88. We agree with Petitioners that the Commission lacks the authority to order changes to Bonneville's OATT or to any of its transmission agreements that are serviced under Bonneville's OATT. Under the Northwest Power Act, the Commission has authority to accept or deny Bonneville's rates, but not to modify them. PPC/WPUDA are concerned about our conditioning authority where non-jurisdictional transmission providers take service under the Grid West tariff to meet their obligations in existing transmission agreements. We find their concerns are unwarranted. In their filing, Petitioners explicitly state that, "[t]he transmission provider will continue to directly serve its pre-existing obligations under their terms, including the provider's own OATT."[65] Given this proposed structure, we find that we do not have the authority to modify Bonneville's or a non-jurisdictional transmission provider's existing transmission agreements.

(8) Will the Commission support implementation, for an indefinite period, of license plate rates and the application of charges to through-and-out transactions?

[65] Petition at 7.

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Petitioners' Position

89. Petitioners anticipate that the license plate rate (Company Rate) concept would be applied for the first eight years and would continue unless and until the Operational Board elected to adopt another pricing approach. Making the Company Rate approach the default gave significant comfort to certain load-serving entities with substantial concerns about disadvantageous cost shifts.

90. Petitioners claim that the Commission has adopted a flexible policy regarding the period of application of license plate rates in the RTO context. Petitioners state in Order No. 2000 the Commission concluded that it was appropriate to allow RTOs to propose the use of license plate rates and that the Commission's policy does not require abandonment of license plate rates at the end of the initial fixed term, but does require the RTO and its transmission owners to justify their choice to continue or discontinue using license plate rates, or otherwise change the method for fixed cost recovery.[66] In the *RTO West Order*, the Commission approved in concept a Company Rate for a minimum period of eight years, allowing the RTO West board to decide whether to continue the Company Rate or propose an alternative pricing mechanism.[67] In non-RTO circumstances like those of Grid West, the Commission accepted the Southwest Power Pool's proposal for zonal rates because it was voluntarily eliminating rate pancaking and charging a single rate.[68] Since the Grid West proposal will not be filed under Order No. 2000, Petitioners desire confirmation from the Commission that license plate pricing, or a pricing methodology consistent with the Company Rate principle is acceptable and that a maximum duration will not be imposed.

91. Next, Petitioners state that they anticipate Grid West using a physical rights system, not a financial rights system. Consequently, customers with pre-existing rights to schedule exports or throughput would continue to pay their share of embedded costs through the rates applicable to those contracts, and customers desiring to schedule new export and throughput transactions would need to purchase the necessary physical transmission rights. Those rights could be obtained either through the Reconfiguration Market (for service of one year or less) or through purchase of long-term rights from available flow capacity (if any) or from expansion projects. Rights holders who offer transmission rights in the Reconfiguration Market would continue to pay the applicable

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[66] Order No. 2000 at 31,117.

[67] *RTO West Order*, 100 FERC ¶ 61,274 at P 136.

[68] *Southwest Power Pool*, 89 FERC at 61,889 (1999).

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rates, including embedded costs, even after the rights have been traded to others. Rates for new long-term export and throughput service would also collect their share of embedded costs, though it is not yet known whether those rates would be the Company Rate of the particular owner whose facilities are used at the boundary or a blended average of all the Company Rates applicable to border facilities. Petitioners state that the Grid West Pricing Work Group is currently developing proposals regarding the pricing of Grid West services and evaluating the appropriateness of export fees. Petitioners request the Commission clarify that Grid West rates for exports or throughput would not be limited to a transition period.

Comments

92. IPP/Marketers state that there are several reasons why this request is inappropriate at this time. They state that tariff and design issues for Grid West are in the initial stages and consideration of pricing mechanisms has just begun. Furthermore, IPP/Marketers claim that the Commission has repeatedly stated that the elimination of rate pancaking has been a central goal of its RTO policy.

93. PNGC and PPC/WPUDA both support petitioners' request for guidance regarding the envisioned rate design for Grid West. The creation of significant cost shifts by the adoption of a new, regional transmission rate design is one of the most troublesome issues facing Grid West. For both short-term and long-term transmission use, it is important that through-and-out transactions and exports pay their share of the embedded cost of the transmission system. Doing so will support the equitable allocation of costs to all users of the transmission system and mitigate the potential for under-recovery of transmission revenue requirements.

94. Petitioners respond that the Bylaws establish the Company Rate as a continuing rate mechanism. Further, a departure from the Bylaws is one of the five Special Issues that would required the Board to implement the special interactive process with membership. Thus, they contend that making the Company Rate approach effective for an indefinite duration is consistent with the Bylaws. Moreover, Petitioners argue that they have not asked the Commission to rule on whether their requests in the Petition are consistent with the Bylaws.

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Commission Determination

95. Applicants state that they seek approval only of the pricing methodology to be employed prospectively or until such time that the Operational Board elects to adopt an alternate rate methodology. They further state that actual rate filings will be submitted before Grid West begins commercial operations. For purposes of this order, we will view this as a request for this Commission to make a determination on the reasonableness of the design of the license plate rate design and export fee.

96. The Commission has previously approved requests for license plate rates in approving RTOs. Petitioners' preference for license plate rates is consistent with other proposals. Consequently, we will accept Applicants' proposal on a generic basis. Regarding the length of the Company Rate Period, we will not impose a maximum duration period but encourage Grid West to set forth principles that should guide the region in developing a pricing proposal that is pragmatic and encourages investment in infrastructure.

The Commission orders:

The Commission hereby provides preliminary guidance concerning the Grid West proposal, as discussed in the body of this order.

By the Commission. Commissioner Brownell concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Bonneville Power Administration
PacifiCorp
Idaho Power Company

Docket No. EL05-106-000

(Issued July 1, 2005)

Nora Mead BROWNELL, Commissioner *concurring*:

Today's order provides guidance on the Commission's authority to mandate changes to the proposed framework for Grid West. While I agree with the conclusions of this order, I am writing separately to express my grave concern about the future efficacy of this entity.

Grid West's Operational Bylaws contain several provisions that have the potential to limit the effectiveness of the Board of Trustees in addressing the issues confronting the region. For example, before the Board of Trustees can move forward with solutions to address chronic, significant, commercial congestion that no other has stepped forward to address, it must submit a proposal to a vote of the Members Representative Committee[1] in accordance with specific timeline, procedural requirements, and mandatory consultation,[2] at the end of which the Board of Trustees shall vote to adopt a proposal to invoke an authorization or take an action. This vote is then subject to a supermajority vote of the Members Representative Committee. If 16 of the 30 Members Representative Committee members vote to support the proposal, the Board may implement the proposal. Otherwise, it is sent back to the Board of Trustees for another vote. Approval requires an affirmative vote of not fewer than seven of the nine Trustees.[3] This

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[1] The Members Representative Committee is a committee of either 30 or 31 representatives of the member classes where each member class may generally elect six representatives to the Members Representative Committee. Operational Bylaws, section 7.3.

[2] The mandatory consultation process has a minimum window of 45 days but no upper limit.

[3] The Bylaws provide that except where a greater vote is required, an affirmative vote requires a majority of Trustees. The Special Issues require a supermajority vote.

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process, or one similar, is used for all of the listed Special Issues.[4] This, in conjunction with the Members Representative Committee's right to remove Trustees without cause puts up a high hurdle to the Board of Trustees moving forward on issues of critical concern to the region.

The West has already experienced first hand the dangers of ineffective governance of a regional transmission operator. In the summer and fall of 2000, a cumbersome, stakeholder-driven governance structure paralyzed the California Independent System Operator's ability to respond to the growing crisis. As the Petitioners themselves acknowledge, the West faces serious challenges.[5] The region can ill afford to ignore the lessons of the past and create a regional transmission provider whose board is hamstrung from implementing timely solutions.

Nora Mead Brownell

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[4] Special Issues are: (1) authorization for Grid West to exercise backstop measures (authority to arrange for transmission construction) with respect to chronic, significant, commercial congestion; (2) departure from using the "Company Rate approach"; (3) authorization to issue financial transmission rights; (4) authorization for Grid West's market monitor to impose penalties or actively intervene in markets; and (5) authorization to change a transmission owner's loss methodology. Operational Bylaws, section 7.16.

[5] *See* Bonneville's publication *Keeping Current* at 4 (March 2005) (citing problems such as power plant developers' inability to access transmission and increased congestion).