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

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FEBRUARY 16 2001
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FEDERAL ENERGY REGULATORY COMMISSION

_____)
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

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

Pursuant to the Commission's December 15, 2000, Notice of Filing, Enron Power Marketing, Inc. ("EPMI"), an intervenor in this proceeding, hereby comments on the December 1, 2000, Amended Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order No. 2000 of Avista Corporation, the Bonneville Power Administration, Idaho Power Company, The Montana Power Company, PacifiCorp, and Puget Sound Energy, Inc. (collectively, "the Concurring Utilities") in the above-captioned docket.

**I.
THE FILING**

The December 1 filing amends an earlier October 23, 2000, filing that the Concurring Utilities made as Stage 1 of their efforts to form a western regional transmission organization ("RTO West") complying with the requirements of Order No. 2000.¹ The filing includes amended versions

¹Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 810 (January 6, 2000), [1996 - 2000 Regs. Preambles] III F.E.R.C. Stats. & Regs. ¶ 31,089 (2000), order on reh'g, Order No. 2000-A, III

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of the Form of Transmission Operating Agreement and Form of Agreement to Suspend Provisions of Pre-Existing Transmission Agreements, which were submitted with the October 23 Compliance Filing. The filing also provides brief explanations for the agreement's amendments.

II. COMMENTS

In earlier comments on the October 23 Compliance Filing, EPMI generally lauded the RTO West proposal, but criticized several deficiencies. Specifically, EPMI opposed RTO West for:

- denying long-term firm transmission to new entrants and preventing market valuation of congestion by allocating administratively the flow-based physical transmission rights ("PTRs") that it proposes to use as its congestion management system ("CMS");
- violating the independence requirement of Order No. 2000 by proposing to contract its security coordination functions to the Pacific Northwest Security Coordinator, which is staffed by employees of the vertically integrated utilities participating in RTO West;
- carving out from the RTO's operational control certain important facilities that control the rating of the interties connecting the northwest grid with Canada; and
- introducing into the Transmission Operating Agreement between the RTO and the Bonneville Power Administration ("BPA") a provincial and discriminatory preference for customers serving Northwest regional loads.

EPMI also asked that the Commission direct RTO West to expedite the seating of its independent Board of Trustees so that the independent (as opposed to stakeholder) board would be the ultimate

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). In the spring of this year, the Concurring Utilities intend to file with the Commission pleadings implementing Stage 2.

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decisionmaker in negotiations to form the final Transmission Operating Agreement, the Tariff, Interconnection Agreements, Interregional Coordination and other remaining issues.

Although EPMI is pleased to see in the December 1 Filing that the Concurring Utilities continue to make progress toward RTO West's implementation, we are concerned that they have failed to address the critical deficiencies set out above. The failure, at this stage, to have fixed the administrative allocation of PTRs is especially problematic because that allocation actually results in less open access to the regional grid than exists today less than what is required under Order No. 2000.² As explained in EPMI's initial comments, PTRs are needed in order to secure long-term firm transmission service at a price that is fixed and known in advance.³ To the extent that they are all allocated to existing transmission holders and incumbent utilities, there will be none available to new entrant competitors in the wholesale market. The result will be that new entrants are denied long-term firm transmission service — a service that is currently available to them under individual open access transmission tariffs — and will be unable to compete for sales in the forward market. The result is also that there will be no market valuation of transmission and the need to add or expand transmission capacity.

²*Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 810 (January 6, 2000), [1996-2000 Regs. Preambles] III F.E.R.C. Stats. & Regs. ¶ 31,089 (2000), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), 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).

³Short-term firm service may be available in the secondary market for PTRs provided that those incumbent utilities that receive PTRs in the administrative allocation choose to release them into the secondary market.

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Also troubling is the failure of RTO West to make progress on the other issues that EPMI identified. Indeed, the December 1 Filing appears to exacerbate the problem of strategic parts of the regional grid being carved out from the grid to be operated by the RTO. In particular, proposed amendments to section 4.2.1. of the Transmission Operating Agreement ("TOA") appear to be intended to transfer from RTO West to the transmission owners control over the interconnection of new generators. In addition, a proposed new TOA section 5.1.2.1 would exclude from RTO control "[f]acilities that are classified as distribution pursuant to State or Federal order, but that also meet the definition of transmission facilities contained within the definition of RTO West Controlled Transmission Facilities" *TOA* § 5.1.2.1. This carve out based on characterization is inconsistent with both the Commission's open-access Order No. 888⁴ and Order No. 2000. Transmission system for purposes of both orders should be defined as it is in the Order No. 888 open access transmission tariff ("OATT"). In the OATT, the transmission system, irrespective of State or Federal classifications, is defined *functionally* in terms of "facilities . . . that are used to provide transmission service . . ." *OATT* § 1.49; see *Duke/Louis Dreyfus Energy Services (New England) LLC*, 75 F.E.R.C. ¶ 61,165 AT 61,544 (1996) (distinction is "important . . . because facilities other than "transmission facilities . . . may be needed to provide transmission service"). By proposing to deny RTO West operational control over facilities used to provide transmission service, the

⁴*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 (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), *petition for cert. filed sub nom. People of the State of New York and Public Serv. Comm. of the State of New York v. FERC*, 69 U.S.L.W. 3281 (U.S. Oct. 11, 2000) (No. 00-568).

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December 1 Filing is also at odds with Order No. 2000's directive that an RTO have operational authority for the transmission system (Characteristic 3), *Order No. 2000* at 31,086-92, and "be the sole administrator of its own transmission tariff." *Id.* at 31,106. If portions of the regional transmission system are excluded from the RTO's control, then it can hardly have operational control and administer the transmission tariff.

EPMI suspects that a contributing reason that RTO West has not yet fixed the PTR allocation regional grid-carve out problems that EPMI has identified is that critical RTO formation decisions are not being made by an independent Board of Trustees, but rather continue to be made by a board of interested companies, each anxious to further its interests at the expense of its competitors. The Commission could and should move RTO West beyond this impasse by ordering the seating of the independent Board of Trustees by no later than March 1, 2001.

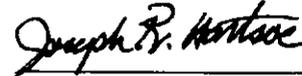
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III. CONCLUSION

WHEREFORE, EPMI asks the Commission to accept the December 1 Filing and direct the Concurring Utilities to proceed to seat an independent Board of Trustees, and to charge that board with addressing the problems that EPMI has identified in these and its earlier comments on the RTO West proposal.

Respectfully submitted,



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January 16, 2001

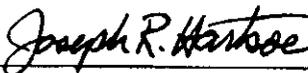
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CERTIFICATE OF SERVICE

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 16th day of January 2001.



 Joseph R. Hartsoe

