

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

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

Docket No. RT01-35-000

**MOTION TO INTERVENE AND COMMENTS
OF MORGAN STANLEY CAPITAL GROUP INC.**

Pursuant to Rule 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), Morgan Stanley Capital Group Inc. ("MSCG") hereby submits its motion to intervene and comments in the captioned proceeding. In support of this motion, MSCG states the following:

I.

Communications concerning this motion should be addressed to the following persons who should be included in the official service list in this proceeding:

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*The indicated persons should receive service of all documents in this proceeding.¹

II.

MSCG is a Commission-approved power marketer, and is a buyer and seller of wholesale electricity in the Western and Northwestern regions of the United States. As such, MSCG's participation in the West and Northwest's electric markets is directly and financially impacted by formation of a Regional Transmission Organization ("RTO") in that region.

III.

On October 16, 2000 Avista Corporation, Bonneville Power Administration, Idaho Power Company, The Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company (collectively referred to herein as, the "Filing Utilities") made an initial filing (the "Initial Filing") in accordance with Order No. 2000 ("Order No. 2000").² The Filing Utilities proposed the creation of an independent transmission entity, TransConnect, LLC, that would hold title to a considerable amount of the wholesale transmission system owned and operated by each of the Filing Utilities in the Northwest and Western states of California (most northerly portion only), Idaho, Montana, Nevada, Oregon, Utah, and Washington. TransConnect, LLC, in turn, would be

¹ MSCG requests waiver of 18 C.F.R. § 385.203(b)(3) to include three names on the service list.

² *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000) FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, III FERC Stats. & Regs., Regs. Preambles ¶ 31,092 (2000).

managed by the TransConnect Corporate Manager, Inc. On October 23, 2000 the Filing Utilities submitted a Supplemental Compliance Filing and Request for Declaratory Order (the “Supplemental Filing”) proposing the creation of an RTO, a not-for-profit corporation named “RTO West” to operate and manage this transmission system in compliance with the Commission’s Order No. 2000 (the Initial Filing and Supplemental Filing together are referred to as the “RTO West Proposal”). The Filing Utilities commit to make an additional filing (“Stage 2 filing”) in spring of 2001.

IV. Motion to Intervene

As a wholesale power marketer in the Northwestern and Western United States, MSCG has a substantial and vital interest in this proceeding and desires to intervene herein in order to protect that interest. Therefore, MSCG is an interested party, and its intervention and participation will be in the public interest. MSCG is not now, and will not be, adequately represented by any other party in this proceeding, and may be bound or adversely affected by the Commission’s action herein.

WHEREFORE, Morgan Stanley Capital Group Inc. respectfully requests that it be allowed to intervene in this proceeding with full rights as a party hereto.

V. Comments

As an active participant in the competitive wholesale energy markets nationwide, MSCG is very concerned with making those markets fair, efficient and transparent. MSCG first notes that the Filing Utilities’ proposal contains many meritorious characteristics. For example, MSCG supports the formation of an RTO with the extensive scope of RTO West, and with exclusive operational authority over transmission facilities, OASIS and related capabilities,

congestion management and parallel path flows (notwithstanding the separate ownership of the transmission facilities by TransConnect, LLC).

However, several crucial aspects of the Filing Utilities' proposal are not sufficiently worked out to meet the requirements of Order No. 2000. First and foremost, the proposal does not provide for a sufficiently independent RTO. The proposal does not present an appropriate congestion management proposal. The market monitoring plan offered does not identify in sufficient detail what are the appropriate monitoring activities RTO West will perform. MSCG will address each of these shortcomings in detail below. MSCG urges the Commission to request that the Filing Utilities revise their proposal regarding RTO West and TransConnect, LLC to take into account these considerations. MSCG is willing to participate in a collaborative process to assist RTO West in achieving compliance with Order No. 2000.

A. Independence

Order No. 2000 provides that "RTO[s] must have a decision-making process that is independent of control by any market participant or class of participants."³ Independence encompasses three conditions:

First, the RTO, its employees, and any non-stakeholder directors must not have any financial interests in any market participants. Second, the RTO must have a decision-making process that is independent of control by any market participant or class of participants. . . . Third, the RTO must have exclusive and independent authority to file changes to its transmission tariff with the Commission under Section 205 of the FPA.⁴

The Commission commented recently in the context of the California markets on the detrimental effects a lack of independence has on governing boards and markets. The Commission stated,

³ Order No. 2000 at 31,046-047.

[t]he ISO is an institution that is central to the functioning of wholesale power markets in the West and, unless it is able to resolve matters in a timely manner and is independent from market participants, we cannot be assured that rates, terms or conditions of its jurisdictional services will be just, reasonable and not unduly discriminatory or preferential. . . . Operation of this interstate transmission grid must be controlled by an expert board which is free from the influence of any market participant or market segment.⁵

The governance structure of each of the component entities of the RTO (TransConnect LLC, TransConnect Corporate Manager Inc., and RTO West) is critical in determining the degree of independence the RTO can ultimately achieve. MSCG has concerns about how each of these governance structures will operate, including reservations about the selection process for the various governing bodies.⁶ However, MSCG believes that the RTO West Proposal presents insufficient detail at this time for the Commission and market participants to make an informed judgment of the independence of the RTO. RTO West should be required, in its Stage 2 filing, to provide full details establishing the independence of its governing structure.

B. Operational Authority

Although the RTO West Proposal appears to be largely structured in a manner that grants operational independence to RTO West, MSCG would like to highlight a few issues worthy of particular concern. The Filing Utilities will be proposing the initial tariff and rate structure for TransConnect, LLC, and therefore that tariff merits careful and strict review by the Commission. This is especially the case since there is a fixed period of ten years in which RTO West may not

⁴ *Id.*

⁵ *San Diego Gas & Elec. Co. v. "All Sellers," et al*, 93 FERC ¶ 61,121, slip op. at 30-31 (2000).

⁶ MSCG is also concerned about the geographical preference the Trustees Selection Committee is authorized to exercise in voting for Trustees. See Attachment K to RTO West Proposal, page 5. We note that the Commission rejected the geographic limitations that were present in the initially proposed structure of the California Power Exchange and California Independent System Operator on the grounds that they could lead to discrimination against out-of-state market participants. *Pacific Gas and Electric Co., et. al*, 81 FERC ¶ 61,122, 61,450 (1997).

change the rate design. (See definition of “Company Rate Period” in Attachment S to Supplemental Compliance Filing). In light of the considerable implementation problems that have occurred in nearly all jurisdictions that have undergone restructuring, the Commission should reject this extremely long period for freezing the rate design.

As discussed below under “Congestion Management,” MSCG believes that the Filing Utilities’ proposal contains certain unacceptable restrictions on RTO West’s operational authority with respect to the upgrading and expansion of transmission facilities.

C. Congestion Management

RTO West should not rely on a physical-rights-only FTR market, because a financial-rights market is both more efficient and more effective.

Generally there are many details with respect to congestion management which RTO West has reserved until preparation of its Stage 2 filing. However, it is clear that RTO West is proposing a “flow-based physical rights” congestion model, which manages congestion based on issuing transmission rights along RTO grid facilities that are expected to have commercially significant amounts of congestion.⁷ RTO West will determine the total transfer capability for each flow-path and the amount of transmission rights to issue. Customers without FTRs will not be able to schedule on congested paths unless non-firm or recallable transmission is available. This information may not be available, in some cases, until as little as two hours before real-time power-flow. The implementation of a financial rights scheme, on the other hand, would allow a non-FTR holder to schedule transmission but require it to pay the allocated cost of the increased congestion.

⁷ See Attachment M of RTO West Proposal.

RTO West has not justified why a nodal congestion pricing mechanism, like that used by the PJM Interconnection, was not proposed instead of RTO West's unproven flow-path-based system. There are several working congestion management systems around the country, most notably that of PJM, from which RTO West could learn valuable lessons. PJM has two years of experience, and a tremendous amount of data, showing the advantages of nodal systems. The PJM market design is based on Locational Marginal Pricing, with trading hubs and zones based upon mathematical aggregates rather than physical boundaries. Such nodal systems allow the market to decide which paths are commercially relevant. As new congestion develops with changing flow patterns, "the aggregated LMP values will reflect the changing system conditions and in effect the market prices will evolve with the changing flow patterns conditions. . . . In effect, the market will decide which rights are valuable given the current system conditions."⁸ The flow-path approach, on the other hand, rely on administrators to make judgments market participants can make more efficiently. The flow-path model will require RTO West to constantly redefine which flow-paths are "expected to have commercially significant amounts of congestion."⁹ This in turn introduces constant administrative redesign of the market with the accompanied inefficiencies and uncertainties, and may "result in large uplift payments, which would be unpredictable."¹⁰

An RTO must ensure the development and operation of market mechanisms to manage congestion. The Commission states that "congestion pricing proposals should seek to ensure that (1) the generators that are dispatched in the presence of transmission constraints are those that

⁸ Andrew L. Ott, *Can Flowgates Really Work? An Analysis of Transmission Congestion in the PJM Market from April 1, 1998 to April 30, 2000*, Report to PJM Interconnection, Sept. 15, 2000, at 5.

⁹ Attachment M to RTO West Proposal, pg. 1.

¹⁰ Ott, *supra* note 8, at 9.

can serve the system at least cost, and (2) limited transmission capacity is used by market participants that value that use most highly.”¹¹

An adequate congestion management proposal should, at a minimum, address the following issues:

- an efficient nodal pricing system, *i.e.*, such as that implemented in the PJM Interconnection system;
- adequate interface modeling;
- equivalence of financial and physical markets and equal market access;
- a multi-settlement system;
- a well-defined system of financial Firm Transmission Rights; and
- sufficient disclosure of operational information.

E. Market Monitoring

RTO West fails to address the specific market monitoring topics outlined in Order No. 2000 for inclusion in all RTO proposals. Independent market monitoring is essential, and more specificity should be required than that provided by RTO West.

Order No. 2000 requires that RTO proposals contain a market monitoring plan that identifies what the RTO believes are the appropriate monitoring activities the RTO, or an independent monitor will perform.¹² RTO West’s Market Monitoring Unit (“MMU”) will identify, examine and evaluate design flaws, efficiency improvements, and performance inconsistent with competitive markets.

MSCG is concern by the absence of an explicit process by which market participants can present perceived market problems for investigation by the MMU, or due-process-type

¹¹ Order No. 2000 at 31,126.

requirements for such an investigation. MSCG also requests that the Commission order the Filing Utilities to supplement their market monitoring proposal to provide further details and descriptions regarding the types of market behavior, activities and trends that the MMU will be evaluating and its proposed timetable for regularly issuing reports on these matters.

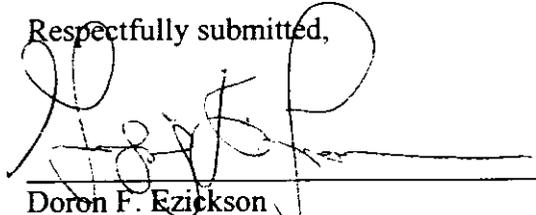
F. Interregional Coordination.

The Filing Utilities' proposal indicated that they had not yet completed the interregional coordination for RTO West. MSCG reserves the right to comment on this aspect of the filing once the Filing Utilities have elaborated further on its details.

VI. Conclusion

WHEREFORE, MSCG urges the Commission to revise its proposal consistent with the recommendations and reasons stated herein.

Respectfully submitted,



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Dated: November 20, 2000

¹² Order No. 2000 at 31,155.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing document upon each person designated on the official Service List as compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. 385.2010.

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



Donna M. Sauter