

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

Docket No. RT01-35-000

**PROTEST AND COMMENTS OF
DESERET GENERATION & TRANSMISSION CO-OPERATIVE, INC.**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2000), and the Commission's October 20, 2000, Notice of Filing issued in this proceeding, Deseret Generation & Transmission Co-operative, Inc. ("Deseret"), a timely intervenor in this proceeding, submits its protest and comments on the October 23, 2000 "Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000" ("Stage 1 Proposal") filed by Avista Corporation, the Bonneville Power Administration ("BPA"), Idaho Power Company, The Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific Power Company (collectively, the "Filing Utilities"). In support of its protest and comments, Deseret states as follows:

I. SERVICE AND COMMUNICATIONS

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II. PROTEST AND COMMENTS REGARDING THE STAGE 1 PROPOSAL

In its own Order No. 2000¹ compliance filing submitted to the Commission on October 16, 2000,² Deseret described the Filing Utilities' resistance to including Deseret as a full participant in the negotiations leading up to the Stage 1 Proposal. Deseret is the only FERC-jurisdictional public utility that owns transmission facilities contemplated to be part of the RTO West transmission system that was not a sponsor of the Stage 1 Proposal. This was not because Deseret was not interested in sponsoring the filing, but because it was not provided a reasonable and fair opportunity to do so. As a result, Deseret was not adequately represented in all RTO West decision-making processes, as embodied in the Filing Utilities' Stage 1 Proposal.

Deseret therefore informs the Commission that any implication on the part of the Filing Utilities that the Stage 1 Proposal represents the consensus opinion of all transmission owning entities planning to place their transmission facilities under the functional control of RTO West is incorrect. The exclusion of Deseret (and potentially non-jurisdictional transmission owning entities other than BPA) has impacted the decisions that the Filing Utilities made unilaterally regarding RTO West's features and, in Deseret's opinion, has adversely impacted the collaborative process and the RTO West proposal itself.

Notwithstanding the foregoing, Deseret remains committed to developing a strong regional transmission organization for the Pacific Northwest and Far West with terms and conditions acceptable to all parties. In many respects, Deseret endorses the concepts the Stage 1 proposal embodies. Deseret accordingly does not seek rejection of the Stage 1 Proposal *in toto*. Deseret

¹ *Regional Transmission Organizations*, ORDER NO. 2000, III FERC Stats. & Regs. ¶ 31,089; 89 FERC ¶ 61,285 (1999); order on reh'g, ORDER NO. 2000-A, 90 FERC ¶ 61,201 (2000), appeal pending sub. nom. Public Utility District No. 1 of Snohomish County, Washington et. al v. FERC, Docket No. 00-1174 (DC Cir.).

² See, *Deseret Generation and Transmission Co-operative, Inc.*, FERC Docket No. RT01-65-000.

does, however, request that the Commission require modification or clarification of the Stage 1 Proposal, as discussed in this protest, to correct problematic aspects of the filing and to provide further guidance on the development of the RTO West and to refrain from approving in form or in concept certain portions of the filing that are too incomplete for the Commission to issue guidance that is consistent with Order No. 2000.³

A. RTO WEST'S PROPOSED BYLAWS UNNECESSARILY RESTRICT A TRANSMITTING UTILITY THAT CONTRIBUTES ITS ASSETS TO THE RTO FROM PARTICIPATING IN AN APPROPRIATE MEMBERSHIP CLASS.

Under RTO West's proposed Bylaws (Attachment J), the various classes of members have been structured in a way that potentially excludes from the transmission owners' class entities that, in fact, contribute transmission facilities to the RTO West. A "Major Transmitting Utility" is defined by the Bylaws as "a Transmission Owner which individually or together with one or more of its Affiliates, owns transmission assets having a net book value greater than or equal to two percent of the aggregate net book value of the RTO West Transmission System." Attachment J, Pages 3-4, § 1(u). The remaining transmission owners that contribute their assets would not be totally excluded from membership, but would be forced to participate in the "Transmission Dependent Utilities" class. This class is defined in part as any entity that ". . .(i) furnishes electric services over an electric transmission or distribution system (whether its own or its members') located within the RTO West Geographic Area and (ii) is not a Major Transmitting Utility." Attachment J, Page 7, § 1(ww) (emphasis added).

The Filing Utilities fail to explain why such a division between "major" Transmitting

³ Deseret acknowledges that Declaratory Order requested by the Filing Utilities (and in some instances, only by a subset of the Filing Utilities) only covers a portion of the materials submitted to the Commission as part of the Stage 1 Filing. Deseret has focused its substantive review on those portions of the filing for which approval is sought, however, issues presented in other attachments submitted for informational purposes only by the Filing Utilities may be referred to as well.

Utilities and other transmitting utilities is necessary, and moreover why they have employed a “two percent of net book” threshold as their “bright line” test for a “major” Transmitting Utility. Not surprisingly, however, defining the “Major Transmitting Utility” class in this manner limits the eligibility for this class to the Filing Utilities themselves, *i.e.*, the incumbent investor-owned utilities and BPA. No other utilities within the RTO West footprint (with the exception of the TransConnect ITC proposed by six of the nine Filing Utilities) would qualify for the class, notwithstanding the fact that all “Participating Transmission Owners”⁴ turning their transmission facilities over to RTO West would be required to execute the same or substantially similar Transmission Operating Agreements with the RTO.

Deseret believes that a more pragmatic approach would be to open the transmission owners’ membership class to all “Participating Transmission Owners” rather limiting it to just “Major Transmitting Utilities.” Deseret believes that any entity that submits its transmission assets to the RTO’s operational control (assuming that the RTO finds the assets of sufficient commercial/operational interest to accept them), should be afforded the *right, but not the obligation*, to join a Participating Transmission Owners class under the Bylaws. Some entities might prefer to join the Transmission Dependent Utilities class or any other class which is appropriate, as they may feel that their interests are better represented by that class. The RTO West should be indifferent to the selection made, as each unique entity is only afforded one membership and one vote under the Bylaws in the class it ultimately joins.

Deseret, for example, is a FERC-jurisdictional public utility squarely within the RTO West footprint that owns a system with 750 MW of transfer capability and 275 miles of transmission line. Based on its FERC Form 582 data for calendar year 1999, Deseret provided 210,668 MWH of short-term firm transmission service for others and 39,735 MWH of long-term transmission service for

⁴ The term Participating Transmission Owner is defined in the TOA, not the Bylaws.

others over its transmission system. It is clearly an integral transmission provider as well as a transmission customer in the RTO West markets, and a holder of a substantial portion of firm transmission rights on an interface between the RTO West and the proposed Desert STAR. In addition, Deseret has FERC market-based rate authority and markets power pursuant to this authority and the WSPP Agreement,⁵ and thus, has interests which align with the Non-Utility Entity class as well. Deseret intends to submit its transmission facilities to the operational control of RTO West, *assuming that the RTO's features are acceptable to Deseret*. Under the Filing Utilities' current proposal, however, Deseret would not be eligible to be a member of a Major Transmitting Utility class if it did so, because the net book value of its transmission assets is less than two percent of the RTO West assets. In essence, the Filing Utilities have determined which class Deseret could join, even if its interests on the whole were not consistent with the other members of that class.

Deseret's proposed revision to the RTO's class structure would significantly improve the open architecture of RTO West, a fundamental objective of Order No. 2000. First and foremost, paradoxical results such as exclusion from a membership class based on size alone might discourage other smaller transmission-owning entities that are considering RTO West membership. It might appear to them (and with good reason) that the "Major Transmitting Utilities" class was being reserved for the "big boys," with other transmission owners being relegated to a class with members having different interests. Smaller transmission-owning utilities within the RTO West footprint, particularly public power and cooperative entities, should be allowed to join a class that represents their interests, and not be shoehorned into another class that does not do so. As the Commission stated in Order No. 2000,

a properly formed RTO should include all transmission owners in a specific region, including

⁵ The Western Systems Power Pool Agreement ("WSPP Agreement") was originally approved by the Commission in 59 FERC ¶ 61,249 (1992), as later amended by 87 FERC ¶ 61,332 (1999), and by an unpublished letter order, Docket No. ER00-2477-000 (June 13, 2000).

municipals, cooperatives, Federal Power Marketing Agencies (PMAs), Tennessee Valley Authority and other state and local entities. As noted by some commenters, public power and cooperative participation in RTOs will enhance the reliability and economic benefits of an RTO. Furthermore, participation by public power entities and cooperatives is vital to ensure that each RTO is appropriate in size and scope.^{6]}

Proper class membership will be an incentive for those smaller entities that might be the proverbial “holes” in the “swiss cheese” of RTO West, to come on down and join.⁷ To this end, all Participating Transmission Owners, regardless of size, should be afforded an opportunity, if they wish, to participate in a fully inclusive Participating Transmission Owner class under the bylaws. Opening the transmission owners’ class to all Participating Transmission Owners removes any perception of bias in the governance structure, and moreover, furthers the Commission’s goal that an RTO “be independent in both reality and perception.”⁸

Another reason to revise the bylaws to discard or to broaden the concept of a “Major Transmitting Utilities” class is that the definition employs as its standard a moving target, which may change over time. An entity may at first be eligible for inclusion in the Major Transmitting Utilities group, but later, through expansion of the RTO or through corporate restructuring, fall below the two percent of net book threshold. Alternatively, a large transmission owner could leave the RTO West, thereby automatically shifting another transmission owner into the Major Transmitting Utilities class even if the entity believes that it would be more appropriate to remain in its prior class. A definitive benchmark for class inclusion should be set that does not enhance or

⁶ ORDER NO. 2000, III FERC Stats & Regs at 31,200-31,201.

⁷ As noted in Attachment L to the filing, at page 1, with consolidation of the control area functions of the Filing Utilities, RTO West would operate more than 90% of the existing high voltage transmission facilities within its proposed geographic scope. While an impressive number, this figure makes clear that the Filing Utilities by themselves do not bring “full area coverage” to the RTO table.

⁸ ORDER NO. 2000, III FERC Stats & Regs at 31,061.

impair any particular transmitting utility's rights to class membership upon joining or in the future.

A final point to note is that the six Filing Utilities that intend to form the TransConnect ITC appear to have an interest in accessing other classes once they no longer fit the definition of a Major Transmitting Utility. In the Transmittal Letter, the opportunity for Filing Utilities to "cross-pollinate" is established:

After those filing utilities intending to participate in a new, for-profit ITC have transferred their transmission assets to that company, the remaining distribution companies would be able to participate in the Transmission-Dependent Utilities class. These distribution companies serve more than 40% of the customers within the RTO West geographic region. It is important to these companies, therefore, that they have an effective voice in the selection of two of the six members of the Trustee Selection Committee from the Transmission-Dependent Utilities class.

Transmittal Letter at 82. Accordingly, the rights of all other entities in the RTO West to join any appropriate class should be equally conceived.

At this early juncture, it appears that the Filing Utilities are still contemplating changes to the RTO membership class structure to accommodate inclusion of certain Canadian utilities. *See* Attachment J, pages 3-4, n. 1. Thus, modification of the relevant membership class definition can be implemented before any individual class memberships have been determined. Deseret accordingly requests that the Commission direct the Filing Utilities to modify the class structure in the RTO West bylaws to include a Participating Transmission Owner class, rather than a "Major Transmitting Utility" class, and to allow all transmitting utilities submitting transmission facilities to the functional control of RTO West to join that class, should they desire to do so. All references to the "two percent of net book" limitation on transmitting utility class membership should be eliminated. Finally, the Declaratory Order issued by the Commission should ensure that

membership classes are open to choice by the member, and not limited by the definitions within the Bylaws.

B. THE DEFINITION OF AFFILIATE WITHIN THE BYLAWS MUST BE CLARIFIED TO ENSURE THAT DISTRIBUTION COOPERATIVE MEMBERS OF A GENERATION AND TRANSMISSION COOPERATIVE ARE PERMITTED TO SEPARATELY JOIN THE RTO.

The Bylaws defines "Affiliate" as follows:

(a) "Affiliate" of a Person means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of these bylaws, in determining whether one Person controls another Person: (1) without limitation, the direct or indirect ownership or control of or power to vote five percent or more of the outstanding voting securities of a corporation shall be deemed to constitute control of such corporation; provided, however, that in the case of any Person that is a public utility which owns an interest in an Independent Transmission Company and has divested ownership of its electric transmission system, such Person and the Independent Transmission Company shall not be considered Affiliates; (2) **members of any cooperative corporation shall not, merely by virtue of membership in such corporation, be deemed to be Affiliates of each other or of the cooperative corporation;** (3) members of any joint operating agency, joint powers authority or comparable entity shall not, merely by virtue of membership in such joint operating agency, joint powers authority or other such entity, be considered Affiliates of each other or of the joint operating agency, joint powers authority or other such entity; (4) separate agencies of a state or of the federal government shall not be considered Affiliates, regardless of any commonality of political control; (5) no tribal utility or tribal commercial enterprise shall be considered an Affiliate of any Tribal Utility Regulatory Authority; and (6) no crown-owned utility shall be considered an Affiliate of any State or Provincial Energy Authority.

Attachment J, § 1(a) (emphasis added). Deseret's interpretation of this definition permits separate membership in the RTO by distribution cooperatives that may also be members of a larger generation and transmission cooperative. The language as drafted, however, is somewhat unclear.

Therefore, Deseret proposes the following clarification:

(a) "Affiliate" of a Person means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of these bylaws, in determining whether one Person controls another Person,

without limitation, the direct or indirect ownership or control of or power to vote five percent or more of the outstanding voting securities of a corporation shall be deemed to constitute control of such corporation, subject to the following exceptions: (1) in the case of any Person that is a public utility which owns an interest in an Independent Transmission Company and has divested ownership of its electric transmission system, such Person and the Independent Transmission Company shall not be considered Affiliates; (2) members of any cooperative corporation shall not, merely by virtue of membership in such corporation, be deemed to be Affiliates of each other or of the cooperative corporation; (3) members of any joint operating agency, joint powers authority or comparable entity shall not, merely by virtue of membership in such joint operating agency, joint powers authority or other such entity, be considered Affiliates of each other or of the joint operating agency, joint powers authority or other such entity; (4) separate agencies of a state or of the federal government shall not be considered Affiliates, regardless of any commonality of political control; (5) no tribal utility or tribal commercial enterprise shall be considered an Affiliate of any Tribal Utility Regulatory Authority; and (6) no crown-owned utility shall be considered an Affiliate of any State or Provincial Energy Authority.

Although this modification only slightly changes the language of the Bylaws, it eliminates any potential for misconstruction. The Commission should direct the RTO to revise §1(a) accordingly.

C. THE DEFINITION OF TRANSMISSION FACILITIES UNDER RTO WEST'S OPERATIONAL CONTROL AND INCLUDED IN THE RTO'S RATES UNDER THE TRANSMISSION OPERATING AGREEMENT MUST BE FURTHER CLARIFIED TO PROPERLY DELINEATE THE SIZE OF THE RTO.

Under Section 5.1 of the Transmission Operating Agreement ("TOA"), the RTO would exercise operational authority over "RTO West Controlled Transmission Facilities" as set forth on Exhibit D to the TOA. The facilities to be included in Exhibit D are defined, in relevant part, as

all transmission facilities that have a material impact on

(1) transfer capabilities of RTO West managed constraint paths between congestion zones;

(2) the ability to transfer electric power and energy within a congestion zone; or

(3) the ability to transfer electric power into or out of the RTO West

Transmission System if such transfer capabilities would change if the Transmission Facility were not included.

See Exhibit A to the TOA, pages 86-87 (definition of “RTO West Controlled Transmission Facilities”). Similarly, the TOA specifies the “Transmission Facilities” set out in Exhibit B to the TOA (and defined at Exhibit A to the TOA, page 89) as all the transmission facilities included in Exhibit D, as well as those additional transmission facilities that an Executing Transmission Owner⁹ wishes to include in RTO West for ratemaking purposes, but over which it will not cede operational control.

The Filing Utilities’ definition of RTO West Controlled Transmission Facilities to be ceded to the RTO’s operational control leaves open the possibility that certain high voltage transmission facilities (*i.e.*, 138 kV or higher) could be excluded from the operational control of the RTO if they do not meet the three-part definitional test set out in the TOA. Moreover, lower-voltage transmission facilities used to serve wholesale loads within the RTO footprint (but not in a congestion zone) could similarly be excluded from the RTO’s operational control. While these facilities might be included in Exhibit B as “Transmission Facilities” and included in the RTO’s transmission rates, they could apparently be removed at the Executing Transmission Owner’s discretion, or not included in Exhibit B in the first instance.

In Order No. 2000, the Commission determined that “all or most of the transmission facilities in a region must be included in the RTO. Any RTO proposal filed with us should intend to operate all transmission facilities within its proposed region.”¹⁰ Deseret believes that the three-part standard the Filing Utilities propose to use to determine RTO West Controlled Transmission Facilities will

⁹ Deseret also notes that there is an unnecessary complexity to the definitions within the TOA and the RTO West structure. The TOA has definitions for “Additional Participating Transmission Owner”, “Executing Transmission Owner”, “Initial Participating Transmission Owner”, and “Participating Transmission Owner.” The term “Parties” in the preamble to the TOA refers to the “Executing Transmission Owner” and the RTO West. It would be far less confusing if duplicative terms within the TOA were eliminated, and for terms to be defined and used consistently throughout all RTO West documents.

¹⁰ Order No. 2000, III FERC Stats & Regs at 31,086.

not fully achieve this end. Because the standard is in part subjective and subject to differing interpretations by different Executing Transmission Owners, the RTO may end up controlling an incomplete patchwork of transmission facilities. This in turn would imperfectly mitigate the transmission market power of the Executing Transmission Owners.

To avoid this result, Deseret proposes that RTO West use, in addition to the above three definitional standards, a “bright line” presumption that all transmission facilities of 138 kV or above should be subject to the RTO’s operational control, subject to a finding *by the RTO* that it does not find the exercise of operational control over particular facilities meeting this description necessary to carry out its duties. Addition of this new standard will ensure that all important transmission facilities, whether in a congestion zone or not, will be under the operational control of the RTO. This will ensure that there are no harmful gaps in the transmission facilities subject to the RTO’s operational control and set out in the Exhibit Ds to the TOAs it signs with Executing Transmission Owners.

Deseret is further concerned that at least some Executing Transmission Owners may engage in “transmission revenue maximization” by strategically designating (or, more accurately, not designating) transmission facilities under Exhibits D and B, in an attempt to retain control of sufficient transmission facilities to charge their wholesale transmission customers a “vertical rate pancake” for the use of transmission facilities not listed in those Exhibits. Deseret understands that it may be impracticable for all facilities to be placed under the operational control of the RTO, but at a minimum, the Commission should not allow the Executing Transmission Owners to use the TOA as a vehicle to perpetuate rate pancaking by selectively designating facilities used to serve wholesale loads. As the Commission stated in Order No. 2000, “the RTO tariff must not result in transmission customers paying multiple access charges to recover capital costs.”¹¹ To protect against

¹¹ Order No. 2000, III FERC Stats. & Regs at 31,174.

such levying of multiple charges, the RTO, and not the Executing Transmission Owner, should determine which facilities not already subject to the RTO's operational control (and hence listed in Exhibit D) are used to serve wholesale loads, and thus should be included in an Executing Transmission Owner's Exhibit B. Similarly, the RTO should determine whether to remove facilities from Exhibit B pursuant to Section 5.1.3 of the TOA. The RTO should direct that all transmission facilities not set out in Exhibit D that are used to serve wholesale loads should be included in Exhibit B. By including these facilities in Exhibit B (and thus in the RTO's rates) the RTO will remove the opportunity for the Executing Transmission Owners to create intra-company pancaked rates concurrent with the elimination of inter-company pancaked rates.

Thus, in furtherance of the Commission's objectives and to close the above-noted gaps that exist in the TOA, Deseret requests the Commission to require the Filing Utilities to: (1) supplement the definition of "RTO West Controlled Transmission Facilities" to also include "all transmission facilities at or above 138 kV"; and (2) modify Section 5.1.3 and Exhibit B of the TOA (and any other applicable section) to require that any transmission facilities used to serve wholesale loads, regardless of voltage, must be included in Exhibit B for rate purposes. These determinations should be made by the RTO West, and not the Executing Transmission Owner. Moreover, the last sentence of the definition of "RTO West Controlled Transmission Facilities" should be eliminated, insofar as the modifications above would govern in which category radial transmission facilities would be placed. Finally, RTO West should be given the discretion to return to an Executing Transmission Owner's control any transmission facilities that the RTO finds, in the course of experience gained in operating the regional transmission system, it does not need to carry out its duties. Any such returned transmission facilities used to serve wholesale loads, however, should continue to be

included in that Executing Transmission Owner's Exhibit B.¹²

D. THE AGREEMENT LIMITING LIABILITY AND THE TRANSMISSION OPERATING AGREEMENT, WHEN READ TOGETHER, ATTEMPT TO SHIFT LIABILITY FOR CONTACT CLAIMS TO RTO WEST IN CIRCUMSTANCES WHERE THE RTO'S ASSUMPTION OF SUCH LIABILITY IS UNWARRANTED.

As a corollary to the issue of the inclusion or exclusion of facilities from the universe of RTO West Controlled Transmission Facilities, the TOA and the Agreement Limiting Liability Among RTO Participants ("Liability Agreement") should make clear that RTO West's liability for claims relating to facilities operation or enforcement of operational standards is limited to those circumstances in which the RTO has the corresponding operational or standard setting responsibilities. RTO West should not be permitted to become the liability sugar-daddy for those Transmission Owners executing the TOA and the Liability Agreement.

Under Section 12.1.2 of the TOA (Attachment S, page 38), the Executing Transmission Owner retains responsibility for planning and for making additions, modifications, and expansions to all non-RTO West Controlled Transmission Facilities. As discussed above, the Executing Transmission Owner also retains operating control of these facilities. Yet Section 4.3 of the Agreement Limiting Liability Among RTO West Participants ("Liability Agreement") requires the RTO to assume liability for

Contact Claims arising from the system design or condition of any Electric System facilities which it operates pursuant to a Transmission Operating Agreement, *or to which it interconnects pursuant to a Generation Integration Agreement or Load Integration*

¹² It should also be noted that in the TOA, the term "Transmission Owner" is never defined although it is used throughout the agreement. Deseret believes that although the RTO West implicitly states as much, an appropriate definition of Transmission Owner is necessary to be clear that any entity that provides wholesale transmission service within the footprint of the RTO is eligible to enter into a TOA. This definition would include an entity for whom it is appropriate to enter into a TOA only for ratemaking purposes with facilities under Exhibit B even if that entity may not have any RTO West Controlled Transmission Facilities. By memorializing this concept, the TOA would further ensure that even the smallest provider of wholesale transmission service can become a Participating Transmission Owner in the RTO West, and further reduce rate pancaking.

Agreement; provided however, that with respect to interconnection with the generating facilities of a Party or distribution facilities of a Party, such assumption of a Contact Claim shall not apply unless contact with an Electric System occurs at a point other than on the generating Party's own generation system or a distributing Party's own distribution system.

Attachment Y, page 7 (emphasis added). The italicized language appears to open up a substantial liability gap, causing RTO West to be liable for Contact Claims arising on the facilities of entities with whom it has a generation interconnection agreement, so long as those facilities are not denominated as “generating” or “distribution.” In particular, RTO West could be liable for claims associated with Exhibit B facilities or other non-distribution facilities it does not operate on the system of load serving entities with whom it has executed a Load Integration Agreement.

This would cause an unwarranted expansion in RTO West’s potential liability for Contact Claims. Deseret believes that RTO West’s liability for Contact Claims should be limited to facilities which the RTO itself operates. Those who operate non-transferred facilities should be liable for Contact Claims arising from their operation of those facilities. Section 4.3 of the Agreement Limiting Liability and any other required documents should be amended accordingly.

Moreover, Section 4.4 of the Liability Agreement requires RTO West to assume liability for Contact Claims based on “alleged inadequacy of interconnection standards or operating standards, including those required pursuant to Sections 4.2 and 5.6 of the Transmission Operating Agreement.” Attachment Y, page 7. Examination of those sections of the TOA, however, reveals that in at least some cases, it is an *Executing Transmission Owner’s* interconnection or operating standards, not the RTO’s standards, that the RTO would apply, and which presumably would give rise to the claim in question. See Section 4.2.1 of the TOA (page 9)(“*The Executing Transmission Owner’s interconnection standards shall apply to the RTO West Controlled Transmission Facilities unless and until modified by RTO West. . .*”)(italics in original); Section 5.6 of the TOA (page 20)(“RTO West shall operate the RTO West Control Area in compliance with the standards

specified in Section 10.1 of this Agreement *and with thermal and other operating parameters established by the Executing Transmission Owner for its Transmission Facilities.*”(italics in original).

Deseret believes that the RTO should not be liable for Contact Claims arising from the alleged inadequacy of standards and operating parameters which it merely inherited from the Executing Transmission Owners. Alternatively, the Liability Agreement should include an express right of the RTO to seek contribution from any entity, including an Executing Transmission Owner, for damages resulting in whole or in part on account of standards set by, or other conduct of, any such entity. On the other hand, if RTO West modifies those standards or parameters, then it should assume liability for their application. Again, liability should rest with the responsible party. The Commission should act to ensure that RTO West is not saddled with potential liability for claims to which its actions did not contribute.

E. THE FILING’S DISCUSSION OF TRANSMISSION PLANNING AND EXPANSION ISSUES REQUIRES SIGNIFICANT ADDITIONAL WORK TO SATISFY THE REQUIREMENTS OF ORDER NO. 2000.

Section 11 of the TOA (pages 35-37) sets out an Executing Transmission Owner’s obligations to the RTO regarding upgrades and expansion of transmission facilities on the RTO West system. Among the duties the TOA specifies are the Executing Transmission Owner’s obligations to: (1) permit interconnection of upgrades or expansions with RTO West Controlled Transmission Facilities (Section 11.1.1), (2) cooperate with the RTO West to obtain necessary siting approvals, permits and licenses (Section 11.1.2); and (3) exercise eminent domain authority and condemnation rights (Section 11.1.3). Deseret supports these provisions, as the RTO must have the maximum available authority to implement expansions and upgrades called for under its planning process.

The TOA, however, should clarify and strengthen the rights of third parties that construct transmission facilities for the RTO. If an Executing Transmission Owner cannot or will not build or upgrade existing transmission facilities as directed by the RTO, the RTO should have unfettered authority to contract with a third party to construct such facilities, and the Executing Transmission Owners should be required to facilitate such construction to the maximum extent practicable. Section 11.2 of the TOA notes that RTO West reserves the right to arrange for the expansion or upgrade “through a third party” if the Executing Transmission Owners fails to comply with Section 11.1. Section 11.1.2 speaks in general terms of “cooperation” by the Executing Transmission Owner with “a third party designated by RTO West.” But the TOA should make clear that the Executing Transmission Owner agrees not only to “cooperate” with a third party as set forth in Section 11.1.2, but also to (i) interconnect with a third party expansion or upgrade as part of the RTO transmission grid as set forth in Section 11.1.1, and (ii) exercise its eminent domain and condemnation authority to the full extent the law permits when requested by the third party as set forth in Section 11.1.3. Finally, any third party constructing and owning such transmission facilities should be permitted to join the RTO as a member of the Participating Transmitting Utility class if it so desires. *See* discussion of this issue, *supra*.

Many of the details of the RTO’s transmission planning and expansion roles are to be further addressed in the Stage 2 Proposal (presumably when the Filing Utilities will seek Section 205 approval of, *inter alia*, the TOA and the complete planning and expansion protocols and procedures outlined in the “Description of RTO West Planning and Expansion” (Attachment P)). Until Deseret has had the opportunity to review the proposed detailed planning and expansion plans and protocols for RTO West, it must reserve its rights to protest specific provisions of them.

F. THE CONGESTION MANAGEMENT DRAFT PROPOSAL LACKS SUBSTANCE, IS UNPROVEN, AND APPEARS TO BE OVERLY-CONTROLLED BY THE FILING UTILITIES.

The Filing Utilities have not proposed, nor are they seeking Commission approval of, a congestion management scheme for the RTO West in their Stage 1 Filing. They do, however, include at page 66-67 of their Transmittal Letter, and in Attachment M, a general description of their proposed flow-based, physical rights congestion management model. Users of constrained flowpaths will require, in order to schedule power, firm transmission rights (FTRs), recallable transmission rights (RTRs), non-firm transmission rights (NTRs), or non-converted transmission rights (NCRs) which, if not initially allocated to a particular transmission rights holder, will be auctioned periodically throughout the year. This requirement of possession of firm rights in order to submit a schedule is a limitation on the use of generation, not simply a tool for financial settlements. The RTO West Tariff (which has yet to be filed with the Commission) will have more details regarding this scheme. The Filing Utilities explain that they will initially identify congested flowpaths, along with initial transmission rights allocations and procedures for adding or removing flowpaths, in the Stage 2 Filing. Moreover, the Filing Utilities explain that before the RTO West Tariff filing, they will endeavor to translate (or “map”) preexisting ownership and contract rights defined on a contract path basis onto flowpaths, or alternatively, where the Filing Utilities find that the translation of flowpaths “seriously impairs” the rights holders to use or to be compensated for their existing rights, to include a transition period to move from the contract path to the flow-based congestion management model in the Stage 2 filing. Attachment M at 1.

Deseret is aware that existing Independent System Operators (“ISOs”) have grappled with the design and implementation of congestion management systems, at times much to the dismay of

the Commission.¹³ However, substantive decisions regarding the appropriateness of any chosen congestion management system should not be made before the entire system is fully fleshed out through the RTO West collaborative process and presented to the Commission.

It is simply impossible based on the general description set out in Attachment M for Deseret to determine whether it will be able to obtain from the RTO the transmission service that it requires to serve its own customers (both its member cooperative customers and its wholesale customers). For example, Deseret is quite concerned that the process of “mapping” preexisting transmission rights based on contract paths on to flowpaths is fraught with opportunities to disadvantage one customer and advantage another. Moreover, the identification of flowgates is a crucial process that will heavily impact the transmission rights that Deseret would obtain to displace its preexisting rights. The Filing Utilities should not be allowed to usurp the authority to be the single and final word on what is or what is not a flowpath and more importantly, what rights under existing bilateral contracts will be honored. RTO West, once established, should be vested with such authority, after considering the input of all affected parties. An aggrieved transmission customer, owner, or third party should then have the ability to challenge any determination regarding transmission rights over the flowpaths the RTO develops.

Above and beyond any implementation problems, the fact remains that the complex and untested FTR auction process will advantage large organizations and lead to a new, hybrid form of transmission monopoly and market power abuse. Competition for FTRs in the primary auction will undoubtedly advantage large entities with the resources to accumulate significant FTRs. These entities could then speculate in the unregulated secondary FTR market just as simply a commodities futures trader. The impetus of the FTR process would move from congestion management to profit maximization, leaving entities that require firm transmission rights to serve loads with the

¹³ See, e.g., *ISO New England, Inc.*, 91 FERC 61,311 (2000); *Old Dominion Electric Cooperative, Inc. v. PJM Interconnection, LLC and Connectiv*, 92 FERC 61,278 (2000).

unpalatable option of relying on RTRs or NTRs or paying artificially escalated market prices. Moreover, an entity that has generation trapped behind a flowgate could be forced to sell its power at artificially low prices (or elect not to use the resource altogether) because it cannot obtain the required firm rights. The congestion management scheme should be designed to prevent such unjust and unreasonable outcomes for actual market participants.

G. THE COMMISSION SHOULD NOT APPROVE THE SUSPENSION AGREEMENT IN PRINCIPLE OR SUBSTANCE AT THIS TIME.

Three of the Filing Utilities (BPA, Idaho Power Company, and PacifiCorp) seek a Commission finding that the concepts as a package embodied in the TOA and in Attachment U to the Stage 1 Filing, the “Agreement to Suspend Provisions of Pre-existing Transmission Agreements” (“Suspension Agreement”), are acceptable to the Commission and consistent with the requirements of Order No. 2000. Transmittal Letter at 5-6. Under the Suspension Agreement, transmission agreements between Participating Transmission Owners would be suspended. “Comparable” FTRs would be exchanged for the firm transmission rights thereunder. Any related payment obligations under the pre-existing agreement would be replaced with a negotiated schedule of transfer charges, thus bringing a significant amount of additional firm transactions to the RTO.

The Commission should not give its blessing to the Suspension Agreement, in principle or in substance, at this juncture. The draft of the Suspension Agreement provided in Attachment U (for it is indeed a draft) is clearly not “ready for prime time.” To see that this is so, one need look no further than Section 3, “Suspension of Rights and Obligations Under Pre-existing Agreements” (Attachment U, page 3). That section states that “[t]he specific rights and obligations suspended under each of the Pre-Existing Transmission Agreements shall be as set forth in Exhibit A to this Agreement.” Exhibit A (*id.* at 11), however, is *completely blank*. Therefore, aside from the final sentence of Section 3 (“[t]he suspended provisions shall include all those for Transmission

Services”), Deseret has no idea what provisions of their transmission agreements with other Participating Transmission Owners these three sponsoring utilities intend to suspend, and what provisions would remain in effect.

Similarly, Section 4 of the Suspension Agreement (Attachment U, pages 3-4) states that during the Company Rate Period (which extends until December 14, 2011¹⁴), the Participating Transmission Owners agree they will pay and accept in lieu of the contract rates the “replacement Transfer Charges as set forth in Exhibit B.” Exhibit B, however, is skeletal in form, and gives Deseret no idea what Transfer Charges it would be asked to pay or would be entitled to receive.

Moreover, it is not clear that Additional Participating Transmission Owners would suspend their preexisting transmission agreements on the same basis as Initial Participating Transmission Owners. Under Section 6.2 of the TOA, when a new transmission owner intends to execute a TOA with RTO West, the Executing Transmission Owner is to “negotiate in good faith to suspend all or portions of its Pre-existing Transmission Agreements with such Additional Participating Transmission Owners, in a manner consistent with the suspension agreements negotiated with the Initial Participating Transmission Owners.” Attachment S, page 27-28. It is not clear whether such agreements will be suspended on the same basis as agreements suspended under Section 6.1 of the TOA, or that RTO West will even provide such transmission service. All preexisting transmission agreements among transmission owners participating in RTO West, regardless of when they execute a TOA, should be treated similarly, and RTO West should provide the transmission service under those suspended agreements.¹⁵

These matters are of more than mere theoretical interest to Deseret. It has an existing

¹⁴ TOA, Attachment S, page 80 (definition of “Company Rate Period”).

¹⁵ The dichotomy of potential treatment of Initial and Additional Participating Transmission Owners’ preexisting contract further emphasizes the need to eliminate the multiple definitions of various transmission owning entities, as well as any “loopholes” that specific definitions may provide. See fn. 9 *supra*.

transmission agreement with PacifiCorp dated May 1, 1992, which is vital to Deseret's own operations, as some of its member loads and Hunter II resource are embedded in the PacifiCorp transmission system. If Deseret joins RTO West, then both Deseret and PacifiCorp will be Participating Transmission Owners, and the Suspension Agreement would apply to this transmission agreement. Until Deseret has a very clear understanding of exactly which rights would survive suspension of that agreement and which rights would not, and the Transfer Charges it would be required to pay during the Company Rate Period, Deseret must protest Attachment U and request the Commission not to approve it in principle or in substance. Neither the Commission nor Deseret can understand what is being proposed and what rights parties to these contracts will be asked to waive until this portion of the Stage 1 Filing is completed.

This is not to say that Deseret objects to the concept of suspension of certain terms of pre-existing transmission contracts between Participating Transmission Owners. It does, however, believe that a more structured, bilateral negotiation and dispute resolution process is required to ensure that transmission providers that also happen to be Filing Utilities do not impose their unilateral interpretation of what rights should be suspended on their transmission customers, or seek to impair the rights of the transmission customer without an opportunity for the aggrieved party to seek redress of its concerns. Particularly, the rights and obligations under transmission contracts that are proposed to be covered under a Suspension Agreement (i) must not seek to abrogate or otherwise impair rights and obligations not related to the provision of firm transmission service; and (ii) must continue to accommodate for increases in firm transmission service as well as increased transfer payments to cover load growth consistent with existing obligations.¹⁶ The Transfer Payments should be developed using a consistent methodology based on the most recent revenue data available (*e.g.*, calendar year 2000), and adjusted for known and measurable changes during the Company Rate

¹⁶ Load growth which is implicitly considered in certain types of agreements such as a network service arrangements or a full requirements contract should be afforded similar rights.

Period.

If a mutual agreement cannot be reached between the parties to the agreement proposed to be suspended, Deseret believes that a neutral third-party should resolve such disputes. Deseret is amenable to a variety of dispute resolution processes, either through the RTO itself or through a third-party process, with the opportunity for an aggrieved party to ultimately bring its controversy before the FERC. Transmission customers of the Filing Utilities, however, should not be required to engage in one-sided negotiations where the Filing Utilities dictate what Transfer Payments they will pay and accept.

H. THE PROPOSED TRANSFER CHARGES FOR SHORT-TERM FIRM AND NON-FIRM TRANSMISSION SERVICE SHOULD BE PHASED OUT WELL BEFORE THE END OF THE COMPANY RATE PERIOD.

The Filing Utilities describe their proposed RTO transmission rate methodology in their Transmittal Letter at pages 35-41. It is clear that avoidance of cost-shifting is paramount to the rate proposal, starting with the lengthy Company Rate Period (through December 14, 2011). Deseret understands full well the strong sensitivity of the Filing Utilities (and other RTO West parties) to the need to avoid cost shifting. The proposed rate methodology, however, may swing the pendulum too far in favor of preservation of the revenue *status quo* and too far away from the basic ratemaking principle that those who cause costs to be incurred and receive the corresponding benefits should pay for them.

The prime example of this in the proposed rate methodology is the treatment of short-term firm and non-firm transmission revenues paid by Participating Transmission Owners and their affiliates before RTO West's commencement of operations. As described at page 37 of the Transmittal Letter, each Participating Transmission Owner must pay to each of the other Participating Transmission Owners an additional transfer charge "equal to the representative levels

of pre-RTO short-term and non-firm transmission revenues paid by the participating transmission owner and its affiliates before RTO West's commencement of operations." In other words, Participating Transmission Owners must continue to make transfer payments until 2011 to keep other Participating Transmission Owners whole for revenues from *short-term firm and non-firm transmission services* that they collected before RTO West started up.

This proposal certainly enshrines current revenue expectations far out into the future in a way rarely seen in transmission rate designs. Short term firm transactions are by definition less than a year in duration, while non-firm transactions are just that--non-firm. Deseret believes that it may be appropriate to levy transfer charges based on such transactions for some reasonable transitional period after RTO West's start-up (*e.g.*, one to three years), but to extend them for ten years into the future simply does not comport with reality. The transmission owners providing such service could easily see those revenues disappear even in the absence of an RTO, simply because the transactions supported by those transmission arrangements expire by their own terms or become uneconomic. Deseret therefore requests the Commission to require RTO West to phase out such transfer charges on a more reasonable timetable.

I. THE FILING LACKS SIGNIFICANT DISCUSSION OF SEAMS ISSUES

At this juncture, Deseret cannot ascertain how the issues relating to inter-regional coordination will be resolved by the RTO West. As the Commission stated in Order No. 2000,

[The Commission] will require an RTO to develop mechanisms to coordinate its activities with other regions whether or not an RTO yet exists in these other regions. If it is not possible to set forth the coordination mechanisms at the time an RTO application is filed, the RTO applicant must propose reporting requirements, including a schedule, for itself to provide follow-up details as to how it is meeting the coordination requirements of this function. . . . An RTO proposal must explain how the RTO will ensure the integration of reliability and market interface practices. An RTO may ensure the integration of these practices either by developing integration

practices itself or by cooperating in the development of integrated practices with an independent entity that covers all regions or, for reliability practices, covers an entire interconnection.^[17]

Attachment Q of the Stage I Filing briefly summarizes the RTO's efforts to date to coordinate with neighboring regions, including the California ISO and the proposed Desert STAR. Yet, even though the process has been initiated, it is extremely unclear how and when key seams issues are to be addressed. As an entity that will rely on other RTOs (Desert STAR) as well as other uncommitted entities (WAPA and LADWP), Deseret is vitally concerned about issues such as reciprocity, uplift and administrative charges, pancaked transmission charges, losses, and ancillary service charges, and scheduling. For example, Deseret has existing transmission rights to capacity between RTO West interfaces through a non-RTO West party, *i.e.*, leaving the RTO at a PacifiCorp interface, passing through the LADWP control area (a non-RTO party) and back into the RTO via a Sierra Pacific interface. RTO West's commitment alone provides little comfort that these issues will be resolved in such a manner consistent with Order No. 2000's directive.

¹⁷ ORDER NO. 2000, III FERC Stats & Regs at 31,167 (footnotes omitted).

III. CONCLUSION

For the reasons set forth above, Deseret respectfully requests that the Commission (i) issue initial guidance on the RTO West Stage 1 Filing consistent with Deseret's positions set out above; (ii) refrain from granting approval at this time of the form or substance of the proposed suspension agreement included in the RTO West Stage 1 Filing; (iii) require the substantive modifications and clarifications set forth herein to be made (including the proposed modifications to the Bylaws, the TOA, and the Liability Agreement) in any subsequent filing made regarding the RTO West; and (iv) grant any further relief as it may deem appropriate under the circumstances.

Respectfully submitted,



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Dated: November 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 compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 20th day of November, 2000.



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