

ORIGINAL

FILED
OFFICE OF THE SECRETARY
00 NOV 20 PM 2:42

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

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

SUPPLEMENTAL COMMENTS OF BC HYDRO

Pursuant to the Commission's October 24, 2000 notice in this proceeding, the British Columbia Hydro and Power Authority ("BC Hydro") hereby files its supplemental comments regarding the October 23, 2000 Supplemental Compliance Filing And Request For Declaratory Order Pursuant To Order 2000 ("Stage 1 Filing") by the above-referenced parties ("Filing Utilities") with respect to RTO West.¹

By way of such comments, BC Hydro respectfully shows the following.

001121-0413 - 1

FERC DOCKETED
NOV 20 2000

¹BC Hydro filed initial comments in this proceeding on October 24, 2000 that supported the Filing Utilities' proposed framework for British Columbian participation in a Pacific Northwest RTO through a British Columbia Independent Grid Operator.

I.
CORRESPONDENCE AND COMMUNICATIONS

Correspondence and communications regarding these comments should be addressed to the following persons, both of whom should be placed on the Commission's official service list in this proceeding:

Ray A. Aldeguer
Senior Vice President,
Legal, Regulatory Affairs and
General Counsel
British Columbia Hydro and Power Authority
333 Dunsmuir Street
Vancouver, British Columbia
Canada, V6B 5R3
Telephone: 604-623-4513
Facsimile: 604-623-4323

Paul W. Fox
Bracewell & Patterson, L.L.P.
111 Congress Avenue
Suite 2300
Austin, Texas 78701-4043
Telephone: 512-472-7800
Facsimile: 512-472-9123
e-mail: pfox@bracepatt.com

II.
IDENTITY OF BC HYDRO

BC Hydro is a provincial crown corporation operating as a vertically-integrated utility within British Columbia. BC Hydro provides open access wholesale transmission service over more than 11,000 miles of transmission lines. BC Hydro is also a major generator of hydroelectric power. BC Hydro would participate in regional transmission organization ("RTO") functions in the Pacific Northwest through a British Columbia Independent Grid Operator ("BC IGO") interfacing with RTO West.

BC Hydro's wholly-owned subsidiary Powerex Corp. ("Powerex") is authorized by the Commission to make sales of power at wholesale in U.S. interstate commerce at market-based rates, and also holds firm and non-firm transmission rights on transmission systems such as the Bonneville Power Administration ("BPA") that will be controlled by RTO West.

BC Hydro has been actively involved with the RTO West Filing Utilities and other regional stakeholders in RTO formation and development for the Pacific Northwest pursuant to the Commission's Order No. 2000. BC Hydro has committed extensive internal and external resources to the RTO West formation process. Over the course of the past several months, a large number of its officers and employees, as well as outside consultants and experts engaged on its behalf, have participated in numerous working groups to establish a workable RTO framework in the Pacific Northwest. BC Hydro also participated in the Regional Representatives Group.

III.
ORDERS REQUESTED BY FILING UTILITIES

The Filing Utilities in their Stage 1 filing seek a declaratory order approving: (1) the RTO West Articles of Incorporation and Bylaws; (2) the scope and configuration of RTO West as proposed in the filing; and (3) the form of Agreement Limiting Liability Among RTO West Participants. Additionally, three of the Filing Utilities (BPA, Idaho Power and PacifiCorp) request the Commission to find:

. . . 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 2000, subject to timing and procedures detailed in Section VII.A of this filing.

Stage 1 filing at 6.

BC Hydro has no comments regarding the RTO West Articles of Incorporation and Bylaws, which appear to meet the independent governance requirements of Order No. 2000. These comments will instead address the remaining items for which all or some of the Filing Utilities seek declaratory orders.

IV.

COMMENTS REGARDING REQUESTED DECLARATORY ORDERS**A. The Scope And Configuration Of RTO West Provide A Framework For Broad Regional Participation, And Advance The Objectives Of Order No. 2000.**

The Stage 1 Filing creates a structure that will permit broad regional participation, provided that the concepts embodied in the proposed Transmission Operating Agreement, several of which are problematic for BC Hydro, can be satisfactorily resolved in Stage 2. BC Hydro supports the following aspects of the Stage 1 filing, and urges that they be approved in the Commission's declaratory order regarding the scope and configuration of RTO West.

1. Framework For British Columbian Participation.

As BC Hydro discussed in its October 24, 2000 Initial Comments, the RTO West Filing Utilities, BC Hydro and West Kootenay Power Ltd. ("WKP") have reached consensus on a framework that will provide consistent RTO transmission service over the RTO West transmission system and the transmission system in British Columbia, while giving due regard to Canadian sovereignty, and the differing regulatory structures and requirements in British Columbia and the United States. The principles for British Columbian participation in RTO formation in the Pacific Northwest are set forth in Attachment H to the RTO West Stage 1 Filing. The Filing Utilities have characterized this framework as follows:

In practice, it is expected that this framework will present to all transmission customers an essentially seamless grid with standardized business practices and closely coordinated system operation. This proposal is a result of consensus among participating representatives of British Columbian entities and the filing utilities.

Stage 1 Filing at 79.

BC Hydro concurs with this statement and supports this approach to British Columbian participation. The proposed scope and configuration of RTO West provide the opportunity for an RTO of broad regional coverage, and represent a major step towards achieving a "natural transmission region" in the Pacific Northwest that does not stop at the U.S.-Canada border.²

2. Participation By BPA And Other U.S. Non-Public Utilities.

The large number of non-public utilities in the U.S. Pacific Northwest present a particular challenge for RTO development. Participation by these utilities, particularly BPA with its extensive transmission system, is essential if an RTO is to succeed in the region.³

BC Hydro believes that the Commission should make reasonable accommodations to permit BPA's participation in RTO West, in view of BPA's unique statutory and treaty responsibilities, such as its obligation on behalf of the United States with respect to the return to Canada of the downstream benefits to power under the Columbia River Treaty.⁴ While BC Hydro in these comments objects to the Commission's issuance of a declaratory order at this time approving the Transmission Operating Agreement ("TOA"), as requested by BPA, Idaho Power and PacifiCorp, and has substantial concerns regarding a number of the concepts embodied in that agreement, it generally supports those aspects of the Filing Utilities' proposal that have been tailored to allow BPA's participation.

²*Regional Transmission Organizations*, Order No. 2000, [Regs. Preambles] III FERC Stats. & Regs. ¶ 31,092 at 31,383 (1999).

³BPA's RTO participation has been facilitated by the FY 2001 Energy and Water Appropriations Act signed into law on October 27, 2000 (PL 106-377).

⁴BPA's treaty obligations are expressly recognized by the Filing Utilities. Stage 1 filing at 47.

Even with BPA's participation, BC Hydro remains concerned that the effectiveness of the regional RTO will be undercut if other significant non-public U.S. utilities do not participate in RTO West. If these utilities do not operate and maintain their systems in accordance with RTO West standards, they can adversely affect the reliability and quality of RTO West's transmission service, through parallel path deratings and otherwise. Their non-participation can also seriously complicate and hinder the regional planning process.

BC Hydro therefore believes that it is essential that the RTO West structure provide substantial incentives for non-public U.S. utilities to become members. These incentives need to be more fully articulated and developed by RTO West in Stage 2. One such opportunity to provide incentives would be in the development of tariff provisions for contract conversions. For example, the RTO West tariff could provide that contracts converted during the first year of RTO operation will be afforded higher priority service, in the event of a shortage of capacity, over those converted at a later date. The RTO West Stage 1 filing provides certain limited inducements for non-public utility participation, but broader steps need to be taken in Stage 2 to maximize participation and ensure seamless transmission and planning within the region, while at the same time taking care to avoid unduly favoring incumbents at the expense of other market participants.

3. Ancillary Services Market Design.

BC Hydro supports the RTO West approach to ancillary services.⁵ The proposal will foster the development of real-time markets, without the need for a large centralized pool that inhibits the formation of forward bilateral markets. The proposal will provide a regional safety net through designating RTO West as the supplier of last resort for ancillary

⁵Stage 1 Filing at 69; Attachment N.

services, while at the same time allowing market participants to self-provide and self-track such services.

Such a balanced approach is entirely consistent with the bilateral model for energy trading that has historically been followed in the Pacific Northwest, and also is tailored to meet the region's needs for ancillary services under an RTO.

4. Congestion Management Principles.

BC Hydro supports the flow-based physical rights congestion management and scheduling system that will be used by RTO West.⁶ This system balances the needs of marketers to lock-in non-pancaked transmission rates in order to make sales in forward markets, while providing sufficient flexibility for RTO West to continue to maintain reliability in real time. The proposal improves on the existing regional system of rated contract paths, and enjoys widespread support among the RTO West stakeholders and market participants.

However, as discussed in Section IV(A)(7) below, BC Hydro's support of the RTO West congestion management model does not extend to RTO West's proposed assessment of transfer charges for short-term firm and non-firm transactions, which would be additive to congestion management fees.

5. Company-Specific Load-Based Access Fees.

RTO West proposes to use company-specific load-based access fees as the principal means of recovering embedded system costs of transmission and avoiding cost shifts. This proposal is compatible with Canadian sovereignty considerations, and facilitates BC Hydro's participation in a Pacific Northwest RTO, since under the BC

⁶Stage 1 Filing at 36, 67.

IGO/RTO West framework for British Columbian participation the BCUC will retain jurisdiction to set rates for transmission assets located in the Province. Moreover, this approach should be attractive to non-public utilities in the Pacific Northwest and should likewise facilitate their participation in RTO West, to the extent that they are subject to unique company-specific rate setting requirements.

6. Outsourcing Security Coordination Functions.

The Filing Utilities propose that RTO West contract with the Pacific Northwest Security Coordinator ("PNSC"), at least initially, for performance of RTO West's security coordination functions.⁷ BC Hydro participated on an equal basis in negotiations with other Northwest utilities that led to the establishment of the PNSC in 1998. Since that time, the PNSC has functioned effectively, and on a non-discriminatory basis, to help ensure the reliability of the member systems, including BC Hydro.

The PNSC is critical to the stability of the bulk transmission systems in the region, and will be materially helpful to the development of RTO West by continuing that function as a contractor to RTO West. The formation of PNSC and its subsequent success in the region also illustrate the desirability of full and equal participation of both U.S. and Canadian parties in regional collaborative processes.

7. Transfer Charges.

BC Hydro supports the use of transfer charges with respect to long-term transmission contracts as a means of minimizing cost-shifting and achieving the regional buy-in that IndeGo could not accomplish. However, BC Hydro questions the appropriateness of transfer charges for short-term and nonfirm transactions.

⁷Stage 1 Filing at 64.

Under the RTO West Stage 1 proposal, historical short-term and nonfirm transactions trigger transfer charge responsibilities for which the obligor receives no corollary transmission rights.⁸ The only offsetting "benefit" received by the obligor is a potential refund from any excess FTR revenues remaining after first deducting allocations to the Filing Utilities for "lost revenue recovery," and then prorating such refunds with revenues lost to the Filing Utilities from terminated long-term service agreements.⁹ The speculative prospect of refunds under the RTO West proposal does not cure its discriminatory impact on market participants from requiring them to pay twice for the same short-term or nonfirm service: once through transfer charges and again through congestion management fees and/or various short-term and nonfirm service fees derived from auctions in the day-ahead market.

The net effect of the RTO West transfer charge proposal, as applied to short-term firm and nonfirm service, is to reintroduce the very sort of cost-shifting that the overall proposal is intended to mitigate. BC Hydro intends to work with the Filing Utilities in Stage 2 to attempt to resolve these outstanding transfer charge issues. However, if these negotiations are unsuccessful, BC Hydro reserves its rights to file further Stage 2 comments on these issues, up to and including opposing transfer charges *per se*.

⁸See Stage 1 Filing at 37.

⁹Stage 1 Filing at 38-39.

B. Need For Additional Provisions In The Form Of Agreement Limiting Liability Among RTO West Participants To Accommodate British Columbian Participation.

The Filing Utilities have requested a declaratory order approving the form of Agreement Limiting Liability ("ALL") set forth in Attachment Y to the Stage 1 filing. Execution of the ALL is a mandatory precondition to participation in RTO West.

While BC Hydro generally endorses the concepts and principles which underlie the ALL,¹⁰ the ALL as drafted cannot be considered a "one size fits all" document, since it has not been tailored to reflect the framework for British Columbian participation in a Pacific Northwest RTO which has been accepted by the Filing Utilities.¹¹ The ALL assumes that Canadian participants will enter into direct contractual relationships with RTO West, whereas under the agreed-on framework Canadian Participating Transmission Owners will have contract privity with an independent grid operator (BC IGO) in British Columbia, which in turn will contract directly with RTO West. Accordingly, the ALL does not address, in any comprehensive or meaningful way, the risk and liability relationships among Canadian and U.S. parties which will arise under the agreed-on framework.

The following examples illustrate some of the structural deficiencies of the ALL from a British Columbian perspective:

- (1) The ALL does not address the liability and insurance issues associated with the coordination of RTO functions and services between RTO West and BC IGO.¹² The provision of some of

¹⁰See Stage 1 Filing at 88-89.

¹¹The framework for Canadian participation is outlined in Attachment H to the RTO West Stage 1 Filing.

¹²Under the framework, BC IGO will provide RTO functions and services in British Columbia in coordination with RTO West and will contract directly with Canadian

the RTO functions and services in British Columbia for which RTO West accepts the allocation of risk in the United States will be performed in British Columbia by the BC IGO, or by some combination of RTO West and the BC IGO, in accordance with contractual arrangements which remain to be negotiated and which will require regulatory approval in British Columbia. The ALL will need to be expanded and modified to address the acceptance and allocation of risk and insurance obligations among RTO West, the BC IGO and Canadian and U.S. participants, both with respect to liability issues among the parties and liability issues between the parties and end-users and other third parties;

- (2) The termination provision of Section 2.2 of the ALL references parallel terminations of other agreements with RTO West to which BC Hydro will not be a signatory, and thus the provision will be unavailable to BC Hydro;
- (3) The waiver provisions of Section 7 of the ALL are available only to parties who have a direct contractual relationship with RTO West, which would exclude British Columbian participants other than the BC IGO; and

participants for the operation of transmission assets in British Columbia and for the interconnection of loads and generators in British Columbia.

- (4) The arbitration provisions in Section 3 of the ALL are only applicable to American parties, and have not been tailored for Canadian participation.

As admitted by the Filing Utilities, the concept of a multi-party RTO West Liability Agreement did not emerge until late in the Regional Representatives Group discussions. The critical decision to make participation in this ALL mandatory did not take place until the meetings of September 25 and 26, 2000. The Filing Utilities have had neither the necessary broad input required from all potential parties as to the structure, form, and content of the ALL, nor have the ALL's drafters been able to reflect the framework for British Columbian participation in their proposed agreement during the time available.

In Order No. 2000 and prior orders regarding regional enterprises with Canadian participants, the Commission has recognized the need to tailor agreements and authorizations to recognize Canadian sovereignty and regulatory concerns.¹³ The Commission should follow the same approach here and either:

- (1) Withhold issuance of a declaratory order approving the ALL until it accommodates such concerns and accurately reflects the framework for Canadian participation; or
- (2) Alternatively, limit the scope and coverage of the declaratory order to strictly those U.S. risk allocation, liability and insurance issues that involve RTO West and the relationships among it and the Filing Utilities, and condition the order on the Filing Utilities addressing further in Stage 2 comparable Canadian

¹³Order No. 2000 at 31,203; *Northwest Regional Transmission Association*, 71 FERC ¶ 61,397 (1995).

issues arising from the interaction of British Columbia participants with RTO West through the BC IGO, and from the provision of RTO functions and services in British Columbia for which RTO West accepts the allocation of risk in the United States.

BC Hydro understands that the Canadian risk allocation, liability and insurance issues it has raised can be considered in Stage 2, and possibly reflected in further modifications to the final form of the ALL. However, since the Filing Utilities have sought a declaratory order approving the ALL as it now exists, with no provision for Canadian participation, BC Hydro has no recourse except to raise the foregoing issues at this time, in order to protect its rights with respect to the ALL.

C. It Is Inappropriate For Three Of The Filing Utilities To Request A Declaratory Order Regarding The Transmission Operating Agreement.

The concepts embodied in the TOA are not sufficiently developed to justify issuance of a declaratory order by the Commission, as requested by BPA, Idaho Power and PacifiCorp. By the Filing Utilities' own admission, there are major outstanding issues such as the inclusion of specific transmission facilities within RTO West's control, the allocation of FTRs, and development of a schedule of transfer charges that must be resolved before the TOA can be finalized. Moreover, BC Hydro has had no direct input with respect to the provisions of the TOA, even though it will be expected to enter into a parallel agreement with BC IGO under the framework for British Columbian participation in the Pacific Northwest RTO.

Thus the TOA is very much a work in progress, and one as to which even a majority of the Filing Utilities are reserving judgment until the entire extent of the RTO West

proposal has been fully developed. If the drafters of the TOA have been unable to reach agreement among themselves as to how to proceed with key aspects of their proposed agreement, it is inappropriate and premature to ask the Commission to bless the "concepts embodied in the agreement" on a "package" basis, as BPA, Idaho Power and PacifiCorp request. Commission action on the TOA should await completion of Stage 2 negotiations, after all outstanding issues have been ventilated, and hopefully resolved, in the negotiation process.

At the very least, the Commission should follow its approach in *Entergy Services, Inc.*, 88 FERC ¶ 61,149 at 61,499 (1999) where the Commission limited its declaratory order on an ISO proposal to "those matters that Entergy has developed sufficiently for an informed decision." By contrast, issues such as the TOA's approach to contract conversions and allocation of firm capacity rights, transfer pricing and exclusion of certain transmission facilities from RTO West's control are all open and controversial issues among the participants in RTO West discussions, and even the Filing Utilities do not agree on the ripeness of the TOA for Commission review. Fundamental aspects of how these "concepts" will be applied remain to be developed, and the concepts themselves could obviously change as a result of further negotiations. Moreover, certain key issues such as the RTO West system-wide loss valuation methodology are not even dealt with in the TOA,¹⁴ and thus all of the concepts to be included in the TOA "package" are not yet known.

BC Hydro believes that the portions of the TOA for which BPA, Idaho Power and

¹⁴At page 66 of the Stage 1 filing, the Filing Utilities have indicated that they have left this fundamental, threshold issue, which could have a material impact on a market participant's decision as to whether to participate in a Pacific Northwest RTO, to RTO West to resolve at some unspecified point in the future. This aspect of the RTO West proposal must be concretely developed before a proper assessment of the full impact of the RTO West proposal can be made.

PacifiCorp seek approval are not "generally defined well enough to support informed guidance" as required by the *Entergy* decision, and that the declaratory order procedure is an inappropriate vehicle for them to pursue under these circumstances. The Commission should treat the TOA strictly as an informational filing at this point, and decline to issue the requested order.¹⁵

D. **Alternatively, The Commission Should Rule Adversely On Certain Of The Concepts Embodied In The TOA If It Elects To Issue The Declaratory Order Requested By BPA, Idaho Power And PacifiCorp.**

If the Commission nevertheless determines to issue a declaratory order on the TOA as requested by BPA, Idaho Power and PacifiCorp, it should rule adversely on the following concepts embodied in the TOA.

1. **The TOA's Exclusions Of Transmission Facilities From RTO West's Control Undercut The Effectiveness Of The Regional RTO.**

One of the principal defects of the current transmission regime in the Pacific Northwest is that there is no effective, coordinated transmission planning process. This defect is aggravated by the patchwork of public and non-public utilities in the region, which tends to impose a "lowest common denominator" approach on transmission capability and reliability. Curing this situation, which has a direct, adverse impact on the transmission paths between British Columbia and the U.S, Pacific Northwest, is one of the principal motivations for BC Hydro to support the RTO development process. Lack of reliable and predictable transfer capability on these paths affects not only the ability of Canadian power

¹⁵BC Hydro notes that Desert Star in its October 16, 2000 RTO filing did not request a declaratory order, but indicated its desire to continue discussions with stakeholders to attempt to reach consensus on outstanding key issues. This same approach should be followed with respect to the RTO West TOA.

to reach U.S. markets, but also BPA's return to British Columbia of the Canadian Entitlement to power under the Columbia River Treaty.

BC Hydro is concerned that the Filing Utilities' proposed limitations and exclusions on the transmission facilities that will be placed under the operational control of RTO West will undercut the effectiveness of RTO West in dealing with transmission bottlenecks. The Filing Utilities propose several categories of exceptions to transmission facilities that would be placed under RTO West's control, including:

- (1) Transmission facilities within a congestion zone that carry less than 10% of the electric power transferred across parallel paths through the congestion zone;¹⁶
- (2) Facilities that meet the definition of main grid transmission but have secondary impacts on the transfer capability of some regional paths. Although these facilities will be included in the RTO West planning process, ownership and control of such facilities will remain with the distribution companies, and RTO West's ratings of total transfer capability on commercial paths will be based in part on these excluded main grid facilities;¹⁷
- (3) Transmission facilities that a Participating Transmission Owner may elect to add or remove from RTO West control;¹⁸ and
- (4) Transmission facilities that a Participating Transmission Owner may elect to include for Company Rate purposes only, over

¹⁶Stage 1 Filing at 42.

¹⁷Stage 1 Filing at 44.

¹⁸Stage 1 Filing at 13.

which RTO West will not have final planning or operational control.¹⁹

The net effect of these exclusions will not be fully known until RTO West identifies included transmission facilities in its Stage 2 filing. However, the initial impression of BC Hydro is that the categories of exclusions are too broad, and confer too much discretion on individual Participating Transmission Owners (particularly Puget Sound Energy, Inc.), to the potential detriment of RTO West, other U.S. and Canadian Participating Transmission Owners and the market.

BC Hydro could potentially benefit as a Participating Canadian Transmission Owner from the loopholes proposed by the Filing Utilities. However, BC Hydro rejects such an approach in favor of a more comprehensive dedication of transmission and transmission-related facilities to RTO control (such control to be exercised by RTO West in the case of U.S. facilities, and by a BC IGO in the case of British Columbian facilities), in order to enhance a Pacific Northwest RTO's ability to cure the transfer capability and planning problems that now exist in the region.

BC Hydro supports an inclusive approach with respect to RTO-controlled and operated transmission facilities, in order to fully achieve the Filing Utilities' objectives that RTO West operate all transmission facilities that have a material impact on: (1) transfer capabilities of RTO West managed constraint paths between its congestion zones; (2) the ability to transfer power within a congestion zone; or (3) the ability to transfer electric power and energy into or out of the RTO West transmission system.²⁰ RTO West should strictly adhere to its Facilities Criteria definition which contemplates that RTO West will have full

¹⁹Stage 1 Filing at 42.

²⁰Stage 1 Filing at 42.

operational control over facilities that have a material impact on transfer capabilities within, between and into and out of congestion zones.²¹ Otherwise, the less than 10% exclusion, the failure to include under RTO West's operational control lower voltage facilities that support bulk power flows, and the exemption of transmission facilities controlled by distribution companies, could in aggregate have a material adverse impact on the transfer capability of the bulk power system, and could violate single contingency planning.

Failure to adopt a comprehensive approach toward inclusion of transmission facilities under RTO West control could also perpetuate the patchwork situation that now exists in the Pacific Northwest. For example, at page 62 of the Stage 1 Filing, the Filing Utilities state that:

. . . some facilities that presently would otherwise meet the definition of RTO West controlled transmission facilities will continue to be operated as distribution facilities by the local transmission owner in the Puget Sound area and not as RTO West controlled transmission facilities.

The Filing Utilities have not justified this special treatment of a single Participating Transmission Owner. Moreover, such an exclusion creates the potential for parallel path problems that could lead to deratings of RTO West-controlled transmission facilities, one of the very problems that a Pacific Northwest RTO is intended to correct. Another adverse consequence of the patchwork approach is the exclusion from RTO West control of interconnection facilities needed for new independent power projects. If such lower voltage facilities are not controlled by RTO West, then prospective new generation could be held hostage to pancaked rates by Participating Transmission Owners.

²¹Under the RTO West Filing, a facility would have a "material impact" on transfer capabilities between congestion zones or into or out of the RTO West transmission system "if such transfer capabilities would change if the transmission facility were removed." Stage 1 Filing at 42.

The better solution appears to be to include under RTO West's control all transmission facilities necessary for it to realize its objectives, starting with at least those facilities reported on the Commission's Form 1, and then make Alternate Dispute Resolution procedures available to any Participating Transmission Owner who seeks an exclusion or exception.²² BC Hydro is willing to abide by the equivalent of this approach in its arrangements with a BC IGO.

BC Hydro believes that market participants need a clear understanding of the facilities that will be under RTO West control, which the Stage 1 Filing does not provide. Otherwise, it is unclear how and to what extent RTO West will have functional control over non-transferred facilities, whether a separate, additional charge will be required for use of these facilities, and how requests for transmission service over non-transferred facilities will be satisfied.²³ Likewise, the exercise of determining benefits and assigning costs of upgrades will be needlessly confused.

In this latter regard, BC Hydro also disagrees with the Filing Utilities' proposal that transmission owners who own facilities not under RTO West control, and who upgrade existing facilities or construct new facilities that create additional transfer capability on RTO West-controlled facilities, should be awarded FTRs on RTO West.²⁴ This proposal would create a perverse incentive for transmission owners to exclude facilities from RTO West control, operate them in such a way that limits RTO West transfer capability, and yet be

²²See Section 5.12 of the TOA, where a similar approach is taken with respect to Additional RTO West Controlled Transmission Facilities.

²³See *Alliance Companies*, 89 FERC ¶ 61,298 at 61,924 (1999), where the Commission discussed its principle that an ISO should have control over the operation of the interconnected transmission facilities within its region.

²⁴Stage 1 Filing, Attachment P at 1.

awarded FTRs on RTO West for any corrective actions. Instead of being awarded FTRs, transmission owners whose upgrades create additional transfer capability should be able to share the costs of such upgrades with RTO West.

BC Hydro also believes that the planning functions of RTO West must be more fully developed and defined. The TOA gives RTO West backstop authority to maintain transfer capability and allocate costs to a Participating Transmission Owner who has failed to restore transfer capability within a reasonable period of time. This backstop authority needs to be expanded further so that RTO can play a proactive role in the region-wide planning process, with authority to implement market-based solutions to support local load service as well as commercial transactions.

In particular, BC Hydro recommends that RTO West's planning role include, at a minimum, the following responsibilities:

- (1) RTO West should identify system bottlenecks that may impede efficient bulk power transactions, and opportunities that may aid such transactions. RTO West can perform this function through monitoring of trade activity in the region, tracking congestion revenue from various congestion paths, and evaluating technical performance of the system under normal and abnormal conditions;
- (2) RTO West should develop an annual consultative process to share its findings and observations regarding transmission planning with market participants, and to seek their formal input;

- (3) RTO West should facilitate processes to identify alternative solutions to resolve an identified constraint or other problem affecting transfer capability. Competing alternatives such as siting incentives for generation, load management and remedial action schemes should all be considered and encouraged;
- (4) After identifying the most cost-effective solution to a transmission constraint or other problem, RTO West should facilitate implementation of the solution. If the most cost-effective solution is determined to be a transmission project, then the transmission owner in the area should be extended a right of first refusal to carry out the project; and
- (5) RTO West should be responsible for quantifying the benefits of an expansion or upgrade, identifying the beneficiaries of the project and allocating costs appropriately.

These clarifications of RTO West's planning functions and responsibilities will enable RTO West to pursue market-based solutions to transmission bottlenecks in the region. If the Commission determines to issue the declaratory order on the TOA sought by BPA, Idaho Power and PacifiCorp, then BC Hydro asks the Commission to endorse these transmission planning concepts as well as requiring a more inclusive approach for transmission facilities to be placed under RTO West's control.

2. **The TOA's Conversion Rights Unduly Favor Incumbents And Frustrate Development Of A Liquid Market For Firm Transmission Rights.**

The Filing Utilities have elected to make the details of the RTO West mechanisms regarding conversion rights and capacity trading part of the TOA rather than the RTO West tariff. BC Hydro is willing to accept this approach initially as part of the RTO formation efforts, but has strong reservations regarding the limiting effect such an approach will have on the Commission's "open architecture" concept for RTOs, since the TOA now provides that it will have priority over the RTO West tariff. The Commission in any declaratory order should take steps to ensure that the priority of the TOA over the tariff does not hamper continued development and fine-tuning of these mechanisms for converting, allocating and trading transmission rights, so that RTO West and the market participants can apply their real-world experience with these mechanisms to refining their operation in the future.

As to the substance of the RTO West proposal: BC Hydro recognizes that Order No. 2000 does not predetermine whether, and to what extent, pre-existing transmission arrangements are to be grandfathered by RTOs. However, it is evident that the RTO West proposal fails to strike a proper balance between the rights of incumbents, on the one hand, and a liquid market in transmission rights, on the other. The net result of the RTO West proposal is an undue preference in favor of incumbents, with corresponding detriment to development of a robust market for trading transmission rights.

The proposal essentially creates a "regional preference" to transmission for Northwest utilities, to the disadvantage of new market entrants. While BC Hydro would conceivably benefit from such a preference, BC Hydro nevertheless believes that such an approach is not in the best interest of ensuring competitive markets for wholesale power and transmission in the region.

Thus if the Commission determines to issue a declaratory order regarding the TOA, it should require the Filing Utilities to modify the TOA to:

- (1) Moderate the excessive disposition of FTRs to incumbent rights holders. The Filing Utilities have proposed to grant incumbents FTRs that will: (a) replace firm rights under existing agreements; (b) meet unspecified load service obligations not covered by preexisting agreements; (c) meet load growth projections; (d) serve obligations under bundled power sale, exchange, coordination or other arrangements not covered by preexisting transmission agreements; and (e) be based on extensive conversion and rollover rights.²⁵ Over time, if not initially, this proposed overly generous allocation of capacity to incumbents is not likely to leave enough available, tradeable capacity to support a viable initial auction or secondary market;
- (2) Establish unused FTR posting and bidding mechanisms and auction revenue allocation methodologies that free up unused FTRs for other market participants. There is no incentive or compulsion under the Filing Utilities' proposal for an incumbent holder of transmission rights to make unused rights available in the forward market prior to their potential release in the day-

²⁵Stage 1 Filing at 30-32.

ahead market. The Filing Utilities need to correct this deficiency; and

(3) Promote a more liquid market for transmission rights.

These steps will place reasonable limits on the extent of grandfathered arrangements that will carry over into the new RTO West structure.²⁶ They will also ensure a better balance between the interests of incumbent rights holders and new market participants.

3. Any Movement By The Filing Utilities Toward Import/Export Fees Should Be Rejected.

The RTO West proposal does not include import or export fees. However, several of the Filing Utilities state that "there are difficult hurdles associated with issues relating to import and export charges that must be cleared before they proceed to implementation of the proposal," and suggest that such charges may be necessary to "mitigate future cost shifts or allow for lost revenue recovery."²⁷ Any move in the direction of import/export fees by RTO West should be strongly discouraged by the Commission in its Stage 1 declaratory order.

The RTO West proposal is based on a flow-based physical rights model for congestion management. Import/export fees are incompatible with such a congestion management scheme, in that they would result in a minimum congestion charge on all transactions into or out of RTO West even if the customer had secured Firm Transmission

²⁶See *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 at 62,281 (1997) (differentiating RTO restructuring from the process of converting bilateral agreements to the Order No. 888 tariff).

²⁷Stage 1 Filing at 15-16. The Filing Utilities making this assertion are Nevada Power, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific Power Company.

Rights ("FTRs") on RTO West. Thus FTRs used on an intra-regional basis would not be subject to such congestion charges, while inter-regional transactions would be subject to such an assessment.

BC Hydro believes that an import/export fee would be a regression toward pancaked rates, which the Commission has found to be "a major detriment to competition in the bulk power market." Order No. 2000-A at 31,383. The Commission has viewed import/export fees with disfavor in the context of region-wide transmission tariffs, and should adopt the same stance with respect to any comparable fee by RTO West. See *Mid-Continent Area Power Pool*, 91 FERC ¶ 61,065 (2000). In the RTO West context, export fees would also undo many of the benefits achieved by eliminating segmentation of transmission facilities. And, as stated above, there are also significant threshold concerns regarding the incompatibility of import/export fees with RTO West's proposed flow-based physical rights transmission access model.²⁸

While BC Hydro is sensitive to the cost shifting concerns that frustrated development of IndeGO, there are already three mechanisms in the RTO West proposal intended to satisfy such concerns: company rates, transfer charges and the allocation of revenues from the sale of unencumbered transmission rights. These mechanisms are entirely sufficient to deal with the problem (provided that the previously-discussed issues regarding transfer charges for short-term firm and nonfirm transmission service can be

²⁸For example, superimposing an import/export fee on the RTO West flow-based physical rights model could lead to the following situation: within-RTO transactions contracted between Washington or Oregon and Nevada could in fact be subject to an import/export fee since the power in the transaction may have physically flowed through California (*i.e.*, out of and back into the region). The same situation could occur with transactions along the eastern edge of RTO West, which will likely involve some power flows through MAPP. To avoid discrimination, these transactions would need to be charged the same import/export fee as a pure export from RTO West to California.

resolved in Stage 2). Import/export fees are redundant and unnecessary in the RTO West context, and should be rejected by the Commission if they are proposed by any Filing Utility.

4. Need for ADR Safeguards.

Under the Filing Utilities' approach, terms and conditions of service that would normally be prescribed in a tariff will instead be predetermined by the TOA. However, U.S. and Canadian transmission customers and Canadian utilities will not be signatories to the TOA, and thus it is unclear whether they will have standing to invoke the Alternate Dispute Resolution ("ADR") procedures of the TOA.

If the Commission issues the requested declaratory order regarding the TOA, it should require the Filing Utilities to specify how disputes arising under the TOA, and adversely affecting non-signatories, are to be resolved through ADR.

V.

**RENEWAL OF BC HYDRO'S REQUEST FOR PARTICIPATION IN
STAGE 2 DISCUSSIONS ON EQUAL FOOTING WITH THE FILING UTILITIES**

In its October 24, 2000 Initial Comments, BC Hydro observed that it had requested, but was denied, full participation in the Filing Utilities group. This severely limited BC Hydro's ability to effectively participate in the negotiations among the Filing Utilities which led to the TOA. BC Hydro believes that this result is fundamentally inequitable, in that the framework for British Columbian participation developed with RTO West would call for the transfer of operational control of British Columbian transmission facilities to the BC IGO pursuant to agreements which are to parallel the TOA.

These supplemental comments by BC Hydro show that there are a number of substantive issues with the TOA that, unless resolved by the Commission in a declaratory order or by the Filing Utilities and BC Hydro in Stage 2 negotiations, could prevent BC

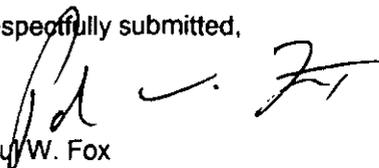
Hydro from becoming a Canadian Participating Transmission Owner. It is imperative that BC Hydro be given an equal "seat at the table" with the Filing Utilities in the Stage 2 discussions, an approach that appears to be fully within the scope of the Commission's October 6, 2000 order in Docket No. RM99-2-000, which expressly allows a non-public utility participating in an RTO proposal to "join in the RTO filing without jeopardizing its non-jurisdictional status."

The issues already raised by the TOA would directly affect BC Hydro's operations under the BC IGO / RTO West framework, and there is the possibility that additional seams issues between the BC IGO and RTO West could arise as a result of further unilateral actions by the Filing Utilities. BC Hydro therefore renews its request, made in its Initial Comments, that the Commission encourage the Filing Utilities to include BC Hydro prospectively as a participant of equal standing in the Pacific Northwest RTO development process.

WHEREFORE, BC Hydro requests the Commission in its declaratory order on the RTO West Stage 1 Filing to: (1) approve the proposed scope and configuration of RTO West, including the framework for British Columbian participation set forth in Attachment H to the filing; (2) defer action on the Agreement Limiting Liability or, alternatively, require the Filing Utilities to modify the ALL to accommodate British Columbian participation in an RTO in the Pacific Northwest; (3) not issue a declaratory order regarding the TOA at this time or, alternatively, rule on the concepts embodied in the TOA consistent with the foregoing comments; and (4) encourage the Filing Utilities to include BC Hydro

prospectively as a participant of equal standing in the RTO development process.

Respectfully submitted,



Paul W. Fox
Bracewell & Patterson, L.L.P.
111 Congress Avenue, Suite 2300
Austin, Texas 78701-4043
Telephone: (512) 472-7800
Facsimile: (512) 472-9123
e-mail: pfox@bracepatt.com

Attorney for BC Hydro

November 20, 2000