

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

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

**PROTEST AND COMMENT OF IDAHO CONSUMER-  
OWNED UTILITIES ASSOCIATION, IDAHO ENERGY AUTHORITY,  
NORTHWEST REQUIREMENTS UTILITIES, PACIFIC NORTHWEST  
GENERATING COOPERATIVE, POWER RESOURCES MANAGERS, LLP,  
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON,  
UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS  
and WESTERN PUBLIC AGENCIES GROUP**

**November 17, 2000**

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This *Protest and Comment* is submitted pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("Commission's") Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2000), on behalf of Idaho Consumer-Owned Utilities Association, Idaho Energy Authority, Northwest Requirements Utilities, Pacific Northwest Generating Cooperative, Power Resources Managers, LLP, Public Utility District No. 1 of Snohomish County, Washington, Utah Associated Municipal Power Systems and Western Public Agencies Group (collectively, "Consumer-Owned Utilities"). The Consumer-Owned Utilities represent approximately 130 electric utilities located in California, Idaho, Montana, Nevada, Oregon, Utah, and Washington.<sup>1</sup> The represented utilities

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<sup>1</sup> A listing of the Consumer-Owned Utilities' constituents is found at Exhibit 1 hereto.

range in size from among the smallest to the largest consumer-owned electric utilities in the region. Each of these electric utilities is transmission dependent, and all take transmission service from one or more of the Filing Utilities. Idaho Consumer-Owned Utilities Association, Idaho Energy Authority, Northwest Requirements Utilities, Pacific Northwest Generating Cooperative, Power Resources Managers, LLP, Public Utility District No. 1 of Snohomish County, Washington, Utah Associated Municipal Power Systems and Western Public Agencies Group each represent that it is concurrently submitting its own intervention in the above-captioned proceeding which incorporates the contents of this *Protest and Comments* by reference.

The Consumer-Owned Utilities hereby respond to the October 16, 2000, filing by 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 ("Filing Utilities") entitled "Alternative Filing Pursuant to Order No. 2000" and the October 23, 2000, filing entitled "Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000" (hereafter, the "RTO West Filing"). Commission Docket No. RT01-35 was assigned to these filings.

## **INTRODUCTION**

The Commission-sponsored regional forum held in Las Vegas in late March, 2000, was an effective kick-start to development of a Pacific Northwest effort on regional transmission organizations, or RTOs. Following the Las Vegas

forum, the Filing Utilities were persuaded to initiate meetings of a policy-level, regional collaborative group representing varied interests in the Pacific Northwest and adjoining areas. The regional collaborative group was called the Regional Representatives Group, and consisted of twenty-five members. Representatives of the Consumer-Owned Utilities filled five of the twenty-five Regional Representatives Group positions.

In addition to the Regional Representatives Group, the Filing Utilities committed to conduct meetings among their technical staff and the representatives of interested parties, in workgroup sessions that addressed certain characteristics and functions of a RTO. These technical workgroups advised the Regional Representatives Group through spring and summer 2000 and were open to any interested participant. Representatives from the Consumer-Owned Utilities staffed each of the eight technical workgroups.

As defined by the Filing Utilities, the purpose of the Regional Representatives Group (supported by the technical workgroups) was “to make every reasonable effort to achieve consensus” on the RTO issues identified by interested parties, in order “to produce the best achievable RTO proposal” for submission to the Commission pursuant to Order No. 2000. See RTO West Filing, Attachment C “Northwest RTO Collaborative Process Plan – a Proposal by the Filing Utilities” at 2. The above-stated purpose of the Regional Representatives Group notwithstanding, the Filing Utilities reserved for themselves the exclusive right to make an Order No. 2000 compliance filing in mid-October, 2000. To that end, the Filing Utilities made independent decisions

on issues where no regional consensus was reached at the Regional Representatives Group. And as discussed herein, the Filing Utilities also made independent decisions on certain issues notwithstanding the regional consensus arrived at by the technical workgroups and endorsed by the Regional Representatives Group.

A. The RTO West Filing.

The RTO West Filing was produced independently by Filing Utilities, who made portions of their draft materials available for comment prior to submission to the Commission. The Filing Utilities make four specific requests. First, the Filing Utilities request an expedited declaratory order that the proposed governance structure of RTO West, set forth in its Articles of Incorporation and Bylaws, satisfies the independence characteristic of a RTO. Second, they request an order affirming that the proposed Articles of Incorporation and Bylaws of RTO West otherwise meet the Commission's RTO policy. See RTO West Filing at 93. Third, the Filing Utilities request an expedited declaratory order regarding the proposed scope and configuration of RTO West. Finally they request approval of the proposed liability and insurance structure as set forth in the "Agreement Limiting Liability Among RTO West Participants"; see RTO West Filing at 93.

Three of the Filing Utilities – the Bonneville Power Administration, Idaho Power Company and PacifiCorp – request a Commission declaration that:

[t]he concepts as a package embodied in the Transmission Operating Agreement and the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements (along with any amendments as may be submitted and in accordance with the agreed procedures described

above) are appropriate as part of arrangements otherwise acceptable to the Commission for creating RTO West and are consistent with the requirements of Order 2000. RTO West Filing at 95.

With respect to this last request by three of the nine Filing Utilities, the remaining six Filing Utilities state that they may change the Transmission Operating Agreement or the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements, and that they are currently negotiating with the other three Filing Utilities to make changes for later filing, perhaps by December 1, 2000. These six Filing Utilities specifically *do not* support the request for a declaratory order with respect to the Agreements, or the Agreement's "concept as a package." See Section III below.

B. Position of the Consumer-Owned Utilities.

With respect to the actions requested by the Filing Utilities and for the reasons discussed in detail below, the Consumer-Owned Utilities state as follows:

First, the Consumer-Owned Utilities believe that last-minute, unilateral changes made by the Filing Utilities to RTO West's governance documents threaten RTO West's independence by effectively consolidating governance power among themselves, and repudiates the collaborative process that Order No. 2000 requires and that the Filing Utilities purport to have utilized. The Consumer-Owned Utilities therefore urge the Commission to reject the Filing Utilities' request that, as proposed, RTO West meets Order No. 2000's independence criteria.

Second, and for similar reasons, the Consumer-Owned Utilities object to and protest the Filing Utilities' request for declaratory order that the RTO West Articles of Incorporation and Bylaws are "otherwise consistent" with Order 2000, and urge the Commission to reject that request.

Third, the Consumer-Owned Utilities believe that the *geographic* scope and configuration of RTO West is appropriate and should be approved. RTO West is appropriately structured so that it may be expanded in the future consistent with Order No. 2000's "open architecture" requirement. However, RTO West as proposed will not fully satisfy Order 2000's requirement that an RTO control an appropriate scope and configuration of critical *facilities* within its geographic area. Accordingly, the Commission should limit its approval of RTO West's scope and configuration to its geographic scope, and should withhold judgment on whether RTO West, as proposed, fully satisfies all aspects of Order 2000's required scope characteristic (Characteristic 2).

Fourth, the Consumer-Owned Utilities take no position on the requested declaratory order regarding the proposed liability and insurance structure.

Finally, the "concepts as a package" embodied in the Transmission Operating Agreement and the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements are not ripe for Commission consideration and action at this time, for this portion of the filing is incomplete. Further, certain provisions in the Transmission Operating Agreement as currently drafted tend to pre-determine pricing and other issues that are not yet properly before the Commission because the filing lacks detail crucial to determining the appropriate

resolution of such issues. As such, the requested declaratory order should be rejected; and the Commission should classify the Transmission Operating Agreement and Agreement to Suspend Provisions of Pre-Existing Transmission Agreements as an informational filing only. Should the Commission agree with this recommendation by the Consumer-Owned Utilities, then our comments in Sections III and IV below should also be regarded as provided for informational purposes. On the other hand, if the Commission determines it must take action upon the declaratory order requested with respect to these agreements, then the Consumer-Owned Utilities protest and comment by detailing the deficiencies of those agreements as currently filed, in Sections III and IV below. At such time as these agreements and the remainder of the RTO West materials are completed and filed with the Commission, a subsequent Notice of Filing and opportunity for public intervention, comment and/or protest should be afforded interested persons.

Before detailing our position however, the Consumer-Owned Utilities must comment on an overarching theme to the RTO West Filing and accompanying materials. This theme will be highlighted in the course of the our *Protest and Comment*, for it permeates the filing itself. To wit: the Consumer-Owned Utilities took the Commission very seriously when it directed interested persons to develop an RTO proposal through regional collaboration. As such, our utility constituents earmarked substantial resources in order for us to fully participate in the development of RTO West, and we have done so. Now we find that the filing itself repeatedly ignores or is silent on issues that are critical to our utilities and

that were part of the negotiated regional consensus. Such errors and omissions were often not apparent until the days immediately preceding the filing, or upon review of the filing itself. In short, the Consumer-Owned Utilities are in the awkward position of protesting aspects of the very proposal we were charged by the Commission to collaborate upon; and unsure if components of the regional consensus we helped create are in fact memorialized anywhere but in our memories.<sup>2</sup> Future efforts in the ongoing development of the RTO West must be a true collaboration among interested persons rather than an intermittent one, in order to honor the Commission's directive on regional collaboration.

**I.  
THE FILING UTILITIES' PROPOSED GOVERNANCE STRUCTURE  
FALLS SHORT OF ORDER NO. 2000 POLICIES**

The Filing Utilities request an expedited declaratory order pursuant to 18 C.F.R. § 35.34(c)(3) that “[t]he proposed governance structure of RTO West as set forth in its Articles of Incorporation and Bylaws satisfies the independence characteristic of a regional transmission organization as set forth in 18 C.F.R. § 35.34(j)(1) and that the proposed Articles of Incorporation and Bylaws of RTO West otherwise meet the Commission's regional transmission organization policy.” RTO West Filing at 93. For the reasons set forth below, the proposed governance structure of RTO West fails to meet the Commission's RTO policy, and in particular fails to meet the independence characteristic.

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<sup>2</sup> For example (and as discussed in detail below), the RTO West Bylaws substitute a new proposal for the regional consensus on Member voting rights; firm transmission rights attained in return for payment are only established for Filing Utilities; and the planning provisions do not capture the conclusions agreed to by the Regional Representative Group.

The Commission's RTO policy is embodied in the Commission's stated goals and in Order No. 2000, and has been implemented in Commission orders thereunder. As such, the minimum characteristics and functions detailed in Order No. 2000<sup>3</sup>, and the Commission's overall goal of promoting efficiency in wholesale electric markets and ensuring that electricity consumers pay the lowest possible price for reliable service<sup>4</sup>, frame the Commission's RTO policy.

The Commission clearly states in Order No. 2000 the importance of independence in its RTO policy:

In the [Notice of Proposed Rulemaking], we repeated our earlier statement that "the principle of independence is the bedrock upon which the ISO must be built" and emphasized that this principle must apply to all RTOs, whether they are ISOs, transcos, or variants of the two. We also stated that "[a]n RTO needs to be independent in both reality and perception." We reaffirm both principles in the Final Rule. Order No. 2000, F.E.R.C. Stats. and Regs. ¶¶31,089 at 31,061.

Order No. 2000 is equally clear in documenting the Commission's emphasis on the RTO collaborative development process "whereby transmission owners, market participants, interest groups, and governmental officials can attempt to reach mutual agreement on how best to establish RTOs in their respective regions."

A key element of this Final Rule is our commitment to the use of the collaborative process to assist in the voluntary formation of RTOs. . . . We expect that, following the initial Commission-sponsored workshops, parties in each region will work collaboratively to identify the appropriate RTO regions, identify all transmission owners and facilities in each region,

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<sup>3</sup> *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), F.E.R.C. Stats. and Regs. ¶¶31,089 (2000) at 30,993, *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), F.E.R.C. Stats. and Regs. ¶¶ 31.092 (2000), *review pending sub nom*, *Pub. Util. Dist. No. 1 of Snohomish County, WA v. F.E.R.C.*, nos. 00-1174 et al. (D.C. Cir) (hereafter, "Order No. 2000").

<sup>4</sup> *Id.*

and develop a timely application in accordance with the Final Rule. Order No. 2000, F.E.R.C. Stats. and Regs. ¶31,089 at 31,221.

1. The Proposed Bylaws Inequitably Allocate Member Voting Rights And In So Doing, Discard Independence and Broad Regional Consensus.

The RTO West Regional Representatives Group reached a consensus framework establishing RTO West governance, including Members' voting rights. That consensus governance framework was based on the work of an RTO West technical workgroup. The governance workgroup produced a work-product that is memorialized in the "Summary of RTO West Governance Consensus Proposal" dated August 21, 2000, and attached to this *Protest and Comment* as Exhibit 2. The Summary of RTO West Governance Consensus was presented by the governance workgroup to the Regional Representatives Group during its August 23-24, 2000 meeting. The Regional Representatives Group accepted the Summary of RTO West Governance Consensus without change at that meeting.

The Summary of RTO West Governance Consensus covers many issues that are the subject of formal bylaws. The voting rights of a Member class are but one component of the consensus, which was produced by the governance workgroup as a package proposal. The consensus provides for five RTO West Member classes. Each Member class has the right to select six representatives to a committee whose thirty members, in turn, are charged with electing the RTO West Board of Trustees. The Transmission Dependent Utility (TDU) Member class is, along with other Member classes, charged with selecting such committee members on the basis of one Member, one vote. To wit: the Summary of RTO West Governance Consensus states that "Members vote by

class except as provided below with respect to sub-class voting rights in Trustees Selection Committee member elections." The TDU member class has no TDU sub-classes established in either the governance workgroup's consensus framework, or in the Summary of RTO West Governance Consensus adopted by the Regional Representatives Group. Exhibit 2 at 2.

In contrast, the filed Bylaws of RTO West propose to replace Member rights that were negotiated among the RTO West regional collaborative group with a last minute substitute. The filed Bylaws preserve the five RTO West Member classes as defined in the Regional Representatives Group consensus; see RTO West Filing, Attachment J "Bylaws of RTO West", at 9-10. Pursuant to those definitions, Avista Corp., Montana Power Co., Nevada Power Co., Portland General Electric Co., Puget Sound Energy, Inc. and Sierra Pacific Power Co. qualify as Major Transmitting Utilities at present. However, these entities assert that they will become Members of the TDU class because, as entities that do not own transmission facilities (assuming such assets are sold to TransConnect), their interests align with the TDU class.

Pursuant to the Filing Utilities' proposal, certain large distribution utilities -- namely, those that comprise the TransConnect Filing Utilities (the "TransConnect TDUs") and perhaps one or two other entities -- will dictate the choice of two of the six members of the Trustee Selection Committee from the Transmission Dependent Utility class.<sup>5</sup> At the same time, TransConnect itself will be a

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<sup>5</sup> "In the election of members of the Trustees Selection Committee, the voting rights of the Members shall be as follows:

Member of the Major Transmitting Utility class, and will join Bonneville Power Administration, Idaho Power Company and PacifiCorp in selecting six representatives to the Trustee Selection Committee from that Member class.

The Filing Utilities' substitute proposal is in lieu of the Regional Representatives Group consensus described above, and is an unacceptable departure from that broad policy consensus. The substitute bylaws proposal apportions the TDU votes for Trustee Selection Committee members based on relative load size of the Member utility, and thereby inappropriately diminishes the rights of the great majority of TDU Members. *Id.* at 18-19. The proposal has the effect of tilting governance and representation on RTO West to transmission

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(ii) Transmission-Dependent Utilities Class. Six members of the Trustees Selection Committee shall be representatives of, and shall be elected by, the Members in the Transmission-Dependent Utilities Class. The Members in the Transmission-Dependent Utilities Class shall be entitled to nominate and vote in the election of such six members of the Trustees Selection Committee, but shall not be entitled to nominate or vote in the election of any other members of the Trustees Selection Committee. Notwithstanding the foregoing, in the election of such six members of the Trustees Selection Committee, the voting rights of the Members in the Transmission-Dependent Utilities Class shall be as follows:

(A) In the nomination of and voting for two members of the Trustees Selection Committee, the voting power of each Member in the Transmission-Dependent Utilities Class shall be to the ratio of (1) the average energy demand of the loads served by the distribution facilities of such Member to (2) the total average energy demand of the loads served by the distribution facilities of all of the Members of the Transmission-Dependent Class. For this purpose, the average energy demand shall be for loads served by each such Member's distribution facilities within the RTO West Geographic Area for most recent the calendar year ending at least 90 days prior to the date set for the election of members of the Trustees Selection Committee. Such average energy demand shall be certified under oath or affirmation by each Member of the Class to RTO West and to each other Member of the Transmission-Dependent Utilities Class.

(B) In the nomination of and voting for the remaining four members of the Trustees Selection Committee, each Member in the Transmission-Dependent Utilities Class shall have one vote; provided, however, that those Members comprising 50% or more of the voting power in the Member Sub-Class described in Section 3(b)(ii)(A) of this Article V shall not be permitted to vote in this Member Sub-Class.

RTO West Filing, Attachment J at 17-19.

owners' interests and away from independent and broad-based input. During the governance workgroup negotiation of the bylaws package that was presented to the Regional Representatives Group, there were no such load weighted proposals to apportion Member voting rights. Had there been any such proposal, it would have met with vigorous opposition from any number of technical and policy participants on the governance workgroup and the Regional Representatives Group.

There has been no sound rationale articulated for treating the TransConnect TDUs differently from other TDUs in the class.<sup>6</sup> The only reason for the distinction stated in the various governance workshops that dealt with this late-offered proposal was that they are bigger than the other members, and should have a larger and guaranteed voice. Of course, their size, financial position, and staffing abilities will already give the TransConnect TDUs disproportionate influence in the class. That is no reason to institutionalize the disproportionality. With respect to the interests that the TransConnect TDUs represent vis-à-vis the RTO and the Major Transmitting Utilities, they are in all respects situated similarly to every other TDU. The TransConnect TDUs have no more at stake because they may have more facilities; per customer and per kWh, the investment each TDU has in distribution facilities will likely be far more similar than different. Financial viability and nondiscriminatory transmission access is just as important to smaller entities than larger ones. There is no basis, and

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<sup>6</sup> The only meaningful difference between the TransConnect and other TDUs is that the former don't even exist yet, and may or may not depending on the outcome of the TransConnect docket, Commission Docket No. RT01-15-000.

certainly not one articulated in the filing, for giving them different voting rights from all other TDUs.<sup>7</sup>

Moreover, the issue resolutions contained in the Summary of RTO West Governance Consensus are a package, based on the RTO West governance workgroup and Regional Representatives Group discussions. The Filing Utilities substitute a voting rights proposal that excises a piece of the consensus package, presumably believing that the remainder of the package would not fail as a result. Such a departure from a negotiated governance consensus package should be rejected by the Commission, and the "one Member, one vote" standard should be reinstated for the TDU Members voting for their representatives on the Trustee Selection Committee.

In the alternative, should the Commission conclude that load-weighted voting is acceptable, the proposal put forward by the Filing Utilities must be substantially modified. As proposed by the Filing Utilities, the two members of the Trustee Selection Committee to be selected under the load-weighted voting mechanism would be elected if they receive a simple majority of the vote on a load-weighted basis. Under this scheme, two or three of the largest distribution utilities could dominate the voting class since together they would account for

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<sup>7</sup> The retail customer class has distinct subclasses, but, unlike the defined "Sub-Class" proposed for the TDU class, for a good reason. Large industrial retail users are more likely than smaller retail customers to be connected directly to the transmission grid and so more likely to need a voice separate from smaller customers and the TDUs that may also represent the individual customers they serve. Unlike the distinction without a difference that the TransConnect utilities propose for the TDU class, the retail class distinction was included in the original governance consensus documents presented to and approved by the Regional Representatives Group. See Exhibit 1 at 1.

well over 50% of the load in the RTO West region.<sup>8</sup> This violates Order No. 2000's independence requirements, since these utilities would be able to virtually dictate who is elected to fill these seats.

As an alternative to the Filing Utilities' flawed proposal, in order to preserve the independence of RTO West, a supermajority voting requirement of 80% of the entire TDU class should be imposed on the load-weighted voting mechanism proposed in Article V, Section 3(b)(ii)(A); see RTO West Filing, Attachment J at 18.<sup>9</sup> This approach ensures that the persons elected to fill these seats receive support not only from the two or three largest distribution investor-owned utilities in the region, but also from a substantial number of the large publicly-owned utilities in the region, including, for example, major players such as the Cities of Seattle and Tacoma, or else from a broad coalition of the smaller publicly-owned distribution utilities in the region. This will ensure that the persons elected to fill these two seats will serve the broad interests of the region's distribution utilities and not just a small subset of those utilities that happen to operate large distribution systems.

The Filing Utilities' proposal for a one-member, one-vote TDU Sub-Class is, as proposed in Article V, Section 3(b)(ii)(B) in the Bylaws, is also flawed

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<sup>8</sup> Bonneville Power Administration, Idaho Power Co. and PacifiCorp are expected to qualify for the Major Transmitting Utilities Member class. Thus, one may reasonably expect that Avista Corp., Montana Power Co., Nevada Power Co., Portland General Electric Co., Puget Sound Energy, Inc. and Sierra Pacific Power Co. will dominate the Transmission Dependent Utility class on a weighted load basis.

<sup>9</sup> If no candidate received the required 80% vote, a runoff would be required as provided in Art. V, Section 3(d) of the proposed Bylaws. RTO West Filing, Attachment J at 22.

because it specifies that “those Members comprising 50% or more of the voting power in the [load-weighted] Member Sub-Class. . . shall not be permitted to vote in this Member Sub-Class.” RTO West Filing, Attachment J at 18-19. This provision is hopelessly ambiguous and should be eliminated.<sup>10</sup> If the Bylaws are changed in this way, the result would be that all TDUs vote in each Sub-Class, with two members elected by load-weighted voting and four elected on the basis of membership. This approach goes much farther toward ensuring that all TDU representatives on the Trustee Selection Committee enjoy broad support among the region’s distribution utilities than the proposal offered by the Filing Utilities. It likewise better protects the independence of the RTO. Finally, it avoids what would necessarily be an arbitrary line-drawing exercise to determine which utilities should be excluded from the one-Member, one-vote Sub-class proposed in Section 3(b)(ii)(B) of Article V (RTO West Filing, Attachment J at 18-19).

In summary, the regional collaborative group governance consensus should be reinstated. The Transmission Dependent Utility Member class voting structure for Board of Trustees’ Selection Committee should be one member, one vote (as is the case for the Major Transmitting Utilities). The “Member Sub-Classes” which are proposed for Transmission Dependent Utilities should be eliminated. In the alternative, if load weighted voting is deemed appropriate, then

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<sup>10</sup> The language provides no clue as to how the 50% calculation would be performed. Does this exclude only those Members that individually hold 50% or more of the voting in the load-weighted class? If so, it is unlikely to exclude any utility. Is it, on the other hand, meant to exclude some combination of Members who together comprise 50% or more of the load-weighted voting? If so, it is unclear how many utilities would be included in the combination or where the cut-off would be. Read literally, the provision could exclude all Members of the TDU class from voting in the one-utility, one-vote Sub-Class since, taken together, those utilities “comprise 50% of more” of the load-weighted voting.

restructuring the Filing Utilities' load-weighted governance proposal in the manner suggested above will help remedy the flaws in the Bylaws as presently cast.

2. The Trustee Qualification Criteria Proposed by the Filing Utilities Will Limit the Eligibility of Persons with Diverse Experience.

The Trustee Selection Committee, once seated, selects the Board of Trustees from among an independently compiled pool of nominees. Prospective nominees are screened, so that at least two-thirds of the pool consists of nominees with "substantial experience" relative to an entity "having revenues or an operating budget greater than or equal to five percent (5%) of the gross book value of the assets operated by the RTO." RTO West Filing, Attachment J at 27-28.

The threshold financial criteria apply to the majority of Trustee nominees, and reveals a bias in favor of individuals coming from large corporate concerns – that is, persons most like the investor-owned utilities themselves. Such a bias lacks merit particularly in this region, where many qualified candidates with relevant and "substantial" experience in the public sector would fail the threshold financial criteria. On the other hand, a slight expansion of the criteria would open the door for many such potential nominees: if an individual has had significant responsibility for an organization with revenues, an operating budget or assets with a gross book value of equal to 5% of the gross book value of the assets operated by the RTO, then that individual should qualify within the two-thirds of nominees required to meet such criteria. *Id.* Such nominees, coming from a broader set of backgrounds, will help assure independent perspectives.

3. The Proposed Bylaws Compromise Members' Rights and Muzzle the Board Advisory Committee.

Order No. 2000 made clear that, while the Commission plainly wants RTO Governing Boards to be independent, the Commission was also concerned the RTO Boards not become, by virtue of their independence, isolated from the membership and membership concerns of the RTO. Order No. 2000, F.E.R.C. Stats. and Regs. ¶¶31,089 at 31,074.

Governance by an independent board exposed meaningfully only to the RTO Staff and, by the nature of the relationships between Staff and the participating transmission owners, the transmission owners, is directly counter to the thrust of Order No. 2000. Accordingly, the RTO West Regional Representatives Group sanctioned a consensus governance framework that includes a defined committee whereby Members have regular, meaningful access to the RTO West Board of Trustees. The purpose, function, scope and access of this Board Advisory Committee are negotiated pieces of the consensus governance package discussed in Section II.1, above, and memorialized in the Summary of RTO West Governance Consensus.<sup>11</sup>

Without explanation or warning, the RTO West Filing proposed by the Filing Utilities significantly reduces the purpose and function of the Board Advisory Committee, as well as the Committee members' access to the Board of Trustees and the scope of issues upon which the Board of Trustees must seek Committee advice. See RTO West Filing, Attachment J at 39-42. First, pursuant

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<sup>11</sup> The Board Advisory Committee in the consensus governance framework advises the Board of Trustees as a whole, over time establishing a known and familiar group of advisors that may act as an effective compliment and counterpart to RTO West staff. See Exhibit 2 at 2.

to the filed Bylaws, Trustees may delegate to a committee of Trustees, consideration of and action upon those issues brought to it by the Board Advisory Committee. See RTO West Filing, Attachment J at 39. To delegate the Board Advisory Committee to a subset of Trustees is to dampen, if not smother, the Committee's purpose and effect by minimizing the role and access of the Committee vis a vis the Board of Trustees. To the contrary: Trustee subcommittees should be prohibited from taking action on those issues where Board Advisory Committee advice is given, and Section 1 of Article VII should be revised to include "Consider or take action upon those issues specified in Section 6c of this Article VII". RTO West Filing, Attachment J at 39.

Elsewhere, the RTO West filed Bylaws are revised away from the Regional Representatives Group consensus governance framework, to diminish the Board Advisory Committee purpose, function, scope and access to Trustees. In most places, the offending revisions remove language that was negotiated and intentionally placed in Section 6 of draft Bylaws Article VII. As such, many of the following comments require that stricken language be replaced in the Bylaws in order to effectuate the intent and purpose of parties who negotiated these terms and conditions in the first place, at the RTO West governance workgroup and subsequently before the Regional Representatives Group.

Bylaws Article VII, Section 6(a) as filed was revised from the RTO West Regional Representatives Group consensus governance framework to delete language in the first sentence of that Section that is material and substantive – indeed, language that captures the very purposes of this Board Advisory

Committee. *Id.* at 40-41. The Section as filed should be revised and the stricken language reinstated, so that the first sentence in Section 6(a) reads:

The Corporation shall have a Board Advisory Committee to provide advice to the Board of Trustees, promote input on Board decisions and provide a focal point for dissemination of information on matters of significance to the Corporation.

Next, Section 6(b) of Article VII deletes a critical concept in the RTO West Regional Representatives Group consensus governance framework. The filed Bylaws delete language last seen by the governance workgroup in the draft Bylaws, whereby the Board Advisory Committee "shall assist and advise the Board Audit Committee in the performance of its responsibilities." See RTO West Filing, Attachment J at 41. There is no reason given for the deletion of this language, which was a part of the draft Bylaws for months (as were the other items in this Section 6 that were excised from the Bylaws as filed). Such a duty was not placed in the Bylaws merely to take up space – it is an affirmative duty on part of the Board Advisory Committee to provide assistance to the Trustees in performance of their duties, in an open and independent manner. Such a duty should be reinstated in the Bylaws.

Section 6(c) is similarly minimized by the removal of material terms and conditions. Drafters of this section in its original form intended there to be certain issues that the Board Advisory Committee was required to consider, and that then became the required subject of the Committee's direct advice to and interaction with the Trustees. These requirements have been removed from Section 6(c) and replaced with an "opportunity to advise" the Trustees on such matters. The method for such an "opportunity" is via the Chairperson of the

Board Advisory Committee only, as described below concerning Section 6(f).

The requirements of the pre-filing draft Bylaws in this regard should be reinstated in Section 6(c).

In addition, Section 6(c) contains new language that purports to describe the Board Advisory Committee's "opportunity" to advise the Trustees. The "opportunity" is nothing more than a notice requirement; see RTO West Filing, Attachment J at 41. That notice requirement, to be meaningful, must be coupled with a requirement that the Trustees receive and in good faith consider input from the Board Advisory Committee at regularly scheduled meetings of the Trustees.

Section 6(d) of Article VII removes the consensus governance framework provisions for developing procedures to admit public participation and input to the Board Advisory Committee. The Board Advisory Committee is open to all comers and such procedures are appropriate to the organized functioning of the Committee. The following language from the pre-filing draft Bylaws should be reinstated: "The Board Advisory Committee shall also develop procedures to ensure public notice of each and all of the matters before the Committee, and to ensure that members of the public have an adequate opportunity to comment on issues under consideration by the Committee."

In a final effort to minimize the Board Advisory Committee, the Bylaws are revised in Section 6(f) to eliminate regular meetings of the Committee with the Board of Trustees. Instead, the Trustees are required only to meet with the Board Advisory Committee chairperson, and the Committee receives only notice of that meeting. RTO West Filing, Attachment J at 42. Again, the purposes of

the Committee as negotiated are to “provide advice to the Board of Trustees, promote input on Board decisions and provide a focal point for dissemination of information on matters of significance to the Corporation.” Such purposes cannot be realized if the Trustees do not meet with the Board Advisory Committee on a regular basis, no matter how talented and effective a given chairperson may prove to be. The filed version of Section 6(f) should be rejected and the following negotiated version of this Section restored:

The Board Advisory Committee shall select a Chairperson and a Vice-Chairperson who will convene and conduct the meetings of the Committee. The Board of Trustees shall be required to meet with the Board Advisory Committee not less than four times each fiscal year, in conjunction with each regularly scheduled meeting of the Board of Trustees.

The restrictions on Board Advisory Committee access to the Board of Trustees colors what otherwise would be benign and common governance provisions. For example, under the proposed Bylaws, Trustees may close their meetings for the reasons listed in Attachment J at 23 or for “other matters which are reasonably and in good faith determined by the Board of Trustees to be entitled to confidential treatment.” *Id.* And Trustees may act on a matter without even meeting; *id.* at 31 (Section 7(d) of Article VI).<sup>12</sup> If the members of RTO West were comfortable that their Board Advisory Committee was a meaningful and active participant in the governance process of RTO West, such provisions would be of little concern. But with the isolation of the Board of Trustees from the stakeholders that the Filing Utilities’ unilateral redraft of the Bylaws imposes,

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<sup>12</sup> At a minimum, Trustee actions regarding those issues upon which the Trustees must receive advice from the Board Advisory Committee should be acted upon by the Trustees at a meeting, not by consent letter as permitted in this Section 7(d).

such opportunities for secrecy and non-public action are alarming particularly in a context where so many provisions, recited above, seem designed to concentrate power in the hands of a few major players.

The combined effect of these Bylaws provisions is to limit interested persons' access to the RTO West Board of Trustees, and to compromise the access of Members to the Trustees. Section 7(d) permits Board of Trustees action without a meeting. To the extent Trustee meetings are closed to Member attendance and participation pursuant to Section 9, the reasons for such closure should be specified in the Bylaws and the broad exception based on Trustees' reasonable and good faith determination eliminated.

Members' rights to meaningfully participate in the RTO are further compromised if a Member faces challenges to its participation from within the RTO. That is to say, a Member's qualification as a Member, or as belonging to a particular Member class, may be contested or challenged at any time. The time and expense of such a challenge (legitimate or otherwise) is borne by the challenged Member, irrespective of the outcome. See RTO West Filing, Attachment J at 10-11 (Article IV, Section 3(e)); and Attachment J at 16 (Article IV, Section 12).

Two modifications to the Bylaws would help cure this diminution of Members' exercise of their RTO West rights. First, challenges to membership or Member class qualification should be reviewed and heard by the Board of Trustees upon challenged Member's request, before the challenged Member is forced into dispute resolution. In addition, and in order to discourage frivolous

challenges, the judge or arbitrator charged with ruling in a dispute resolution proceeding should be empowered to reasonably apportion costs arising from a challenge to membership or Member classification among the parties that is based on the outcome of the proceeding.

4. The Bylaws as Proposed Sanction Affiliate Status That Diminish RTO West's Independence.

There are portions of the RTO West filing where, because of permitted financial holdings and other authorized conflicts of interest, RTO West appears to abandon, rather than embrace, independence. Taken collectively, these provisions severely diminish RTO West's independence, to the point that the filing violates Order No. 2000's independence characteristic.

To begin, the proposed definition of "Affiliate" in the RTO West Bylaws contains a major loophole: "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." RTO West Filing, Attachment J at 1, B-1. This provision appears to be crafted to grant special privileges to the utilities participating in the TransConnect filing and should therefore be stricken. The provision allows a distribution utility to own a 100% stake in the Independent Transmission Company ("ITC") and still not be considered an "Affiliate" for purposes of the RTO West Bylaws. This loophole therefore puts the independence of RTO West into serious question.

For example, a distribution utility holding a large financial stake in TransConnect would, by virtue of this loophole in the "Affiliate" definition, be

allowed to vote in both the Major Transmitting Utility and Transmission-Dependent Utility classes. The result would be a serious erosion of the independence of RTO West since the common financial interest of the two entities may override the disparate interests the two entities would otherwise represent. Further, the loophole results in a special privilege for the TransConnect utilities, the right to participate in the TDU class at the same time as their affiliate, TransConnect, participates in the Major Transmitting Utility class. All other Members of RTO West will be required to elect representation in only one class, even if they own both transmission and distribution facilities. Hence, because neither the vertically integrated Filing Utilities not participating in TransConnect (Bonneville, Idaho Power and PacifiCorp) nor any of the publicly-owned distribution utilities would be accorded the privilege to participate in more than one Member class, the loophole is discriminatory and must be stricken.<sup>13</sup>

The elimination of this loophole in the "Affiliate" definition will assure that no entity seeking membership in the RTO could own more than five percent of TransConnect, or of any other ITC that participates in RTO West in the Major Transmitting Utility class. In the alternative, if the Commission concludes that some special allowance should be made for the utilities participating in TransConnect, a distribution utility's allowable ownership interest should be

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<sup>13</sup> Under the proposed Employee Code of Conduct, for example, an employee could own a substantial financial interest in a distribution utility, which in turn could hold a large financial stake in the proposed ITC TransConnect. Even though the RTO employee could be making decisions with critical economic impacts on both TransConnect and the distribution utility, the Employee Code of Conduct may not bar the employee's financial stake in those companies – it would prohibit financial involvement only in "Market Participants" and since neither the distribution company nor TransConnect would be selling electric power, they would not clearly qualify as "Market Participants" under the FERC definition relied upon by the Bylaws.

strictly limited to no more than a ten percent share of the ITC and neither the TransConnect utilities nor other utilities in the RTO West region should be allowed to increase their ownership share in TransConnect beyond the ten percent limit. Similarly, the Commission should place specific temporal limits on ownership of the ITC by other utilities in the region, including the distribution utilities divesting their transmission assets into the ITC. Hence, the Commission should require that regional utilities and others taking service from RTO West divest any passive ownership in the ITC within two years. Only such a strict requirement can assure that control of the ITC is clearly separated from others with financial interests in the transmission system, and therefore ensure the independence of RTO West.<sup>14</sup>

Apart from the definition of Affiliate, an additional conflict of interest implicates the proposed TransConnect ITC and bears mention here. To wit: there is a potential conflict arising from performance of RTO West planning functions by TransConnect. In a separate filing (Commission Docket No. RT01-15), the TransConnect sponsors request Commission sanction of TransConnect's performance of RTO West planning functions. In the RTO West Filing, ITCs (such as TransConnect) may unilaterally request approval from the Commission to perform additional RTO West functions in the future. See "Order 2000 Compliance Filing and Petition for Declaratory Order", Docket No. RT01-15

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<sup>14</sup> The definition of "Independent Transmission Company" in the proposed Bylaws is inconsistent with the definition in both the Trustee Code of Conduct and the Employee Code of Conduct. The definition in the Bylaws requires the Independent Transmission Company to meet the Commission's independence requirements, but the definition in both Codes of Conduct adds the phrase "and which company has divested its electric transmission systems." The added phrase makes no sense in this context and appears to have been added to the Codes of Conduct in error.

(October 16, 2000) (the "TransConnect Filing") at 26-27, 32; see also RTO West Filing, Attachment S "RTO West Transmission Operating Agreement" at 73-74.

The conflict of interest arises from TransConnect's vested interest in promoting construction of new transmission capacity over other ways of alleviating congestion. As a for-profit transco, one may expect that TransConnect will deploy itself in order to maximize the profits for its shareholders. Construction may, or may not, be in the best interest of RTO West. The independence (or not) of TransConnect is unrelated to the for-profit driver behind its performance of the proposed shared RTO function. Rather, TransConnect's performance of the shared function creates a conflict of interest as between RTO West and TransConnect. In turn, the conflict of interest further jeopardizes the independence of RTO West.

With respect to RTO West's Board of Trustees, the Trustee Code of Conduct leaves a substantial gap in its prohibitions on Trustee financial dealings with entities having a financial interest in the operation of the RTO. Specifically, the proposed Trustee Code of Conduct would prohibit Trustees from holding a financial interest in any "Market Entity" subject to limited exceptions. RTO West Filing, Attachment J at B-4. "Market Entity" is, in turn, defined to include "any Market Participant, Member or Scheduling Coordinator" or any affiliates of such entities. *Id.* at B-1. This definition of "Market Entity" is flawed because it leaves out a potentially significant subset of entities that may have a substantial interest in the operation of the RTO – specifically, those entities that are eligible for

membership but choose not to become Members and do not qualify as “Market Participants.”

The Commission’s definition of “Market Participant” is, in turn, incorporated in the proposed Bylaws. This definition excludes a subset of those entities that may have a substantial interest in the operation of RTO West. The Commission’s definition of “Market Participant,” 18 C.F.R. § 35.34(b)(2), includes any entity that: (1) “sells or brokers electric energy, or provides ancillary services to an RTO”; and, (2) “[a]ny other entity that the Commission finds has economic or commercial interests that would be significantly affected by” an RTO’s actions. Hence, under the first prong of the Commission’s definition, many entities that have a substantial interest in RTO West’s operations would not be considered “Market Participants.” For example, any wires company that is not affiliated with a generator, does not possess a default supply obligation and is not a power broker would not be a market participant. Yet such an entity (TransConnect, for example) may move very large amounts of power across RTO-controlled transmission lines and therefore have a direct and substantial financial interest in the operation of the RTO. The only way such entities could be included in the definition of “Market Participant” would be through an appeal to FERC under the second prong of the definition. Relying on such appeals adds needless expense, complication, and unpredictability to the functions of an RTO. It would be far more efficient and predictable to simply spell out a more inclusive definition in the Trustee Code of Conduct.

“Member” likewise leaves out a potentially large number of entities that have a significant financial interest in the operation of RTO West. Thus, for example, a distribution company or some other entity not qualifying as a “Market Participant” could avoid this restriction simply by electing not to become a Member of RTO West or by allowing its membership to expire.

Finally, the Trustee Code of Conduct is inadequate because it fails to prohibit Trustee financial involvement in entities that have substantial dealings with the RTO not involving the power market. There is, for example, no prohibition on a Trustee owning financial interests in vendors providing real estate, technology, or other goods and services to the RTO. *See generally, RTO West Filing*, Attachment J at B-1 through B-7.

Accordingly, the prohibition on Trustee financial interests in “Market Entities” should be expanded so that Trustees are prohibited from holding financial interests in any entity that buys or sells power moving across RTO West-controlled transmission lines, or purchases or relies upon transmission service provided by RTO West, whether or not such entity is a “Member” or “Market Participant.” In addition, Trustees should be prohibited from holding financial interests in entities that supply substantial amounts of goods and services to the RTO, whether or not those entities are involved in the transmission of electric power. The independence of the RTO can be assured only if these loopholes in the Trustee Code of Conduct are closed. Nor should Trustees be permitted to petition the Commission for an exemption, in whole or in

part, to the prohibitions on Trustee financial interests. See RTO West Filing, Attachment J at 34-35 (Bylaws of RTO West, Article VI, Section 13(b)(ii)).

The proposed Employee Code of Conduct leaves even larger holes in its prohibition on financial involvement in entities with financial interests in the operation of the RTO. Specifically, the Employee Code of Conduct would prohibit employee financial involvement in "Market Participants," allowing employees to have a financial stake, or even a management role, in any entity not qualifying as a "Market Participant." RTO West Filing, Attachment J at A-3 through A-5. Thus, for example, an employee could own substantial stakes in a power scheduler or a distribution utility involved with or served by RTO West yet not violate the Code of Conduct. Similarly, the employee could have a substantial stake in a vendor providing RTO West with goods or services and not run afoul of the Code of Conduct. These gaps in the Employee Code of Conduct call into question whether the employees of RTO West will operate the RTO in a fair and unbiased manner, thereby undermining the independence of the RTO.

The Employee Code of Conduct is similarly lacking in its failure to include any prohibition on ex-employees engaging in transactions that would constitute a conflict of interest or breach of loyalty to RTO West. Specifically, Section III.E of the Code of Conduct, entitled "Employee Movement," requires only that the name of an ex-employee be posted on the RTO West Website if that employee is hired by a "Market Participant." RTO West Filing, Attachment J at A-7. Other than this posting requirement, there is no prohibition on the ex-employee appearing in a representative capacity in the same matter on which it once represented the

RTO. Nor is there any prohibition on the ex-employee using confidential or proprietary information to aid its new employer. And there is no restriction at all if the ex-employee is hired by an entity that does not qualify as a "Market Participant." Hence, in order to ensure that ex-employees do not compromise the independence of the RTO, restrictions should be included in the Employee Code of Conduct that prohibit (at a minimum): (1) use of confidential or proprietary information to which the ex-employee had access; (2) participation of the ex-employee in matters where the employee once represented the RTO, for a period of at least one year after leaving the RTO; (3) participation of the ex-employee in other types of matters where conflict of interest concerns may arise; and, (4) ex-employee involvement in entities that do not qualify as "Market Participants" but nonetheless have a substantial financial stake in the operation of the RTO, such as distribution companies and vendors serving the RTO.

## II.

### **THE RTO WEST PROPOSED GEOGRAPHIC SCOPE AND CONFIGURATION MEETS THE COMMISSION'S ORDER NO. 2000 CHARACTERISTIC, BUT ITS PROPOSED SCOPE WITH RESPECT TO FACILITIES INCLUSION DOES NOT**

The Filing Utilities request an expedited declaratory order pursuant to 18 C.F.R. § 35.34(c)(3) that "[t]he proposed scope and configuration of RTO West as set forth in this application would satisfy the scope and regional configuration characteristic of a regional transmission organization as set forth in 18 C.F.R. § 35.34(j)(2)." RTO West Filing at 93. The Consumer-Owned Utilities agree that, as to *geographic* scope and configuration, the geographic scope and configuration of RTO West meets or exceeds the minimum scope and regional configuration characteristic of a regional transmission organization.

In addition, the Consumer-Owned Utilities believe that the proposed RTO West is appropriately structured in a manner that will facilitate expansion in the future if such expansion is warranted. Given the Commission's interest in open architecture,<sup>15</sup> this is the appropriate approach for RTO West since there could be circumstances under which subsequent expansion may be necessary or appropriate to efficiently administer and operate the RTO West Controlled Transmission Facilities<sup>16</sup> and where doing would not increase cost shifts across seams, create cost shifts within RTO West or make the resulting organization unwieldy or administratively too complex. In particular, because of the shared generation and other resources among some utilities in RTO West and some of those in Desert STAR, Desert STAR participants may be logical candidates for such future expansion.

As we show in Section III below, however, the RTO West proposal plainly does not satisfy the other prong of Order No. 2000's Characteristic 2, which requires that "[a]ny RTO proposal filed with us should intend to operate all transmission facilities within its proposed region." Order No. 2000, F.E.R.C. Stats. and Regs. ¶¶31,089 at 31,164. While the Commission contemplated that gaps in transmission control might occur because some transmission owners in a region might not agree to join the RTO, it did not appear to contemplate that

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<sup>15</sup> "[W]e adopt the principle of open architecture in order that the RTO and its members have the flexibility to improve their organization in the future in terms of structure, geographic scope, market support and operations to meet market needs. . . . [O]pen architecture design accommodates change in the geographical scope of RTOs." Order No. 2000, F.E.R.C. Stats. and Regs. ¶¶31,089 at 31,170.

<sup>16</sup> "RTO West Controlled Transmission Facilities" are defined in the RTO West Filing, Attachment S at 90. See discussion in Section III.1, below.

transmission holes would be created by participating owners withholding necessary transmission facilities. Accordingly, as set forth more fully in Section III below, as to the scope of RTO West's "control of facilities within a region" required by Order No. 2000, the Commission should reject the RTO West proposal. *Id.*

### III.

#### **THE TRANSMISSION OPERATING AGREEMENT FILING SHOULD BE TREATED BY THE COMMISSION AS INFORMATIONAL ONLY, OR OTHERWISE REJECTED AS DEFICIENT IN ITS CURRENT FORM**

The Transmission Operating Agreement ("TOA") is substantially incomplete, and thus is not ripe for the Commission's declaratory order at this time. Indeed, only three of the nine Filing Utilities support the TOA in its current form, and all nine of the Filing Utilities advise the Commission that modifications – of unknown scope and substance -- may be submitted by the Filing Utilities in the near future. Furthermore, the justness and reasonableness of the TOA depend on facts and determinations that haven't been made or developed yet. For example, we discuss below that the TOA contains different definitions of the facilities to be operationally turned over to RTO West depending on whether the facilities are within or astride congestion zones. Whether the definitions comply with Order No. 2000 in some significant measure may turn on how congestion zones are determined and what they turn out to be. That determination, however, has not yet been made and is not yet before the Commission.

Accordingly, the Consumer-Owned Utilities recommend that the Commission deny the requested declaration approving the TOA, and instead treat it and the subject matters it contains as if they were filed with the

Commission for informational purposes only.<sup>17</sup> If the Commission determines that it will treat the TOA and related matters as an informational filing only, then the Consumer-Owned Utilities' protest and comments that follow should be regarded as only informational filings as well.

In the alternative, if the Commission concludes it must act upon the TOA and related matters in this filing, then the deficiencies of that Agreement as currently filed are detailed below in the protest and comment of the Consumer-Owned Utilities. In either case, at such time as the TOA, including the attachments thereto, is complete and filed with the Commission, a subsequent Notice of Filing and opportunity for public intervention, comment and/or protest should be afforded interested persons.

1. The Transmission Operating Agreement Inappropriately Permits a Transmission Owner To Exclude Facilities Used for Wholesale Power Transfers to Existing Distribution Utilities From RTO West.

The topic of which transmission facilities each Filing Utility shall include RTO West has been extensively debated during the RTO West technical workgroups and by the policy level regional collaborative group. Despite the extensive discussion, the RTO West filing does not identify the specific transmission facilities that a given Filing utility will include in RTO West. See RTO West Filing, Attachment S at 96, 98-99 (a series of blank exhibits to the TOA). Instead, the TOA contains criteria defining the transmission facilities that must be included, and exceptions to those criteria. Furthermore, the TOA

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<sup>17</sup> Declaratory orders should not be issued approving fractions of agreements that a) not all sponsors and proposed signatories support, b) are advertised to be modified by the sponsors in the very near term, and c) have insufficient factual support to permit confident review and evaluation.

establishes certain rights and obligations regarding those facilities that meet the definitions.

The TOA defines “RTO West Controlled Transmission Facilities” (hereafter “Controlled Facilities”) as:

those facilities that have a material impact on: (1) transfer capabilities of RTO West managed constraint paths between its congestion zones; (2) the ability to transfer electric power and energy within a congestion zone; or (3) the ability to transfer electric power and energy into or out of the RTO West transmission system.<sup>18</sup>

The important qualifier of this description is the term “material impact”.

The term is defined differently for categories (1) and (2), and (3) contained in the definition of Controlled Facilities, above.

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 capability would change if the transmission facility were removed. A transmission facility will be deemed to have a material impact on transfer capability within a congestion zone if such transmission facility carries 10% or more of the electric power transferred across parallel paths through the congestion zone. *Id.*

The determination of which “material impact” applies to a particular facility is dependent on the initial congestion zone and constrained path designations. Therefore, it is important that the process for determining congestion zones and constrained paths is set forth in this RTO West filing, and that the initial designation of congestion zones and constrained paths be determined. The instant RTO West Filing identifies neither a process for determining congestion zones and constrained paths, nor the initial congestion zones and constrained

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<sup>18</sup> RTO West Filing at 41-43; see also RTO West Filing, Attachment S at 90.

paths. As a result, if an existing transmission owner is permitted to define congestion zones (initially or in the future), it may identify itself as a congestion zone. Thereafter, it will be very difficult for RTO West to obtain control over transmission facilities internal to the transmission owner's system which are limiting the market. In summary, the defining facilities criteria (complete with qualification), coupled with the absence of identified congestion zones or constrained paths, gives a participating transmission owner too much discretion to limit the facilities turned over to RTO West control.<sup>19</sup>

Section 5.1.3 of the TOA is especially problematic: that section would apparently allow each transmission owner to elect, "from time to time," to change the designation of at least some of its transmission facilities, either putting them under or taking them from, RTO "control." In addition to creating a high likelihood that functionally similar transmission facilities may be treated differently on various existing systems within RTO West (and even that the same facilities on the same system may be treated differently "from time to time"), thereby raising concerns with comparability and potential discriminatory treatment that RTO structures were supposed to mitigate, such a provision unnecessarily and substantially adds to the pricing, planning, and operational weaknesses of the TOA as proposed.

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<sup>19</sup> In fact, the transmission owner's discretion to include facilities in RTO West at all is quite broad. Contrast "RTO West Controlled Transmission Facilities" with the TOA definition of the much broader "RTO West Transmission System" :which includes all the facilities listed by the transmission owner in its TOA ("Transmission Facilities") and "at least all of the Executing Transmission Owner's transmission facilities that meet the definition of RTO West Controlled Transmission Facilities. The Transmission Facilities shall not include generation-integration transmission facilities." RTO West Filing, Attachment S at 90.

Indeed, a number of the Filing Utilities have indicated that they intend to exclude from RTO West a portion of those regional facilities that are categorized as transmission facilities under the Commission's current standards. The Consumer-Owned Utilities particularly fear that jurisdictional transmission facilities used to serve wholesale customers will be excluded from RTO West control. The potential problems with this exclusion are two-fold. First a division of transmission facilities between RTO West and one or more of the filing utilities carries a serious risk of pancaked rates. Many of the Consumer-Owned Utilities and their members are directly served by transmission lines that may well not be deemed to be "Controlled Facilities" under the TOA's definition. If these facilities are excluded from RTO West's control, these wholesale customers presumably will have to pay both the RTO West transmission charges plus the individual utility charges for all deliveries.

Similarly, the Consumer-Owned Utilities include among them many distribution utilities whose wholesale power deliveries use both Bonneville's transmission system and transmission facilities of third parties such as the Filing Utilities. The third party facilities used to serve these distribution utilities are often the type that would not qualify as Controlled Facilities. Under these circumstances, the distribution utility utilizes transmission services arising from two sources – the transmission arrangement between itself and Bonneville for use of Bonneville's transmission system; and the contract between Bonneville and the third party transmission owner for the distribution utility's use of the third party's transmission facilities (typically called a general transfer agreement, or

GTA). In effect, Bonneville's treatment of GTAs has eliminated rate-pancaking for these distribution utilities over the past few decades because the cost of these third party transfer agreements is rolled into Bonneville's rates.<sup>20</sup> Although representatives of the Consumer-Owned Utilities have worked to avoid establishing an RTO that would result in these uniquely located distribution utilities experiencing pancaked rates for the Company Rate term (through December 2011 as filed), rate pancaking may return as an issue at the end of that period.

There is also the possibility that expansions or upgrades needed before the end of the Company Rate period might result in vertical rate pancaking, i.e. the payment by the distribution utility of an RTO access charge plus a FERC transmission charge from the company holding the residual transmission. Such outstanding issues must be resolved quickly and with the input from affected utilities.

Second, excluding facilities from RTO West that are needed to provide wholesale deliveries to existing distribution utilities will make it almost impossible to manage the planning process. More precisely, the planning of transmission facilities that are not in RTO West but that are necessary to provide wholesale service to an existing distribution utility would involve a planning forum separate from the RTO to resolve issues regarding the residual transmission. If the

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<sup>20</sup> The Filing Utilities came to an agreement regarding facilities that are likely to be excluded from the RTO by a Transmission Owner, and that are used to provide GTA service. In consideration for a Bonneville transfer payment, distribution utilities that obtain wholesale power deliveries over the Bonneville transmission system and a GTA contract will continue to receive wholesale power deliveries without the incursion of an additional distribution or transmission charge during the Company Rate period, regardless of whether all the facilities needed to effect the delivery are in RTO West or not.

TransConnect filing is approved as filed, it will further complicate the planning process by inserting another planning body and forum in the loop. Thereafter, RTO planning on the limited set of facilities that RTO West is proposing to plan for in this filing creates yet another planning forum. Thus there might be three forums, or four if more than one Filing Utility is involved, which a wholesale distribution utility would need to go to in order to insure reliable transmission planning and service to its load.

Furthermore, the instant proposal adds one or more layers to the already burdensome transmission regulatory processes that are an anticipated part of the RTO. Currently, the regulatory involvement burden for many wholesale distribution utilities amounts to participation in one proceeding before Bonneville (with subsequent review by the Commission). Under the new regime, they will need to become involved in multiple transmission regulatory forums: 1) RTO West rate case before the Commission; 2) the Filing Utility Company Rate case before the Commission (or, in the case of Bonneville, its rate case proceeding pursuant to Section 7(i) of the Northwest Power Act, 16 U.S.C. §§ 839 *et seq.*); 3) the third party residual transmission owner rate case before the Commission; and 4) the third party residual transmission owner's state rate case.

The same sort of complexity exists in the dispute resolution forum where one may face multiple forums that apply differing standards. Because RTO West is designed to have final planning and expansion authority over Controlled Facilities, a wholesale utility may find itself faced with a dispute over service and a need to address the issue in three different dispute resolution forums: 1) RTO

West for Controlled Facilities, 2) the TransConnect ITC, if approved as filed, for RTO West Transmission System facilities which are not Controlled Facilities, and 3) the transmission owner whose residual assets are not turned over to RTO West. This is not a welcome outcome. To the contrary – one may reasonably expect an RTO to simplify transmission service acquisition by providing one-stop shopping for the transmission needed to deliver wholesale power under one rate. The Commission should clarify that all Filing Utility facilities used to serve wholesale distribution utilities should be included in RTO West.

The multiplication of planning and regulatory forums and potential future exposure to rate pancaking are both inconsistent with the Commission's RTO policy, and with the vision that representatives of Consumer-Owned Utilities had in mind entering into RTO West discussions. Our member distribution utilities are the potential payers of pancaked rates and face the accompanying ills of pancaked planning, pancaked regulatory participation, and pancaked dispute resolution. We expected, from reading Order 2000, that a regional transmission organization would make it easier to serve our distribution utilities by simplifying the array of rates, companies, and processes they will face simply to obtain transmission to serve their native loads. To wit: "[a]ny RTO proposal filed with us should intend to operate all transmission facilities within its proposed region." Order No. 2000, F.E.R.C. Stats. & Regs. ¶31,089 at 31,164. However, the status quo is looking simple and efficient compared to the complications that may be precipitated by this fragmentation of transmission facilities.

Further, maintenance outage planning coordination could potentially be a source of market power for transmission owners through the manipulation of maintenance outage schedules directly affecting a Transmission Customer. If all transmission facilities used to deliver power to wholesale distribution utilities are included in RTO West and in its Maintenance Outage authority (section 5.8.5 of the TOA) and a process for all impacted parties to have a voice is established, market power issues are avoided. Much efficiency can be gained if these outages take into account the needs of all parties. RTO West should have the authority to approve outage of all Transmission Facilities for this reason. We also suggest a time limit on RTO West's obligation to pay for moved maintenance as a way to prevent excessive uplift costs. We offer the following language to implement these ideas:

*Section 5.8.5.1 The ETO shall coordinate proposed Transmission Facility maintenance outages with RTO West. RTO West shall communicate the proposed outage schedule to impacted customers and allow time for such customers to express concerns or suggestions as to the proposed schedule. RTO West, taking into account the concerns of the impacted customers as well as the ETO, shall either approve the proposed outage schedule or request that the ETO revise the outage schedule. ETO shall use best efforts to comply with the RTO West request to move an outage. RTO West will have final approval of maintenance outage schedule on all Transmission Facilities.*

*5.8.5.2 RTO West shall pay to the ETO the cost incurred by the ETO resulting from a RTO West directive to change the timing of a scheduled outage that previously had been approved by RTO West only if such directive is given within 45 days of the date of such scheduled maintenance.*

The potential for abuse of market power is removed by applying the obligations of the transmission owners to all Transmission Facilities, not just

Controlled Facilities, in section 5.8.5.2, Restoration of RTO West Controlled Transmission Facilities.

In conclusion, RTO West should define in the Transmission Operating Agreement as "Transmission Facilities" for purposes of planning, performance plans, dispute resolution, expansion, coordination of maintenance outages and restoration of transmission facilities after outages, those transmission facilities of the Filing Utilities that are necessary to provide wholesale service to existing distribution utilities. Disputes concerning the reliability of Transmission Facilities should be subject to dispute resolution provided within the RTO West framework.

2. The Transmission Operating Agreement Fails to Implement RTO West's Authority for Planning and Expansion.

In Order No. 2000, the Commission is very clear that an RTO "must have ultimate responsibility for both transmission planning and expansion within its region that will enable it to provide efficient, reliable, non-discriminatory service":

The rationale for this requirement is that a single entity must coordinate these actions to ensure a least cost outcome that maintains or improves existing reliability levels. In the absence of a single entity performing these functions, there is a danger that separate transmission investments will work at cross-purposes and possibility even hurt reliability. . . .Accordingly, we shall evaluate each RTO proposal to ensure that the RTO can direct or arrange for the construction of expansion projects that are needed to ensure reliable transmission services." Order No. 2000, F.E.R.C. Stats. and Regs. ¶¶31,089 at 31,164.

Clearly, the RTO must have the ability to plan and expand, or cause to have expanded, the transmission grid *in its region*. There are four deficiencies with the RTO West filing in fulfilling this requirement. First, as discussed above, not all the transmission facilities necessary to provide wholesale service to distribution utilities are included in RTO West.

Second, RTO West only has planning and expansion authority over a subset of the transmission facilities included in RTO West. Third, the planning and expansion authority RTO West does purport to have over the subset of transmission facilities it controls may be unenforceable. Fourth, because the Filing Utilities retain authority to make unilateral decisions with respect to expansion even of RTO West Controlled Facilities, RTO West will not be able to make and enforce cost-effective choices among alternative means of relieving congestion or achieving desired expansions.

The first deficiency, RTO West's lack of the complete set of transmission facilities in the region, is discussed above. Transmission facilities used to transmit wholesale power to distribution utilities should be included in RTO West and subject ultimately to RTO West's authority to plan and expand. This does not mean that there is no role for other parties or organizations in the planning and expansion process. The goal is to have all transmission customers have a final appeal to the RTO if inadequate planning or expansion activities are being performed. This is not in conflict with the market driven approach generally utilized for transmission planning under the RTO West proposal; and such an outcome is necessary to meet the planning and expansion requirements of Order No. 2000. Giving RTO West the authority to compel construction or allocate costs of expansion for transmission facilities used for wholesale deliveries to distribution utilities recognizes that market driven

mechanisms may fail, and in failure thereby jeopardize the requirements load service obligations of such distribution utilities.

In regard to the second deficiency, omitting transmission facilities used for wholesale deliveries to distribution utilities from RTO West planning and expansion will likely result in an RTO in this region that cannot insure wholesale service to load. Nonetheless, the RTO West Filing makes frequent reference to the fact that RTO West is indeed fulfilling the Order No. 2000. For example, Section V.B.7.a, RTO West Filing at 74, provides that:

RTO West has the backstop authority to cause the construction of transmission facilities that ensure that the participating transmission owner's transfer capability is maintained at an appropriate level and that the facilities under RTO West's control are adequate for load service purposes.

The backstop obligation and even the obligation to maintain transfer capacity for existing obligations are limited to Controlled Facilities. Often, this subset of the RTO West Transmission System does not reach to a distribution utility's wholesale point of delivery. How then can RTO West ensure a backstop authority for "service to load" when it doesn't even have authority for all transmission facilities pursuant to contract or tariff? The use of the term "RTO West Controlled Transmission Facilities" throughout the Transmission Operating Agreement avoids the Commission's clear requirement for planning, by appearing to satisfy the requirement but in fact leaving out the facilities necessary to satisfy the requirement.

In summary, and despite the affirmative language found in the RTO West Filing,<sup>21</sup> the Transmission Operating Agreement implements neither the requirement of Order No. 2000 nor the promise of the Filing Utilities to the Regional Representatives Group to provide a “backstop for load service” because it lacks authority over all relevant transmission facilities. We urge the Commission to reject the notion that RTO West only has obligations concerning “Controlled Facilities” found in RTO West Filing Attachment S, section 5.2 (Obligation to Maintain Transfer Capability), section 5.8 (Maintenance Outages), section 5.8.8 (Restoration of RTO West Controlled Transmission Facilities, section 8 (Performance Plans and Performance Standards), section 12.1.1 and 12.1.2 (Planning Function).

The obligations of RTO West to ensure that transmission capacity is maintained, to coordinate maintenance outages, to ensure no undue preference in Outage Restoration practices, to establish a Performance Plan, and to plan and ultimately ensure expansion of the transmission system for reliability should extend to the RTO West Transmission System as defined in the RTO West Filing, Attachment S at 91, at a minimum. In addition, the Commission should extend this obligation to all transmission facilities used in wholesale transactions to distribution utilities as discussed in Section III.1 above.

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<sup>21</sup> “RTO West will be responsible for planning of all transmission facilities under its control and will have “backstop” authority to address failures to construct or upgrade transmission facilities needed to maintain reliable service to load within the RTO West region.” RTO West Filing at 9.

The third deficiency is that the Transmission Operating Agreement does not deliver the backstop promised even on the Controlled Facilities. The Filing Utility letter is clear that such a backstop is provided, but the contractual construction of the backstop is sufficiently vague as to call its enforceability into question.

The weakness of the planning backstop may be understood by delving into the Transmission Operating Agreement. Section 12.1.2, the planning section, contains language which gives “primary planning responsibility and final decision-making authority with respect to RTO West Controlled Transmission Facilities” to RTO West. However, scant implementation and no operative language may be found in the contract to effect this authority. The only place that such authority, which is ultimately the authority to allocate costs, is even mentioned is in the definition of “Transmission Facility Cost Sharing Payment”. This definition is quite informative:

“Transmission Facility Cost Sharing Payment” means such payments as are specified in the RTO West Tariff, in response to requests by entities constructing and/or operating Transmission Facilities, that will benefit the Company Loads served by one or more Participating Transmission Owners other than the entity constructing and/or operating such Transmission Facilities, with such payments intended by RTO West to equitably allocate the costs related to such Transmission Facilities among the company Loads benefiting from the facilities. RTO West Filing, Attachment S at 93.

From this excerpt one may conclude that RTO West has the authority to allocate costs to benefiting loads and collect those costs from

Company Loads through the RTO West Tariff. Unfortunately, this definition is only used once in the Transmission Operating Agreement and then, as part of a formula in Exhibit G, Company Rates. There is no mention that RTO West has authority to allocate costs pursuant to the Transmission Operating Agreement Section 12, Planning; nor mention of any process to allocate costs in this section or any other operative section of the Agreement. Thus the planning backstop authority appears weak, where relevant operative language appears only in a definition and the definition used once (obliquely at that) and never mentioned again in the Transmission Operating Agreement. For something as important as ultimate backstop authority for planning and expansion, a clearer, cleaner, stronger formulation is required.

Conversely, because the Filing Utilities essentially retain the right to construct (and add to their revenue requirements, which must be included in RTO rates) any facilities or upgrades they choose even with respect to RTO West Controlled facilities, RTO West will not be able to “coordinate . . . actions to ensure a least cost outcome” as Order No. 2000 contemplates. Order No. 2000, F.E.R.C. Stats. and Regs. ¶¶31,089 at 31,164. Section 12.1.2 of the TOA apparently requires RTO West to approve any “additions, modifications and expansions to such facilities [that] do not impair reliability or bulk transmission capability of the RTO West Transmission System.” Thus, under the TOA, any individual transmission owner may unilaterally decide to construct facilities that it believes will

increase its own revenues, and then increase its revenue requirement to ensure recovery of that investment. RTO West would have no ability to reject the individual's self-interested decision in favor of a more cost-effective outcome. This is plainly not the sort of efficient regional planning Order No. 2000 contemplates.

The following language is offered as a remedy to the insufficient planning and expansion backstop in order to implement the planning backstop agreed to by the Regional Representatives Group and required by Order No. 2000. Add section 12.1.3 as proposed below:

*12.1.3. ETO will demonstrate, upon request from RTO West, that transmission necessary for service to load for a particular area or transmission customer is adequate. ETO shall cooperate with RTO West in its effort to determine such transmission adequacy and shall work cooperatively with RTO West to remedy the situation if RTO West determines that transmission is not adequate.*

*RTO has the final decision-making authority with respect to all Transmission Facilities as to transmission adequacy for load service. If RTO West determines that additional transmission facilities are needed to assure transmission adequacy, RTO West shall offer first to let the ETO build such additions. If, after offering the ETO the first opportunity to undertake transmission additions which RTO West determines are necessary for transmission adequacy, ETO chooses to not undertake such additions, RTO West may allocate the costs or a portion of the costs of such additions as RTO West deems necessary to the ETO as a Transmission Facility Cost Sharing Payment to be included in Company Rate.*

Section 11, Support of Upgrade and Expansion of Transmission Facilities also needs additional language to fully implement the planning and expansion

backstop authority. The following should be added to the end of the first sentence of section 11.1.1 and section 11.1.2:

*unless such costs were allocated to the ETO as a Transmission Facility Cost Share Payment by RTO West in order to ensure service to load.*

The above additions and recommended changes are necessary for RTO West to comply with the planning requirements of Order No. 2000.

We urge the Commission require them in any final TOA.

3. RTO West's Ten Year "Company Rate" Is Appropriate but the Filing Lacks Critical Detail.

Representatives of the Consumer-Owned utilities participated actively in the technical workgroups that developed the pricing construct contained in the RTO West Filing at 34-41; see *also* RTO West Filing Attachment S at 41-52, 101-103. The "Company Rate" pricing framework described by this filing has our strong support, for it is an essential tool for mitigating cost shifts that may come as a result of RTO formation. In order to mitigate cost shifts it is essential that the transfer payments are included in the calculation of the Company Rate; and as described below, further clarification is needed in this area.

In addition, a ten-year term for the Company Rate period is appropriate and should commence tolling when RTO service commences. When the Filing Utilities proposed a ten-year term for the Company Rate, RTO West was expected to commence service on or about December 15, 2001; hence the measuring date for the term of the Company Rate period was December 15, 2011. If the start-up date for RTO West slips significantly from December 15,

2001, then too the ten-year term should move forward in time to track ten years from the actual start-up date of RTO West.

Furthermore, the Consumer-Owned Utilities cannot provide full support to the broader RTO West pricing proposal until the details of the proposal are provided. In this respect, the Transmission Operating Agreement is incomplete as filed. See, e.g., RTO West Filing, Attachment S at 104-06. One expects that the second "stage" RTO West filing will provide more of the details necessary to fully describe the RTO West pricing construct, and we look forward to working with the Filing Utilities as these concepts are developed over the next few months.

Transmission Dependent Utilities came to the RTO West collaborative forum concerned about two major issues: avoidance of cost shifting and continued reliable transmission service. The Company Rate proposal is the most essential tool for mitigating cost shifts. Any attempt to meld or average transmission costs across RTO West would have met with strong resistance as to do so would precipitate cost shifts. The ten-year duration of the Company Rate will give the RTO sufficient time to address important start-up and operational issues, instead of holding contentious rate cases.

Essential to our support of the RTO West pricing proposal is the condition that transmission customers served over General Transfer Agreements between Bonneville and third party transmission owners (including some Filing Utilities) will be served at the Bonneville Company Rate. This point was a fundamental agreement between the RTO West Filing Utilities and the Transmission

Dependant Utilities. However, it is disturbing that this agreement is not memorialized in the discussion of the Company Rate; and this concept must be explicitly incorporated in the subsequent RTO West filing.

Of even greater concern is the omission of any commitment in the TOA between the Filing Utilities and RTO West, to provide firm transmission rights to Eligible Customers in consideration for payment by an Eligible Customer of the appropriate Company Rate. Such a commitment is memorialized with respect to transmission service obtained by the Filing Utilities; see RTO West Filing, Attachment S at 27-29, 53-56. An explicit commitment in the TOA to provide firm transmission rights to Eligible Customers that pay the appropriate Company Rate is an appropriate and necessary component of the RTO West filing.

Thus the following language is requested for inclusion as the lead paragraph in Section 14.2.1 of Attachment S:

*In consideration for having paid the applicable Company Rate, the Eligible Customer shall be entitled to transmission service on any transmission facilities operated or controlled by RTO West. In addition, Eligible Customers utilizing transmission service pursuant to General Transfer Agreements shall be entitled to transmission service on any transmission facilities operated or controlled by RTO West in consideration for having paid the Bonneville Company Rate.*

Transfer payments are essential to the calculation of the Company Rate. The calculation of the Company Rate begins with company costs. Company costs are then adjusted upward or downward by the net of payments made for transmission services from other transmission providers and payments received for transmission services by the participating utility. Exhibit H of the Transmission Operating Agreement provides for the specification of transfer

payments by each participating utility. As filed this Exhibit is incomplete. First, while Transfer Charges payable are requested in this attachment, Transfer Charges receivable are not requested. As noted above, the net transfer payment is the difference between these “payments to” and “received from”. This omission must be rectified. Without this specification of transfer payments received from transmission customers, the Filing Utility’s option of keeping its transfer payments constant throughout the Company Rate period or adjusting them for changes in transmission costs is inoperable within the context of the present Exhibit H. In addition, Exhibit H does not list those utilities that this information will be requested from. This listing is essential so that we can understand exactly which utilities will have this information (revised as above) requested of them. Finally, the transmission contracts among and between the Filing utilities, and amounts of the corresponding transfer payments must be provided in the RTO West filing.

An additional problem with respect to the proposed transfer payment scheme – particularly when combined with the proposal for excluding existing transmission facilities from RTO control and pricing -- is that the transfer payments will apparently be calculated on the basis of historical payments between transmission owners based on their current filed rates. These rates are, presumably, based on each transmission owner’s FERC jurisdictional transmission revenue requirement as defined in that owner’s last transmission rate case. The proposal by some of the Filing Utilities to segment their existing transmission facilities and to have some facilities under the RTO West tariff and

some under a separate open access tariff may lead to over collection unless (i) a detailed cost of service study is performed to correctly allocate the costs from the current costs of service to the two different costs of service that are proposed for the future, and (ii) the results of that allocation are applied to the transfer payments so that only the RTO West portion is recovered through transfer payments under the RTO West tariff.

Another area of concern with regard to the lack of specificity of this proposal is the issue of whether there will be export fees for transmission outside of the borders of RTO West. In the workgroup much time and effort was given over to the question of what type of export fee, if any, should RTO West impose on exports outside of the borders of RTO West. This filing is silent on the issue of export fees. The presence or absence of export fees has implications for the analysis of the costs of the RTO and also whether the formation of the RTO will impose cost shifts on current transmission customers. In particular, if the transfer payments among and between participating transmission owners in combination with Company Rate access fees are insufficient to recover the costs of facilities primarily utilized in export transactions across RTO West seams, then an export fee may be appropriate. The sufficiency of transfer payments or the applicable Company Rates are facts not in evidence at this point in time. Thus, to endorse this concept without more specific information is impossible.

Section 14.2 of Attachment S to RTO West Filing provides that rates to Company loads will include compensation to RTO West for its cost of operations including, among other costs, the "lost revenue recovery amount payments."

These lost revenue recovery amount payments are essentially transfer payments that cannot be recovered from users of the transmission system. The proposal requires that these lost revenues be recovered over all customers of RTO West. While this is a clear instance of cost shift, the magnitude of these lost revenues are unclear at this time. Since scant detail has been provided regarding the source of the revenue problem, the magnitude of the "lost revenues" or the reason why they are in fact "lost", we cannot assess the efficacy of the Filing Utilities' proposed solution. Such a proposed solution should not be adopted until the problem itself is defined.

Exhibit H provides that Bonneville will collect "as an additional Access Charge" an undefined "amount due" if a transmission owner elects not to join RTO West as a Participating Transmission Owner. The intent of this provision is unclear. The Commission should ensure that any charge imposed on a non-participating transmission owner under this provision is non-discriminatory and does not exceed the Access Charge that would have been imposed on the transmission owner had it become a Participating Transmission Owner. To allow higher charges against non-participating transmission owners would be discriminatory and therefore violate the Federal Power Act. That is particularly true in the case of RTO West because some owners of transmission facilities are public entities that face legal and financial constraints on participating in the RTO.

4. The Proposal Should Not Provide Owners With a Unilateral Right to Make Transmission Tariff Changes.

Section 13.3 would accord the Executing Transmission Owners “the right to unilaterally file at the FERC” for performance-based rates and other incentive-oriented rates. Similarly, Section 22 of the proposed TOA provides that the Executing Transmission Owner “shall have the right to unilaterally request approval from FERC to perform additional regional transmission organization functions and responsibilities.” RTO West Filing, Attachment S at 73-74. These provisions plainly violate Order No. 2000’s requirement that the RTO must have “the independent and exclusive right to make Section 205 filings that apply to the rates, terms and conditions of transmission services over the facilities operated by the RTO.” Order No. 2000, F.E.R.C. Stats. and Regs. ¶¶31,089 at 31,075.

In Order No. 2000, the Commission carefully balanced the right of individual transmission owners to ensure an adequate revenue recovery with the RTO’s “clear” need to control the tariffs governing the service provided over its facilities by ordering that while transmission owners would retain the right to make independent filings under § 205 of the Federal Power Act to establish their overall revenue requirements or the payments they are entitled to receive from the RTO, the RTO must have exclusive authority to design rates and file tariffs establishing rates, terms, and conditions for service. Order No. 2000, F.E.R.C. Stats. and Regs. ¶¶31,089 at 31,075-76.<sup>22</sup>

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<sup>22</sup> Bonneville is subject to statutory obligations that will require it to retain a greater degree of control over its rate and tariff filings than the other Filing Utilities.

If individual transmission owners, rather than the RTO itself, are permitted to implement their own "innovative" or "performance-based" rates, it will be impossible for RTO West to implement a coordinated program for an entire region. If an individual transmission owner files for special rates designed, for example, to create an "incentive" to construct new transmission, those rates may undermine or conflict with RTO West's regional congestion management plan. At the very least, permitting individual utilities to implement their own "innovative" rates runs the risk of pancaked, (higher) incentive rates, because the RTO may seek to create its own incentives on top of those that individual transmission owners develop for themselves. The Commission has, in fact, concluded that such rate adjustments "should not be applied piecemeal." Order No. 2000, F.E.R.C. Stats. and Regs. ¶31,089 at 31,185. "To the extent possible, PBR programs should focus on the entire operation of the RTO, rather than smaller parts of the operation." *Id.*

For similar reasons, the reservation of the right to individual transmission owners to file tariffs seeking to assume RTO functions such as planning and expansion activities cannot be squared with the requirement that the RTO must have independent and exclusive authority to file the RTO tariff. There is no way for the RTO to maintain a coherent plan of control over centralized RTO operations when the individual transmission owners can, at any time, assume control over some or all of those operations with or without leave from the RTO. It would be entirely inappropriate, moreover, to allow for-profit transmission owners operating under the RTO West umbrella to make their own unilateral

decisions about what RTO functions to assume and then demand recovery of those costs through RTO West rates.

5. Firm Transmission Rights Arise from Pre-Existing Contracts, and Should Include Service Agreements and Associated OATT.

Order No. 2000 requires that RTO applications must address congestion management; see, e.g., 18 C.F.R. §35.34(k)(2). This issue was given in-depth consideration throughout the RTO West collaborative process, with one of the technical workgroups devoted exclusively to developing a congestion management proposal.

Attachment M to the RTO West Filing provides a narrative proposal for congestion management within RTO West's geographic scope. As with many other aspects of this filing, RTO West's congestion management approach is provided in outline rather than detail. The Consumer-Owned utilities cannot take a position regarding the congestion management outline provided in the filing at this point, because it lacks substantial detail; although the following comments illustrate general areas of support or concern for the congestion management framework proposed herein.

As a fundamental starting point, the proposed RTO West congestion management framework attempts to protect firm transmission rights springing from existing transmission contracts and load service obligations over congested paths. The Consumer-Owned Utilities vigorously support such a beginning threshold. Pre-existing firm transmission rights must be guaranteed, whether such transmission customers choose to convert to RTO service or instead prefer to remain customers of the incumbent transmission owner(s). The instant

comments are provided on behalf of approximately 130 distribution utilities located throughout the RTO West region that range from small to large. Many, if not most of these utilities anticipate receiving transmission service over constrained pathways or through congestion zones. These utilities have existing and ongoing contracts for transmission services from one or more of the Filing Utilities. An exclusively market-driven approach to allocating transmission capacity over congested paths would ignore these pre-existing rights, and could substantially increase transmission costs to historic transmission customers such as Consumer-Owned Utilities for use of facilities that they have been paying for over the decades. Indeed, some would argue that to discard pre-existing transmission rights in favor of an exclusively market-driven remedy to congestion management would abrogate existing contracts, and effect a taking of financial value.

The treatment of pre-existing contract rights that was negotiated into the RTO West congestion management approach provides adequate price signals and compensation for firm transmission rights holders while protecting existing transmission customers' rights. Representatives of the Consumer-Owned Utilities participated in the development of this proposal, and we urge that it be maintained in this RTO West filing and over the course of subsequent filings with the Commission and elsewhere. However we do have concerns about specific aspects of this portion in the RTO West congestion management proposal.

The TOA identifies September 30, 2001 as an end-date for purposes of entering into transmission service agreements that resemble current pre-existing

contracts terms and conditions; see RTO West Filing, Attachment S at 5.4.2 (pre-existing contracts executed after September 30, 2001 must permit either party to replace that service with RTO West transmission service). Such a grandfather date may be appropriate if the RTO West anticipates operation on or before December 15, 2001. However, if the actual operation of RTO West is delayed beyond that Commission sanctioned commencement date, then the grandfather date for pre-existing contracts should be established as no earlier than ninety days prior to the date that RTO West actually becomes operational.

Pre-existing transmission contracts tend to fall into one of three categories: an Order No. 888 Open Access transmission contract (service agreement) that is coupled with an Open Access Transmission Tariff ("OATT"); a pre-Order No. 888 transmission contract; or a bundled power and transmission contract. Each type of pre-existing contract qualifies for a grant of firm transmission rights, as negotiated within the RTO West congestion management technical workgroup, and approved by the Regional Representatives Group. The grant of firm transmission rights was not limited to transmission owners only; rather, any holder of a pre-existing contract could expect to receive firm transmission rights corresponding to its pre-existing contract, if that transmission customer chose to take RTO West transmission service.

The RTO West filing does not preserve the regional collaborative process conclusion regarding the allocation to all transmission customers of firm transmission rights arising from pre-existing contracts. It must do so. Such firm transmission rights for participating transmission owners are clearly memorialized

out in the TOA, RTO West Filing, Attachment S at 27-29; 53-56. There is no parallel provision corresponding to the allocation of firm transmission rights for transmission dependent utilities. *Id.*, see also RTO West Filing, Attachment M at 2-3. Clearly, the firm transmission rights of Eligible Customers should be treated in a manner consistent with those of the participating transmission owners; to do otherwise should be rejected by the Commission as discrimination in favor of incumbent transmission owners. The TOA must be revised to establish the allocation of firm transmission rights arising from pre-existing contracts to all transmission customers, not just those among the Filing Utilities. The RTO's Load Integration Agreement and Generation Integration Agreement should also contain comparable language.

Regarding the duration of such pre-existing contracts (and the firm transmission rights arising from them), the Filing Utilities agreed to honor explicit roll-over rights; and pre-Order 888 contracts and Order 888 Open Access contracts associated with firm power service to loads (including statutory requirements loads and third party transmission contracts necessary to meet load service obligations) are deemed to include transmission rollover rights that shall be honored so long as such rollover rights are exercised. In addition, a participating transmission owner *may* deny roll-over rights if the transmission contract provides the PTO with the option to do so. This agreement was recounted at a meeting of the Regional Representatives Group in late September, 2000.

The Filing Utilities' agreement in September did not get captured in the TOA one month later. In fact, the implementing TOA diminishes the duration of pre-existing contract rights. Rollover rights arising from pre-existing contracts are limited to such rights as do not rely on an underlying tariff for their existence; RTO West Filing, Attachment S at 55. This limitation will prevent the majority of transmission contracts – open access network or point-to-point service agreements and tariffs – from qualifying, in the RTO environment, for the very rollover rights contained in section 2.2 of the Commission's OATT. And for service agreement and other pre-existing contracts that rely upon tariffs for their ongoing rollover rights, such contracts are afforded a one-time opportunity to roll over; *id.* at 18. Taken together, these TOA provisions either narrow or eliminate the future firm transmission rights that pre-existing contracts should obtain. This implementation through the TOA loses the very substance agreed upon by the Filing Utilities prior to the filing.

An RTO that delivers to the region a diminution of firm transmission rights under pre-existing contracts will not only garner little support, it is likely to arouse active opposition. Such a development would bode ill for RTO West in a region in which jurisdictional utilities own less than fifty percent of the transmission capacity. The current system under which transmission service is provided is characterized with reasonably open access, stable prices and predictable, long term rights to transmission capacity. To be acceptable, RTO West must deliver a product of at least the same quality. To do so, the TOA should adhere to the

consensus position developed in the collaborative process and expressly honor roll-over rights in pre-existing contracts.

6. Regional Transmission Preference Is a Statutory Right That May Not Be Rendered Void By the Transmission Operating Agreement.

Section 5.5 of the Transmission Operating Agreement properly recognizes that RTO West must honor regional preference rights as specified in the Northwest Power Act. The RTO West filing properly provides that “requests for use of the Transmission Facilities (1) to serve loads within the Pacific Northwest or (2) to meet the requirements of Section 9(i)(3) of the Northwest Power Act shall receive preference in accordance with applicable federal law.” RTO West Filing, Attachment S at 20. The TOA also contains a provision allowing RTO West to charge Bonneville for costs that may arise as a result of a request by Bonneville for RTO West to honor its statutory obligations.

The provision recognizing Bonneville’s duty to comply with statutory preference provisions in the administration and operation of Federal transmission facilities is essential if Bonneville is to participate in RTO West. An RTO filing predicated on the notion that Bonneville can ignore obligations under existing federal law would be neither credible nor sustainable. The language contained in the TOA is the minimum necessary to ensure that Bonneville will retain the ability to fulfill its statutory duties. Any alteration or reduction in the provision recognizing Bonneville’s duty to comply with existing statutes will raise serious questions regarding the ability of Bonneville to participate in RTO West.

The provision allowing RTO West to charge Bonneville if it requests RTO West to honor regional transmission preference contains language that is

ambiguous, and which will present difficult issues of interpretation and application.

Section 5.5 would allow RTO West to charge Bonneville unless Bonneville's order to curtail in favor of regional loads was "necessary" and the "costs arise because of RTO West's failure to comply with its obligations to implement these service preferences and delivery obligations." RTO West Filing, Attachment S at 21. No standard is provided to determine whether a Bonneville order to RTO West is "necessary." Nor is there any suggestion as to how the question of whether such an order is "necessary" would be resolved. Likewise, it is not clear how it would be determined whether the costs arose "because of RTO West's failure to comply with its obligations" rather than from some other cause.

Further, Bonneville would be subject to "any amounts specified in the RTO West Tariff" which "may include" but are not necessarily limited to "any amounts needed to make third parties whole for the economic impacts of providing Transmission Service as demanded." The parenthetical comments included in Section 5.5 suggest that these costs would include "lost commercial opportunities and any cost of interruption of service." RTO West Filing, Attachment S at 21. It is not clear how these costs would be calculated or whether other costs would be added in the RTO West Tariff.

Bonneville must retain an effective means of complying with its obligations under existing statutes. To do so, the ambiguities in the language and the method for implementing any charge to be levied on Bonneville if and when

statutory preferences are exercised must be clarified and set forth in sufficient detail to demonstrate that Bonneville truly retains the ability to fulfill these statutory duties.<sup>23</sup>

#### IV.

### **THE SUSPENSION AGREEMENT FILING SHOULD BE TREATED BY THE COMMISSION AS INFORMATIONAL ONLY, OR OTHERWISE REJECTED AS DEFICIENT IN ITS CURRENT FORM**

The introductory discussion concerning the Transmission Operating Agreement (see Section III above) is equally applicable to the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements ("Suspension Agreement"). The Suspension Agreement is substantially incomplete, and thus is not ripe for the Commission's declaratory order approving the Suspension Agreement at this time.<sup>24</sup>

The Suspension Agreement suffers from its connection with and similarities to the TOA. Like the TOA, the justness and reasonableness of the Suspension Agreement depends on facts and determinations that simply aren't in the RTO West filing. For example, Exhibit C to the TOA is meant to list the Filing Utilities' Pre-Existing Transmission Agreements; RTO West Filing, Attachment S at 97. That TOA Exhibit C is critical to the appropriate functioning of the proposed contract suspension scheme; see, e.g., RTO West Filing, Attachment U "Agreement to Suspend Provisions of Pre-Existing Transmission Agreements"

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<sup>23</sup> The exclusive focus in this section of the *Protest and Comment* on preference rights under the Northwest Power Act is not intended to suggest that other regions may not also be subject to similar preference rights under other statutory provisions.

<sup>24</sup> As was the case concerning the TOA, only three of the nine Filing Utilities support the Suspension Agreement in its current form, and all nine of the Filing Utilities advise the Commission that modifications – of unknown scope and substance -- may be submitted by the Filing Utilities in the near future.

at 3. TOA Exhibit C was filed as a blank page; thus, the list identifying all such Pre-Existing Agreements, much less identification of transmission rights thereunder, is incomplete.<sup>25</sup>

In another instance, Section six of the Suspension Agreement permits the "automatic" renewal of a suspended pre-existing agreement for a specified period. However, the "automatic" renewal is subject to exception as provided in Exhibit A to the Suspension Agreement, RTO West Filing, Attachment U at 11. Exhibit A should contain the "Provisions of Pre-Existing Transmission Agreements to be Suspended". Unfortunately, Exhibit A is blank.

Accordingly, the requested declaration approving the Suspension Agreement should be denied at this time and the subject materials treated as if filed with the Commission for informational purposes only. If the Commission concludes it must act upon the Suspension Agreement, then the Consumer-Owned Utilities request a subsequent Notice of Filing and opportunity to comment on the Suspension Agreement after that contract and the TOA have been completed in their relevant terms.

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<sup>25</sup> Exhibit F of the TOA is where the replacement transmission rights arising from the suspended agreements are to be detailed. That exhibit is also blank.

**V.**  
**THE COMMISSION SHOULD CONSIDER WHETHER THE RTO WEST FILING PROVIDES DEMONSTRABLE BENEFITS TO CONSUMERS WITHIN THE RTO WEST GEOGRAPHIC SCOPE<sup>26</sup>**

Although the Commission does not require utilities to include a cost benefit analysis in their Order No. 2000 compliance filings, it is a glaring omission from this RTO West filing. The Filing Utilities should be asked to demonstrate, or indicate that they will provide a demonstration, that RTO West provides substantial benefits to electric consumers in the region and is therefore in the public interest. A great deal of time and effort has been invested by the participants in the RTO West collaborative process in attempting to determine whether RTO West would produce enough benefits to offset its costs, yet the filing does not even mention this effort, provide a plan or a timeline for its completion, or make any other attempt to establish that RTO West is in the public interest. Such a showing is necessary to satisfy the core purpose of the Federal Power Act ("FPA"), the protection of electric consumers.

There is substantial reason to doubt that an RTO in the Pacific Northwest will create more benefits than costs. The benefits of an RTO are likely to be small because Bonneville already captures much of the benefit an RTO would offer in the Pacific Northwest. Bonneville owns approximately seventy-five percent of the high-voltage transmission system (230-kV and above) in the Pacific Northwest and nearly fifty percent of such facilities in the RTO West

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<sup>26</sup> Utah Associated Municipal Power Systems ("UAMPS") does not join in this Section V of the Consumer-Owned Utilities' *Protest and Comment*. UAMPS' does not agree that any further cost-benefit study or evaluation, beyond that already undertaken by the Commission in Order 2000, is necessary under the Federal Power Act or otherwise. UAMPS fully concurs with and supports all other sections of this *Protest and Comment*.

geographic area. Hence, although, as asserted by the Commission in Order No. 2000, RTOs in other regions may significantly improve the operation of the transmission grid by reducing balkanization, those benefits are likely to be substantially reduced (or lacking altogether) given the dominance of Bonneville within the geographic scope of RTO West. Similarly, the other benefit of RTOs cited by the Commission in Order No. 2000, the reduction of control over transmission by generation-owning monopolies, is likely to be minimal in RTO West region. Bonneville, the region's predominant transmission owner, has for several years administratively separated its generation and transmission functions. Further separation cannot be achieved without an act of Congress. Hence, the RTO is likely to produce little, if any, benefit in terms of constraining monopolist market power in this region.

On the other hand, the costs of creating an RTO are likely to be substantial. The Commission itself estimates that the start-up costs of an RTO are likely to run between \$10 million and several hundred million dollars.<sup>27</sup> A study prepared by the Public Power Council estimated that IndeGO, had it been implemented, would have incurred start-up costs in the range of \$89-\$164 million and annual operating costs of approximately \$45 million per year. The operating costs of the Cal-ISO, which operates a transmission system roughly equal in size to the system RTO West would operate, are in the range of \$225 million per year. Further, given that RTO West will alter the way the regional transmission system has been managed for the last half-century, RTO West could produce

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<sup>27</sup> Order No. 2000, F.E.R.C. Stats. and Regs. ¶31,089 at 31,026.

unintended and potentially costly consequences. The experience of the Cal-ISO stands as a stark warning that the transition to the new world could involve hundreds of millions, even billions, of dollars in unanticipated costs, may impact system reliability, and cause endless political wrangling.

Especially in view of the cloudy prospects for RTO West to produce substantial consumer benefits, it is essential that the Filing Utilities provide substantial evidence demonstrating that RTO West will produce benefits to consumers in the RTO West region that significantly outweigh its costs. Under Order No. 2000, this filing is to be judged under the standards of FPA Sections 203, 205, and 206, 16 U.S.C. §§ 824b, 824d, 824e.<sup>28</sup> "The unifying principle" of these sections "is that the proponent of change bears the burden" of proving the change is in the public interest. Public Service Comm'n of New York v. FERC, 866 F.2d 487, 488 (D.C. Cir. 1989); see, also, Cities of Campbell v. FERC, 770 F.2d 1180, 1185 (D.C. Cir. 1985) (discussing procedural requirements of Sections 205 and 206); Villages of Chatham v. FERC, 662 F.2d 23, 27-33 (D.C. Cir. 1981) (in a Section 205 proceeding, the utility propounding change bears the burden "to establish the validity and accuracy for each of their cost estimates"); Northeast Utils. Service Co. v. FERC, 993 F.2d 937, 944 (1<sup>st</sup> Cir. 1993) (Section 203 requires proponent to demonstrate that merger will benefit consumers). It is likewise established in law that the public interest standard requires demonstrated benefits to electric consumers, which is distinct from the interests of private utility monopolists. FPC v. Sierra Pacific Power Co., 350 U.S. 348, 372

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<sup>28</sup> Order No. 2000, F.E.R.C. Stats. and Regs. ¶31,089 at 31.223.

(1956). Hence, “the relevant analytical touchstone” for public interest determination is “benefits to existing classes of ratepayers.” Process Gas Consumers Group v. FERC, 930 F.2d 926, 931 (D.C. Cir. 1991).<sup>29</sup>

Accordingly, in order for the Commission to approve RTO West, the record must contain substantial evidence demonstrating that RTO West provides substantial consumer benefits. It simply defies common sense to adopt an RTO that is likely to cost more than any possible benefits it will produce. It is, moreover, a clear violation of the FPA for the Commission to approve an RTO without such a showing. See Indiana Municipal Power Agency v. FERC, 56 F.3d 247, 253 (D.C. Cir. 1995) (FERC must “ensure that consumers pay no more than a reasonable rate”); Tejas Power Corp. v. FERC, 908 F.2d at 1003-04 (FERC must “determine whether any benefits or harm might accrue” to consumers).

### CONCLUSION

For the reasons discussed above, the Consumer Owned Electric Utilities represented by Idaho Consumer-Owned Utilities Association, Idaho Energy Authority, Northwest Requirements Utilities, Pacific Northwest Generating Cooperative, Power Resource Managers, LLP, Public Utility District No. 1 of Snohomish County, Washington, Utah Associated Municipal Power Systems and the Western Public Agencies Group state as follows:

First, the Consumer-Owned Utilities object to and protest the Filing Utilities' request for declaratory order that RTO West meets Order No. 2000's

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<sup>29</sup> Sections 4 and 5 of the Natural Gas Act are substantively identical to Sections 205 and 206 of the FPA. Hence, they are interpreted *in pari materia*. Sierra Pacific Power v. FPC, 350 U.S. 348, 350-51 (1956).

independence requirement, and that its Articles of Incorporation and Bylaws are otherwise consistent with Order No. 2000, and urge the Commission to reject that request.

Next, the Consumer-Owned Utilities believe that the geographic scope and configuration of RTO West is appropriate and that an order affirming that principle should be granted. However, the Commission should specifically reserve judgment on whether RTO West fully satisfies Order No. 2000's scope and configuration requirement until it can affirm that all necessary facilities, including those for service to existing wholesale distribution utilities, will be included within RTO West's configuration. The Consumer-Owned Utilities take no position on the requested declaratory order regarding the proposed liability and insurance structure.

Finally, the "concepts as a package" embodied in the Transmission Operating Agreement and the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements are not ripe for Commission consideration and action at this time, for this portion of the filing is incomplete. As such, the requested declaratory order should be rejected; and the Commission should classify the Transmission Operating Agreement and Agreement to Suspend Provisions of Pre-Existing Transmission Agreements as an informational filing only. Should the Commission agree with this recommendation by the Consumer-Owned Utilities, then our comments in Sections III and IV above should also be regarded as provided for informational purposes. On the other hand, if the Commission determines it must take action upon the declaratory order requested with respect

to these agreements, then the Consumer-Owned Utilities protest and comment by detailing the deficiencies of those agreements as currently filed, in Sections III and IV above.

At such time as these agreements and the remainder of the RTO West materials are completed and filed with the Commission, a subsequent Notice of Filing and opportunity for public intervention, comment and/or protest should be afforded interested persons. In addition, the Consumer-Owned Utilities reserve the right to request a technical conference or hearing, as appropriate.

Most of our member utilities purchase transmission service from the Bonneville Power Administration and have received quality service at reasonable cost. Yet during the last year our Consumer Owned Electric Utilities have been extremely active in the open public processes associated with RTO West. We appreciate the opportunity to participate, but at the end of the day, the RTO West Filing submitted to the Commission is the independent product of the Filing Utilities. Our comments regarding the filing are meant to be constructive, focusing primarily on those areas where the proposal is either flawed or insufficiently defined. We will reserve final opinions about RTO West until all of the critical information is available. Our request is that FERC take the time required to fully consider all facets of a complete RTO West proposal before issuing any orders that would essentially initiate RTO West.

In conclusion, we appreciate the work that the Commission staff have put into the RTO West process to date. The Consumer-Owned Utilities strongly encourage continued discussions of this important filing within the RTO West geographic region, to the extent possible.

Respectfully submitted this 17th day of November, 2000.

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## **Members of the Consumer-Owned Utilities Include:**

### **For Idaho Consumer-Owned Utilities Association:**

City of Albion, City of Bonners Ferry, City of Burley, Clearwater Power Company, Fall River Rural Electric Co-op, City of Heyburn, Idaho County Light & Power, Idaho Falls Power, Inland Power & Light Company, Lost River Electric Co-op, Lower Valley Energy, Northern Lights Inc., City of Plummer, Raft River Rural Electric Co-op, City of Rupert, Salmon River Electric Co-op, City of Soda Springs, South Side Electric Lines, United Electric Co-op, and City of Weiser.

### **For Idaho Energy Authority:**

City of Burley, City of Declo, East End Mutual Electric Company, LTD., Farmer's Electric Co., Fall River Rural Electric Cooperative, Inc., City of Heyburn, Idaho County Light & Power Cooperative, Inc., Idaho Falls Power, Lower Valley Energy, Riverside Electric Company, City of Rupert, Salmon River Electric Cooperative, Inc., City of Soda Springs, South Side Electric Lines, Inc., United Electric Cooperative, Inc. and Utah Associated Municipal Power Systems.

### **For Northwest Requirements Utilities:**

City of Ashland, Benton County PUD, Benton Rural Electric Association, Big Bend Electric Cooperative, Columbia Basin Electric Co-op, Columbia Power Cooperative, Columbia Rural Electric, Columbia River PUD, Emerald PUD, Fall River Cooperative, Ferry County PUD, Flathead Electric Cooperative, City of Forest Grove, Franklin County PUD, Harney Electric Cooperative, Hood River Electric Co-op, City of Idaho Falls, Inland Power & Light, Klickitat County PUD, McMinnville Water & Light, Midstate Electric Cooperative, Nespelem Valley Cooperative, Northern Wasco County PUD, Okanogan County PUD, Orcas Power & Light, City of Richland, PUD of Skamania County, Surprise Valley Electrification Corp., Tanner Electric Cooperative, United Electric Cooperative, Vera Water & Power, Wasco Electric Cooperative, Wells Rural Electric and Western Montana G&T (on behalf of Flathead Electric Cooperative, Glacier Electric Cooperative, Lincoln Electric Cooperative, Mission Valley Power, Missoula Electric Cooperative, Ravalli County Electric Cooperative, Vigilante Electric Cooperative).

### **For Pacific Northwest Generating Cooperative:**

Blachly-Lane Electric Cooperative, Central Electric Cooperative, Inc., Consumers Power, Inc., Coos-Curry Electric Cooperative, Inc., Douglas Electric Cooperative, Lane Electric Cooperative, Inc., Lost River Electric Cooperative, Northern Lights, Inc., Oregon Trail Electric Consumers Cooperative, Inc., Raft River Rural Electric Cooperative, Inc., Umatilla Electric Cooperative, Clearwater Power Company, Okanogan County Electric Cooperative, Inc., Salmon River Electric Cooperative, Inc., West Oregon Electric Co-operative, Inc., Fall River Rural Electric Cooperative, Inc., and Lower Valley Energy.

**For Power Resource Managers:**

Benton County PUD, Franklin County PUD, City of Richland, Grays Harbor PUD, and Tractebel Power.

**For Utah Associated Municipal Power Systems (in RTO West region):**

Beaver, UT, Blanding, UT, Bountiful, UT, Brigham City, UT, Central Utah Water Conservancy District, UT, Eagle Mountain, UT, Enterprise, UT, Ephraim, UT, Fairview, Fillmore, UT, Heber Light & Power, UT, Holden, UT, Hurricane, UT, Hyrum, UT, Idaho Falls, ID, Kanab, UT, Kanosh, UT, Kaysville, UT, Lehi, UT, Logan, UT, Meadow, UT, Monroe, UT, Morgan, UT, Mt. Pleasant, UT, Murray, UT, Oak City, UT, Paragonah, UT, Parowan, UT, Payson, UT, Price Santa Clara, UT, Spring City, UT, Springville, UT, St. George, UT, Strawberry ESD, UT, Washington, UT, and Weber Basin Water Conservancy District, UT.

**For Western Public Agencies Group:**

City of Ellensburg, Pacific County PUD #2, Ohop Mutual Light Company, Clark Public Utilities, Grays Harbor County, Lakeview Light & Power Co., Elmhurst Mutual Power and Light Company, Parkland Light & Water Co., Clallam County PUD, Snohomish County PUD #1, Penninsula Light Co., Mason County PUD #1, City of Cheney, Alder Mutual Light Co., City of Milton, Town of Steilacoom, Lewis County PUD, Mason County PUD #3, Town of Eatonville, City of Fircrest, Kittitas County PUD, City of Port Angeles, and Benton Rural Electric Assoc.

**SUMMARY OF RTO WEST GOVERNANCE CONSENSUS PROPOSAL**

**Members**

- **Composition:** Five membership classes: Major Transmitting Utilities; Transmission-Dependent Utilities; Nonutility Entities; Retail Customers; State and Provincial Energy Authorities and Utilities Commissions/Tribal Utility Regulatory Authorities/Unaligned Entities.
- **Requirements for Membership in RTO:** Must be eligible for membership in an established class and pay reasonable membership fee.
- **Member Rights:** Elect members of Trustees Selection Committee; participate in Board Advisory Committee (and in connection therewith request information and studies from RTO staff, subject to reasonable controls on staff time and resources from RTO CEO and Board); propose issues to Board for consideration; vote on specified articles and bylaws amendments (such as amendment of provisions relating to member voting rights); vote to dissolve corporation.
- **Voting:** Members vote by class except as provided below with respect to sub-class voting rights in Trustees Selection Committee member elections.

**Board of Trustees**

- **Composition and Term:** Nine members, divided into three classes of three members each; each Trustee serves a three-year term (except in case of initial Board, where Trustees by drawing straws will divide into three initial classes, with one class serving a one-year term, one class serving a two-year term and one class serving a three-year term).
- **Selection/Removal:** Trustees elected and removed by Trustees Selection Committee.
- **Responsibilities:**
  - Board has ultimate responsibility for management of RTO; delegates management authority in specific areas to RTO officers and defines limits of such authority.
  - Board may appoint standing or ad hoc committees to assist it in performing its functions.
- **Voting:** Board acts by majority vote except where otherwise specified (e.g., not less than 2/3 of Trustees required to approve removal of Trustee for cause).
- **Procedures:**
  - Board meetings open to public.
  - Agenda and briefing papers for any Board meeting required to be available for public review and comment for specified time prior to applicable meeting (except in cases of emergency).

**Trustees Selection Committee ("TSC")**

- **Composition:** 30 TSC members in total, elected by RTO members as described below.
- **Responsibilities:** Elect and remove Trustees.
- **Election of Committee Members:** Each RTO member class elects six principal and six alternate TSC members. RTO members vote by class unless class members have elected to allocate voting rights among specified sub-classes. Initial bylaws will recognize following allocation of voting rights by sub-class:
  - Nonutility Entities Class: In event there are any members in this class aside from IPPs, QFs and FERC-jurisdictional power marketers, such members will elect one TSC member; the IPP, QF and FERC-jurisdictional power marketer members of the class will elect all other TSC members which this class is entitled to elect (although such IPP, QF

and power marketer members may determine to create their own separate sub-classes among which to apportion such votes).

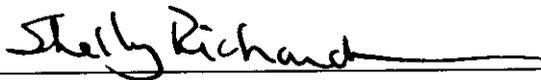
- Retail Customers Class: Retail customers having <5 MW load elect two TSC members (with residential customers alone electing one of such two members); retail customers having  $\geq 5$  MW load elect four TSC members (with customers that are RTO-qualified Scheduling Coordinators electing one of such four members).
- State and Provincial Energy Authorities and Utilities Commissions/Tribal Utility Regulatory Authorities/Unaligned Entities: State and provincial energy authorities and utilities commissions and NWPPC elect four TSC members; tribal utility regulatory authorities elect one TSC member; unaligned entities elect one TSC member.
- Election of Trustees:
  - Nominees must receive 24 out of 30 TSC votes to be elected as Trustee.
  - Members of TSC do not vote by class; each member is entitled (and required) to cast one vote for each Board vacancy (cannot cumulate votes).
  - Initial election of Trustees: executive search firm provides slate of 12-15 qualified candidates for nine open positions.
  - Subsequent annual elections of Trustees: slate of candidates is required to be twice the number of Board vacancies (less any vacancies for which the incumbent Trustee is running for re-election); any number of nominees required in excess of incumbents running for re-election are provided by executive search firm.
  - If not all open positions filled in first election round, runoff election will be held (Board may require search firm to locate new candidates as part of such process).
  - All TSC votes open and public.

Board Advisory Committee ("BAC")

- Composition: BAC membership open to any RTO member; BAC members not elected and not divided into classes.
- Responsibilities:
  - BAC provides advice to Board, promotes input on Board decisions and provides focal point for dissemination of information; does not have a gatekeeper function (BAC in no way limits Board authority).
  - BAC members do not vote on any issue; members provide advice to Board in form of position papers reflecting consensus view of BAC members where consensus has been reached on issue, or all divergent views of BAC members where consensus has not been achieved.
  - In event Board wishes further consideration of or further efforts to develop consensus on any issue referred from BAC, Board may appoint ad hoc committee or take any other action it deems appropriate.
- Procedures:
  - BAC procedures will ensure opportunity for all RTO members to propose any issue to BAC for consideration, and adequate notice of and opportunity to comment on any issue under consideration by BAC (without regard to whether the issue has been referred to BAC by an RTO member, Board or any other source).
  - BAC procedures will also ensure adequate and appropriate structure for conduct of BAC business in effective and timely manner.

I hereby certify that I have this day served the foregoing *Protest and Comment of Idaho Consumer-Owned Utilities Association, Idaho Energy Authority, Northwest Requirements Utilities, Pacific Northwest Generating Cooperative, Power Resources Managers, LLP, Public Utility District No. 1 of Snohomish County, Washington, Utah Associated Municipal Power Systems and Western Public Agencies Group* upon each person designated on the official list compiled by the Secretary in this proceeding.

Dated this 17<sup>th</sup> day of November, 2000.

A handwritten signature in black ink that reads "Shelly Richardson". The signature is written in a cursive style and is positioned above a solid horizontal line.

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