

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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Avista Corporation	)	
	)	
Bonneville Power Administration	)	
	)	
Idaho Power Company	)	
	)	
The Montana Power Company	)	
	)	
Nevada Power Company	)	Docket No. RT01-35-000
	)	
PacifiCorp	)	
	)	
Portland General Electric Company	)	
	)	
Puget Sound Energy, Inc.	)	
	)	
Sierra Pacific Power Company	)	
	)	

**COMMENTS OF AVISTA CORPORATION**

Pursuant to the October 20, 2000 Notice of Filing and Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 CFR § 385.214 (2000), Avista Corporation ("Avista") hereby submits comments in the above-captioned proceeding. In support thereof, Avista states as follows:

## I. Communications

All communications, correspondence, and documents related to these proceedings should be directed to the following persons:

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## II. Background

On October 23, 2000, Avista Corporation and eight other utilities – Bonneville Power Administration, Idaho Power Company, the Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company (collectively, the “Filing Utilities”) – submitted to the Commission an extensive Order No. 2000 compliance filing (the “October 23 Filing”). See Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000, Docket No. RT01-35-000 (filed October 23, 2000). In that submittal, the Filing Utilities provide a proposal to form RTO West, a regional transmission organization that would operate the high-voltage transmission lines in Washington, Oregon, Idaho, Nevada, Utah, and parts of Montana, Wyoming, Montana, and California. The October 23 Filing also requests, on behalf of all of the Filing Utilities, a declaratory order on the following items: (1) the form of the RTO West First

Restated Articles of Incorporation and RTO West Bylaws; (2) the scope and configuration of RTO West; and (3) the form of Agreement Limiting Liability Among RTO West Participants. In addition, three of the Filing Utilities – Bonneville Power Administration, Idaho Power Company, and PacifiCorp – “request that the Commission issue a declaration that the concepts as a package embodied in the Transmission Operating Agreement and Agreement to Suspend Provisions of Pre-existing Transmission Agreements are acceptable to the Commission and consistent with the requirements of Order No. 2000[.]” Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order No. 2000, Docket No. RT01-35-000, pg. 11.

Nonetheless, in recognition that not all of the Filing Utilities are seeking similar approval of the Transmission Operating Agreement, the October 23 Filing represents that the Filing Utilities “will continue their work with the hope of communicating to the Commission the agreement of all nine filing utilities to these agreements as initially submitted or as amended by December 1, 2000. Id. at pg. 94.

### **III. Avista’s Comments**

#### **A. Transmission Operating Agreement**

At this time, the Filing Utilities are continuing to work together in the hope of resolving a number of outstanding substantive issues embodied in the Transmission Operating Agreement. In addition, there are also a number of drafting problems in the agreement that merit further attention. The Filing Utilities have been meeting to further the common goal of resolving these issues, and hope to file a revised agreement on December 1, 2000. Because of these ongoing negotiations, Avista believes that raising its issues before the Commission at this time would be premature and, indeed, may be

potentially disruptive to the negotiation process. Moreover, Avista anticipates that once a revised Transmission Operating Agreement is filed with the Commission, such agreement will be noticed by the Commission, and Avista will have 30 days after notice of that filing in which to comment. At that time, it will be appropriate for Avista to raise its concerns regarding the agreement with the Commission. In the event that no such revised agreement is filed with FERC on December 1, 2000, or a subsequent date, Avista respectfully requests that the Commission notice that fact, and give the Filing Utilities that did not find the filed Transmission Operating Agreement generally acceptable additional time to present their issues to the Commission.

### **B. Outage Liability**

As part of the October 23 Filing, the Filing Utilities included the Agreement Limiting Liability Among RTO West Participants (“RTO West Liability Agreement”). Avista is a strong advocate of that agreement, and therefore is filing these additional comments as to why the RTO West Liability Agreement is a critical component of the October 23 Filing.

For the past 30 years, transmission owners in the West have protected themselves against protracted disputes over liability through participation in the Western Interconnected Systems Agreement (“WIS”). Each party to that agreement consents to hold all other parties harmless from damage to its system arising from interconnected system failures. Further, an insurance policy is in place to satisfy claims by customers of WIS participants for multiple system events, and each party to WIS insures its own facilities against harm by actions of other parties to that agreement. WIS has provided significant benefits to transmission owners in the West by lowering the cost of liability

insurance and reducing litigation over issues of fault for service outages. These benefits, in turn, have facilitated widespread participation in interconnections by Western transmission owners.

In negotiating the transition from the traditional market structure to one in which provision of transmission service is governed by a regional transmission organization, the transmission owners in the Northwest have attempted to maintain the benefits provided by WIS. The resulting RTO West Liability Agreement is important because it helps to maintain pre-existing relationships in the Northwest. Under the RTO West Liability Agreement, RTO West is required to file continuity of service tariffs, and to maintain an insurance fund for satisfaction of claims arising out of transmission service provided by RTO West. Each party to the RTO West Liability Agreement consents to hold all other parties harmless from claims arising out of contact with equipment that it operates; and each party insures against the risk of damage to its own property, and against consequential damages arising out of participation in RTO West. Finally, the RTO West Liability Agreement gives each party the right to refuse to comply with a wrongful dispatch order issued by RTO West; and replacement power costs and defined opportunity costs are recoverable by a party in the event of damage arising out of a wrongful dispatch order from RTO West.

One of the most important provisions in the RTO West Liability Agreement is the requirement that RTO West include in its tariff a continuity of service provision. Such a provision makes clear that complete continuity of service by RTO West cannot be guaranteed, and that the price of transmission reflects the fact that there are limitations on liability on the part of RTO West for interruptions of transmission service. Continuity of

service tariff provisions have traditionally been used in the Northwest, and are a consistently applied regional practice. They have played an integral role in the protections afforded transmission owners in the region under WIS. By requiring that RTO West include such a provision in its own tariffs, the Filing Utilities are attempting to extend a basic protection from the traditional regulatory paradigm (through this regional practice) to the new market structure being instituted by the establishment of an RTO in the Northwest.

In retaining the liability and insurance structure established by WIS, the RTO West Liability Agreement accomplishes several important goals. Most significantly, the RTO West Liability Agreement reduces the cost and increases the availability of liability insurance. The RTO West Liability Agreement's no-fault system of allocating cost-responsibility also reduces the amount of litigation between parties over causes of outages. By increasing the availability of liability insurance and reducing the amount of litigation over outage causes, the RTO West Liability Agreement facilitates participation in RTO West by generators and small loads that might otherwise be deterred by large liability risks, and ensures approximately equal liability exposure to both government-owned utilities – which generally have the benefit of sovereign immunity – and investor-owned utilities. Maintenance of equal liability exposure between government-owned and investor-owned utilities is particularly important in the Northwest given the large number of public power entities in the region, and the extensive interlocks between transmission owned by public power entities and transmission owned by investor-owned utilities. Without an equal division of liability exposure between public and private transmission

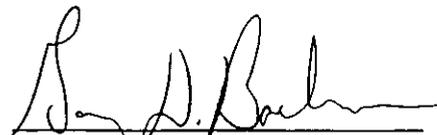
owners, formation of an RTO in the Pacific Northwest that meets the scope and size requirements of Order No. 2000 would be difficult.

In sum, the RTO West Liability Agreement retains the liability and insurance structure that has prevailed in the Northwest for the past 30 years, and therefore facilitates the development of a viable RTO in that region. For these reasons, Avista encourages the Commission to approve the Agreement Limiting Liability Among RTO West Participants submitted in the October 23 Filing, and permit its provisions to be implemented as an appropriate regional practice.

#### IV. Conclusion

Wherefore, Avista respectfully requests that the Commission approve the Agreement Limiting Liability among RTO West Participants so that the important regional practices reflected in that agreement can be continued in an RTO context. Avista also respectfully requests that the Commission allow Avista to comment on the Transmission Operating Agreement after the Filing Utilities have revised that agreement, and filed the revised version.

Respectfully submitted,



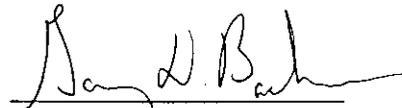
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Counsel for Avista Corporation

## CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document upon all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 20<sup>th</sup> day of November 2000.

  
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Gary D. Bachman