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December 20, 2000

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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 the "Answer of Consumer-Owned Utilities To 'Request' For Waiver of Commission's Rules."

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

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

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

**ANSWER OF CONSUMER-OWNED UTILITIES  
TO "REQUEST" FOR WAIVER OF COMMISSION'S RULES**

On October 23, 2000, the nine utilities identified in the caption above (the "Filing Utilities") submitted in this docket a proposal to form RTO West, a non-profit entity they intend to become a regional transmission organization as described in Order No. 2000.<sup>1</sup> On November 20, 2000, the Consumer-Owned Utilities<sup>2</sup> jointly filed a Protest and Comment to the RTO West Application ("Protest"), and concurrently filed separate interventions, each of which incorporated

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<sup>1</sup> The RTO West Application was made in response to the Commission's Order 2000 concerning regional transmission organizations, and includes the work-product of a public collaborative process. The Consumer-Owned Utilities actively participated in the RTO West collaborative process and we appreciate the consideration that many of the Filing Utilities have given to our positions.

<sup>2</sup> 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 -- 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 "Protest and Comment of Idaho Consumer-Owned Utilities Association, et al.", Docket No. RT01-35-000 (November 20, 2000).

the joint Protest.<sup>3</sup> On December 5, 2000, the Filing Utilities filed a “request” that the Commission waive its Rules of Practice and Procedure, 18 C.F.R. § 385.213, in order to allow them to answer selected portions of the Consumer-Owned Utilities’ Protest, as well as the protests of other entities in this proceeding.<sup>4</sup> The Filing Utilities’ request for a waiver of Commission rules is, therefore, a Motion subject to 18 C.F.R. § 385.212. Pursuant to 18 C.F.R. § 385.213, then, the Consumer-Owned Utilities now answer the Filing Utilities’ Request.<sup>5</sup>

As described below, the Filing Utilities’ requested waiver of the Commission’s Rules of Practice and Procedure should be denied in part and granted in part. In many cases, the Answer merely restates the Filing Utilities’ position on the issues addressed. Those portions of the Answer neither clarify the issues nor assist the Commission’s understanding, and the Filing Utilities’ request should be denied with respect to them.<sup>6</sup> With respect to four specific issues, however, the Filing Utilities have in fact provided new or supplemental information that the Commission may want to consider. The Filing Utilities’ Request should therefore be granted and the Commission should consider those portions of its Answer, along with the Consumer-Owned Utilities’ responses laid out below.

**I. The Filing Utilities’ Request Should Be Denied in Part.**

Most of the Filing Utilities’ Answer to the Consumer-Owned Utilities is devoted to specific issues the Consumer-Owned Utilities (and, in many cases, others) raised concerning

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<sup>3</sup> Utah Associated Municipal Power Systems (“UAMPS”) individually filed a “Protest and Motion to Intervene” which referenced arguments made in the Joint Protest and contained some additional substantive comments.

<sup>4</sup> The Filing Utilities’ pleading is referred to herein as the “Filing Utilities’ Request” or “Filing Utilities’ Answer,” as appropriate.

<sup>5</sup> The Consumer-Owned Utilities answer the Filing Utilities’ Request only insofar as it applies to responses to our own protests, and express no views on the appropriateness of the Filing Utilities’ responses to other parties.

<sup>6</sup> See, e.g., International Transmission Company, 92 F.E.R.C. ¶ 61,276 at 61, 912-13 (2000)(rejecting answers because “these pleadings are largely repetitive”).

RTO West's proposed governance. *See* Filing Utilities' Answer at 16-24. In our Protest, the Consumer-Owned Utilities pointed out (1) that the Filing Utilities had unjustifiably departed from the consensus agreement that had been reached through the collaborative process, and (2) that particularly in combination, the changes ensure that the Filing Utilities will retain significant control over RTO West, and thereby preclude RTO West from meeting Order No. 2000's independence requirement. The Filing Utilities' Answer does not provide any new information that could assist the Commission in deciding any of these issues. As even a cursory review demonstrates, rather, in each case the Filing Utilities simply restate the position presented in their initial filing, without addressing the real issues raised in the Consumer-Owned Utilities' Protest.

**A. Transmission Dependent Utilities' Voting Rights.**

As discussed in the Consumer-Owned Utilities' Protest, the Filing Utilities altered the consensus agreement with respect to class voting rights, unilaterally deciding that two of the six Transmission Dependent Utility ("TDU") representatives to the Trustee Selection Committee should be elected by the six TransConnect Utilities through a system of "load-weighted voting". Protest at 10-14. This voting structure would give the Filing Utilities a total of eight representatives on the Trustee Selection Committee: six from the Major Transmitting Utility class, and two from the TDU class.<sup>7</sup> With eight representatives, the Filing Utilities would be able to unilaterally veto any candidate for the Board, and unilaterally protect any sitting Board member that the other members of the Committee wished to remove. This voting structure would therefore allow the Filing Utilities to exercise excessive control over RTO West, and would, as noted above, violate Order No. 2000's independence requirement. *See* Protest at 10-14; UAMPS' Protest and Motion to Intervene at 10-11.

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<sup>7</sup> The TransConnect Utilities' interests will not radically change simply because they transfer some portion of their transmission assets to a Limited Liability Company. Those utilities will continue to directly operate significant high-voltage transmission facilities and will continue to be entitled to virtually all of the income from the transmission assets "transferred" to TransConnect. *See* UAMPS' Protest and Motion to Intervene at 11 n.12.

The Filing Utilities' Answer does not address this substantial core issue. Rather, it simply reiterates that "[t]he Filing Utilities believe that this allocation of voting rights is appropriate," and asserts that their approach is required if the TransConnect utilities are to have "fair representation."<sup>8</sup> Answer at 18. Such is not the case. There is no reason – certainly none is offered by the Filing Utilities – why the TransConnect utilities -- alone among the TDU class -- must have the unilateral ability to elect their own representatives to the board in order to be "fairly" represented. No other TDU (or small group thereof) enjoys that right.

Although the Filing Utilities assert that the TransConnect TDUs will differ from other TDUs in that they will have more customers, larger service areas, and a different mix of power supply sources, they do not indicate how these differences would result in materially different interests with respect to RTO West's governance and policies than other TDUs. As the Consumer-Owned Utilities have pointed out, they would not. Protest at 13-14. Rather, if there are any differences in preferences with respect to RTO West's policies and operation, they would stem from the substantial transmission income and interests that the TransConnect "TDUs" will retain -- both directly and through their ownership interests in TransConnect. These transmission-ownership interests, however, are precisely the reason that giving the Filing Utilities two "TDU" representatives in addition to their six representatives from the Major Transmitting Utilities' class is problematic.

Since the Filing Utilities do not address the real issues at stake here, the Filing Utilities' Answer on this issue is merely repetitive and conclusory, and should not be permitted.

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<sup>8</sup> The Filing Utilities claim that no consensus "agreement" on the TDU class structure was in fact reached during the collaborative process. Filing Utilities Answer at 19. That claim is incorrect, and is refuted by the "Summary of RTO West Governance Consensus Proposal" that was adopted without dissent by the RTO West Regional Representatives Group – on which each of the Filing Utilities had a seat – and that was attached as Exhibit 2 to our Protest. The simple fact is that the governance proposal submitted to FERC by the Filing Utilities departed substantially from the proposal adopted by consensus.

**B. The “Affiliate” Loophole.**

In our Protest, the Consumer-Owned Utilities argued that the proposed RTO West Bylaws improperly define “Affiliate” to exempt TransConnect and each of its “TDU” owners from the general rule that only one of a group of affiliated entities, and not each member of the group, may participate in RTO West as a member. Protest at 24-26. In response, the Filing Utilities assert that removing this loophole in the definition of “Affiliate” would deny them a voice in governance of the RTO. Answer at 22. The Consumer-Owned Utilities do not, of course, advocate denying the TransConnect Utilities a voice in RTO West, but we strongly oppose double representation of those entities. Double representation is precisely what would result if the open-ended loophole proposed by the Filing Utilities is retained, because the TransConnect Utilities could own an unlimited percentage of the TransConnect transmission company for an unlimited time and still not be considered affiliates.<sup>9</sup> Allowing affiliated entities with common financial interests to be represented in two different classes while all other participants in the RTO are limited to representation in a single class severely undermines the independence of the RTO. This is particularly true if the TransConnect “TDUs” are also permitted to unilaterally control two of the six representatives from the TDU class, as they propose. Accordingly, the loophole should be eliminated.

**C. Restrictions on Candidates for the Board of Trustees.**

Similarly, the Filing Utilities provide no new information or perspective in responding to the Consumer-Owned Utilities’ objection to proposed restrictions on potential candidates for the Board of Trustees. As the Consumer-Owned Utilities pointed out, the Filing Utilities’ proposal would effectively require that two-thirds of the candidates for the RTO West Board of Trustees have a background in large, privately owned corporations, thereby skewing the Board in the

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<sup>9</sup> The Filing Utilities incorrectly assert that the TransConnect utilities will own only passive interests in TransConnect, and therefore will not be represented through TransConnect. In fact, the TransConnect Utilities contemplate that at least some of their number will own controlling interests in TransConnect through ownership of Class C shares. See Docket No. RT01-15-000.

Filing Utilities' favor. Protest at 17; UAMPS' Protest and Motion to Intervene at 11-12. In response, the Filing Utilities restate their argument that the proposed provision is designed to ensure that the Board will be comprised of capable managers. Answer at 21.<sup>10</sup> They do not explain, however, why modifying their proposal to permit individuals with significant experience relative to an entity "having revenues, an operating budget *or assets*" with a gross book value greater than or equal to 5% of the gross book value of the assets operated by RTO West, as the Consumer-Owned Utilities suggest, would impede achievement of that goal. Apparently conceding that the qualification they insist upon would exclude candidates from backgrounds other than with private corporations, the Filing Utilities assert that "diversity of experience" on the Board can be achieved by "providing that one-third of the candidates for Trustee need not come from larger enterprises." *Id.* These responses fail to provide any discussion of the Consumer-Owned Utilities' fundamental point and should not be permitted.

**D. The Board Advisory Committee.**

The Consumer-Owned Utilities' Protest showed that the Filing Utilities' proposal would restrict the Board Advisory Committee's opportunity to provide meaningful input into RTO West decisions, and would, particularly in combination with other Bylaws provisions, threaten RTO West's independence. *See* Protest at 18-24. The Filing Utilities' Answer sheds no new light on this issue. Rather, they simply restate their original position: notwithstanding its deviation from the consensus previously reached, the proposed Bylaws allegedly "reasonably balance stakeholders' ability to participate in RTO West policy making with the needs for independence and efficient decision-making." Answer at 17.<sup>11</sup>

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<sup>10</sup> The Filing Utilities' also emphasize (at 20-21) that nonprofit and governmental entities are not excluded by the strict language of their proposal. We never contended to the contrary; our concern is with the practical effect of the proposal. *See, e.g.* UAMPS' Protest and Motion to Intervene at n. 13.

<sup>11</sup> The Filing Utilities' statement that "locking procedures into the Bylaws" will somehow hamper the Board's ability to "adopt procedures related to public process and adjust them as needed" is makeweight. The Filing Utilities' proposal does not amount to leaving "procedures related to public process" out of the Bylaws; rather, it advocates "locking in" a different

**E. Conflict of Interest Provisions.**

In our November 20 Protest, the Consumer-Owned Utilities pointed out that the conflict of interest provisions in both the Trustee and Employee Codes of Conduct are inadequate to prevent what would be obvious conflicts of interest from arising. Protest at 29-31. In response, the Filing Utilities simply assert that they oppose any such provisions, and that such conflicts can be prevented by the Audit Committee of the Board of Trustees and by amendments to the Employee Code of Conduct. Answer at 23-24. In other words, the Filing Utilities provide no reasoned response to our concerns.

The Commission must require that the RTO Bylaws set forth clear *a priori* standards to govern conflict of interest situations and, as we demonstrated in our Protest, they fail to do so. Leaving such conflicts to be resolved at the discretion of the Audit Committee acting to enforce Codes of Conduct that are on their face inadequate simply cannot guarantee that RTO West will operate independently of entities with a financial interest in how it functions.

**F. Conclusion.**

As the above discussion demonstrates, the Filing Utilities "Answer" to the issues identified above is repetitive and conclusory, and does not aid the Commission in its understanding or resolution. The Filing Utilities Request for Leave to Answer should therefore be denied with respect to these arguments.

**II. The Filing Utilities' Answer Should Be Considered in Part.**

Although as stated above, much of the Filing Utilities' Answer only repeats positions taken in their initial filing, two portions of the Answer do address issues -- the Stage 2 process and cost-benefit analysis -- that were largely not discussed in the Utilities' initial filing, and which the Commission may therefore want to consider. In addition, those portions of the Filing Utilities' Answer that address RTO West's "scope and configuration" and the proposed membership fee for RTO West present new material that the Commission may find helpful to

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procedure than that on which consensus was reached -- one which greatly restricts the likelihood of public input.

consider. The Consumer-Owned Utilities, consequently, believe that the Filing Utilities' "request" should be granted and the Commission should consider these portions of the Answer. If the Commission so acts, it should in addition consider the Consumer-Owned Utilities comments on these issues as follows.

**A. Stage 2 Filings.**

We agree with the Filing Utilities' assertion (Answer, at 7-8, 10-11) that the Commission should not prejudge issues that will be resolved during the Stage 2 filing. We also agree, as stated in our Protest, that the Stage 2 filings should be developed through an open public process, and commend the Filing Utilities for their recent initiatives in this regard.<sup>12</sup>

Subsequent to the filing of their Answer, on December 15, 2000, the Filing Utilities hosted a meeting in Portland, Oregon, to present their proposal for structuring a public process to develop the necessary Stage 2 filings. At that time, the Filing Utilities indicated that they intend to utilize a similar process during Stage 2 that they utilized in connection with their initial filing. Stakeholder workgroups will develop proposals on most issues, and the Regional Representatives Group will be charged with approving workgroup proposals and attempting to achieve consensus on issues that could not be resolved in the workgroups.<sup>13</sup> The Consumer-Owned Utilities appreciate the Filing Utilities' leadership in reinstating the collaborative

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<sup>12</sup> We do not agree, as the Filing Utilities' suggest, that it would violate the "voluntary" premises of Order No. 2000 to deny those utilities complete control over the Stage 2 process. Although Order No. 2000 seeks to encourage voluntary participation in RTOs rather than mandating such participation, it did establish a mandatory process of regional collaboration on developing RTOs, and further mandated various filings reporting on efforts to form and participate in RTOs. It would therefore be perfectly consistent with Order No. 2000 for the Commission to order or shape the collaborative process for RTO West's Stage 2 filings.

<sup>13</sup> The Consumer-Owned Utilities are concerned, however, about the Filing Utilities' attempt during the December 15 meeting to reserve their "right" to modify consensus proposals in some cases. As is evident from our Protest (as well as this Answer), Consumer-Owned Utilities believe that permitting the Filing Utilities to unilaterally modify elements of a consensus agreement to which they have previously agreed seriously jeopardizes the collaborative process, and we urge the Commission to clarify this point in its Order on the filings before it.

process, and look forward to working with them and with the other stakeholders in the RTO West region to develop a Stage 2 filing.

**B. Cost-Benefit Analysis.<sup>14</sup>**

In their Answer, the Filing Utilities also argue that a cost/benefit analysis of the proposed RTO West is not required by Order No. 2000, and should not be required in this case. Once again, the Filing Utilities miss the point. The territory to be covered by RTO West includes one of the few areas in the nation that currently enjoys a transmission system with essentially open access and relatively low wheeling costs. Instituting an RTO in that region will undoubtedly result in an increase in costs over the near term. Without a cost/benefit study to demonstrate that there will be benefits from an RTO over the longer term, RTO West will face both political and institutional resistance. Failure to address this issue will place the political viability of RTO West in jeopardy.

**C. Geographic Scope.**

As stated in our Protest, the Consumer-Owned Utilities agree with the Filing Utilities' that RTO West's *geographic* scope is appropriate, and we particularly agree that a West-wide RTO that includes California "is infeasible at this time and would face near universal rejection in the RTO West region." Answer at 29. In the face of transitory supply problems, the dysfunction of the deregulated California energy markets have grown from a problem requiring serious attention into a full crisis. The effects of this crisis have rippled across the interconnected electric systems of the West, including those of the Pacific Northwest. In the last two weeks, this region has experienced skyrocketing market prices for electricity and unprecedented difficulties in the delivery of electric service. As a consequence, electric consumers across the Pacific Northwest face immediate and dramatic rate increases -- in some cases, electric bills may rise by more than 100%. In this atmosphere, any measure, including an RTO, that ties the Pacific

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<sup>14</sup> UAMPS, whose members are not served from the BPA transmission system, did not join in the portion of the Consumer-Owned Utilities' Joint Protest that requested cost-benefit analysis, and does not join in this portion of the Answer to the Filing Utilities Request.

Northwest markets more tightly to the California markets carries with it the potential for severe economic consequences and possible political intervention. Hence, any proposal for a West-wide RTO inclusive of California would be dead on arrival in this region for the foreseeable future.<sup>15</sup>

That said with respect to geographic scope, we also noted in our Protest that Order No. 2000's second characteristic requires not only that an RTO cover an appropriate geographic region, but that the RTO control all significant facilities within its region. See Protest at 31-33. In this respect, the proposed RTO West falls short of meeting Order No. 2000's requirements.

The Filing Utilities do not address this fundamental point, deferring it to the decision on their proposed Transmission Operating Agreement, see Answer at 26 n.44, and requesting immediate blanket approval of RTO West's "scope and configuration." As set forth in the Consumer-Owned Utilities' Protest, however, any such blanket approval would be inappropriate if facilities inclusion issues are not satisfactorily resolved. Any order of approval at this stage should therefore be limited to RTO West's *geographic* scope.

**D. Membership Fee.**

In response to objections from a number of parties concerning RTO West's proposed \$1,000 membership fee, the Filing Utilities state that they are "amenable to providing in the Bylaws that the Board of Trustees' authority to reduce or waive fees be expanded to include legitimate public interest participants upon the written request of such entities." Answer at 16. The Filing Utilities' proposal is a commendable first step; however, it is an imperfect remedy. Rather than relying on a burdensome waiver process, the Commission should simply reduce the fee to a level commensurate with the \$250 annual fee proposed by a neighboring RTO, Desert STAR. Alternatively, if unwilling to modify the proposed membership fee in this way, the Commission should at the least "conclude," as the Filing Utilities request, that the proposed

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<sup>15</sup> The immediate impracticality of a single RTO in the western interconnection, however, highlights the importance of adequately addressing "seams" issues, as discussed in UAMPS' Protest and Motion to Intervene (at 24-27).

modification permitting waiver would be "appropriate," but clarify that public entities (including municipalities and public utility districts), as well as other non-profit consumer-owned utilities, would be entitled to seek a waiver under its provisions.

**III. Conclusion.**

For the reasons discussed above, the Filing Utilities' Request for Leave to Answer the Consumer-Owned Utilities' Protest should be denied in part and granted in part. The Consumer-Owned Utilities further request that to the extent the Filing Utilities' Request is granted, the Commission also consider their additional comments on those issues as set forth above.

Respectfully submitted,

SHEA & GARDNER

By 

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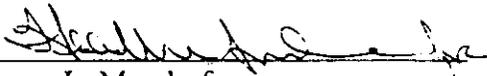
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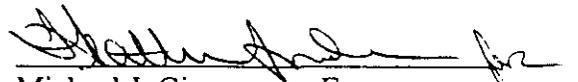
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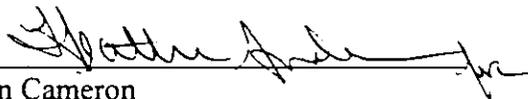
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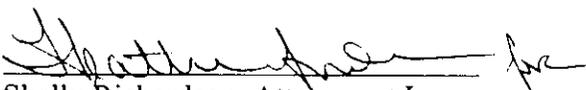
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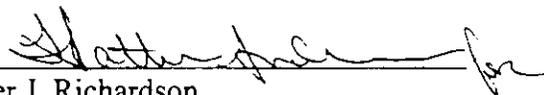
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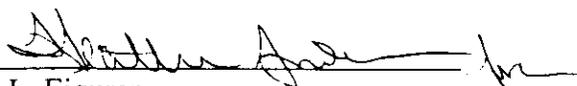
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Attorney for Idaho Consumer-Owned Utilities  
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December 20, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Washington, D.C., this 20<sup>th</sup> day of December, 2000.



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