

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Avista Corporation;)	
The Montana Power Company;)	
Nevada Power Company;)	Docket No. RT01-15-000
Portland General Electric Company;)	
Puget Sound Energy, Inc.; and)	
Sierra Pacific Power Company)	

**APPLICANTS' ANSWER TO MOTIONS TO CONSOLIDATE,
PROTESTS, AND COMMENTS AND
REQUEST FOR WAIVER**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2000), the above-captioned parties (collectively "Applicants") answer the motions to consolidate, protests, and comments filed in response to Applicant's Order No. 2000 Compliance Filing and Request for Declaratory Order filed on October 16, 2000 ("October 16 Filing"). Applicants request waiver of Rule 213 to the extent it would otherwise prohibit an answer to protests and comments.

I. Introduction

On October 16, 2000, the Applicants filed a proposal to form an independent transmission company (ITC), comprising TransConnect, LLC and TransConnect Corporate Manager, Inc., that would own and operate the interstate transmission assets presently owned and operated by each of the Applicants. On October 23, 2000, a group of utilities that included PacificCorp, Bonneville Power Administration, and Idaho Power

Company, as well as the Applicants, filed a separate proposal in Docket No. RT01-35-000 to form RTO West, a regional transmission organization (RTO) that plans to operate in the Western United States. Each of the Applicants has also been actively engaged in the development of RTO West. It is contemplated that TransConnect, LLC will participate as a transmission owner within RTO West.

This Answer responds to motions to consolidate, protests, and comments filed on or about November 20, 2000, in response to the October 16 Filing. The motions to consolidate are addressed first. As shown below, consolidation would not be beneficial to further development of the issues and future filings in either this or the RTO West proceeding. The Answer then responds to issues raised in the protests and comments to the October 16 Filing.

II. Request for Waiver

Applicants recognize that the Commission's rules do not allow answers to protests or comments. 18 C.F.R. § 385.213(a)(2). However, in certain situations, and for good cause shown, the Commission has permitted such answers where they aid the Commission's "understanding and resolution of the issues."¹ Applicants believe their

¹ See, e.g., *Arizona Public Service Co.*, 93 FERC ¶ 61,216 (2000), slip op. at 7 (accepting answer because it aids understanding and resolution of issues); *Entergy Nuclear Indian Point 3, LLC*, 92 FERC ¶ 61,281, at 61,944 (2000) (accepting one answer that assisted in understanding and resolution of issues, but rejecting another answer because no such special circumstances warranting acceptance were present); *International Transmission Co.*, 92 FERC ¶ 61,276, at 61,912-13 (2000) (accepting one
(Footnote continued)

answer will so aid the Commission and that good cause exists to waive the rule against such answers. Accordingly, Applicants request the Commission grant waiver and accept Applicant's response.

III. Answer to Motions to Consolidate

Motions to consolidate the TransConnect proceeding in Docket No. RT01-15-000 with the RTO West proceeding in Docket No. RT01-35-000 were filed by the Northwest IPPs/Marketers Group ("IPPs/Marketers")² and the Public Interest Organizations ("PIOs").^{3 4} IPPs/Marketers assert that:

The existence of two concurrent proceedings covering identical or overlapping issues creates the potential for conflicting decisions in the two proceedings, issues falling between the cracks of the proceedings, and

answer that assisted in understanding and resolution of issues, but rejecting other answers as repetitive).

² The Northwest IPPs/Marketers Group comprise: the Cogeneration Association of California; the Cogeneration Coalition of Washington; Duck Energy North America, LLC; Dynegy Power Marketing, Inc.; National Energy Systems Company; Nevada Independent Energy Coalition; PG&E National Energy Group, Inc.; PPL EnergyPlus, LLC; PPL Montana, LLC; Reliant Energy Services, Inc; and TransAlta Energy Marketing (U.S.), Inc.

³ The Public Interest Organizations comprise: Northwest Energy Coalition; Renewable Northwest Project; Natural Resources Defense Council; and Project for Sustainable FERC Energy Policy.

⁴ An additional motion to consolidate these proceedings was contained in comments filed by Powerex Corp. in Docket No. RT01-35-000. This motion was not filed in Docket No. RT01-15-000. This motion will be addressed in the response of the RTO West filing utilities. Consistent with Applicants' position on the other motions, the motion to consolidate of Powerex Corp. should also be denied.

interested stakeholders mistakenly believing that it was appropriate for them to address their concerns in one proceeding, only to learn later that they had dedicated their efforts and resources to the wrong proceeding.

IPPs/Marketers Motion at 15. IPPs/Marketers then recommend consolidation, or, in the alternative, that the Commission “issue an order as quickly as possible identifying the specific determinations . . . that it intends to make in the context of each proceeding,” and “ensure that the pace of the ITC proceeding is not permitted to impede the progress of the formation of RTO West.”⁵ PIOs assert that the “existence of two concurrent proceedings covering identical and overlapping issues makes no sense for the participating parties, and it creates the potential for conflicting decisions.”⁶

Consolidation of the TransConnect and RTO West proceedings will not further the public interest and will unduly complicate both proceedings to the detriment of all parties involved. IPPs/Marketers and the PIOs correctly note the related nature of the TransConnect and RTO West proceedings. The proceedings are, however, far from identical or overlapping. In the October 16 Filing, TransConnect requested the Commission issue a declaratory order finding that:

1. TransConnect will meet or exceed the minimum requirements for independence; and
2. the limited functions that TransConnect, LLC proposes to undertake – related to rate filings and transmission planning and expansion – are acceptable.

⁵ IPPs/Marketers Motion at 15-16.

⁶ PIOs Motion at 6.

October 16 Filing at 5. The first issue, independence, turns on the governance documents and discussion wholly contained in the October 16 Filing. Consolidation would not enable the Commission or parties to more efficiently evaluate the independence issue. Indeed, consolidation could confuse resolution of governance issues because RTO West has its own, different governance documents that must be evaluated in the RTO West proceeding. The second issue concerns the limited functions that the proposed ITC seeks to undertake within the RTO West framework. Applicants do not challenge in their filing the broad regional planning responsibilities of RTO West, or the rate framework for RTO West, both of which are properly addressed in the RTO West proceeding. Rather, Applicants seek only Commission approval as to the ability of an ITC, based on a finding of independence, to undertake limited planning and expansion responsibilities subject to RTO oversight where it impacts regional concerns, and to make rate filings consistent with the rate framework in the RTO West filing. Should the RTO West framework substantively change in future filings by the RTO West filing utilities, or as the result of future Commission action, the issue of whether conforming changes to the ITC are necessary could then be evaluated.⁷

⁷ The Commission has recognized that even where consistency is desirable, consolidation is not always necessary. *See, e.g., Houston Lighting and Power Co.*, 81 FERC ¶ 61,105, at 61,108 (1997) (denying motion to consolidate noting “we believe that we can analyze the section 211 transmission filings . . . equally well whether we act upon them concurrently or separately, or in one or more proceedings. . .”).

Consolidation could also unnecessarily delay Commission consideration of the ITC proposal, in turn delaying the continuing work needed to bring the ITC to fruition.⁸ For example, on December 1, 2000, the RTO West filing utilities made amendatory filings to the October 23, 2000 RTO West compliance filing. These filings will require a notice period and result in additional Commission consideration of aspects of the RTO West proposal. If the Commission were to deal with the TransConnect and RTO West filings in a common order, the additional time required for the RTO West proceeding would likely delay action on the October 16 Filing. Similarly, if the dockets were consolidated, future issues involving implementation of the ITC could delay action on RTO West issues otherwise ripe for Commission consideration. Consolidation of the proceedings could thus have the unintended consequence of slowing implementation, contrary to the Commission's goal to establish RTOs as soon as feasible.

For these reasons, Applicants request the Commission deny the motions to consolidate and act as soon as practicable to issue a declaratory order and provide Applicants the guidance necessary for them to continue developing their ITC proposal.

⁸ The reverse situation, the ITC delaying RTO West, is an unlikely scenario, unless the proceedings are consolidated. Without consolidation, a delay in implementation of the ITC should not delay RTO West. Should implementation of the ITC be delayed, each Applicant could independently join the RTO in its own capacity until such time as the ITC is finalized. If the proceedings are consolidated, however, a delay in one could potentially directly delay the other.

IV. Answer to Protests and Comments

Applicants appreciate the effort and thoughtfulness represented in the comments, as well as the support for the ITC and RTO West expressed in many of them. Applicants propose to address only the following specific issues: (A) concerns with the incomplete nature of the filing, (B) issues related to governance, and (C) assertions that the ITC should not undertake functions related to (1) rate filings (including filing for innovative rate treatments) and (2) planning and expansion. This answer is without prejudice to the position Applicants may take with regard to any comment or issue not addressed herein.

A. Commission Guidance

A number of the protests and comments questioned whether Commission action on the October 16 Filing was appropriate given the incomplete nature of the proposal and the related RTO West filing.⁹ Applicants do not dispute that the October 16 Filing represented only part of the total package that will ultimately be needed to finalize the proposed ITC. Indeed, Applicants themselves recognized their proposal to be a work in progress and detailed a series of additional actions necessary to finalize the ITC,

⁹ Among the comments raising this issue in one form or another were: Wyoming Industrial Energy Consumers; City of Seattle; Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC; Dynegy, Inc.; Edison Mission Energy and Edison Mission Marketing & Trading, Inc.; Electric Power Supply Association; Modesto Irrigation District; Northwest IPPs/Marketers; the Cities of Redding and Santa Clara, CA, and the M-S-R Public Power Agency; TransAlta Corp.; Transmission Agency of Northern California; and the Washington Utilities and Transportation Commission.

including any necessary approvals from state regulatory authorities.¹⁰ TransConnect has no desire to sidestep or avoid seeking those approvals. However, the first step is to ensure that the ITC can be a viable for-profit, pure transmission company. And to do that, Commission endorsement, even if preliminary, is required. Without this preliminary guidance, the reality is that the ITC may never be formed. While this may be the goal of some of the protests and comments, others may not fully appreciate the step-by-step process needed to organize and implement the ITC proposal.

Preliminary guidance is also consistent with *Entergy Services, Inc.*¹¹ In that case, the Commission issued a declaratory order providing preliminary guidance on governance and independence issues. As in *Entergy*, Applicants believe that their governance documents are sufficiently complete to permit the Commission to issue a declaratory order on the governance and independence issues presented in the October 16 Filing. However, Applicants also recognize that given there is still uncertainty as to the final version of the RTO West planning and rate provisions, more conditional and preliminary guidance with regard to the functions the ITC proposes to undertake may be appropriate.

¹⁰ See, e.g., October 16 Filing at n.4, pp. 5-6, 34-35.

¹¹ *Entergy Services Inc.*, 88 FERC ¶ 61,149, at 61,500 (1999), *reh'g denied*, 90 FERC ¶ 61,191 (2000).

What should not happen, and what is not in the public interest, is to defer or reject the October 16 filing as incomplete or premature. Action is needed now if the Applicants are to move forward and achieve their goal – a goal consonant with the vision articulated by the Commission in Order No. 2000.¹²

B. Governance Issues

Several comments or protests raised issues relating to the governance documents included as part of the October 16 Filing. Among the issues raised was the safe harbor for active ownership, the voting structure of the board selection committee and eligibility requirements for the initial slate of directors, and a concern with the provision for a special class of shares that could be held by non-market participant interest holders of TransConnect, LLC. Each of these issues will be addressed in turn.

1. Active Ownership

Dynegy, Inc., Electric Power Supply Association (“EPSA”), and United Associated Municipal Power Systems, *et al.* (“UAMPS, *et al.*”) raise concerns with the five percent active ownership interest any market participant could hold in TransConnect Corporate Manager, Inc., and the 15 percent that could be held by a single class of market

¹² *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *review pending sub nom.*, *Public Utility Dst. No. 1 of Snohomish Cty., WA v. FERC*, Nos. 00-1174, *et al.* (D.C. Cir.)

participants. EPSA, for example, notes that the ITC's independence may be compromised due to these active ownership rights.¹³

Order No. 2000 provides an unconditional five-year "safe harbor" of five percent for active ownership interests by market participants.¹⁴ Applicants' proposal is consistent with this limitation.¹⁵ Only for proposals for active ownership greater than five percent did the Commission indicate it would undertake a more careful case-by-case evaluation.¹⁶ Requests for rehearing of this safe harbor were denied, the Commission finding that "a transition period during which active ownership in limited amounts may be proposed, together with auditing requirements, is a reasonable interim measure to assist RTO formation."¹⁷ The arguments against the five percent safe harbor are an impermissible collateral attack on Order No. 2000 that must be rejected.¹⁸ Consistent with the

¹³ EPSA Comments at 14.

¹⁴ Order No. 2000 at 31,069-70.

¹⁵ Only UAMPS, *et al.*, raised an issue regarding the 15 percent benchmark. However, the concern raised by UAMPS, *et al.* appears to be based on the same misunderstanding regarding Class C Common Stock that is further discussed in Section B.3 below. Because, by definition, Class C Common Stock can only be held by a non-market participant, ownership of Class C Common Stock is not included in calculating the five percent safe harbor or the 15 percent benchmark.

¹⁶ *Id.* at 31,070.

¹⁷ Order No. 2000-A at 31,367.

¹⁸ *See, e.g., Mid-Continent Area Power Pool*, 91 FERC ¶ 61,065, at 61,230 (2000) (rejecting request to change provision permitted in Order No. 888 *pro forma* tariff as a collateral attack on Order No. 888); *Allegheny Power System, Inc., et al.*, 85 FERC

(Footnote continued)

Commission's rulings, Applicants believe this safe harbor provision is reasonable and will not result in inappropriate influence by the Applicants or other market participants.

2. Board Selection Process

Public Power Council identifies what it believes are two flaws in the selection process of the initial Board of Directors for TransConnect Corporate Manager, Inc. First, PPC asserts that because the board selection committee contains two members from the ITC applicants while the other four classes have only one each, the ITC applicants have an undue advantage. This is, PPC asserts, because the ITC applicants can block a nomination with only one additional vote. PPC suggests the board be reduced to five members with the ITC applicants accorded only one member, and all decisions be made by majority vote. Second, PPC notes the Formation Plan requires six of the nine initial directors to have been a CEO, COO, CFO, or director of a publicly traded corporation. PPC asserts this will eliminate many desirable board candidates, particularly those with experience in privately held firms, such as some of the largest retail users of electricity in the Northwest and, therefore, proposes this restriction be eliminated. Applicants oppose these proposed modifications.

¶ 61,235, at 61,987 (2000) (rejecting impermissible collateral attack on Order No. 888 implementation procedures); *accord*, *Southern Natural Gas Company*, 93 FERC ¶ 61,162 (2000), slip op. at 14 (rejecting collateral attack on Commission's prior approval of tariff provision).

The proposal to have a six member board selection committee is reasonable and should be approved. With only two members, the Applicants cannot control the board selection committee, nor can they veto a candidate without obtaining agreement from at least one other committee member. With four votes required to install a board member, the representatives of at least two other stakeholder classes on the selection committee would need to agree to that selection. Thus, a total of three of the five classes need to positively agree on any given selection. Given their experience with the systems at issue and the need for a high-quality board to protect their very significant financial interests, it is appropriate that two of the six members come from the class comprising the Applicants.

The purpose of the restriction on board member qualifications is to ensure that TransConnect Corporate Manager, Inc. has a high quality board that can direct the operations of a newly-formed billion dollar company and to ensure that the majority of the members bring experience from for-profit corporations. The owners who form the ITC by divesting their transmission assets will continue to own very substantial financial interests in the ITC, but will not have the degree of control which would normally accompany such interests. In the business world this is highly unusual. In order to justify the trust of the companies who would form the ITC, it is essential that the ITC companies have the assurance that the board -- which the ITC companies themselves will not be allowed to independently select or participate in -- be highly qualified and have experience in running for-profit corporations. A prospective board member need not

currently hold the position of CEO, COO, CFO, or director of a publicly traded company; the requirement is only that the candidate shall have held such position in at least one publicly traded company either currently or at some point in the candidate's career.

Applicants believe it is critical that the board have the experience and managerial skills to launch and run a large publicly traded company. Additionally, since three board member positions will not have this restriction, candidates with other experience, including from privately held firms, will not be eliminated. Moreover, any of the remaining six positions may be filled from a large pool of individuals who have served on boards of publicly traded corporations, but who come from positions of responsibility with diverse entities, including privately held, not-for-profit, and government entities.

3. Class C Common Stock

UAMPS, *et al.* take issue with TransConnect's "provision for a separate class of voting stock, Class C Common Stock, that is reserved solely for members of TransConnect."¹⁹ UAMPS, *et al.* assert this class of stock compromises the ITC's independence. Although UAMPS, *et al.* acknowledge that Class C Common Stock can only be held by members that are not market participants, they argue that the ITC would not be independent because stock would be held by individual participating transmission owners, as well as sellers of electric power.

¹⁹ UAMPS, *et al.* Protest at 6.

Although UAMPS, *et al.* correctly state the basis under which a member of TransConnect, LLC could hold Class C Common Stock (*i.e.*, only when such a member is not a market participant), they draw an invalid conclusion. Class C Common Stock gives the holder the same rights as Class A Common Stock precisely because the holder of Class C Common Stock is not a market participant. Currently, all of the Applicants are market participants under the Commission's rules. But it is possible that one or more of the Applicants may eventually divest certain aspects of their business and thus become pure wire-owners who are not market participants. If that were to occur, the Commission's rules concerning independence from market participants would no longer apply to such non-market participants, and it would be appropriate for the non-market participant to enjoy similar rights as Class A Common Stock holders.

The primary reason for Class C Common Stock is that if a member were to become a non-market participant, it should then be able to participate and vote on matters brought to the shareholders of TransConnect Corporate Manager, Inc. to the same extent other non-market participants can participate and vote. Conversion of its membership interest into Class A Common Stock, however, could potentially result in a taxable event. Additionally, although the non-market participant member could choose to convert into Class A Common Stock, to do so also could force such member to lose the advantages of flow-through tax treatment it receives from holding a limited liability company interest and instead potentially subject the member to double taxation due to ownership of common stock in a corporation. In order to preserve such member's tax treatment of its

investment in the ITC, the Class C Common Stock permits a non-market participant to continue holding a limited liability company interest, while permitting it to actively participate in corporate matters at TransConnect Corporate Manager, Inc. to the same extent as other non-market participants. By holding the Class C Common Stock, the non-market participant is able to exercise active ownership – a benefit available to any other non-market participant – and still retain the tax benefits of membership in TransConnect, LLC.

Independence in this circumstance is not compromised because, by definition, a non-market participant is not prohibited from owning an active interest in TransConnect Corporate Manager, Inc.; such restrictions are only imposed on market participants.²⁰

C. Functions of an ITC

One of the key features of the Commission's Order No. 2000 policy is the incentive to create transmission organizations that would have correctly aligned incentives to build and operate new transmission facilities. Comments and protests took issue with the proposal to permit the ITC to undertake certain functions related to rate filings²¹ and transmission planning and expansion.²² Although these challenges took a

²⁰ Order No. 2000 at 31,068-69.

²¹ *See, e.g.*, Big Horn County Electric Cooperative and Central Montana Electric Power Cooperative, *et al.* (expressing concerns with possible increased rates for transmission and ancillary services in Montana); Idaho Energy Authority, Inc. (protests proposal to file for innovative rates); Public Power Council (asserts it will oppose a higher rate of return); Public Utility District No. 1 of Snohomish County, WA (record

(Footnote continued)

number of forms, they essentially focused on (1) concerns about potentially excessive returns and rates that might be sought and arguments that the ITC should not be eligible for innovative rate treatment, and (2) the impact of the ITC planning function on RTO West and whether the ITC would appropriately weigh non-transmission alternatives to relieving congestion.

1. Rate Filing and Innovative Rates

As described in the October 16 Filing, the ITC proposal is in part an outgrowth of the unusual circumstances faced in the West where one of the key participants in RTO West is the Bonneville Power Administration.²³ Since Bonneville has ruled out participation in a for-profit ITC, some sort of hybrid structure was necessary if there was

must contain substantial evidence demonstrating consumer benefits); UAMPS, *et al.* (ITC is not an RTO and, therefore, not eligible for innovative rates and should not be eligible for start-up costs); Washington Utilities and Transportation Commission (are reasonably estimated benefits of the ITC likely to outweigh the costs and risks to retail ratepayers?).

²² *See, e.g.*, Affiliated Tribes of Northwest Indians—Economic Development Corporation (asserting TransConnect must be subject to centralized authority for transmission system planning); Edison Mission Energy and Edison Mission Marketing & Trading, Inc. (filing does not clearly delineate between the functions performed by TransConnect and those performed by RTO West and TransConnect should not have authority over transmission planning); Electric Power Supply Association (the ITC “will inherently favor transmission solutions over generation or demand side solutions”); IPPs/Marketers (no basis in Order No. 2000 for asserting that a finding of independence should lead to the right to perform planning functions); Public Power Council (raises concern that the ITC’s planning function could undermine RTO West’s planning function); UAMPS, *et al.*, (ITC proposal would deny RTO West the authority to make decisions among competing possibilities for expanding capacity or relieving congestion.).

²³ October 16 Filing at 7.

to be an ITC within RTO West. In Order No. 2000, the Commission specifically recognized that such a hybrid or “tiered” structure would be entertained, subject only to the RTO being responsible for “ensuring that the requirements are met in a way that satisfies [Order No. 2000].”²⁴ As noted in the October 16 Filing, the proposed ITC is designed to operate within the RTO West framework.²⁵ In encouraging the development of RTOs, the Commission included a number of innovative rate treatments it would consider.²⁶ The Commission also noted that these pricing proposals would not be incompatible with any particular RTO structure, including tiered organization structures.²⁷ Finally, the Commission has approved innovative rate treatment for an ITC subject to that ITC joining an RTO.²⁸

Consistent with Order No. 2000 and with Commission precedent, Applicants plan to file for innovative rate treatment in a future filing that will also be consistent with the RTO West rate framework. Now, Applicants only seek Commission guidance affirming that Applicants have a right to seek such treatment in the future given the independence of the proposed ITC. As part of their future filing in which an actual innovative rate treatment proposal will be made, Applicants will include the analysis required by the

²⁴ Order No. 2000 at 31,037.

²⁵ October 16 Filing at 30-33.

²⁶ Order No. 2000 at 31,191-95.

²⁷ *Id.*

Commission's regulations. When that filing is made, with a concrete proposal for innovative rate treatment, parties will be able to evaluate the proposal and how it may affect them. Until that filing is made, however, concerns regarding increases in rates or other issues are premature.

2. Planning and Expansion

The right to plan, propose, and where appropriate, compete with alternative proposals for building new transmission is an essential benefit provided by an ITC which is independent of any market participant. Most observers agree that new transmission is necessary in the region spanned by RTO West, and most would likewise agree that a variety of factors have conspired to prevent the existing transmission owners from constructing necessary new facilities. The ITC, as a for-profit business focused on transmission, will have every incentive to identify areas where there is a need for new facilities and to see that such facilities are built. The proposed ITC does not, however, intend to preempt or supercede the overarching planning responsibilities of RTO West. Specifically, the ITC would be subject to proposed Section 12.1.2 of the Transmission Operating Agreement which provides that:

12.1.2 Planning by the Executing Transmission Owner. With respect to facilities owned or otherwise controlled by the Executing Transmission Owner, the Executing Transmission Owner shall have responsibility for planning its Transmission Facilities and for making additions, modifications and expansions to its Transmission Facilities if the FERC

²⁸ *International Transmission Company*, 92 FERC ¶ 61,276 (2000).

Determines that such Executing Transmission Owner is independent from control of market participants or otherwise is entitled to exercise such authority. RTO West shall retain primary planning responsibility and final decision-making authority with respect to RTO West Controlled Transmission Facilities; provided that if the additions, modifications and expansions to such facilities do not impair reliability or bulk transmission capability of the RTO West Transmission System, the requested approval of RTO West shall not be unreasonably delayed or withheld.

October 23 RTO West Filing, Attachment S at 40-41 (emphasis added).²⁹ It is appropriate that the Commission provide preliminary guidance that the limited planning function that would be retained by the ITC is consistent with Order No. 2000, subject to modification to comport with any future modifications that may be agreed upon in the stakeholder process or required by the Commission. Without an understanding that it can perform the limited planning function described in the Transmission Operating Agreement, many of the benefits perceived by the Applicants to creating an ITC would

²⁹ On December 1, 2000, Avista Corporation, the Bonneville Power Administration, Idaho Power Company, The Montana Power Company, PacifiCorp, and Puget Sound Energy, Inc. submitted an Amended Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order No. 2000. This filing included a revised Transmission Operating Agreement that included non-substantive changes in Section 12.1.2. The language quoted above thus is subject to further change and is quoted here for informational purposes. Applicants are not seeking as part of their ITC filing approval of specific contract language in the Transmission Operating Agreement. Those approval are being sought, appropriately, in the RTO West proceeding.

Sierra Pacific Power Company, Nevada Power Company, and Portland General Electric Company made a separate filing on December 1, 2000 indicating broad agreement with the terms of the Transmission Operating Agreement as amended, but urging the Commission to require an analysis of export fees in the Stage 2 financial modeling of transfer charges.

not exist. Preliminary Commission guidance on this issue may well determine whether the ITC moves forward or whether it does not.

The argument that the ITC would construct transmission and ignore other alternatives is fallacious. No new transmission will be built unless it is consistent with RTO West planning concerns, as is described in the Transmission Operating Agreement provision cited above. Any transmission built by the ITC will be subject to applicable siting provisions of state or other law that require all manner of reviews and consideration before transmission is built. Moreover, the ITC is intended to be a for-profit company that will actually earn a profit. When the ITC considers the economics of any new transmission construction, it will necessarily weigh alternatives to building that transmission. This is particularly true if such alternatives could diminish the value of a planned transmission expansion. Transmission solutions are often the highest-cost, highest-lead time solutions. If there are other, less capital intensive solutions that would serve as a viable alternative to the proposed transmission, a rational economic decision-making process, based on an appropriate profit motivation (or corollary "avoiding losses" motivation), should yield the most economically efficient outcome. This is, in fact, a key benefit of the ITC, and another reason why it is appropriate to consider innovative rate treatments that assure that rational economic incentives will guide the ITC's planning and decision-making processes.

V. Conclusion

Wherefore, Applicants request the Commission deny the Motions to Consolidate, grant the request for waiver, and consider the Applicant's Answer to the protests and comments, as discussed above.

Respectfully submitted,

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December 5, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 5th day of December, 2000.

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