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

OFFICE OF THE SECRETARY
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FEDERAL ENERGY
REGULATORY
COMMISSION

Avista Corporation,)
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

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

Docket No. RT01-15-000

**COMMENTS OF
OF ENRON POWER MARKETING, INC.**

Pursuant to 18 C.F.R. § 385.211 (2000) and the Commission's October 20, 2000, and October 24, 2000, Notices of Filing, Enron Power Marketing, Inc. ("EPMI") hereby comments on two inter-related filings responding to the Commission's Order No. 2000:¹ first is the October 23, 2000, filing of Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company, which are the companies that propose to form the

¹ *Regional Transmission Organizations*, Order No. 2000, [1996 - 2000 Regs. Preambles] III F.E.R.C. Stats. & Regs. ¶ 31,089 (2000), *order on reh'g*, Order No. 2000-A, III F.E.R.C. Stats. & Regs. ¶ 31,092 (2000), *appeal docketed sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, Nos. 00-1174, et al., (D.C. Cir. April 24, 2000).

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RTO West; second is the October 16, 2000, filing of Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company to form an independent transmission company ("ITC"). Both filings were submitted in purported compliance with the Commission's Order No. 2000 on regional transmission organizations ("RTO"). In support of its comments, EPMI states:

I. INTRODUCTION

EPMI commends the RTO West filing utilities for their hard work in producing a proposal that encapsulates many of the features identified by the Commission as hallmarks of an acceptable RTO. There is much to praise here, including the congestion management system ("CMS") and the proposal to place all uses of the regional grid on the same open-access transmission tariff of RTO West. EPMI also commends the RTO West filing utilities for finding a way for the Bonneville Power Authority ("BPA") — a Federal Power Marketing Administration ("PMA") — to participate together with the region's other transmission owners. The Transmission Operating Agreement ensures that Bonneville need not violate any statutory or regulatory obligations in order to participate in the RTO West. *RTO West Ltr.* at 46-51. The RTO West filing utilities' good work in this respect should be the basis for requiring all PMAs and the Tennessee Valley Authority to relinquish operation of their transmission systems to an RTO.²

² EPMI asks the Commission to accept the filing conditioned on the Filing Utilities making the changes we have recommended and BPA immediately beginning its public process and issuing a record of decision ("ROD") allowing itself to join the RTO. Once the Commission has issued an order, and BPA an ROD, then BPA may begin its appeals process, which BPA must complete before the RTO starts operations.

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Notwithstanding its many strengths, the proposal suffers from two apparent deficiencies that the Commission should be aware of and caution RTO West filing utilities to remedy when it finalizes its design and structure. Specifically, RTO West filing utilities propose a conceptually sound CMS based on physical rights, referred to as Firm Transmission Rights ("FTRs"), but then administratively allocate all of them to the incumbent utilities, depriving the CMS of any market mechanism for valuing congestion. Second, it appears that very important parts of the grid, including high voltage facilities that determine the rating of interconnections with Canada, have been excluded from the grid that RTO West will control and operate. Fortunately, both of these deficiencies can readily be cured: in the one instance, by allocating FTRs pursuant to a market mechanism, such as an auction, bilateral trading or both; in the other instance, by insisting that all wires that are part of the interconnected grid, including facilities that affect cross-border transfer capability, are entrusted to RTO West.

In addition, the Commission should require RTO West filing utilities to implement its proposed non-stakeholder board as soon as possible. Under the RTO West articles of incorporation, before the Trustees Selection Committee meets and chooses the first non-stakeholder board, an Interim Board of Directors *comprising of stakeholders* shall carry out the duties and authority of the RTO. *RTO West Ltr., Attach. R, First Restated Articles of Incorporation*, Art. V, at 2. The Interim Board should be directed promptly to convene the Selection Committee so that the independent Board of Trustees can negotiate the final Transmission Operating Agreement, the Tariff,

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Interconnection Agreements, Interregional Coordination for seams issues, and other issues that remain after the Commission has approved RTO West.³

RTO West's gestation has been long, dating back to at least 1996, when twenty-one utilities developed an independent grid operator called "IndeGO." Proponents never brought their IndeGO proposal before the Commission, but it formed the conceptual basis for the RTO West proposal pending before the Commission. With the modifications urged below, EPMI endorses its swift approval.

II. COMMENTS

A. *RTO West Promises to Achieve a High Degree of Independence from Market Participants*

RTO West filing utilities have proposed an RTO structure that largely conforms to Order No. 2000's central requirement of independence from market participants. First, neither its employees nor directors will have any financial interests in market participants. *RTO West Ltr.* at 60. The RTO West decision making process will be independent of control by any single market participant or class of participants. Only RTO West may file changes to its transmission tariff. *RTO West Ltr.* at 60. In addition, RTO West will have its own tariff and "the exclusive and independent authority to file changes to its transmission tariff." *RTO West Ltr.* at 60. EPMI believes that this is essential to an RTO's independence and ability to act in the best interest of the transmission business.

³ Until the new independent Board of Trustees is installed, the participating utilities should be admonished to continue the Order No. 2000 collaborative process.

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Second, the Board of Trustees, once formed, will be an independent, non-stakeholder board not susceptible to control by any market participants.⁴ This is superior to stakeholder boards, which experience has shown invite gridlock and are largely ineffectual. *See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 93 F.E.R.C. ¶ 61,121, slip op. at 27-32 (Nov. 1, 2000). Board Trustees must have no direct or indirect financial interest in a market participant, member, or scheduling coordinator or any affiliates (except through diversified mutual funds) and no trustee may be connected as an owner, director, officer, employee partner, principal or any similar capacity to a market participant, member or scheduling coordinator. *RTO West, Attach. J, Bylaws for RTO West* at 33-34. An independent compliance auditor will ensure that the Trustees, employees, and officers of RTO West comply with the relevant independence policies and code of conduct. *RTO West, Attach. K, Key Positions of RTO West Bylaws* at 4.

Any RTO Member may participate in the Board Advisory Commission, which will provide advice to the board, promote input on Board decisions, and disseminate information relevant to the RTO. *Id.* at 6. Significantly, however, the Advisory Committee may not limit the authority of the Board to consider any matter the Board deems appropriate. *Id.* at 6.

RTO West falls short of complete independence, however, in one critical respect. RTO West filing utilities have indicated that RTO West will contract the security coordinator function of the

⁴ The selection committee for choosing board members shall comprise 30 members. The selection committee itself will comprise six members from each of the following five classes: (1) Major Transmitting Utilities; (2) Transmission-Dependent Utilities; (3) Nonutility Entities Class; (4) Retail Customers; and (5) State and Provincial Energy Authorities/Tribal Utility Regulatory authorities/Unaligned Entities. *RTO West, Attach. J* at 17-21. Single legal entities may participate only in one class. *RTO West, Attach. K* at 1. Trustees shall be elected to the board if they earn 24 of the 30 possible selection committee votes. *RTO West, Attach. J* at 29.

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RTO to the Pacific Northwest Security Coordinator ("PNSC"). PNSC is not an independent body. Its board of directors is made up of employees of the vertically integrated utilities participating in RTO West. The proposal to use PNSC as the security coordinator should be accepted only on a transitional basis, together with a directive that this function be transferred to the RTO within no longer than two years.

B. RTO West Is Attractively Scoped, but its Configuration Appears to Leave Out Some Segments of the Regional Grid

The RTO West would encompass the transmission facilities in most of Oregon, Washington, Idaho, Montana, Utah and Nevada, and parts of Wyoming and California. This includes the entire U.S. portion of the Northwest Power Pool. RTO West "will internalize a majority of the constrained paths that affect transfer within its region" and employ a configuration that corresponds to existing natural boundaries for operational integration and trading patterns. *RTO West Ltr.* at 61. EPMI trades large amounts of power in the northwestern U.S. Based on EPMI's experience, RTO West will comprise recognized trading patterns and will not divide existing or potential markets to any appreciable extent. This scope will also help RTO West to perform its required functions as well as support efficient and nondiscriminatory western power markets. *RTO West Trans. Ltr.* at 61. In addition, the RTO allows for Canadian participation by entities in British Columbia and Alberta. *RTO West Ltr.* at 61.

For the most part, RTO West's configuration appears to be appropriate. Nevertheless, there appear to be some lines that are integral to the regional grid, but which inexplicably have been

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withdrawn from RTO West's operational control. According to the filing, RTO West will have operational control of only those facilities that have a material impact on (1) transfer capabilities on certain RTO managed constrained paths, (2) the ability to transfer power within a congestion zone, or (3) the ability to export electric energy out of RTO West. EPMI is concerned that this formulation may exclude facilities that are used for interstate transmission within RTO West. Accordingly, EPMI urges the Commission to apply essentially the same rule that it applied in Order No. 888 to determine what would be subject to the open-access transmission tariff ("OATT") — namely, all facilities used to provide interstate transmission and to make sales for resale in interstate commerce. *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888 [1991-96 Reg. Preambles] F.E.R.C. Stats. & Regs. ¶ 31,036, at 31,770-85 (1996), *clarified*, 76 F.E.R.C. ¶¶ 61,009, 61,347 (1996), *order on reh'g*, Order No. 888-A, III F.E.R.C. Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 F.E.R.C. ¶ 61,248 (1997), *aff'd and remanded sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000). Control of all of the wire of a participating transmission system owner that are subject to OATT for purposes of Order No. 888 should be entrusted to the RTO.

EPMI is also concerned that some of the RTO West participating utilities plan to exclude from RTO West's configuration important facilities that control the rating of the interties that connect the northwestern grid with Canada. *Trans. Ltr.* at 62. Just after crossing the U.S.-Canadian border, the 500 kV lines that make up the Northern Intertie, operate in parallel with other high voltage lines. The import/export rating of the Northern Intertie is limited by contingencies that may overload

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parallel facilities. The exclusion of the facilities that control the rating of the Northern Intertie would thus deprive RTO West of independent operational and planning control over the Northern Intertie. In connection with approving RTO West, the Commission should direct all of the participating transmission owners to relinquish to RTO West control over all facilities that affect the transfer capability ratings of cross-border facilities or any other significant interface within or external to RTO West.

C. *RTO West Benefits from Being a Single Control Area*

Order No. 2000 requires that an RTO be ultimately responsible for the provision of transmission services under the regional transmission tariff and serve as the NERC security coordinator. *Order No. 2000* at 31,090. With the exception of those apparent exclusions of certain transmission wires from RTO West control that are noted in the preceding section, RTO West is accorded sufficient operational control.

The RTO West Transmission Operating Agreement sets forth the rights and obligations of transmission owners that elect to join RTO West. This agreement gives RTO West "the exclusive right to operate and control main grid bulk transfer facilities of each transmission owner." *RTO West Ltr.* at 61-62. RTO West will serve as the NERC-accredited control area operator as well as providing power scheduling and congestion management and maintaining an ancillary services market. As the single control area operator for the region, RTO West can and should be directed to ensure that all market participants enjoy equally commercial advantages that, in the past, were

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enjoyed only by control areas that were vertically integrated utilities. These advantages include the ability to reserve and schedule power into the control area for participation in the intra-day market.

D. RTO West's Congestion Management System Is Conceptually Sound, but Ineffectual in Its Apparent Implementation

Order No. 2000 directs that an RTO have in place, by its first anniversary, a CMS that relies on market mechanisms for managing congesting that send all market participants efficient price signals. *Order No. 2000* at 31,126. RTO West filing utilities create such a market mechanism, but then proceed to make that mechanism available in a way that undermines its effectiveness.

RTO West filing utilities propose flow-based physical rights, called FTRs, as the market mechanism for managing transmission congestion. RTO West will determine the total transfer capability of each flowpath as well as the quantity of transmission rights to issue. Customers that schedule across flowpaths must have transmission rights such as FTRs, recallable transmission rights, non-firm transmission rights, or non-converted rights under pre-existing contracts before RTO West will accept their schedules. *RTO West Ltr.* at 66. In addition, RTO West filing utilities propose zonal FTR auctions as well as real-time balancing that will cover the entire RTO on a zonal, rather than nodal, basis. FTRs also may be traded bilaterally or via non-affiliated exchanges. *RTO West, Attach. M, Description of RTO West Congestion Management Model* at 2.

Because FTRs are stable over long periods of time and are homogeneous (differentiated only by direction and time of availability), they can support secondary markets of continuous trading. Continuous trading will create price transparency and permit energy and spare transmission resource

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to be traded in forward markets. This is why, in concept, this truly is a market mechanism. FTRs are the key to this CMS and are tantamount to having access to firm transmission service.

Problematically, however, RTO West filing utilities do not propose to offer FTRs to the public using a market mechanism. Rather, under the proposal, FTRs would be allocated administratively, and not pursuant to a market mechanism, such as an auction, bilateral trading or both an auction and bilateral trading. Specifically, FTRs would be allocated administratively to the transmission owners in amounts equal to (1) rights under pre-existing long-term transmission agreements, (2) transmission needed to serve load, which is not otherwise covered by a pre-existing long-term transmission agreement, plus (3) transmission needed to fulfil other bundled sale, exchange or coordination commitments not covered by a pre-existing long-term transmission agreement. Further, continuing roll-over rights are granted to the FTRs allocated on this basis.

This administrative allocation is inexcusably discriminatory. It will allow the incumbent to monopolize all of the key interfaces in the region, including commercially significant interties between RTO West, on the one hand, and California and Canada, on the other. Of even greater importance, it will prevent the FTRs from reflecting the relative market value of transmission versus generation over any economically significant time frames. Indeed, it will offer only a glimpse of market values in the short-term secondary market in which those who receive an administrative allocation release FTRs that they do not intend to use themselves. If the FTRs are to be deprived of any market valuation in this fashion, there is little point beyond clearing imbalances in even having a CMS. Surely, they will have little to no value in the long-term market for hedging energy supply.

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Further, administrative allocation together with roll-over rights, as proposed, will mean that only incumbents with captive load will be able to own FTRs. This will stand in the way of jurisdictions that elect to pursue retail competition. In a competitive retail market, FTRs should be available to whomever needs to fulfill their obligations to serve load, and not merely to incumbents.

The Commission should direct RTO West filing utilities to replace the administrative allocation of FTRs with a process for marketing them through periodic auctions and bilateral trading. During RTO West's first year of operation, the administrative allocation may remain in effect. After one year's experience under the new CMS, all FTRs would be made available through auction. The Commission should also abolish roll-over rights or make them available to all transmission customers on the same basis, subject to the same terms and conditions.

E. A Regional Preference in the Agreement between RTO West and BPA Is Unnecessary, Discriminatory, and Will Have a Pernicious Balkanizing Effect on Regional Power Supply

The proposed Transmission Operating Agreement between RTO West and BPA contains a provision that would require RTO West to grant a priority among competing requests for federal transmission capacity to requesters serving Northwest regional loads. *RTO West Ltr.* at 47. An RTO's obligation under the Federal Power Act is to provide nondiscriminatory service to all eligible customers. The contention that a regional preference is legally required is both at war with this nondiscrimination mandate and demonstrably false. For several years, BPA has offered an open-access transmission tariff containing no similar regional preference.

F. Interregional Coordination Must Be Developed Further

The RTO must develop mechanisms to coordinate its activities with other regions whether or not an RTO exists in those regions. The RTO must ensure integration of reliability practices within an interconnection and market interface practices among regions. *Order No. 2000* at 31,167.

RTO West filing utilities explain that the filing utilities have taken steps to integrate reliability practices among regions and coordinate activities with other RTOs and control areas. It has opened discussions with the California ISO and Desert Star to address seams issues and develop bilateral agreements describing joint commitments to address seams issues, but no agreements have yet been reached. *RTO West Ltr.* at 77-78. RTO West filing utilities also mention other discussions underway to coordinate and integrate with certain Canadian entities and to form a Western Interconnection Organization that would address and coordinate reliability and interface functions. *RTO West Ltr.* at 78.

There are at least three issues pertaining to the "seams" between transmission systems that must be explicitly addressed in order to make RTOs work together in the West: (1) management of loop flow, (2) export fees between the RTOs and (3) consistency of scheduling time frames. In approving RTO West, the Commission should establish a deadline by which RTO West will report back to the Commission on how it has addressed each of these issues with its neighbors. Moreover, the RTO Board of Trustees should be formed as soon as possible so that it can take the place of the filing utilities and begin negotiating these agreements itself.

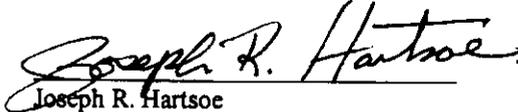
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III. CONCLUSION

For the foregoing reasons, EPMI asks the Commission to accept RTO West filing utilities' proposal to form itself as an RTO and direct its proponents to finalize and implement the proposal, subject to the conditions and modification explained above.

Respectfully submitted,



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November 20, 2000

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CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document on all persons designated on the official service list compiled by the Secretary in this proceeding.

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


Joseph R. Hartsoe