

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

| | | |
|------------------------------------|---|------------------------|
| Avista Corporation; |) | |
| Bonneville Power Administration; |) | |
| Idaho Power Company; |) | Docket No. RTO1-35-000 |
| The Montana Power Company; |) | |
| Nevada Power Company; |) | |
| PacifiCorp; |) | |
| Portland General Electric Company; |) | |
| Puget Sound Energy, Inc.; and |) | |
| Sierra Pacific Power Company. |) | |

**MOTION TO INTERVENE AND PROTEST
OF THE NORTHWEST IPPS/MARKETERS GROUP;
MOTION TO CONSOLIDATE**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), 18 C.F.R. §§ 385.212 and 385.214, the undersigned independent power producers and power marketers (the “Northwest IPPs/Marketers Group,” or the “Group”) hereby move for leave to intervene in the above-captioned proceedings, and submit the following comments on and objections to the Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000 (the “RTO West Stage 1 Filing”) made on October 23, 2000 in this docket by 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, the “RTO Filing Utilities”).

I. INTERVENTION

A. Communications

All pleadings, correspondence and other communications concerning this docket should be sent to:

Michael P. Alcantar
Donald E. Brookhyser
Alcantar & Elsesser LLP
1300 SW Fifth Suite 1750
Portland OR 97201
Tel: (503) 402-9900
Fax: (503) 402-8882 fax
e-mail: deb@aelaw.com

David B. Kinnard
Vice President and General Counsel
PPL Montana, LLC
303 North Broadway, Suite 400
Billings, MT 59101
Tel: (406) 869-5103
Fax: (406) 869-5149
e-mail: dbkinnard@pplmt.com

Denise Hill
Manager, Transmission
TransAlta Energy Marketing (U.S.), Inc.
4004 Kruse Way Place
Suite 150
Lake Oswego, OR 97035
Tel: (503) 675-3816
Fax: (503) 675 3808
e-mail: Denise_Hill@TransAlta.com

Jesse A. Dillon
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Tel.: (610) 774-5013
Fax: (610) 774-6726
e-mail: jadillon@pplweb.com

Eric E. Freedman
Preston Gates & Ellis LLP
701 Fifth Avenue
Suite 5000
Seattle, WA 98104-7078
Tel: (206) 224-7327
Fax: (206) 623-7022
e-mail: ericf@prestongates.com

The Northwest IPPs/Marketers Group respectfully requests a waiver of Commission Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to allow service to be made and communications to be addressed to each of these persons.

B. Description Of The Parties

The Northwest IPPs/Marketers Group is an ad hoc group of independent power producers and power marketers¹ which are active participants in the transmission and power markets in the Pacific Northwest and which have been and remain actively involved in the Northwest regional stakeholder process relating to the proposed formation of RTO West.

C. Basis For Intervention

The members of the Northwest IPPs/Marketers Group have a substantial interest in the RTO West Stage 1 Filing. The members of the Group utilize the transmission facilities of the RTO Filing Utilities to provide transmission service for many transactions. As independent power producers and power marketers, the members of the Northwest IPPs/Marketers Group will have generating facilities interconnected to the transmission facilities controlled and operated by RTO West, and may sell ancillary services to RTO West. The members of the Northwest IPPs/Marketers Group are therefore vitally interested in compliance by RTO West with each of the four characteristics required by Order 2000, as amended and supplemented.² In addition, the manner in which RTO West performs each of the eight functions required by Order 2000

¹Participants in the Northwest IPPs/Marketers Group include: the Cogeneration Association of California; the Cogeneration Coalition of Washington; Duke Energy North America, LLC; Dynegy Power Marketing, Inc.; National Energy Systems Company; Nevada Independent Energy Coalition; PG&E National Energy Group, Inc.; PPL EnergyPlus, LLC; PPL Montana, LLC; Reliant Energy Services, Inc.; and TransAlta Energy Marketing (U.S.), Inc.

² *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *review pending sub nom. Pub. Util. Dist. No. 1 of Snohomish Cty., WA v. FERC*, Nos. 00-1174, et al. (D.C. Cir.).

will have a material impact on both the economic welfare and the physical security of the members of the Northwest IPPs/Marketers Group and their facilities.

Since the members of the Northwest IPPs/Marketers Group include most of the significant independent generators and the power marketers involved in the Northwest power markets, this group represents unique interests that will not be adequately represented by any other party to this proceeding.

II. SUMMARY OF COMMENTS AND OBJECTIONS

The members of the Northwest IPPs/Marketers Group support the formation of RTO West, and support many of the elements of RTO West as proposed in the RTO West Stage 1 Filing. As a framework on which to build, the RTO West proposal is generally sound. However, the proposal suffers from a number of significant flaws which, unless remedied, will prevent RTO West from complying with the requirements of Order 2000 and also undermine the creation of an efficient and competitive wholesale power market in the Northwest.

There are two overarching flaws in the RTO West proposal: (1) the RTO's lack of authority over all Commission-jurisdictional facilities and services within the RTO West area; and (2) the absence of any requirement for incumbent utilities to utilize a market-based mechanism for the allocation of firm transmission rights to the market. These two flaws, combined with other deficiencies described below, result in the RTO West proposal failing to satisfy Order 2000's requirements for independence, scope and regional configuration, operational authority, tariff administration and design, congestion management, planning and expansion, and open architecture. The proposal also threatens to fall considerably short of the requirements of Order 2000 for RTO transmission

pricing. These problems must be rectified before RTO West is permitted to commence operations.

The failure of the RTO West filing to conform to the requirements of Order 2000 derives from the incentives of incumbent utilities to retain preferential treatment for themselves and their merchant functions. For this reason it is critical that an independent RTO board be formed and given the authority to develop the remainder of the RTO documents to be approved by the Commission. Therefore, in response to the RTO West Stage 1 Filing, the Commission should approve only the governance documents submitted in the filing, and direct that RTO West form and seat its first full, independent Board of Trustees. The Commission should further direct that all remaining RTO documents, including the Transmission Operating Agreement (the “TOA”) and the RTO Tariff, be prepared, and that all subsequent filings with respect to the RTO – including the RTO West Stage 2 Filing – be made, under the direction and control of the independent board of the RTO.

III. THE RTO WEST PROPOSAL HAS MUCH MERIT, BUT ALSO SUFFERS FROM SERIOUS FLAWS

The RTO West proposal was developed with broad stakeholder involvement, applying lessons learned from the experience of IndeGO (the failed effort between 1996 and 1998 to create an independent system operator for the Pacific Northwest and northern Rocky Mountain states) and building on prior efforts of Mountain West ISA and Desert STAR. The members of the Northwest IPPs/Marketers Group strongly support many features of RTO West. The following list highlights some of the elements of the proposal having the greatest merit:

- The articles of incorporation and bylaws of the RTO provide the framework for an independent governance structure;
- All members of RTO West will be entitled to provide input to the RTO's Board of Trustees through a Board Advisory Committee;
- The RTO proposes to use a commercially friendly, decentralized congestion management protocol that employs a physical rights, flow-based model;
- The RTO Filing Utilities include not only the region's Commission-jurisdictional public utilities, but also the Bonneville Power Administration, without whose facilities RTO West would be merely a shadow RTO;
- RTO West is proposed to include under its control, from the date on which it commences operations, more than 90 percent of the region's high voltage transmission facilities;
- The RTO proposes to operate through a single control area;
- The RTO proposes to utilize a market-based ancillary services market;
- The RTO proposes to use load-based access fees;
- The RTO is proposed to eliminate pancaking of transmission rates within the RTO area;
- The RTO is proposed to incorporate a market framework for transmission and the use of market-based mechanisms for allocating the use of the congested transmission paths and making investment decisions; and
- RTO West should enhance reliability in the region.

Although there is much in the RTO West proposal that is positive and useful, the proposal also suffers from fundamental flaws. As a result, the proposal fails to satisfy

many of the requirements of Order 2000. Each of these flaws has been raised repeatedly by the members of the Northwest IPPs/Marketers Group during the RTO West collaborative process, and none of them will come as any surprise to the RTO Filing Utilities. Remedying these flaws would bring RTO West into compliance with the requirements of Order 2000, improve the ability of all transmission customers to obtain non-discriminatory access to the western electrical grid, and enhance competition in the power markets in the Western Interconnection. The remedies for these flaws can be easily accommodated within the existing RTO West structure and do not require initiating a new RTO development effort.

There are two overarching flaws in the RTO West proposal: the RTO's lack of authority over all Commission-jurisdictional services within the RTO West area; and (2) the absence of any requirement in connection with the RTO for incumbent utilities to expose their allocated firm transmission rights to the market.

A. The RTO West Proposal Fails To Provide RTO West With Authority Over All Commission-Jurisdictional Services In The RTO West Area

1. Order 2000 Requires That An RTO Have Authority Over All Commission-Jurisdictional Services Within Its Region

RTOs formed pursuant to Order 2000 must have authority over all Commission-jurisdictional services provided within their region. Jurisdiction under the Federal Power Act hinges on the nature of the transactions and functions for which facilities are used, rather than the voltage rating of facilities. The members of the Northwest IPPs/Marketers Group, together with other stakeholders, have consistently proposed that RTO West's authority be defined in terms of services and functions, rather than in terms of specific facilities. In spite of our efforts, the RTO West Stage 1 Filing would restrict RTO West's

authority to only those facilities—the RTO West Controlled Transmission Facilities-- that the transmission owners, in their discretion, decide to turn over to the RTO. This restriction prevents RTO West from complying with Order 2000’s requirements for independence, scope and regional configuration, operational authority, tariff administration and design, and planning and expansion.

In Order 2000, the Commission, in discussing the requirement that an RTO possess adequate scope and regional configuration, stated:

The competitive, efficiency, reliability, and other benefits of RTOs can be best achieved if there is one transmission operator in a region. To be most effective, that operator should have control over all transmission facilities within a large geographic area, including the transmission facilities of non-public utility entities.

65 Fed. Reg. at 863. Order 2000 does not specifically define the scope of the phrase “all transmission facilities,” but the ancestry of Order 2000 makes it clear what is required. Order 888³ requires that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce file open access non-discriminatory transmission tariffs. Thus any facilities used in interstate commerce are covered by the terms of the open access tariff. Order 2000 builds on Order 888 and envisions RTOs as the next evolutionary step from such tariffs. Therefore, the Commission logically must have intended the RTO structure to include RTO authority over all facilities within its region used in interstate commerce. If that were not the case, then there would remain transmission facilities within the RTO region governed only by the Order 888 open-

³ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 62 Fed. Reg. 64,688, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd sub*

access tariff, and subject to the same shortcomings and potential abuses that Order 2000 was intended to remedy. The following statement from Order 2000 confirms this intended scope:

We agree that RTOs must control all transmission facilities that are necessary to support competitive wholesale power markets. For this reason, we specified the scope, configuration and operational control requirements adopted in this Final Rule. We will judge any proposed reclassification on a case-by-case basis. We note that any reclassification of transmission facilities to local distribution will require Commission approval and will not remove from the Commission's jurisdiction any facilities used to deliver power to wholesale customers.

65 Fed. Reg. at 935.

2. Under The RTO West Proposal, RTO West Would Have Control Over Only A Portion Of The Facilities Over Which Commission-Jurisdictional Services Will Be Provided

As proposed, RTO West would not exercise authority over all Commission-jurisdictional services within the RTO West area. Many of the facilities used for interstate commerce would not be included, either directly or indirectly, under the control of RTO West. The TOA requires that Participating Transmission Owners include in the RTO West Transmission System only those facilities meeting the definition of "RTO West Controlled Transmission Facilities"⁴ -- and the RTO's authority under the TOA largely extends only to such facilities.

nom. Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000).

⁴ Exhibit A ("Schedule of Definitions") to the TOA defines "RTO West Controlled Transmission Facilities" as follows: "RTO West Controlled Transmission Facilities" means those Transmission Facilities specified in Exhibit D, which are those Transmission Facilities over which RTO West shall exercise Operational Control. Unless the FERC approves an exception, the Transmission Facilities specified in Exhibit D shall include all Transmission 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 into or out of the RTO West Transmission System. A Transmission Facility shall be deemed to have a material impact on transfer capabilities between Congestion Zones or into or out of the RTO West Transmission System if such transfer capabilities would change if the Transmission Facility were removed. A Transmission Facility

Thus, while the TOA gives RTO West the exclusive right to provide Transmission Services, it gives the RTO that right only over a limited set of facilities, those comprising RTO West Controlled Transmission Facilities.⁵ The label placed on a facility by the Participating Transmission Owner should not be permitted to define the scope of the RTO's authority. If a facility is used for wholesale transactions, it is within FERC's jurisdiction, and it should therefore also be under the authority of the RTO. In *Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), the United States Court of Appeals for the District of Columbia Circuit held that:

FERC's assertion of jurisdiction over all wholesale transactions, regardless of the nature of the facility, is clearly within the scope of its statutory authority. . . . *Wisconsin-Michigan Power Co. v. FPC*, 197 F.2d 472, 477 (7th Cir. 1952) (finding that transmission facilities used at wholesale are not "local distribution facilities").

225 F.3d at 696.

In this context, the facilities now owned by Puget Sound Energy, Inc. ("PSE") appear to be of particular concern. In the RTO West Stage 1 Filing, the RTO Filing Utilities state:

shall be deemed to have a material impact on transfer capabilities within a Congestion Zone if such Transmission Facility carries ten percent (10%) or more of the electric power transferred through parallel paths through such Congestion Zone. The classification of the low-voltage side of a transformer shall determine whether such transformer shall be included in Exhibit D, and substation facilities related to a transformer shall be included in Exhibit D if the transformer is included in Exhibit D. The Executing Transmission Owner shall not be required to include in Exhibit D those Transmission Facilities that are radial to load."

⁵ Section 5.4.1 ("Transmission Service Provided by RTO West") provides as follows: "On and after the Transmission Service Commencement Date, RTO West shall have the exclusive right and obligation pursuant to the terms of the RTO West Tariff to provide to Eligible Customers all Transmission Services over the Transmission Facilities specified in Exhibit B, including all (1) Transmission Services required by the Executing Transmission Owner and using the Transmission Facilities, (2) Transmission Services needed for the Executing Transmission Owner to satisfy its obligations under Non-Converted Transmission Agreements that remain in effect (and are not suspended) on and after the Transmission Service Commencement Date, (3) Transmission Services required pursuant to Firm Transmission Rights granted to entities that have agreed to suspend rights and obligations under Pre-Existing Transmission Agreements,

[S]ome facilities that presently would otherwise meet the definition of RTO West controlled transmission facilities will continue to be operated as distribution facilities by the local transmission owner in the Puget Sound area and not as RTO West controlled transmission facilities.

RTO West Stage 1 Filing at 62. As evidenced by the comments filed by PSE in response to the RTO NOPR,⁶ PSE is highly concerned that, by virtue of provisions of Washington State law, the formation of an RTO will encourage retail open access within its service area.⁷ Although the Commission addressed these concerns in Order 2000⁸, PSE has nonetheless apparently decided to withhold from RTO West most of PSE's transmission facilities, including "main grid" facilities that are apparently being turned over by every other RTO West Filing Utility. PSE's action isolates facilities used for wholesale service from the control of RTO West. PSE's action also significantly limits the authority of the RTO over generation interconnection and planning with respect to those facilities, and inhibits non-discriminatory interconnection and access to transmission facilities by independent power producers and marketers in the rapidly growing Puget Sound area, which is in dire need of additional generation to satisfy its rapid load growth.

3. The Exclusion of Facilities From RTO West's Control Would Perpetuate Rate Pancaking And Discriminatory Treatment

As a result of this exclusion of facilities from the control of RTO West, individual transmission owners in the RTO West area will retain tremendous authority over many

and (4) Transmission Services using the Transmission Facilities that are requested by other third-party Eligible Customers."

⁶ *Regional Transmission Organizations, Notice of Proposed Rulemaking*, 64 Fed. Reg. 31,390 (June 10, 1999), FERC Stats. & Regs. ¶ 32,541 at 33,683-781 (1999).

⁷ 65 Fed. Reg. at 935.

⁸ "We do not believe that an RTO could interfere with a state's decisions on whether or how fast to implement retail choice within its borders, either through the RTO's Section 205 filing authority or otherwise through the RTO's jurisdictional obligation to provide non-discriminatory and non-preferential transmission service." 65 Fed. Reg. at 935.

lines used for wholesale transactions.⁹ For all of such excluded facilities, the transmission owner will retain the right to determine the thermal ratings of the facilities and thereby Total Transmission Capacity (“TTC”) and Available Transmission Capacity (“ATC”), establish and implement interconnection standards and maintenance standards, and plan and construct any facilities it chooses to support the excluded facilities. The individual transmission owner will also retain the ability to pancake rates for the use of the excluded facilities. To a wholesale generator or load connected to such excluded facilities, these retained rights of the transmission owner will have a tremendous impact on the customer’s ability to obtain equal and nondiscriminatory access to the main grid.

In order to remedy this problem, the Commission should direct RTO West to revise the definition of RTO West Controlled Transmission Facilities in a manner that is consistent with Orders 888 and 2000. The term must include all facilities that are used in providing Commission-jurisdictional services. The members of the Northwest IPPs/Marketers Group propose that the definition be amended to read as follows:

“RTO West Controlled Transmission Facilities” mean any and all electric facilities (other than generation facilities) that are used in the provision of Commission-jurisdictional services, with the exception of facilities (i) over which less than 5% of the flows are used for Commission-jurisdictional services and (ii) which do not affect the transfer capabilities of FTR paths.

B. The RTO West Proposal Fails To Make Firm Transmission Rights Available To Eligible Customers On The Basis Required By Orders 888 and 2000

The members of the Northwest IPPs/Marketers Group support RTO West’s proposal to manage congestion through a flow-based physical rights (as opposed to a

⁹ Although Section 5.5 of the TOA seems to permit the RTO to schedule the use of such excluded facilities, scheduling is only one of at least four necessary components of RTO authority: access (both scheduling and interconnection), planning, operations (including switching, response to contingencies, maintenance

financial rights or contract path) model. Under the RTO West congestion management model, users of the RTO West transmission system would require a firm transmission right (“FTR”) – which would be acquired through an auction process-- to schedule on a “flow path” (meaning any RTO West grid facility having commercially significant amounts of congestion). The members of the Northwest IPPs/Marketers Group support this model because in principle it would provide for a decentralized and commercially friendly system, and would not permit the RTO to hold back rights until the day-ahead market but instead require release of 100 percent of the rights to market participants.

However, the reality of the RTO West congestion management process threatens to depart from the concept in ways that make the concept only a hollow promise. The manner in which the RTO Filing Utilities propose to make the initial allocation of FTRs, and the resulting extent to which incumbent utilities will be able to withhold FTRs from auction for themselves, means that there will be effectively no market for FTRs. The allocation rules proposed in the RTO Filing Utilities’ TOA indicate that the allocation of FTRs to incumbent utilities will, for the foreseeable future, consume all or almost all of the available capacity on congested paths in the RTO. As a result, there would be no capacity available for the members of the Northwest IPPs/Marketers Group or any other non-incumbent user to procure through RTO West’s annual FTR auction.¹⁰ Any such

and outage management), and pricing.

¹⁰ The intent of the FTR allocation rules proposed in the TOA is to exclude from the FTR market all transmission capacity that is used for service to native loads, *plus* additional allowances for “load growth,” *plus* additional allowances for “rollover rights” -- all calculated under the most generous of assumptions (the “24 feasible dispatch” conditions). These rules are far more liberal than those currently used for the determination of “committed uses” in the Western Interconnection. From a practical perspective, these rules will result in the pre-allocation and exclusion from the marketplace of effectively all commercially valuable transmission capacity.

state of affairs will be very detrimental to the development of fair and workable competitive markets in the RTO's area.

This preemption of available capacity occurs because, once the FTRs are allocated to an incumbent, the incumbent has no obligation to place any value on the retention of that FTR and no obligation to forecast whether the incumbent actually needs the FTR to serve load. The *de facto* allocation of the incumbents' transmission facilities to the incumbents' merchant business lines removes effectively all commercially valuable transmission capacity from the marketplace. It also negates the key premise upon which the entire RTO West commercial model relies: the existence of a liquid marketplace for flowgate FTR rights through which all market participants can acquire transmission access based on market economics.

Forcing every FTR to be exposed to the market is the only way to develop a competitively efficient and robust market. If incumbents are required to place the FTRs allocated to them into the auction, the incumbents will simply be required to place a rational economic value on the use of the FTR, and to compare the cost of using the related transmission capacity to the cost of alternatives. Incumbents stand no risk of losing any transmission capacity required to serve their loads, because they will always be able to use their entitlement to revenues from the sale of their FTRs to bid in a manner that would prevent their loss of any FTRs that they need.

The elimination of transmission access to non-incumbents by the pre-allocation of FTRs has been the single most important issue for the Northwest IPPs/Marketers Group during the RTO West development process, and the Group has made that fact known repeatedly. While we support the flowgate-based physical rights model proposed by the

RTO Filing Utilities, we cannot do so if the fundamental premise upon which this entire access model rests -- *i.e.*, that there will be deep and liquid markets for FTRs -- is invalid. As the RTO West proposal stands, very few FTRs will be available to the market, and the FTR market will therefore de facto be non-existent.

This treatment is far inferior to the rights that members of the Northwest IPPs/Marketers Group have under Order 888, since under Order 888 the transmission owner is at least obligated to treat all transmission customers -- both incumbents and non-incumbents -- on a comparable, non-discriminatory basis. Under Order 888 a potential transmission customer can request transmission service and receive such service if it is willing to pay the transmission provider's redispatch cost. But under the RTO Filing Utilities' proposal, the Participating Transmission Owners' energy merchants, which would be given control over almost all of the grid's capacity, can simply forestall transmission access and service by keeping all of their FTRs for themselves, regardless of whether or not these incumbents' opportunity costs are less than the price that other eligible customers are willing to pay for FTRs.

By virtue of the proposed unconditional FTR pre-allocation (*i.e.*, allocation with no obligation to place the rights into the RTO's annual FTR auctions), the RTO Filing Utilities' proposal actually eliminates transmission access rights currently available to members of the Northwest IPPs/Marketers Group under Order 888. Under Order 888, a transmission owner is required, in response to a request for transmission access, to determine its redispatch cost and therefore the opportunity cost of its transmission capacity. But under the RTO West proposal, the incumbent utility no longer has to

determine the opportunity cost of retaining the capacity or respond in an economically efficient or non-discriminatory manner to requests for transmission access.

Another problem with the RTO West proposal -- the importance of which is greatly amplified by the transmission rights exclusions described above-- is that the rules for allocation of FTRs to pre-existing contracts and to “load service obligations” are unduly generous to the incumbent utilities. The RTO West proposal carves up and allocates the grid among incumbents, allowing those incumbents to assert liberal and unsubstantiable interpretations of rollover rights and load growth rights, and by claiming rights under 24 “feasible” dispatch scenarios. The carve-out proposal even requires the RTO to buy back rights and to redispatch to create capacity to support such liberal allocations, spreading the associated costs to all users of the RTO West grid. Through these processes, the RTO Filing Utilities would consign most of the ATC of the RTO grid to their retail and wholesale merchant affiliates, to the enormous detriment of non-incumbents such as the members of the Northwest IPPs/Marketers Group.

The lack of availability of access rights under the RTO Filing Utilities’ proposal removes the economic rigor from the congestion management system. The Commission requires that RTOs implement a congestion management system

that provides all transmission customers with efficient price signals regarding the consequences of their transmission use decisions. We are convinced that efficient congestion management requires that transmission customers be made aware of the cost consequences of their actions in an accurate and timely manner . . .

65 Fed. Reg. at 887. Finally, all of the proposed FTR carve-out rules would be permanently locked into place by the inclusion of this construct within the TOA, which

(as discussed in greater detail below) by its terms would always prevail in the event of a conflict with the RTO West Tariff.

The Commission should require that all FTRs that are pre-allocated by the RTO be made available by the recipients of those FTRs to the RTO's annual FTR auctions. In order to protect the legitimate needs of load-serving entities, the auction process should be structured so as to (1) enable such entities to retain the pre-allocated FTRs that the entities need to serve loads through submittal of high-price bids (in effect, a reserve price bid) and (2) in the case of "ties" at the maximum FTR bid price, award the subject FTRs to the load-serving entities.

IV. AS PROPOSED, RTO WEST WOULD FAIL TO SATISFY VARIOUS REQUIREMENTS OF ORDER 2000

The two major issues described above -- facilities exclusion and FTR exclusion -- combined with other deficiencies discussed below, result in the RTO West proposal failing to satisfy Order 2000's requirements for independence, scope and regional configuration, operational authority, tariff administration and design, congestion management, planning and expansion, and open architecture.

A. RTO West Would Fail To Satisfy Characteristics Required By Order 2000

1. The RTO West Proposal Fails To Satisfy Order 2000's Independence Requirements

The RTO Filing Utilities explicitly request a determination that the organization will satisfy the independence standards of Order 2000. The Commission should deny this request for five reasons: (1) the RTO West Stage 1 Filing provides insufficient information to warrant a determination that RTO West will be independent; (2) the RTO Filing Utilities would retain too much control over the rates, terms and conditions of Commission-jurisdictional services; (3) RTO West would lack genuine autonomy; (4)

RTO West proposes to delegate security coordinator functions to a non-independent body; and (5) the RTO Filing Utilities are proposing to provide Participating Transmission Owners with preferential access to proprietary market intelligence.

a. The RTO West Stage 1 Filing Does Not Contain Sufficient Information To Warrant A Determination That RTO West Is Independent

The degree of independence of an RTO from market participants is not a function solely of the RTO's governance. RTO West's independence will be determined more significantly by the day-to-day operational autonomy of the RTO, and by the RTO's ability to carry out its functions without need to rely on or coordinate with decisions and actions by the RTO Filing Utilities or any other group of market participants. For example, can the RTO take all actions necessary to ensure reliability of the grid, or must its actions be coordinated with or subordinated to those of a transmission owner that has the prerogative to act on its own? Or, with regard to congestion management, do RTO West's protocols provide full access to the transmission system for all participants, or are there rights reserved to the Participating Transmission Owners that effectively negate that full access?

The Commission cannot yet determine whether RTO West satisfies the independence requirements of Order 2000, since the RTO West Stage 1 Filing does not give the Commission sufficient information upon which to evaluate fully the independence of the proposed RTO. The ultimate independence and autonomy of RTO West must be reflected in the operational documents and protocols of the RTO, and particularly in the RTO's Tariff and its appendices. Most of these documents have not yet been filed, and will be filed only as part of the RTO West Stage 2 Filing. Until the

Commission can review the tariff and its appendices, the list of facilities over which RTO West will have authority to provide all Commission-jurisdictional services, and the inventory of firm transmission rights being allocated to incumbents, the Commission cannot fairly or intelligently evaluate the independence of RTO West. The Commission should therefore defer any final determination that RTO West satisfies the independence requirements of Order 2000.

b. The RTO Filing Utilities Would Compromise RTO West's Independence By Retaining Too Much Control Over The RTO

The RTO West Stage 1 Filing discloses that the RTO Filing Utilities would retain too much involvement in functions that are properly those of the RTO, such as the RTO's access, operations, interconnection, grid expansion and transmission pricing functions. The filing therefore leaves considerable doubt whether the RTO as proposed will satisfy the independence requirements of Order 2000.

An important example of this dominance by the RTO Filing Utilities appears in the proposed Bylaws of RTO West. Section 4(a) of Article V of the Bylaws in essence affords the RTO Filing Utilities a veto right over the formation of the RTO, because it gives the RTO Filing Utilities the right to determine whether and when the governance of the RTO becomes independent. That section states that the meeting of the RTO's Members for the election of the first members of the Trustee Selection Committee cannot be held until the Major Transmitting Utilities determine, by the affirmative vote of not less than 80 percent of the Major Transmitting Utilities, to allow the meeting to be held. If TransConnect LLC ("TransConnect"), the independent transmission company proposed to be formed by certain of the RTO Filing Utilities in connection with RTO

West,¹¹ is formed before the formation of the RTO, then there will be four Major Transmitting Utilities, and the 80 percent approval requirement would require the unanimous approval of those utilities. Even if TransConnect has not been formed, and there are nine Major Transmitting Utilities, only two out of the nine utilities will be able to prevent the meeting of Members to elect the Trustees Selection Committee.

The election of the members of the Trustees Selection Committee is an essential step in the seating of the independent Board of Trustees and the formation of an independent RTO. Once the Commission has approved RTO West's Order 2000 compliance filing, the RTO Filing Utilities should not have the unilateral right to forestall that formation. Section 4(a) of Article V of the Bylaws should be amended to eliminate the requirement that the Major Transmitting Utilities approve the RTO's commencement of the independent board selection process.

c. The RTO's Lack Of Authority Over Commission-Jurisdictional Services Precludes It From Being Independent

The current RTO documents (and in particular the TOA) do not vest the RTO with the authority to provide all Commission-jurisdictional services over all of the facilities of Participating Transmission Owners (including any facilities that would be retained by the ITC Filing Utilities after formation of TransConnect). The RTO has authority to provide Commission-jurisdictional services only where such services rely upon the use of the limited subset of transmission facilities that are designated by the Participating Transmission Owners as RTO West Controlled Transmission Facilities.

¹¹ Order No. 2000 Compliance Filing and Petition for Declaratory Order, filed on October 16, 2000 in Docket No. RT01-15-000 by Avista Corporation, The Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company (collectively, the "ITC Filing Utilities") (the "ITC Stage 1 Filing").

The TOA provides that certain Commission-jurisdictional transmission facilities, which the RTO Filing Utilities characterize as unnecessary for the operation of the main grid, would be classified as distribution and remain under the authority of the RTO Filing Utilities. This provision would allow the RTO Filing Utilities to retain authority to define the rates, terms and conditions of generation interconnection outside the purview of the Commission. These restrictions would be locked in place indefinitely by virtue of being enshrined in the TOA, which is proposed to serve as the master document for the RTO. Section 23.18 of the TOA provides:

In the event of a conflict between the terms of this Agreement and the terms of (1) RTO West Tariff or (2) the Executing Transmission Owner Rate Schedules, the terms of this Agreement shall govern.

As a result of this provision, the RTO will be precluded from ever exercising any greater authority than the limited authority granted to it in the TOA.

The Commission should order the RTO Filing Utilities to amend the proposed TOA to state clearly that RTO West is authorized, through the TOA and the RTO Tariff, to provide *all* Commission-jurisdictional services over *all* of the facilities of the Participating Transmission Owners, under policies and procedures established and overseen by the RTO. The Commission should also advise the RTO Filing Utilities to eliminate Section 23.18 of the TOA, and instead leave it to the Commission and the courts, in light of the specific facts involved, and in light of applicable law and regulation, to decide the question of which RTO document governs in the event of a dispute.

d. RTO West’s Independence Would Be Compromised By Delegation Of The RTO’s Security Coordination Responsibilities To An Entity Not Satisfying The Commission’s Independence Requirements

The RTO West Stage 1 Filing proposes that the security coordination responsibilities of RTO West will be performed on behalf of the RTO by the Pacific Northwest Security Coordinator (“PNSC”):

[T]he filing utilities intend for RTO West to contract, at least initially, with PNSC to perform RTO West’s security coordination function. . . . PNSC is not operated or controlled by any of the filing utilities or any other control area operator PNSC serves. PNSC’s board of directors consists of members appointed by participating control area operators, but board members may not be associated with any merchant function (including the merchant function of the appointing control area operator).

RTO West Stage 1 Filing at 64. The PNSC board, as currently constituted, comprises only representatives of the incumbent control area operators (i.e., vertically integrated utilities), and is therefore under the control of those utilities. The PNSC’s bylaws prohibit membership on the PNSC board by any employee of a Participating Transmission Owner’s “Merchant Function.” However, the PNSC bylaws define “Merchant Function” in such a way as to permit personnel who have substantial interests in the purchase and sale of electric power to serve as members of the PNSC board:

“Merchant Function” does not include any Control Area Operator officer or employee who has supervisory responsibility for any operating division, department, area of responsibility, or affiliate that carries out the direct purchase or sale of electric capacity or energy so long as the officer or employee does not engage *actively* in the *direct* purchase or sale of electric capacity or energy.

PNSC bylaws, Section 1.9 (emphasis supplied).

It is clearly inconsistent with the independence requirements of Order 2000 for RTO West to delegate its security coordination responsibilities to an entity that is governed by Participating Transmission Owners, and that could even include among its

board members representatives of the transmission owners' merchant functions. If the RTO Filing Utilities wish RTO West to delegate any of its security coordination functions to the PNSC, then the PNSC's bylaws should first be amended to prohibit participation on the PNSC board of directors by any person who is in any way affiliated with a market participant. The delegation should also include a sunset provision, to ensure that the RTO is not required to depend on a third-party provider for this important function for any longer period than necessary.

e. The RTO Filing Utilities' Proposal Would Compromise RTO West's Independence By Granting Participating Transmission Owners Preferential Access To Market Information

As discussed above, under the RTO Filing Utilities' proposal, Participating Transmission Owners would be granted the authority to play the RTO's role with regard to any main grid transmission facilities that the Participating Transmission Owners refuse to turn over to the RTO. This arrangement would give Participating Transmission Owners – many of which will remain vertically integrated utilities – preferential access to commercially significant grid and market information, since they would be permitted to switch and operate, and observe the real-time loadings of, such facilities (while other market participants would not have access to such information). This arrangement would also give the same Participating Transmission Owners the ability over the longer term to control access to these facilities, by virtue of the power of the Participating Transmission Owners to determine the facility ratings that will be used to determine the path TTC and OTC. As a consequence, this exclusion of facilities from the control of RTO West would seriously undermine the independence of RTO West.

2. The RTO West Proposal Fails To Satisfy Order 2000’s Requirements For RTO Scope And Regional Configuration

As proposed, RTO West is deficient in its scope and regional configuration, because not all of the facilities that are used to provide Commission-jurisdictional service in the RTO West area will be under the control of the RTO. This proposed exclusion of facilities violates one of the basic principles of Order 2000. In the order, the Commission stated:

To be most effective, [an RTO] should have control over *all transmission facilities* within a large geographic area . . .

65 Fed. Reg. at 863 (emphasis supplied)]. As discussed above, RTO West will have sufficient scope only if it controls all of the transmission facilities used to provide Commission-jurisdictional services within its region. Should RTO West not have authority over all such facilities, it would fail to satisfy the requirements of Order 2000 for RTO scope and configuration.

The RTO West Stage 2 Filing will set forth the specific facilities of the RTO Filing Utilities that are to be transferred to the control of RTO West. The Commission should require that those facilities include all facilities of the RTO Filing Utilities providing Commission-jurisdictional service.

3. The RTO West Proposal Fails To Satisfy Order 2000’s Requirements For RTO Operational Authority

The problem of facilities exclusion also causes the RTO West proposal to fail to satisfy the Commission’s requirements for RTO operational authority.

RTO West as proposed would perpetuate a balkanized Northwest transmission grid. The transmission system within the RTO West geographic boundaries would continue to be operated by a patchwork of different entities. Wholesale transactions

would utilize facilities operated by RTO West and facilities operated by local transmission and distribution utilities. As a result, RTO West would not be able to fulfill the operational functions that are required by Order 2000.

In the RTO NOPR, the Commission raised these very same concerns:

At present, the industry's ability to maintain reliable grid operation is hindered by the existence of many separate organizations that directly or indirectly affect the operation and expansion of the grid. . . . An additional complication is that many of these entities also own generation or have a decision making process that continues to be dominated by traditional vertically integrated utilities. Therefore, their independence and commercial neutrality as grid operators is subject to question.

64 Fed. Reg. at 31,399 (footnotes omitted). Again, the Commission should require that the RTO West Stage 2 Filing provide that all facilities that are used in the provision of Commission-jurisdictional services are to be governed by the RTO's Tariff and interconnection requirements.

B. RTO West Would Fail To Satisfy Functions Required By Order 2000

1. The RTO West Proposal Fails To Satisfy Order 2000's Requirements For RTO Tariff Administration and Design

The facilities exclusion problem raised by the RTO Filing Utilities' proposal would also prevent RTO West from complying with Order 2000's tariff administration and design requirements. The regulations adopted in Order 2000 provide:

(k)(1)(i) The Regional Transmission Organization must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The Regional Transmission Organization must have the authority to review and approve requests for new interconnections.

18 C.F.R. Part 35(k)(1)(i). Since the RTO Filing Utilities propose to retain authority over interconnection, planning, and pricing of many of the facilities serving wholesale

transactions by classifying such facilities as distribution facilities, Order 2000's vision of a single region-wide RTO tariff, consistently and uniformly administered, will not be realized. In the RTO West geographic region, there will be multiple tariffs, multiple providers approving or disapproving requests for transmission service, and multiple interconnection standards and practices.

In addition to being inconsistent with Order 2000, multiple tariffs create real barriers for non-incumbents -- such as the members of the Northwest IPPs/Marketers Group -- that are trying to do business throughout the RTO. The Commission has acknowledged the validity of these concerns. In response to the RTO NOPR, the Commission received many comments asking the Commission to limit the RTO's authority in approving new interconnections. The Commission, however, remained firm on the necessity of that authority:

[Certain commentators] suggest that an RTO's authority over new interconnections should be limited. Because the ability for customers to obtain nondiscriminatory access to the regional transmission system, whether over existing facilities or over new facilities, is integral to a competitive market for generation, we reject these proposals to modify our original position on new interconnections.

65 Fed. Reg. at 877.

The approval of new interconnections as proposed in RTO West is problematic, not just as a result of the facilities exclusion problem, but also because of the rights and preferences explicitly reserved for the RTO Filing Utilities in the TOA. The TOA creates opportunities for discriminatory treatment of generators, because in the case of many generator interconnections, requirements specified by the Participating Transmission Owners, rather than standards set by a truly independent entity, would prevail. Section 4.2.1 of the TOA would obligate the Participating Transmission Owner to allow

interconnection to any of the Participating Transmission Owner's facilities under "reasonable terms and conditions." However, RTO West could specify interconnection standards *only* for the Participating Transmission Owner's RTO West Controlled Transmission Facilities. RTO West would be prohibited from specifying standards for any other facilities of the Participating Transmission Owner.

Although Section 4.2.2 of the TOA would allow RTO West to force the Participating Transmission Owner into alternative dispute resolution for disputes regarding interconnection at any voltage level, the standards imposed on the arbitrator are unduly preferential to the Participating Transmission Owner:

The arbitrator shall be instructed to accept the Executing Transmission Owner's proposed terms for interconnection with Electric System facilities other than RTO West Controlled Transmission Facilities if such terms (1) are reasonable, (2) are not contrary to requirements of the FERC, (3) do not conflict with the terms of any Generation Integration Agreement or Load Integration Agreement the requesting third party will be expected to execute and (4) are not unreasonably discriminatory or preferential with respect to the Executing Transmission Owner's other comparable interconnection agreements. The arbitrator shall be further instructed that there is no requirement for the interconnection agreement terms of the various Participating Transmission Owners to be uniform among the various Participating Transmission Owners, as long as the proposed interconnection agreement terms meet the above standards.

Thus RTO West would, under the proposed TOA, cede to the Participating Transmission Owners all real authority over interconnection to transmission facilities providing Commission-jurisdictional services, with the exception of that limited set of facilities comprising the RTO West Controlled Transmission Facilities. The Participating Transmission Owner's interconnection standards would apply to the remainder of the Participating Transmission Owner's system.

A system that requires the RTO to enforce its interconnection standards through alternative dispute resolution is clearly not sufficient to protect the interests of non-incumbents such as the members of the Northwest IPPs/Marketers Group. As the Commission stated in Order 2000:

With the RTO the sole provider of transmission service, transmission customers have a nondiscriminatory and uniform access to regional transmission facilities. This type of access cannot be assured if customers are required to deal with several transmission owners with differing tariff terms and conditions. As noted in the [RTO] NOPR, the RTO must be the provider of transmission service in the strong sense of the term. Mere monitoring and dispute resolution are insufficient to meet the requirements of this standard.

65 Fed. Reg. at 877. The RTO Filing Utilities' proposal prevents RTO West from being a transmission provider in the sense required by the Commission. The proposal also flatly contradicts the pronouncements of the Commission with respect to its jurisdiction over wholesale generator interconnections.¹²

Again, the Commission should require that the RTO West Stage 2 Filing provide that all facilities involved in the provision of Commission-jurisdictional services are to be governed by the RTO's Tariff and interconnection requirements.

2. The RTO West Proposal Fails To Satisfy Order 2000's Requirements For RTO Congestion Management

If the Commission intends to create true open access to the transmission system, then incumbent utilities must be required to obtain transmission access through the same market-based mechanisms as other market participants. As discussed above, the RTO

¹² See, e.g., *Sierra Pacific Power Company*, 92 FERC ¶ 61,179 at 61,629 (2000) ("Because RTOs will administer pro forma OATTs, we hope that compliance with our RTO rulemaking will eliminate any concerns regarding interconnection procedures."); *Entergy Services, Inc.*, 91 FERC ¶ 61,149 at 61,560 (2000) (*Id.*); *Tennessee Power Company*, 90 FERC ¶ 61,238 (2000) (holding that interconnection is an element of transmission service).

Filing Utilities' scheme for allocating FTRs to incumbents all but guarantees that competing uses for those FTRs, and uses by non-incumbent providers of generation, will not occur. The RTO West proposal would allow the incumbent vertically integrated market participants to transform a limited preference associated with serving native load into a privilege to protect the profitability of their merchant functions and disadvantage their competitors. As pointed out above, this issue is by far the most critical one standing in the way of a competitive marketplace for transmission services in the RTO West area.

To remedy this problem, the Commission should require that all FTRs that are pre-allocated by RTO West to incumbent utilities be auctioned in the RTO's annual FTR auctions. The auction process should, as described above, be structured in such a way as to allow load-serving entities to retain the rights they need to serve loads by submitting reservation price bids that allow them to retain the FTRs in the event of a tie in the bidding process.

3. The RTO West Proposal Fails To Satisfy Order 2000's Requirements For RTO Planning and Expansion

The TOA gives the RTO Filing Utilities too much discretion in planning and fails to provide RTO West with any real authority to compel needed system expansion. The "Swiss cheese" created by facilities exclusion also creates a disparity in the planning and planning protocols of RTO West Controlled Transmission Facilities as compared to those transmission facilities withheld by the RTO Filing Utilities from the RTO West Controlled Transmission Facilities. The RTO Filing Utilities, as transmission owners, have an incentive to choose transmission additions as planning solutions whenever it would be profitable for them, even if another alternative, such as strategic location of

generation, would be less costly to consumers. These limitations are contrary to the requirements of Order 2000:

[T]he RTO should have ultimate responsibility for both transmission planning and expansion within its region. 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 possibly 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.

65 Fed. Reg. at 909 (footnote omitted).

RTO West's role in transmission planning fails to satisfy these requirements. Under the proposed TOA, RTO West would have planning responsibility for only those transmission facilities that a Participating Transmission Owner has turned over to RTO West's authority -- in general, only RTO West Controlled Transmission Facilities. This limitation would remove important transmission facilities from RTO West's planning authority:

RTO West's only role with respect to [participating transmission owner] facilities not under its control is to analyze new or modified facilities to determine their impact on the transfer capability of facilities under RTO West control and ensure that the project sponsor has appropriately mitigated any negative impacts.

RTO West Stage 1 Filing, Attachment P, § B(2). Furthermore, Section 12.1.2 of the TOA would exempt from RTO authority the planning of bulk transmission facilities under the control of TransConnect, the independent transmission company proposed to be formed in connection with RTO West:

With respect to facilities owned or otherwise controlled by the Executing Transmission Owner, the Executing Transmission Owner shall have responsibility for planning its Transmission Facilities and for making

additions, modifications and expansions to its Transmission Facilities if the FERC determines that such Executing Transmission Owner is independent from control of market participants or otherwise is entitled to exercise such authority.

Although an ITC might be found to be independent, it would certainly not be *neutral* to competitive alternatives to transmission. Depending on the ITC's financial objectives, it might be prone to either favoring or disfavoring "wires" solutions vis-à-vis other alternatives, such as strategic location of generation, distributed generation or demand-side response.

C. RTO West Would Fail To Satisfy Other Requirements Of Order 2000

1. The RTO West Proposal Fails To Satisfy Order 2000's Requirements For RTO Open Architecture

In Order 2000, the Commission required RTOs to be structured so as to "have the flexibility to improve their organizations in the future in terms of structure, geographic scope, market support and operations to meet market needs." 65 Fed. Reg. at 912. As described above, the RTO Filing Utilities' proposal carves much of the structure of the RTO in stone because of the stated supremacy of the TOA over the RTO Tariff and other documents. The consequence of this arrangement is that RTO West will not be able to evolve in important ways over time without the agreement of each Participating Transmission Owner. This limitation on the ability of RTO West to adapt to changing market conditions and other circumstances is in conflict with Order 2000's open architecture requirements.

2. The RTO West Proposal May Fail To Satisfy Order 2000's Requirements For RTO Transmission Ratemaking

A fundamental tenet of Order 2000's pricing policy is that transmission pricing should promote economic efficiency. Generally, the RTO West transmission pricing

proposal adheres to this tenet. The members of the Northwest IPPs/Marketers Group support the proposals by RTO West to eliminate transaction-based import and export charges and to eliminate internal pancaking of access charges. These basic principles would help to ensure that RTO West's transmission pricing is economically efficient and competitively neutral. These are also the principles which the members of the Northwest IPPs/Marketers Group believed had been agreed to in the RTO West collaborative process.

a. Any Provisions For Export Fees Are Contrary To The Requirements Of Order 2000

Notwithstanding the agreements reached in the RTO West stakeholder process, the RTO West Stage 1 Filing discloses that four of the RTO Filing Utilities – PSE, Sierra Pacific Power Company, Nevada Power Company and Portland General Electric Company -- now propose to incorporate transaction-based export charges into the RTO West transmission pricing proposal, until such time as certain unspecified conditions are met. RTO West Stage 1 Filing at 15-16.

Imposing export or import fees on transactions leaving or entering RTO West would result in the imposition of multiple charges for transmission service on the RTO West system. It would produce pancaking of transmission rates, in direct contravention of the provisions of Order 2000, and inhibit the formation of an economically efficient and seamless market in the Western Interconnection. The Commission should prohibit any such charges from being imposed in the context of RTO West.

b. Any Provisions for Recovery Of The Costs Of Transmission Facilities Through Transaction-Based Uplift Charges Are Contrary To The Requirements Of Order 2000

The RTO West Stage 1 Filing (at page 35) states that “[t]he filing utilities propose to recover all costs of ownership and operation of their transmission facilities through a load-based access charge.” However, on page 38 of the RTO West Stage 1 Filing, the RTO Filing Utilities propose that “lost revenue recovery amounts, in the specified amounts set out in an exhibit to be filed with the Stage 2 filing, be recoverable through the RTO West uplift charge that will be imposed on loads *or on transactions* throughout the RTO West area.” (Emphasis supplied). These two statements are in direct conflict with each other. The TOA does not in any way clarify the inconsistency.¹³

Imposing transaction-based uplift charges on generation to pay for the costs of ownership of transmission facilities would be contrary to economic efficiency. Any such charges may also contravene the Filed Rate Doctrine. The Commission should reaffirm to the RTO Filing Utilities that transaction-based allocation of the sunk costs of the transmission grid, either through export fees, import fees or uplift charges on generation, would be contrary to Order 2000’s RTO goals of efficient pricing. The Commission should also direct RTO West to incorporate into its Stage 2 filing pricing provisions consistent with the requirements of Order 2000, and providing only for load-based access charges.¹⁴

¹³ Section 14.3 of the proposed TOA adds no specificity to the RTO Filing Utilities’ proposal. It states that “[d]uring the Company Rate Period, RTO West shall pay to the Executing Transmission Owner *and shall recover through the RTO West Tariff as an administrative and general cost recovery*, the amounts shown for the Executing Transmission Owner as Lost Revenue Recovery Amounts in Exhibit H.” (Emphasis supplied).

¹⁴ The members of the Northwest IPPs/Marketers Group request that, as part of its analysis of the RTO West transmission pricing proposal, the Commission review the appropriateness of the 10-year company rate transition included as part of such proposal.

V. THE RTO WEST AND TRANSCONNECT ORDER 2000 COMPLIANCE PROCEEDINGS SHOULD BE CONSOLIDATED

The ITC Filing Utilities, all of which are parties to the RTO West Stage 1 Filing, intend that TransConnect will be a Participating Transmission Owner in RTO West. As a consequence, the ITC Stage 1 Filing and the RTO West Stage 1 Filing are inextricably linked. Each filing repeatedly acknowledges this relationship, and the RTO West Stage 1 Filing also repeatedly acknowledges the implications of the ITC Stage 1 Filing for key decisions that the Commission must make regarding RTO West. The ITC Filing Utilities have conditioned their participation in RTO West on a favorable disposition of the ITC Stage 1 Filing, expressly “reserv[ing] [their] right to reconsider the [ITC] proposal and the manner of their participation in RTO West (or some other RTO) should the Commission modify or reject the proposals contained [in the ITC Stage 1 Filing], or due to economic, operational, or commercial reasons that may become apparent as the ITC and RTO West development process unfolds.” ITC Stage 1 Filing at 5.

It is clear from both the RTO West Stage 1 Filing and the ITC Stage 1 Filing that much remains as yet undecided about the ITC and RTO. It is not clear, however, at what point the ITC Filing Utilities and the RTO Filing Utilities will resolve these issues and submit them to the Commission, or in which proceeding they will be addressed once they are ultimately submitted. For example, the list of TOA-related issues that remain to be resolved in the context of the ITC is extensive, as the RTO West Stage 1 Filing itself acknowledges:

The Transmission Operating Agreement, as currently structured, is written for the transmission systems of vertically integrated utilities and includes rights and obligations pertaining to distribution and generation functions of those utilities. The Transmission Operating Agreement and related agreements will be structured to keep the filing utilities on an equal

footing, to the extent appropriate, even though some of them will remain vertically integrated and others will place their transmission assets into the ITC, leaving their distribution and generation functions behind in their current company structures. To achieve this objective, the filing utilities anticipate that certain modifications to the Transmission Operating Agreement will be necessary and that separate agreements will be needed to address the rights and obligations related to the distribution and generation functions of those utilities that elect to contribute assets to the ITC. The rights and obligations of the ITC members under such agreements will be independent of the ITC. Among the rights and obligations that may need to be addressed are the following: application of the Transmission Operating Agreement to facilities retained by the ITC members, interconnection obligations, provision of ancillary services, obligations and rights with respect to pre-existing transmission agreements, rights to firm transmission rights for service to native load (including load growth), and obligations and rights with respect to liability and insurance issues.

RTO West Stage 1 Filing at 53-54.

The Northwest IPPs/Marketers Group supports full participation by TransConnect in RTO West. However, the intimate relationship between the two filings means that neither filing can be examined purely on its own merits. The members of the Northwest IPPs/Marketers Group had assumed that the critical decisions affecting their interests -- such as the Participating Transmission Owners' company tariffs, RTO West Controlled Transmission Facilities inclusion issues, and the ultimate form of the TOA -- would be determined by the Commission in the context of the RTO West Stage 1 Filing. It is now evident that these and other decisions critical to the ultimate form and function of RTO West are more likely to be made in the context of the ITC proceeding rather than this proceeding.

Many of the issues that remain to be resolved in the RTO West and ITC filings -- such as interconnection standards, the nature and extent of facilities under RTO West control, and transmission tariffs -- have significant implications for the interests of the

members of the Northwest IPPs/Marketers Group. The existence of two concurrent proceedings covering identical or overlapping issues creates the potential for conflicting decisions in the two proceedings, issues falling between the cracks of the proceedings, and interested stakeholders mistakenly believing that it was appropriate for them to address their concerns in one proceeding, only to learn later that they had dedicated their efforts and resources to the wrong proceeding.

To remedy this problem, the Northwest IPPs/Marketers Group believes that is in the best interests of all parties for the Commission to consolidate the two proceedings into one docket. In the alternative, the Group requests that, if the Commission prefers to review the filings in two separate dockets, it issue an order as quickly as possible identifying the specific determinations -- such as facilities inclusion, interconnection, tariffs, and pricing -- that it intends to make in the context of each proceeding. In the event that the Commission determines to maintain the RTO West and ITC compliance filings in separate proceedings, it should ensure that the pace of the ITC proceeding is not permitted to impede the progress of the formation of RTO West.

VI. FURTHER DEVELOPMENT OF RTO WEST SHOULD BE UNDERTAKEN UNDER THE DIRECTION OF THE RTO'S INDEPENDENT BOARD OF TRUSTEES

This pleading has repeatedly raised significant concerns regarding RTO West's independence. The members of the Northwest IPPs/Marketers Group believe that the proposed RTO West Bylaws -- with the exception of the one provision (Section 4(a) of Article V of the Bylaws), discussed above, giving the Major Transmitting Utilities discretion as to the commencement of the independent board selection process -- will allow RTO West to form and seat a Board of Trustees that is truly independent. This is

an important and critical step in creating a fully independent RTO, as the Commission has explicitly recognized in its recent Order Proposing Remedies for California Wholesale Power Markets.¹⁵

However, as this pleading has indicated throughout, the independence of the governance of an RTO is not the only criterion for an RTO's independence. True independence can be determined only by looking at the whole of the RTO and its governance, interconnection standards, tariffs, transmission operating agreements, and other documents collectively creating the protocols for independent operation and control. Many of the proposed elements of RTO West as described in the RTO West Stage 1 Filing create significant independence concerns for non-incumbent users of the system.

The question remains who can impartially resolve these and the other outstanding issues in the RTO West Stage 2 Filing and create a collective set of documents that ensure RTO West is truly independent. The members of the Northwest IPPs/Marketers Group believe that the most efficient basis for impartially resolving the remaining issues is to make the new, independent board of the RTO, as specified in the Bylaws, responsible for the RTO West Stage 2 filing. This approach offers many advantages for the creation of an RTO satisfying each and all of the requirements of Order 2000, and is analogous to the approach taken in the context of the development of Desert STAR and the PJM Interconnection.

This approach would also be efficient, and would not result in any delay in the RTO West operations commencement date. The board can be seated and RTO West

¹⁵ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 93 FERC ¶ 61,121 (2000),

formed while work on the RTO West Stage 2 Filing proceeds. By granting the independent board responsibility for the Stage 2 filing, the Commission would make it clear to all working on the documents that they must create tariff provisions and interconnection standards that are impartial and non-discriminatory.

In the meantime, the Commission should deny the requests in the RTO West Stage 1 Filing for approval of the Agreement Limiting Liability Among RTO Participants and for approval of the “concepts” embodied in the forms of Transmission Operating Agreement and Agreement to Suspend Provisions of Pre-Existing Transmission Agreements. The Commission should instead order that those documents, as well as the remaining documents proposed by the RTO Filing Utilities to be part of their Stage 2 filing, be developed and filed under the direction of the first full Board of Trustees of RTO West.

VII. CONCLUSION

The members of the Northwest IPPs/Marketers Group support the formation of RTO West. We believe that its formation will be a major step forward in creating an efficient and seamless energy market within the Western Interconnection. However, RTO West as proposed suffers from several fundamental flaws. Unless these flaws are addressed, RTO West will fail to comply with requirements of Order 2000.

The remedies that we have proposed in this pleading can be easily accommodated within the existing RTO West framework. They would bring RTO West into compliance with the requirements of Order 2000. With the modifications that we propose, RTO West

slip op. at 28-33.

would represent a significant step towards the development of fair and workable wholesale power markets in the Western Interconnection.

WHEREFORE, the Northwest members of the Northwest IPPs/Marketers Group request that the Commission:

(1) grant the Northwest IPPs/Marketers Group leave to intervene as a party in this matter;

(2) order the consolidation of this proceeding with the TransConnect ITC Order 2000 compliance proceeding;

(3) approve the First Restated Articles of Incorporation and Bylaws of RTO West with the revisions proposed herein to Section 4(a) of Article V of the Bylaws, and deny without prejudice approval of the Agreement Limiting Liability Among RTO Participants and the concepts of the Transmission Operating Agreement and Agreement to Suspend Provisions of Pre-Existing Transmission Agreements;

(4) rule on the RTO West Order 2000 compliance filing in a manner consistent with the revisions proposed herein;

(5) direct RTO West to form and seat its first full Board of Trustees;

(6) direct that all subsequent RTO West filings, including the RTO's Stage 2 filings, be approved by the new, independent Board of Trustees of RTO West and filed on behalf of RTO West;

(7) until such time as RTO West's new, independent Board of Trustees has been formed, direct the RTO West Filing Utilities to continue to work with regional stakeholders towards the RTO West Stage 2 Filings, utilizing a collaborative process similar to that used for the RTO West Stage 1 Filings;

(8) stay the RTO Filing Utilities' request for a determination that RTO West as proposed meets the independence standard until the new independent board files the requisite Stage 2 documents;

(9) provide that RTO West can recover through the RTO Tariff all prudently incurred development and operating costs; and

(10) grant such other and further relief as the Commission deems proper.

Respectfully submitted,

By _____
Michael P. Alcantar
Donald E. Brookhyser
Alcantar & Elsesser LLP
1300 SW Fifth Suite 1750
Portland, OR 97201
Tel: (503) 402-9900
Fax: (503) 402-8882 fax
e-mail deb@aelaw.com

By _____
Eric E. Freedman
Preston Gates & Ellis LLP
701 Fifth Avenue
Suite 5000
Seattle, WA 98104-7078
Tel: (206) 224-7327
Fax: (206) 623-7022
e-mail: ericf@prestongates.com

*On behalf of the Northwest IPPs/Marketers
Group*

Dated: November 20, 2000

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Motion to Intervene and Protest and Motion to Consolidate this 20th day of November, 2000 upon each person designated on the official service list compiled by the Secretary in this proceeding.

Marybeth B. Magee