

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

Avista Corporation)
The Montana Power Company)
Nevada Power Company)
Portland General Electric Company) Docket No. RT01-15-000
Puget Sound Energy, Inc.)
Sierra Pacific Power Company)

**MOTION TO INTERVENE AND COMMENT OF THE
ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.211 and 385.214, the Electric Power Supply Association (“EPSA”) hereby moves to Intervene in and Protests the above captioned proceedings, which in combination, represent the efforts to date to form a Regional Transmission Organization (“RTO”) in the Northwestern United States (hereinafter “RTO West”). Specifically, EPSA moves to

intervene and comment in Docket No. RT01-35-000 to create RTO West and in Docket No. RT01-15-000 (hereinafter “TransConnect”),¹ which creates TransConnect LLC, an independent transmission company, that will operate within RTO West and participate as a transmission owner in RTO West.

EPSA generally is pleased with the progress that RTO West has made, but believes the Commission should withhold a final determination of whether RTO West satisfies the requirements of Order No. 2000 until additional filings completed. EPSA addresses below the issues for which Commission guidance is warranted.

I. MOTION TO INTERVENE

EPSA is the national trade association representing competitive power suppliers, including independent power producers, merchant generators, and power marketers. EPSA members provide reliable, competitively priced electricity from environmentally-responsible facilities in U.S. and global power markets. EPSA seeks to bring the benefits of competition to all power customers.²

Certain EPSA members presently participate in RTO West markets, or are in the process of developing new generating projects in the RTO area. EPSA is interested in protecting the rights of these power suppliers to equal access to transmission facilities, as well as fair and nondiscriminatory pricing for these transmission services. Accordingly,

¹ The Commission separately noticed both of these proceedings. However, given the interrelationship between the two proceedings and the issues contained therein, EPSA believes the Commission should evaluate both dockets together as one complete proposal. Thus, EPSA is filing one intervention and protest, applicable to both proceedings.

² The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the view of any particular member with respect to any issue.

EPSA has a direct and substantial interest in the outcome of the instant proceedings which cannot adequately be represented by any other party. EPSA submits that good cause exists for granting this timely motion to intervene, and that its intervention is in the public interest, and should thus be granted.

All pleadings, correspondence and other communications concerning this proceeding should be directed to:

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II. PROTEST

A. Overview

The filing to create RTO West, *i.e.* the combination of RTO West and TransConnect, is by the Applicants' own admission, a work in progress.³ The various filings and documents required for the Commission to determine that RTO West complies with the requirements set forth in Order No. 2000 are not included for Commission review. Indeed, with the exception of the specific items listed below, the documents contained in the RTO filing are submitted to the Commission for informational purposes

³ TransConnect filing at 3, n.4.

only.⁴ The filing utilities intend to submit another filing, *i.e.*, Stage 2, in spring 2001, containing all the remaining documents and information needed to complete their proposal for RTO West.

In Docket No. RT01-35-000, the member companies have filed a Stage 1 request, seeking a declaratory order from the Commission relating to various organizational documents. Specifically, in Stage 1, the filing utilities seek a declaratory order with respect to (1) the form of RTO West First Restated Articles of Incorporation and RTO West Bylaws; (2) the scope and configuration of the RTO West and; (3) the form of Agreement Limiting Liability Among RTO West Participants. In addition, the filing includes the current form of the Transmission Operating Agreement and the Agreement to Suspend Provisions of Pre-existing Agreements. However, only three of the filing utilities -- Bonneville Power Administration, Idaho Power and PacifiCorp -- request that the Commission find that the concepts in those two Agreements are acceptable to the Commission and consistent with the requirements of Order No. 2000. The remaining utilities need additional time to fully review the Transmission Operating Agreement and the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements.

Likewise, the filing utilities in the TransConnect proceeding have not put forward a complete proposal required for Commission approval as an ITC within RTO West. For example, the crucial details concerning the functions that RTO West and the ITC will perform and how the two organizations will interact are not clearly spelled out. In TransConnect, the member companies seek only a declaratory order that (1) the

⁴ Supplemental Compliance Filing and Request for Declaratory Order ("RTO West Filing"), filed October 23, 2000 at 6.

TransConnect Corporate Manager, Inc. and TransConnect LLC will meet and exceed the minimum requirements for independence; and (2) the limited functions that TransConnect LLC will undertake – related to rate filings and transmission planning and expansion are acceptable. As discussed below, given the lack of a complete RTO West filing before the Commission, the Commission should not grant even this limited request.

Given that the RTO West filing now before the Commission is not sufficient for the Commission to grant RTO status, EPSA's comments will only focus on those specific aspects of the two filings, such as the scope of authority by the RTO over critical transmission facilities, necessary for the Commission to provide meaningful guidance to RTO West in advance or in conjunction with its consideration of future filings by the members companies. Clearly, the Commission should not grant RTO status until further filings are reviewed in Stage 2. Rather, the Commission should merely grant sufficient authorization so that RTO West can form, and select its independent board and management. The Commission should then require that the newly formed board and management, not the incumbent transmission owning utilities, make the requisite tariff and other filings essential to the operation of RTO West. At the same time, the Commission should defer ruling on the independence of the TransConnect pending further development of the functions the ITC will perform vis a vis RTO West.

The approach proposed for RTO West ensures that the details left out of this filing, but essential to the independent operation of the transmission grid, (such as transmission planning protocols and generation interconnection procedures), have the imprimatur of the independent board and management of RTO West. This approach is much preferable to the alternative of the incumbent transmission owners, and their

generation and marketing affiliates that will continue to use the grid after these two organizations are created, drafting these crucial documents.

Despite the fact that the filing utilities have not put forward, to date, a complete RTO filing, there is much to like in the two filings. In short, once fully developed, EPSA believes that RTO West will be an improvement over the status quo and will facilitate the development of a fully competitive market in the Northwest. Specifically, the proposed governance of RTO West appears to meet the independence requirements of Order No. 2000.⁵ Second, although RTO West encompasses a substantial area of the Northwest, the Commission should require RTO West to work with neighboring proposed RTO structures to develop a unified regional market for the Western Interconnection. Third, TransConnect's filing indicates that this independent transmission company does not intend to have any role in providing or procuring ancillary services. EPSA believes that, unless absolutely necessary, an ITC should not have any role in commodity energy markets, *e.g.* real time ancillary services markets, and this filing is consistent with that view. Fourth, RTO West's proposal for market monitoring calls for gathering market information and reporting of specific recommendations or perceived violations to the appropriate regulatory agency. EPSA supports giving a market monitor authority to gather information and make recommendations. In the end, however, it is the Commission's responsibility to change the market rules affecting the wholesale market or to enforce the rules already in place. The Commission should exercise that authority by looking at markets on an inter-regional,

⁵ III FERC Stat. & Regs. ¶ 31,089 at 31,061 (1999). However, EPSA remains concerned about the independence of TransConnect, given the active ownership by market participants and the lack of clarity over the functions the ITC will perform.

rather than RTO by RTO basis, using the information gathered from the individual market monitors.

Finally, the RTO West filing shows that two contentious issues that have plagued the Commission's restructuring effort and the transition to fully competitive bulk power markets, *i.e.* (1) the participation by public power entities⁶ and (2) ensuring that all transmission including transmission used to serve native load are taken under the same tariff, can be achieved if parties are sufficiently motivated to address the difficult issues involved. In this proceeding, Bonneville Power is an active player and the statutory and cost shifting issues associated with their participation in RTO West are being addressed.

In addition, all transmission, including transmission service to serve native load, will be taken under the RTO tariff, and all existing transmission agreements between Participating Transmission Owners will be suspended or phased out. EPSA strongly endorses RTO West's proposal that existing transmission agreements will be replaced by service under the open access tariff. Moreover, the proposal to require native load to take transmission service under the same terms and conditions as other transmission users will significantly improve the competitive environment in the Northwest. Today 70% to 80% of the transmission system in the Northwest is used to serve native load. Such transmission presently is not subject to the same terms and conditions that apply to other transmission, *i.e.* the terms and conditions of the Order No. 888 open access tariff. This is discriminatory, discrimination remedied under the RTO West proposal. The Commission should closely review the steps RTO West took to bring native load under the open access

⁶ RTO West Filing at 53-54.

tariff, since implementation of this proposal in other regions of the country will go a long way to eliminating one of the major impediments to the development of a competitive bulk power market, *i.e.* the exemption from native load from the terms and conditions of the Order No. 888 tariff.

The development of a seamless national transmission system wherein all transmission usage is accorded fully comparable treatment is vitally important to the growth of a competitive electric power industry.⁷ The establishment of RTO West, and the proposal to bring native load and existing contracts under the RTO tariff is an important step towards that end. With actual comparability, the transmission owners' interests should be to operate the grid as a stand-alone business and to maximize throughput. With incentives aligned in this manner, the transmission operator is expected to facilitate those regional transactions that make the most business sense. Thus, comparability is critical if competitive power markets are to achieve their full potential.

B. Certain Facilities Essential to Transmit Energy May Not Be Under the Control of RTO West, Causing Specific Concerns with One-Stop Shopping for Transmission Service, Rate Pancaking and the Ability to Interconnect New Generation.

EPSA has serious concerns with the extent of control RTO West will have over transmission in the Northwest. The exclusion of particular facilities from RTO West's control will have a serious impact on the interconnection to the transmission grid of vital new generation, and the Commission's goal of one-stop shopping and eliminating rate

⁷ See Staff Report to the Federal Energy Regulatory Commission on Bulk Power Markets in the United States, Part II, November 1, 2000, at 2-49 (addressing the benefits of putting all uses of the system on a single tariff).

pancaking. Simply put, the RTO will not be able to perform the various functions required of it, functions that are essential to the development of a competitive bulk power market, if the facilities necessary to do so are not under its control.

It is not clear from the RTO West filing that certain transmission facilities forming the backbone of transmission in the Northwest will be under the control of RTO West. The specific facilities to be included are not set forth in the filing. Rather, the filing only states that the facilities under the control of the RTO West will be those facilities that have a material⁸ impact on: (1) transfer capabilities of RTO West managed constraint paths between its congestion zones, (2) the ability to transfer electric power within a congestion zone, or (3) the ability to transfer electric power and energy into or out of the RTO West transmission system.⁹ Moreover, distribution facilities that meet the definition of grid transmission facilities, because the facilities may have secondary impacts on the transfer capability of some regional grid paths, can be retained by participating transmission owners.

Specifically, facilities which comprise the backbone of the transmission system in the Pacific Northwest and into Canada may be excluded. For example, Puget Sound is apparently proposing to reclassify, as distribution, high voltage lines (230 KV) which operate in parallel with the 500 KV lines to form the interconnection between the United States and Canada. These lower voltage parallel facilities have an effect on the transfer

⁸ A transmission facility will be deemed to have a material impact on transfer capabilities between congestion zones or into or out of the RTO West transmission system if such transfer capabilities would change if the transmission facility was removed. A transmission facility will be deemed to have a material impact on the transfer capabilities within a congestion zone if such transmission facility carries 10% or more of the electric power transferred across parallel paths through a congestion zone.

⁹ The participating transmission owners have the discretion to include lower voltage facilities that do not meet the above definition into the RTO West controlled transmission facilities.

capability between the Northwestern U.S. and British Columbia and therefore should not be excluded from the RTO's control. As such, the Commission should instruct RTO West that such exclusions are inappropriate. Finally, it is not clear from the TransConnect filing that the member companies will not seek to refunctionalize major facilities from transmission to distribution. As such, in reviewing the Stage 2 filing, the Commission should closely review the facilities under the control of RTO West to ensure that all facilities necessary for market participants to engage in any sales of electric energy subject to the Commission's jurisdiction, requiring any transmission within, through or out of the RTO West region, are subject to the rates, terms and conditions of a single RTO West tariff.

In addition, merely because some facilities might be classified as distribution does not mean that those facilities are not essential to the transmission grid or the Commission's goal of facilitating a competitive bulk power market. First, in order to meet the Commission's goal of one stop shopping, RTO West must have the authority to schedule service over all facilities, regardless of classification, if needed to provide a transmission service. Second, new generation in the Northwest could be interconnected to low voltage facilities. Order No. 2000 requires that RTO West have direct authority over generation interconnection.¹⁰ Individual RTO West members should not be allowed to circumvent RTO West or Commission jurisdiction over new generation interconnection merely by withholding such facilities from RTO West's control or reclassifying certain facilities as distribution.

¹⁰ III FERC Stat. & Regs. ¶ 31,089 at 31,091 (1999) (The RTO must have clear authority to direct all actions that affect facilities under its control).

For transmission under the control of RTO West, Section 4 of the Transmission Owners Agreement (“TOA”) provides that RTO West can resolve disputes, thus expediting the interconnection of facilities. EPSA supports this provision. The RTO must have the authority to set the standards under which generation will be interconnected to the transmission grid and to enforce the rules if problems occur. Simply put, interconnection policy cannot be left to the former transmission owners which may continue to have generation or marketing affiliates competing in the wholesale market with the generation seeking interconnection to the grid. However, if the generation is not interconnected to facilities under the control of the RTO, such protections will not be available. This concern is compounded for the transmission owners that are part of TransConnect. If the facilities to which new generation is interconnected are not part of TransConnect, there is a very real question as to the authority RTO West will have to enforce its standards for interconnecting to the grid.¹¹

C. The Commission Must Ensure that a Liquid Market is Created for Firm Transmission Rights and that the Rights are Allocated through an Auction Process.

In RTO West, transmission congestion will be managed through a flow based physical rights model. Within this model, the right to use the system will primarily be allocated through firm transmission rights. EPSA supports this approach to congestion

¹¹ The Commission Staff recently stated that RTOs should handle “all interconnection requests and system impact studies for their member transmission providers” and that there is a need for standardized procedures for interconnection requests. Staff Report to the Federal Energy Regulatory Commission on the Bulk Power Markets In the United States, Part II, November 1, 2000, at 2-44.

management. Moreover, this approach to congestion management is part of the proposal to place native load under the same terms and conditions as other users of the system.

Under the proposal, Firm Transmission Rights (“FTRs”) will be granted to each of the participating transmission owners: (1) to replace its firm rights under pre-existing long term transmission agreements; (2) to use its transmission facilities as needed to serve its load not covered by pre-existing agreements; and (3) to use its transmission facilities to serve its obligations under a bundled power sale, exchange, coordination or other obligations not covered by a pre-existing transmission agreement. In addition, through December 14, 2011, additional FTRs will be made available without charge to each participating transmission owner as needed to meet that participating owner's following year's reasonable load growth. Finally, continuing rollover rights would be provided for all transmission agreements required to provide (1) an adequate power supply to serve loads from the electric systems of the participating transmission owners, and (2) all other transmission owners holding pre-existing long-term transmission agreements, a one-time opportunity before the commencement of RTO West transmission service to extend the term of any pre-existing long-term transmission agreements, subject to available transmission capacity. If the rollover right is exercised before the commencement of RTO transmission service, the transmission customer will receive FTRs from RTO West for the roll-over period selected in return for a fixed payment during such period equal to the current firm service rate or the company rate for the transmission service to be provided.

The goal of the RTO West filing is for FTRs to be available through an auction process and tradable on the secondary market. EPSA supports that goal. However, with the initial allocation of FTRs for pre-existing customers, future load growth and the rollover rights described above, there will be no FTRs to auction.

There must be an annual auction of FTRs in which all FTRs would be allocated. In order to protect themselves, while at the same time facilitating a market price for FTRs, existing load serving entities could set a reserved price below which they would not sell their rights in the auction. The holders of those rights would receive any auction revenues received as part of the annual auction as set forth in the RTO West tariff.

Without an open and liquid auction process, these valuable FTRs will be left in the hands of the incumbent utility to serve existing load or to engage in other market transactions. This will extremely limit the ability of market participants to compete for existing load. Compounding the concern, the incumbent utilities will have no obligation to make these valuable rights available to the market at any time in the future. The limited availability of such rights in the day ahead market is not sufficient to allow new market participants to compete. In sum, a liquid and transparent market for FTRs is essential to developing robust electric power markets. The Commission should facilitate this process by requiring an annual auction of all FTRs, beginning with commencement of operations, in which a reserve process could be set.

D. The Commission Should Defer Ruling On The Independence Of TransConnect Until The RTO West Tariff Is Finalized And The Crucial Decision Of What Functions RTO West Will Perform And TransConnect Is Completed.

EPSA has two problems with the TransConnect filing. First, it is not clear what functions TransConnect will perform vis a vis RTO West. As the Commission found in the recent *Commonwealth Edison* order¹² dealing with this same issue, the issue of what

¹² *Commonwealth Edison Company*, 90 FERC ¶ 61,262 (2000), reh'g 91 FERC ¶ 61,178 (2000).

functions are performed by an RTO/ISO and what functions will be performed by an ITC/RTO are not always set out with the requisite clarity. Such clarity is essential, however, for the reliable and efficient operation of the market. Indeed, without such clarity the possibility exists that the market will be balkanized.

Until the functions of the ITC are clarified, the Commission cannot rule on the independence of the ITC. There is simply no context by which to determine that the ITC will be independent from market participants because it is not clear what transmission functions the ITC will perform and thus what functions will be independent from market participants. Moreover, compounding the independence question, ITC contemplates that individual market participants, including the Applicants to the extent they are market participants, may have an active ownership interest in the ITC. Market Participants, and the Applicants to the extent they are market participants, may hold up to five percent of the total Class A stock of TransConnect for a period of five years.¹³ While TransConnect asserts that it has met the safe harbor provisions of Order No. 2000, active ownership raises questions of the independence of the ITC from market participants.¹⁴ As such, with the active ownership interest in the ITC, the Commission must not find that TransConnect meets the independence standard of Order 2000 until its functions and the relationship between RTO West and the ITC are clearly spelled out.

¹³ No class of market participant may hold more than 15% of the total Class A shares. After five years, market participants would no longer hold any active interests, unless otherwise permitted by the Commission.

¹⁴ ITC members can also own passive interests in the ITC, thereby obtaining a stream of revenue from the facilities. Thus, it is not clear why they also must have an active and voting interest in the ITC, particularly in the early days of the formation of the ITC and RTO West.

That said, even if the ITC satisfies the independence criteria, the Commission needs to closely scrutinize the functions the ITC will perform because it certainly will not be neutral with respect to certain functions, such as transmission planning. The ITC will inherently favor transmission solutions over generation or demand side solutions to meet customer demands. Accordingly, even if the ITC is independent, RTO West or perhaps a broader interconnection wide entity, and not the ITC, should have authority over transmission planning.

E. Interregional Coordination and Seams Issues

The RTO West filing sets out the efforts to date on coordinating the activities of the three primary RTOs in the West: Desert Star, the California Independent System Operator Corporation (“CAISO”) and RTO West. These are important first steps. However, in light of attention focused on California in recent months and the interrelationship of the California market to other markets in the West, in reviewing each of these three filings, Commission should order that a plan be filed prior to the operational date that addresses seams and interregional coordination issues. The goal, much like the Commission’s efforts in the Northeast between PJM, the New York Independent System Operator Corporation (“NYISO”) and the New England Independent System Operator, should be to create a seamless market throughout the West irrespective of the number of RTOs.

III. CONCLUSION

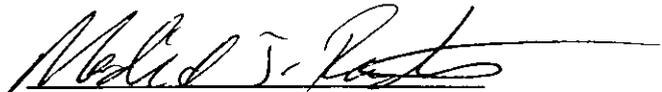
WHEREFORE, the Commission should rule on the RTO West filing in a manner consistent with EPISA’s comments. Specifically, the Commission should authorize the RTO West board, but not the TransConnect Board, and defer final rulings on all substantive issues until after Stage 2 filings are made. Moreover, the Commission should

direct that the Stage 2 filings address the concerns and suggestions raised herein. Finally, the Commission should guard against potential balkanization of the Western market. Desert Star and RTO West are taking a similar approaches to RTO development. As such, FERC should direct these two entities to address seams issues in a manner that would allow these and other entities, including the CAISO to move towards a unified regional market for the Western Interconnection.

November 20, 2000

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by first class United States mail, postage prepaid, upon each person designated on the official service list compiled by the Secretary in this proceeding.

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

A handwritten signature in black ink, appearing to read "Michael J. Rustum", with a long horizontal flourish extending to the right.

Michael J. Rustum