

SHEA & GARDNER
1800 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036-1872

(202) 828-2000
FAX: (202) 828-2195

FILED
JAN 16 AM 10:52

ROBERT T. BASSECHES
BENJAMIN W. SOLEY
RALPH J. MOORE, JR.
MARTIN J. FLYNN
STEPHEN J. POLLAK
DAVID BOOTH BEERS
JOHN D. ALDOCK
WILLIAM S. MOORE
JOHN TOWNSEND RICH
JAMES R. BIEKE
WILLIAM F. SHEEHAN
R. JAMES WOOLSEY
FREDERICK C. SCHAFFRICK
DAVID B. COOK
STEPHEN J. HADLEY
PATRICK M. HANLON

TIMOTHY K. SHUBA
MICHAEL S. GIANNOTTO
JEFFREY C. MARTIN
WILLIAM R. HANLON
ELIZABETH RUNTAN GEISE
COLLETTE C. GOODMAN
LAURA S. WERTHEIMER
RICHARD M. WYNER
THOMAS J. MIKULA
EUGENIA LANGAN
NANCY B. STONE
CHRISTOPHER E. PALMER
MARK S. RAFFMAN
VALERIE E. ROSS
MICHAEL K. ISENMAN
JOHN MOUSTAKAS

ORIGINAL
FEDERAL ENERGY REGULATORY COMMISSION

January 16, 2001

HEATHER H. ANDERSON
REENA J. WAZIR
HOWARD M. WALKER
RONALD J. MUNRO
BRITTA RAGMAR STRANDBERG
TIMOTHY G. LYNCH
MATTHEW M. HOFFMAN
JAMES CHAD OPPENHEIMER
M. DAVID DOBBINS
CHRISTOPHER L. SAGERS
JEFFREY M. KLEIN
JILL ILAN INBAR
TIMOTHY H. EDGAR
DAVID R. ESQUIVEL
DEAN MARRISON
MICHELLE UNSVONKIN
ADAM M. CHUD
ELENA A. BAYLIS
ROSS E. DAVIES
RICHARD A. PASCHAL
RICHARD L. MATHERTY III
DOMINICK V. FREDA
SENIOR COUNSEL
WARNER W. GARDNER
OF COUNSEL
RICHARD T. CONWAY
WILLIAM H. DEMPSEY
FRANCIS M. SHEA (1905-1989)
LAWRENCE J. LATTO
ANTHONY A. LAPHAM
ERIC C. JEFFREY

By Hand Delivery

Mr. David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

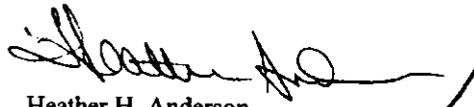
Re: Docket No. RT01-35-000

Dear Mr. Boergers:

Enclosed for filing in the above-referenced docket are an original and 14 copies of "Consumer-Owned Utilities' Comments on the Filing Utilities' December 1 Amended Supplemental Compliance Filings."

Please file-stamp and return the extra copy of the foregoing document by the delivering courier.

Very truly yours,


Heather H. Anderson

HHA/jg
Enclosures
cc: Service List

FILED
JAN 16 2001

010117.0286.1

ORIGINAL
 UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

RECEIVED
 THE SECRETARY
 01 JAN 16 AM 10:52
 FEDERAL ENERGY
 REGULATORY COMMISSION

Avista Corporation, Bonneville Power)
 Administration, Idaho Power Company)
 Montana Power Company, Nevada Power)
 Company, PacifiCorp, Portland General)
 Electric Company, Puget Sound Energy,)
 Inc., and Sierra Pacific Power Company)

Docket No. RT01-35-000

**CONSUMER-OWNED UTILITIES' COMMENTS ON THE FILING UTILITIES'
 DECEMBER 1 AMENDED SUPPLEMENTAL COMPLIANCE FILINGS**

On December 1, 2000, the nine utilities identified in the caption (the "Filing Utilities") submitted a revised Transmission Operating Agreement ("TOA") and a revised Agreement to Suspend Provisions of Pre-existing Transmission Agreements ("Suspension Agreement") in this docket.¹ The Filing Utilities ask the Commission to review these amended documents in place of the versions they submitted on October 23, 2000, and to provide "preliminary guidance regarding the acceptability of the concepts and specific provisions they contain." CU Filing at 4; DU Filing at 6. In addition, the Filing Utilities ask the Commission to arbitrate a disagreement among themselves with respect to a pricing issue (export fees) that will be addressed in the Utilities' "Stage 2" filings. See CU Filing at 4-5; DU Filing at 5-6.

The undersigned "Consumer-Owned Utilities" hereby submit these Comments in response to the Filing Utilities' December 1 submittals. These Comments supplement, and do

¹ The submittal was made pursuant to two separate filings. Six of the utilities -- Avista Corporation, the Bonneville Power Administration, Idaho Power Company, The Montana Power Company, PacifiCorp, and Puget Sound Energy, Inc. (collectively, the "Concurring Utilities") -- submitted the "Concurring Utilities' Amended Supplemental Compliance Filing and Request for Declaratory Order" (the "CU Filing"), which attaches the revised documents. The remaining three utilities -- Portland General Electric Company, Nevada Power Company, and Sierra Pacific Power Company (collectively, the "Dissenting Utilities"), submitted an "Amended Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order No. 2000" (the "DU Filing"), which supports the submission of the amended documents attached to the CU Filing.

not replace, the Consumer-Owned Utilities' Protest and Comment filed on November 20, 2000 (the "November 20 Protest"), in response to the Filing Utilities' October 23, 2000, filing.²

I. The Filing Utilities' Request for "Guidance".

In their December 1 "Amended Supplemental" submissions, the Filing Utilities abandon the request -- previously made by three of them -- for a declaratory order approving the TOA and the Suspension Agreement or their "concepts as a package," and now instead make clear that they are asking solely for "preliminary guidance" on the concepts and provisions of those agreements as currently drafted. In principle, the Consumer-Owned Utilities agree that the Commission might usefully comment on some aspects of the draft documents. For example, there is no need for the Commission to allow the Filing Utilities -- and the other RTO West stakeholders -- to spend the next several months developing a complete proposal around fundamentally faulty provisions. Thus, to the extent that specific elements of the draft documents are plainly unacceptable, the Commission should say so. However, we urge the Commission to take care that in providing "guidance" it does not appear to give a premature stamp of approval to provisions that may now appear acceptable but that might be substantially and adversely impacted by developments during the "Stage 2" process. At bottom, we believe that Commission "guidance" would most effectively and appropriately be provided through the FERC staff's ongoing participation in the collaborative process that the Commission initiated last spring and that the Filing Utilities have confirmed they intend to continue.

² The Consumer-Owned Utilities -- Utah Associated Municipal Power Systems, the Western Public Agencies Group, Public Utility District No. 1 of Snohomish County, Washington, the Market Access Coalition, Pacific Northwest Generating Cooperative, the Northwest Requirements Utilities, the Idaho Energy Authority, and the Idaho Consumer-Owned Utilities Association -- together represent over 130 electric utilities in RTO West's proposed geographic region. A listing of the Consumer-Owned Utilities' constituents is found at Exhibit 1 to the November 20 Protest.

A. The Commission Should Be Cautious in Providing “Guidance” on Draft Documents.

In their October 23 filing, three of the Filing Utilities sought a declaratory order “approving” the draft TOA’s and Suspension Agreement’s “concepts as a package.” Noting that these documents were not final and could not be evaluated in the absence of other information not included in the October 23 filing, however, the Consumer-Owned Utilities urged the Commission to refrain from “approving” any aspect of the TOA or Suspension Agreement at that time. The Consumer-Owned Utilities were concerned that any initial “approval” of “concepts” would handicap other stakeholders -- and even the Commission to some degree -- in making necessary changes to or challenging provisions that later appear problematic.

Our concerns have not been alleviated. Indeed, the December 1 filings explicitly reaffirm that the draft documents remain works in progress. The Dissenting Utilities state that “further modifications to the subject agreements may be necessary” and that “final approval of the agreements [therefore] would be premature.” DU Filing at 4. The Concurring Utilities similarly “recogniz[e] that the documents are non-binding and remain subject to modification within the Stage 2 process,” and therefore request only that “the Commission provide preliminary guidance regarding [the attached agreements].” CU Filing at 23.

Evidently recognizing that in this context even approval of “concepts as a package” would be inappropriate, BPA, PacifiCorp, and Idaho Power Company have dropped their earlier request for a declaratory order providing such approval and joined the other Filing Utilities in seeking only “preliminary guidance” on the acceptability of the agreements. While we are pleased to see such movement, for the same reasons that we previously opposed their request for approval, we urge the Commission to be very cautious if it chooses to provide “guidance” in the form of a written response to the draft agreements. Commenters and the Commission itself must remain free to evaluate all substantive aspects of the TOA and the Suspension Agreement after the complete RTO West proposal is developed and they can do so fully, accurately, and in context. Further, neither commenters nor the Commission should be required to expend their

limited resources making editorial comments on successive draft documents: rather, the Commission should permit comments on all aspects of those documents when they are finalized and the full RTO West proposal is submitted for approval. To preserve the commenters' and the Commission's own ability to comment fully on that final proposal, the Commission should take care not to provide premature endorsement of any isolated aspect of that proposal -- either explicitly or by negative implication. Any written "guidance" should be limited to indicating that specific provisions or changes -- in language or effect -- will plainly be necessary if RTO West is to meet Order No. 2000's minimum requirements.

B. The Commission Should Provide Guidance in the Collaborative Process.

Following their December 1 filings, the Filing Utilities organized and sponsored meetings on December 15, 2000, and January 12, 2001, to discuss a schedule and procedures for a collaborative process for developing the numerous documents the Filing Utilities plan to include in their "Stage 2" submission. The proposal substantially mirrors the process that was in place prior to October 15: Stakeholder workgroups will develop proposals on most issues, and the Regional Representatives Group will be charged with attempting to achieve consensus on issues that could not be resolved in the workgroups. The Consumer-Owned Utilities look forward to working with the Filing Utilities and the other stakeholders to develop a consensus Stage 2 filing.³

Whether or not the Commission chooses to provide written comments on the draft TOA or Suspension Agreement, the Consumer-Owned Utilities believe that the "guidance" the Filing Utilities seek in connection with RTO West's further development would most effectively be

³ The Consumer-Owned Utilities commend the Filing Utilities for re-instituting the collaborative process. We are concerned, however, about the Filing Utilities' intent, announced during the December 15 and January 12 meetings, to reserve their "right" to modify consensus proposals in some cases. As is evident from our November 20 Protest, the Consumer-Owned Utilities believe that the Filing Utilities unilateral modification of elements of a consensus proposal to which they have previously agreed jeopardizes the collaborative process and undermines stakeholder public confidence in the "independence" of the resulting RTO. We urge the Commission to clarify this point in any Order it issues on the filings before it.

provided through FERC Staff participation in this ongoing collaborative process. Such a process provides a far better opportunity for the Commission to provide meaningful “guidance” to the Filing Utilities and other stakeholders than does a formal, adversarial filing and protest procedure. Through Staff participation in this process, the Commission will be able to provide ongoing, responsive guidance on a host of issues in a context in which -- perhaps largely *because of* Staff participation -- the participants are encouraged to compromise and reach consensus. This will maximize the possibility that the final RTO West filing will both meet all of Order No. 2000’s requirements and also enjoy widespread stakeholder support.

Although since October 15, 2000, the Commission Staff has understandably been sensitive to the restrictions that the Commission’s *ex parte* rule may place on their ability to participate further in the collaborative process, the Consumer-Owned Utilities note that Rule 2201 in fact does not preclude the Commission’s participation. First, Rule 2201(a) permits the Commission to simply exempt the collaborative process and any portion of the docket opened pursuant to that process from the Rule’s general ban on *ex parte* communications. Rule 2201(a) specifically provides that the Commission may “by rule or order, modify any provision of [the *ex parte* rule], as it applies to all or part of a proceeding, to the extent permitted by law.” Since it does not appear that the Administrative Procedure Act (or any other statute) prohibits *ex parte* communications in connection with the development of RTO proposals or the process the Commission has established for developing those proposals, the Commission may explicitly “modify” Rule 2201 to permit such contacts pursuant to Rule 2201(a).⁴

⁴ As relevant here, except “to the extent required for the disposition of *ex parte* matters as authorized by law,” the APA generally prohibits *ex parte* communications in “every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing.” See 5 U.S.C. §§ 554, 557. Case law interpreting these provisions makes clear that the APA, including the *ex parte* prohibition of § 557(d)(1), does not apply to every agency process or hearing. Rather, it applies only to formal adjudications that must, by law, be “determined on the record.” See *United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 757 (1972) (APA provisions “need be applied ‘only where the agency statute, in addition to providing a hearing, prescribes explicitly that it be ‘on the record.’”); *Railroad Comm’n of Texas v. United States*, 765 F.2d 221, 227 (D.C. Cir. 1985) (statute which permitted ICC to take certain actions “only after a full hearing” did not require a “hearing on the record” to which APA procedures would

Alternatively, if the Commission does not wish to exempt the collaborative process from Rule 2201 altogether, the Rule by its terms permits Commission Staff to participate in the collaborative process, so long as parties are given "reasonable prior notice" of and the opportunity to attend meetings in which Commission staff participate. See 18 C.F.R. § 385.2201(c)(4)(prohibited communications are, in relevant part, oral communications that are "made without reasonable prior notice to the parties to the proceeding and without the opportunity for such parties to be present when the communication is made."). All participants in the RTO West collaborative process will obviously need and will routinely receive notice of relevant meetings; assuring that all parties on the official service list of this proceeding -- most of whom are in the first group anyway -- are included in notices of scheduled meetings and the Commission Staff's intended participation therein would be a simple matter.

Accordingly, the Consumer-Owned Utilities urge the Commission to provide the "guidance" the Filing Utilities request -- and assist in the development of a broadly-supported,

apply); *No Oilport! v. Carter*, 520 F. Supp. 334, 371 (W.D. Wash. 1981)(*ex parte* provisions of APA do not apply to "informal agency action not based on a record developed in an evidentiary hearing"). Cf. *International Telephone & Tel. Corp. v. Local 134, International Brotherhood of Electrical Workers*, 419 U.S. 428 (1975)(APA does not apply to "preliminary administrative determination" that (1) does not finally resolve any right or issue, and (2) is independent of, although it may substantially impact, the proceeding that will finally resolve those rights or issues).

In this case, the collaborative process and the informational filing deadlines the Commission established in Order No. 2000 are designed to assist the stakeholders in developing a complete and final RTO proposal, which will only later be submitted to the Commission for approval. There is no statutory requirement that the Commission hold a hearing at this preliminary stage of RTO development, let alone a requirement that the Commission hold a formal hearing "on the record." Nor is the applicability of formal APA procedures to the Commission's processes for RTO development triggered by the October interim informational filings and subsequent interventions and comments on those filings. See *District No. 1, Pacific Coast District v. Maritime Administration*, 215 F.3d 37, 43 (D.C. Cir. 2000)(rejecting argument that "once the [agency] requested comments from interested parties, it relinquished its discretion to 'accept and rely upon *ex parte* communications'").

In short, the "informational filing" provided to and the "preliminary guidance" requested of the Commission at this mid-point in the collaborative development of RTO West does not create an "adjudication required by [any] statute to be determined on the record after opportunity for . . . hearing." *Id.*

complete RTO proposal -- by committing Staff resources to participate in the ongoing Stage 2 collaborative process.

II. Elements of the Revised TOA Conflict With Order No. 2000.

In their December 1 filings, the Filing Utilities ask the Commission to “review [the TOA] as submitted with this filing rather than as filed on October 23.” CU Filing at 3. Similarly, in their “Answer to Motions to Consolidate and Request for Leave to File Answer to Protests to the RTO West October 23, 2000 Filing,” submitted on December 5, 2000 (at 9), the Filing Utilities deferred responding to comments on the October 23 TOA, stating that interested parties should first have an opportunity to comment on the December 1 version of the TOA.

Having reviewed the December 1 version of the TOA, the Consumer-Owned Utilities are gratified that the current version of the TOA is in some respects an improvement on the previous draft. For example, the definitions of “Transmission Facility Cost Sharing Payments” and “Company Cost” have properly been modified to recognize that non-transmission alternatives may more economically relieve transmission constraints than construction of new transmission facilities. Section 6.3 of the TOA properly has been modified to make clear that the holders of rights under Non-Converted Transmission Agreements may convert their rights under those agreements even after the Transmission Service Commencement Date. The access charge BPA collects from transmission owners that do not join RTO West has been limited and clarified in Exhibit H to the TOA.

Unfortunately, the fundamental problems, deficiencies, and uncertainties discussed in our initial Comments remain. Indeed, as discussed below, if anything the December 1 amendments to the TOA appear to exacerbate some of the problems on which the Consumer-Owned Utilities previously commented. Our November 20 Protest then, remains applicable to the amended TOA filed on December 1, and we ask the Commission to consider our November 20 filings in

connection with its consideration of the December 1 documents.⁵ In addition, the Consumer-Owned Utilities offer the following supplemental comments on the December 1 amendments.⁶

A. RTO West's Lack of Independent Rate Filing Authority.

In our November 20 Protest, the Consumer-Owned Utilities pointed out that for at least the next ten years -- during the "company rate period" -- the draft TOA vested rate filing authority with the individual utilities, rather than the RTO. See November 20 Protest at 55-57.⁷ Denying RTO West the ability to develop and file its own rates for service over the facilities it controls violates Order No. 2000's independence requirement. Unfortunately, the only significant modifications to the applicable sections of the TOA (Sections 13 and 14) that the Filing Utilities have now made exacerbate that problem by making clear that RTO West will never be able to independently set rates. Now, "[a]fter conclusion of the Company Rate Period, the Executing Transmission Owner shall continue to establish . . . tariffs or rate schedules for charges to or by RTO West, pursuant to the RTO West Tariff." TOA Section 13.1.2.⁸

⁵ The separate Protest and Comments filed on November 20 by Utah Associated Municipal Power Systems similarly remains applicable to the revised TOA.

⁶ The Consumer-Owned Utilities have no supplemental comments on the revised Suspension Agreement. As noted in the Consumer-Owned Utilities' November 20 Protest, the primary problems with the Suspension Agreement were problems of omission which made it impossible to fully evaluate that proposed agreement. See November 20 Protest at 64-65. The December 1 filings do not provide any of the critical information that was missing from the October 23 draft of that document or otherwise materially impact the Consumer-Owned Utilities' comments thereon. Thus our November 20 Protest remains applicable to the revised Suspension Agreement filed on December 1, and we ask the Commission to consider our November 20 filing in connection thereto.

⁷ The Consumer-Owned Utilities do not, at this time, offer comment on the rate methodology described by the Filing Utilities as "company rates." At such time as the RTO West Tariff and supporting materials are developed and filed with the Commission, we will take a position on this methodology.

⁸ As the Consumer-Owned Utilities previously noted, the Bonneville Power Administration may need to retain greater authority to file rate tariffs than the other RTO West participants in order to meet its statutory obligations. Permitting Bonneville to retain authority that it is required by statute to exercise should not, in the Consumer-Owned Utilities' view, compromise RTO West's independence.

B. Inadequate Facilities Inclusion.

It appears that the December 1 revisions to the TOA may also exacerbate the earlier draft's inadequacies with respect to facilities inclusion. As detailed in the Consumer-Owned Utilities' November 20 Protest, the TOA gave the Filing Utilities substantial discretion to withhold necessary facilities from RTO West control, and thus threatened RTO West's ability to meet the Commission's "scope and configuration" requirement or to provide reliable, non-discriminatory service. See November 20 Protest at 34-42; UAMPS' Protest at 17-22.

Although the actual impact of the facilities inclusion provisions of the TOA remains unclear, the revised TOA appears to give the Filing Utilities even greater discretion to exclude necessary facilities. First, changes to the definition of "RTO West Controlled Transmission Facilities" suggest for the first time that the Filing Utilities may have the authority to exclude facilities that contribute to transfer capability between congestion zones, so long as those facilities are not deemed to be part of a "Flowpath," as defined in the TOA.⁹ The earlier draft required the inclusion of any facility that had a "material impact on . . . transfer capability of RTO West managed constraint paths between its Congestion Zones," and then specified that "a Transmission Facility shall be deemed to have a material impact on transfer capabilities between Congestion Zones . . . if such transfer capabilities would change if the Transmission Facility were removed." While the definition of "RTO West managed constraint paths between its Congestion Zones" was unclear, it appeared to the Consumer-Owned Utilities that, at a minimum, all jurisdictional transmission facilities that impacted transfer capability between congestion zones would be included.

In the revised definition of RTO West Controlled Transmission Facilities, however, the provision purporting to require the inclusion of any facility that would change the system's

⁹ Without knowing how the congestion zones will be configured, it is impossible to know how many facilities, if any, will fall into this category. Our purpose is simply to show that December 1 changes to the TOA's language have, at least theoretically, created an additional opportunity for the Filing Utilities to exclude facilities from RTO control.

transfer capability between congestion zones has been removed. The provision now states that only facilities that would change the "Total Transfer Capability of a Flowpath" must be included. A "Flowpath" is in turn defined as: "one or more RTO West Controlled Transmission facilities for which transmission use is managed through requiring Firm Transmission Rights in order to schedule in a particular direction" -- that is, as a congested path.¹⁰ Thus, the Filing Utilities may now be able to exclude facilities that connect "congestion zones," so long as they are not part of a congested "Flowpath."¹¹

Second, the revised TOA now expressly provides for an "exception to facilities inclusion criteria" that was previously described only in the Utilities' filing letter. New Section 5.1.2.1 of the TOA explicitly permits Puget Sound Energy to exclude from RTO control facilities that

¹⁰ It is possible that by requiring the inclusion of all facilities that would change the transfer capability of a "Flowpath," the December 1 Amendments actually expand the category of facilities *within* congestion zones that must be included. Again, however, the actual impact of the amendment is not clear. Because "congestion zone" is specifically defined to mean zones "within which Firm Transmission Rights shall not be required to schedule the transmission of power and energy," a "Flowpath" may not be deemed to exist within these zones. While the Consumer-Owned Utilities would hope that facilities passing through two or more congestion zones would (if congested) be treated as a unified "Flowpath," it is possible that the Filing Utilities will attempt to segment these facilities and exclude portions that fall within a single zone.

¹¹ In its individual comments, Utah Associated Municipal Power Systems stated that it did not appear that RTO West would ever be able to change the initial congestion zones designated by the Filing Utilities. See UAMPS' Protest and Comments at 19 n.20. In fact, the TOA defines "congestion zone" to mean "those zones established by RTO West from time to time in the RTO West Tariff . . ." The existence of this definition, however, in no way alters UAMPS' (or the Consumer-Owned Utilities') comments on the facilities inclusion issue: notwithstanding the definition, it appears that the Filing Utilities in fact intend to establish the initial RTO West congestion zones (and determine which facilities will be included) prior to RTO West's implementation, and it is at the least not clear what ability RTO West will actually have to alter those initial determinations. Perhaps more important, because the December 1 amendments to the TOA may permit the Filing Utilities to exclude facilities between congestion zones, congestion zone designation is not as critical as it appeared to be: any power RTO West may have to correct or amend congestion zone designations will not ensure that all congested facilities are included in any event. Finally, as both UAMPS individually and the Consumer-Owned Utilities as a group pointed out, the proposed 10% test is problematic for many reasons unrelated to congestion zone designations.

“meet the definition of . . . RTO West Controlled Transmission Facilities because they “have secondary impacts on the Total Transfer Capability of some Flowpaths” but that are “classified as distribution pursuant to State or Federal order.”¹² The Consumer-Owned Utilities do not believe that jurisdictional utilities should be able to withhold from the RTO facilities that the FERC has historically classified as transmission by the expedient of obtaining a State public utilities’ commission order reclassifying the facilities as distribution.¹³

In these two respects, then, the revised TOA appears, if anything, to exacerbate the facilities inclusion deficiencies of the earlier draft.

C. Planning Authority.

The amended TOA also reduces the RTO’s authority for planning and expansion. As the Consumer-Owned Utilities pointed out on November 20, RTO West’s authority in this regard was already inadequate: the TOA (1) gave the RTO nominal authority over an inadequate group of facilities, (2) provided inadequate “backstop” authority to ensure necessary facilities expansions, and (3) gave the RTO inadequate authority to review and make decisions among competing alternatives for relieving congestion. See November 20 Protest at 42-49. RTO West would therefore be unable to “coordinate [expansions] to ensure a least cost outcome that maintains or improves existing reliability levels,” as Order No. 2000 requires. Order No. 2000, F.E.R.C. Stats. and Regs. ¶ 31,089 at 31,164.

As described above, amendments to the TOA may have further restricted the group of facilities over which RTO West will have nominal authority. See also Attachment A-Redline, Section 12.1 (RTO West will now have “primary responsibility for planning [only] of the RTO West Controlled Transmission Facilities,” and not “comparable facilities identified in other

¹² Although the “exception” is currently limited to Puget Sound, there is nothing that would prevent the TOA from being amended later to permit other utilities to take advantage of it.

¹³ As previously noted, for both collective and individual reasons the Consumer-Owned Utilities do not believe that the criteria of the TOA are, even without added exceptions, adequate. See November 20 Protest at 34-42; UAMPS’ Protest at 17-23.

Transmission Operating Agreements.”) Other amendments eliminate RTO West’s authority to “consider proposals for additions or modifications to RTO West Transmission System facilities for purposes of serving local loads,” see Attachment A-Redline, Section 12.1; seemingly seek to expand the category of transmission owners who will be able to engage in planning on the RTO’s behalf to either those whom the FERC deems to meet Order No. 2000’s “independence” criteria or those who are otherwise “entitled to exercise such authority,” see *id.*, Section 12.2; and require the RTO to “support” transmission owner’s efforts to increase its (and thus RTO West’s) rates to recover the costs of unilateral expansion decisions, without regard to whether that decision was a cost-effective solution to transmission congestion. See Attachment A-Redline, Section 11.3. Thus, the amended TOA intensifies the Consumer-Owned Utilities’ concerns about RTO West’s planning authority, as expressed in our initial comments. See November 20 Protest at 42-49.

D. Conclusion.

These supplemental comments, like the Consumer-Owned Utilities’ November 20 Protest, do not exhaustively address every provision of the draft TOA or of the Filing Utilities’ most recent amendments. The Consumer-Owned Utilities expect that we will provide more thorough and detailed comments when a final draft, in the context of a complete RTO West Proposal, is filed. There is much in the TOA with which the Consumer-Owned Utilities currently agree, and, indeed, as noted above the Consumer-Owned Utilities believe that some of the Filing Utilities most recent amendments improved the draft. However, as noted above, some significant problems remain.

III. Response to the Filing Utilities’ Pricing Dispute.

In addition to their general request for “guidance” on the current drafts of the TOA and Suspension Agreement, the Filing Utilities ask the Commission to arbitrate a conflict among themselves as to whether (or perhaps when) export fees should be considered as a part of the RTO West pricing proposal. In considering which approach is best, we question why the Concurring Utilities would refuse to examine the question of the effect of export fees as the

Dissenting Utilities ask. The pricing model the Concurring Utilities currently favor might “work” without export fees, but it may well be that the model would “work” better, and that any proposal would be even stronger, with them. The Concurring Utilities correctly note that earlier regional efforts to form the IndeGO ISO foundered largely because of an inability to reach consensus on a pricing proposal. In this case, however, the parties seem to agree that the RTO West pricing proposal should be designed to avoid cost shifts, the prospect of which was largely responsible for IndeGO’s failure. In designing a pricing proposal that will conform with this principle, the Consumer-Owned Utilities do not believe that it is necessary or appropriate to preclude full consideration of alternative designs as the Concurring Utilities suggest.

Further, the Consumer-Owned Utilities note that if neighboring RTOs do have export fees, the unexamined rejection of export fees by RTO West could, without even addressing this issue, result in cost shifts for customers that, for example, have resources in an RTO with export fees and loads in an RTO without them. Thus, the question of export fees raises seams issues as well as internal ones. It seems to the Consumer-Owned Utilities that such issues are best resolved by examination of all alternatives, not by an *a priori* rejection of some.

IV. Conclusion.

For the reasons discussed above, the Consumer-Owned Utilities urge the Commission to:

- (1) be cautious in providing “guidance” with respect to the draft TOA and Suspension Agreement so that it does not explicitly or by implication “approve” any provision of those agreements until the Filing Utilities have finalized and provided a complete RTO West proposal and stakeholders have had an opportunity to provide comments on all aspects of that complete proposal;
- (2) provide the “guidance” the Filing Utilities request through the continuation of the collaborative process that the Commission established in Order No. 2000,
- (3) to the extent it chooses to comment on the draft TOA or Suspension Agreement, to consider the Consumer-Owned Utilities’ Protest and Comments submitted on November 20 and supplemented herein,
- and (4) require, in connection with the development of a pricing proposal and other relevant proposals for RTO West’s operation, that the Filing Utilities not preclude consideration of

potentially beneficial alternatives or disregard the impact that seams issues may have on those proposals.

Respectfully Submitted,

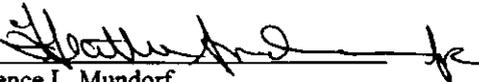
SHEA & GARDNER

By 

Timothy K. Shuba
Heather H. Anderson
1800 Massachusetts Ave., N.W., Suite 800
Washington, D.C. 20036
Telephone: (202) 828-2107
Facsimile: (202) 828-2195
E-mail: tshuba@sheagardner.com

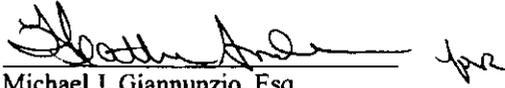
Attorneys for Utah Associated Municipal Power
Systems

MARSH, MUNDORF, PRATT SULLIVAN
& MCKENZIE

By 

Terence L. Mundorf
16000 Bothell-Everett Hwy, Suite 160
Mill Creek, WA 98012
Telephone: (425) 337-2384
Facsimile: (425) 337-2386
E-mail: terrym@millcreeklaw.com

Attorney for Western Public Agencies Group



Michael J. Gianmunzio, Esq.
General Counsel
Eric Lee Christensen
Associate General Counsel
Public Utility Dist. No. 1 of Snohomish Co.
PO Box 1107
2320 California Street
Everett, WA 98206-1107
Telephone: (425) 783-8649
Facsimile: (425) 267-6071
E-mail: elchristensen@snopud.com

Attorneys for Public Utility District No. 1 of
Snohomish County

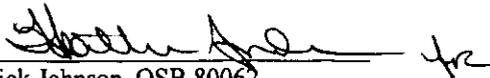
DAVIS WRIGHT TREMAINE LLP



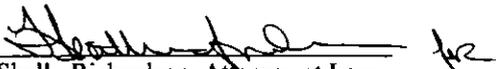
John Cameron
Traci A. Grundon
1300 SE Fifth Avenue, Suite 2300
Portland, OR 97201
Telephone: (503) 778-5477
Facsimile: (503) 778-5299
E-mail: tracigrundon@dwt.com

Attorneys for Market Access Coalition

BULLIVANT HOUSER BAILEY PC

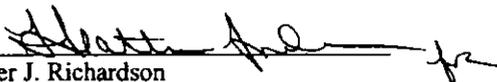
By 
R. Erick Johnson, OSB 80062
300 Pioneer Tower
888 S.W. Fifth Avenue
Portland, Oregon 97204-2089
Telephone: (503) 228-6351
Facsimile: (503) 295-0915
E-mail: erick.johnson@bullivant.com

Attorneys for PNGC Group


Shelly Richardson, Attorney at Law
P.O. Box 61845
Vancouver, Washington 98666-1845
Telephone: (360) 737-2464
Facsimile: (360) 737-2661
E-mail: shellyr@teleport.com

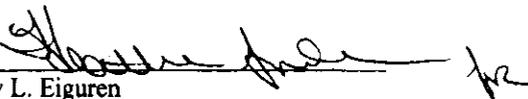
Attorney for Northwest Requirements Utilities

RICHARDSON & O'LEARY

By 
Peter J. Richardson
99 E. State Street
P.O. Box 1849
Eagle, Idaho 83816
Telephone: (208) 938-7900
Facsimile: (208) 938-7904
E-mail: peter@richardsonandoleary.com

Attorneys for Idaho Energy Authority

GIVENS PURSLEY LLP

By 

Roy L. Eiguren
277 N. Sixth Street, Suite 200
P.O. Box 2720
Boise, ID 83701-2720
Telephone: (208) 388-1313
Facsimile: (208) 388-1300
E-mail: rlc@givenspursley.com

Attorney for Idaho Consumer-Owned Utilities
Association

January 16, 2000