

ORIGINAL

KENNY C. GUINN
Governor

STATE OF NEVADA
PUBLIC UTILITIES COMMISSION OF NEVADA

1150 E. William Street
Carson City, Nevada 89701-3109
Policy (775) 687-6007 • Fax (775) 687-6110
Staff (775) 687-6001 • Fax (775) 687-6120

RURAL NEVADA
557 W. Silver Street, No. 207
Elko, Nevada 89801
(775) 738-4914 • Fax (775) 778-6928



SOUTHERN NEVADA OFFICE
555 E. Washington Avenue, No. 4500
Las Vegas, Nevada 89101
(702) 486-2600 • Fax (702) 486-2595

November 20, 2000

VIA HAND DELIVERY

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

FILED
OFFICE OF THE SECRETARY
09 NOV 20 PM 4:42
FEDERAL ENERGY
REGULATORY
COMMISSION

Re: Docket Nos. RT01-15-000 and RT01-35-000 (not consolidated)

Dear Mr. Boergers:

Enclosed for filing in the above-referenced proceedings are an original and fourteen copies of the "Notice Of Intervention And Comments Of The Public Utilities Commission Of Nevada." Also enclosed are two additional copies of the filing which we ask that you stamp and give to the messenger for return to our office.

Thank you for your cooperation.

Sincerely,

Renee L. Lacey /ky KAD

Renee L. Lacey
Attorney for the
Public Utilities Commission of Nevada

Enclosures

cc: Service List

001121-0688-1

CONSUMER DIVISION

Carson City/Reno—(775) 687-6000 • Las Vegas—(702) 486-2600 • Other Areas—800-992-0900, Ext. 687-6000

FILED
NOV 20 2000

(0)-1626

ORIGINAL

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

OFFICE OF SECRETARY
CO. 11/22/00 11:42 AM '02
FEDERAL ENERGY REGULATORY COMMISSION

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

**Docket Nos. RT01-15-000
RT01-35-000**

(not consolidated)

and)

**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.)**

**NOTICE OF INTERVENTION AND COMMENTS
OF THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Pursuant to Rules 214(a)(2) and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. §§ 385.214(a)(2) and 385.212 (2000), the Public Utilities Commission of Nevada ("PUCN") hereby files this Notice of Intervention and Comments in the above-captioned proceedings. In support of this filing, all correspondence and communications with respect to this Notice of Intervention should be sent to:

Jeff E. Parker, Esq.
General Counsel
Renee L. Lacey, Esq.
Assistant General Counsel
Office of the General Counsel
Public Utilities Commission of Nevada
1150 East William Street
Carson City, NV 89701
Phone: (775) 687-6008
Facsimile: (775) 687-6086

I. INTRODUCTION

A. Independent Transmission Company Filing

On October 20, 2000, the Commission issued a notice regarding a proposal for the formation of an Independent Transmission Company ("ITC") and petition for a declaratory order that was filed by Avista Corporation, the Montana Power Company, the Nevada Power Company ("Nevada Power"), Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific Power Company ("Sierra Pacific")(collectively the "ITC Applicants") on October 16, 2000 in Docket No. RT01-15-000. FERC's notice indicated that the ITC Applicants had tendered this filing in compliance with Order No. 2000. The notice further indicated that all motions to intervene and protests should be filed in this proceeding by November 20, 2000.

B. RTO West Filing

On October 24, 2000, the Commission issued a notice regarding a proposal for the formation of a Regional Transmission Organization ("RTO"), "RTO West," that was filed by the same parties that submitted the ITC filings (i.e., Avista Corporation, the

Montana Power Company, Nevada Power, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific) along with Bonneville Power Administration, Idaho Power Company, and PacifiCorp (collectively the "RTO Applicants") on October 23, 2000 in Docket No. RT01-35-000.¹ FERC's notice indicated that the RTO Applicants had tendered this filing in compliance with Order No. 2000. The parties also requested an expedited declaratory order from the Commission that certain aspects of the proposal, including the proposed governance documents and the scope and configuration of RTO West, are in accordance with the requirements of Order No. 2000. The notice further indicated that all motions to intervene and protests should be filed in this proceeding by November 20, 2000.

C. The PUCN is Entitled To Intervene In These Proceedings

As the agency which regulates public utilities in Nevada, including the retail rates and services of Sierra Pacific and Nevada Power, the PUCN is empowered to represent Nevada before FERC. Nev. Rev. Stat. Ann. § 703.152 (1998). The PUCN has an interest in these dockets which cannot be adequately represented by any other party. Rule 214(a)(2) of FERC's Rules of Practice and Procedure provides that a state commission may become a party to a FERC proceeding upon the filing of a timely notice of intervention. Accordingly, the PUCN is entitled to intervene as a matter of

¹ The RTO Applicants filed a brief report with FERC on October 16, 2000 with regard to the status of their efforts to participate in an RTO. In that filing, the parties committed to make a more detailed filing on October 23, 2000. The PUCN's comments are directed to the substantive October 23 filing.

right, pursuant to this timely filed notice. Because these dockets are so closely interconnected (although not consolidated) and in order to assist in FERC's review, the PUCN has elected to address both filings simultaneously.

II. THE ITC WILL FUNCTION AS A TRANSMISSION OWNER WITHIN RTO WEST

In Docket No. RT01-15-000, the ITC Applicants propose the formation of a for-profit ITC that will own and operate the interstate transmission assets presently owned and operated by each of the ITC Applicants.² As proposed, the ITC will consist of: (1) TransConnect, LLC, a limited liability company with "Members" that currently include the ITC Applicants; and (2) TransConnect Corporate Manager, Inc., a separate corporation that will act as the Managing Member of the TransConnect, LLC.³ As set forth in the filing, the for-profit ITC will participate within the larger not-for profit RTO.⁴ That is, TransConnect, LLC will participate as a transmission owner within the RTO West contemplated in Docket No. RT01-35-000.⁵

² Order No. 2000 Compliance Filing and Petition for Declaratory Order, Docket No. RT01-15-000 at 1 (Oct. 16, 2000)("ITC Filing").

³ Id. at 1 and 5. According to the filing, "[t]he Managing Member initially will have a nominal financial membership interest in TransConnect, LLC, but as Managing Member will have control over TransConnect, LLC's policy and procedure." Id. at 5.

⁴ Id. at 4; Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000, Docket No. RT01-35-000 at 8 (Oct. 23, 2000)("RTO West Filing").

⁵ ITC Filing at 2; RTO West Filing at 8.

III. COMMENTS OF THE PUCN

A. **The Interrelationship Between The Proposed ITC And RTO West**

1. Stranded Costs

a. *As contemplated in the ITC and RTO Filings*

The ITC filing notes that section 13.4 of the RTO West Transmission Operating Agreement provides for stranded cost recovery under the RTO framework. That section states that:

[n]othing included in or omitted from this Agreement is intended to create, modify or extinguish any right or obligation, if any and whether now or hereafter existing, of either Party regarding recovery by the Executing Transmission Owner through transmission charges or other means of the Executing Transmission Owner's Stranded Costs, and such rights or obligations, if any, shall be as if this Agreement had not been executed.⁶

According to the ITC Applicants, this provision is intended "to ensure the recovery of any stranded costs that were recoverable prior to the formation of the RTO."⁷ The rationale for this treatment is to preserve the ITC Applicants' "reasonable expectations" regarding stranded cost recovery in order to secure the companies' financial integrity.⁸

In the RTO filing, the RTO Applicants state their agreement that the "establishment of RTO West should not predetermine, hinder, promote, or influence changes in law or policies of any state with respect to the provision of retail electric

⁶ RTO West Filing, Attachment S at p. 41.

⁷ ITC Filing at 24.

⁸ Id.

service that is solely within the jurisdiction of the state legislatures and regulatory commissions."⁹ However, the filing makes clear that "neither TransConnect, LLC nor RTO West should interfere in any way in an Executing Utility's recovery of stranded costs *from both retail and wholesale customers*."¹⁰ To that end, the contemplated RTO West tariff, which has not been made available for review, will contain some kind of automatic adjustment clause to provide for stranded cost recovery.¹¹

b. *The PUCN has already determined that Sierra Pacific and Nevada Power may not recover stranded costs*

On July 20, 2000, the PUCN approved an Agreement and Stipulation with Sierra Pacific and Nevada Power as part of a global settlement on various matters in order to promote retail access in the State of Nevada.¹² Pursuant to that agreement, the PUCN, Sierra Pacific and Nevada Power addressed the issue of stranded costs and determined that, in the State of Nevada, Sierra Pacific and Nevada Power will not be entitled to stranded cost recovery.¹³ In accordance with the global settlement, Sierra Pacific and Nevada Power specifically agreed to "remit, release and waive whatever

⁹ RTO West Filing at 56.

¹⁰ Id. at 57-58 (emphasis added).

¹¹ Id. at 58.

¹² See "Agreement and Stipulation" and "First Amendment to Agreement and Stipulation" (approved July 20, 2000); see also "Second Amendment to Agreement and Stipulation" (approved July 27, 2000).

¹³ "Agreement and Stipulation" at ¶ 21.2.

rights and claims that may have to collect past costs....¹⁴ The global settlement in Nevada therefore protects the State's consumers from stranded costs attributable to Sierra Pacific and Nevada Power.

Despite the RTO Applicants' statement that the formation of the RTO West should not "predetermine, hinder, promote, or influence changes in law or policies of any state with respect to the provisions of retail electric service that is solely within the jurisdiction of the state legislatures and regulatory commissions,"¹⁵ the PUCN notes that the transmission component of retail access is within federal jurisdiction. The PUCN wants to ensure that the formation of either the ITC or RTO West does not circumvent Nevada's actions to protect its consumers from stranded costs by charging Nevada customers for the stranded costs of any of the Member utilities. The PUCN asks the Applicants of both filings to address this issue, and confirm that nothing in this filing is intended to obligate Nevada consumers for any Members' stranded costs. The PUCN further requests that FERC confirm that this will not supercede the PUCN's actions.

2. Rates

Pursuant to the ITC filing, TransConnect, LLC will file its own rates and rate schedules, with such rates to be collected by the RTO West Payment Agent in a

¹⁴ See id. at ¶ 21.

¹⁵ RTO West Filing at 56.

manner consistent with other RTO West transmission owners.¹⁶ The ITC Applicants state that TransConnect, LLC will integrate its rate proposals with those of RTO West.¹⁷ The goal of this interplay is to allow RTO West's transmission customers to do "one-stop shopping" for all transmission service throughout the RTO West grid.¹⁸

a. *License Plate Rates*

The ITC Filing explains that the "RTO West Filing Utilities have agreed to a 'Company Rate' mechanism that sets a license plate rate paid by the loads of each filing utility, thus providing non-pancaked access to the entire RTO West grid."¹⁹ In an attempt to be consistent with the RTO agreement, TransConnect, LLC proposes to use license plate rates for its system.²⁰ According to the ITC filing, "each system currently owned by the Applicants will be a separate rate zone. This zonal mechanism is intended to minimize cost-shifting between customers of the Applicants. Customers pay only one rate to RTO West – albeit one that varies with the location of the load."²¹

It is imperative that the rates in the other zones that Nevada must interface with are non-discriminatory. As noted previously, the PUCN does not have the benefit of a

¹⁶ ITC Filing at 8.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. at 9.

²⁰ Id.

²¹ Id.

tariff to review in order to determine how the ITC Applicants will address this zonal issue and the potential for rate discrimination.

b. *Congestion Management*

The instant filings also lack any specific language concerning the treatment of managing congestion by the two proposals. The ITC filing merely states that RTO West will manage congestion and that TransConnect, LLC, by increasing the economies of scale through the combination of smaller systems, should be able to assist in that congestion management effort.²² In the RTO West filing, the Applicants propose a "flow-based physical rights" congestion management model.²³ Again, without the aid of a tariff, the PUCN cannot be certain as to how this "flow-based" system will work, particularly when load curtailment is enforced. It should be noted, however, that the congestion management provisions and the zonal rates (which should be non-discriminatory) should coincide. Specifically, the PUCN requests the following information:

- What corridors are being considered – particularly for RTO West and the other RTOs that are adjacent to RTO West?
- How will the congestion management regime operate in relation to the distribution of entitlement to Firm Transmission Rights ("FTRs") auction revenues among participating transmission owners?
- What is the entire tariff or pricing proposal – particularly what, if any, incentive ratemaking proposals are included?

²² Id. at 19.

²³ RTO West Filing at 66.

- What is the release mechanism for FTRs and other types of transmission rights (i.e., non-firm and recoverable)?

Because significant aspects of the RTO West proposal are not sufficiently described, the PUCN cannot file meaningful comments at this time; the PUCN reserves the right to file more detailed comments at a later date.

c. *Incentive Ratemaking*

According to the ITC filing, the TransConnect, LLC will propose to establish rates using "innovative" transmission rate treatments.²⁴ As noted previously, TransConnect LLC will file its own rates and rate schedules although it supposedly will integrate its rate proposals with those of RTO West.²⁵ The description of TransConnect, LLC's potential innovative transmission rate treatments is so general (e.g., performance-based rates using benchmarked performance criteria; a rate of return that is formulary; and incremental cost treatments) that it is impossible to discern the intent of the ITC Applicants. For example, while the PUCN believes that any incentive for transmission expansion should be embedded in incentive ratemaking, it is unclear whether such an arrangement is contemplated by the ITC. Moreover, there is nothing in the RTO West filing to determine whether the innovative rate mechanisms of TransConnect, LLC will be compatible with the rates of RTO West.

²⁴ ITC Filing at 9.

²⁵ Id. at 8.

3. Responsibility for Reliability

a. *Short-term reliability*

In the ITC filing, the Applicants assert that the "RTO West will be responsible for the short-term reliability of the grid that it operates" and that "TransConnect, LLC does not seek authority to...assume responsibility for the short-term reliability of the grid to a different degree than any other transmission owner in RTO West."²⁶ However, the ITC filing submits that the new transco will "own and operate the interstate transmission assets presently owned and operated by each of the Applicants."²⁷

In Docket No. RT01-35-000, the RTO Applicants note that RTO West will have the general authority to maintain reliability using such methods as "Critical Control Facilities" and the security coordination function.²⁸ According to the RTO West filing, RTO West will have full operational control over all RTO West controlled transmission facilities.²⁹

The PUCN requests clarification as to which entity – RTO West or the ITC – has operational control and therefore is responsible for short-term reliability. If the two entities plan to share control, how will that type of management work?

²⁶ Id. at 18.

²⁷ Id. at 1.

²⁸ RTO West Filing at 63.

²⁹ Id. at 41.

b. *System Expansion Reliability*

According to the ITC Applicants, TransConnect, LLC's planning and expansion role is "a major, if not the most significant, benefit of an ITC within an RTO."³⁰ The ITC's functions though are not tailored for a specific state. Instead, the for-profit entity intends to focus on undertaking multi-state, regional projects in order to yield a compensatory return.³¹ Although the ITC Applicants insist that "RTO West will have the responsibility for planning and ensuring that expansions do not impair reliability or bulk transmission capability,"³² the RTO West filing appears to contemplate more of a limited responsibility for reliability in the form of a "backstop" function for RTO West.³³ The Transmission Owner, then, appears to retain primary responsibility for reliability for transmission expansion.

The PUCN has concerns regarding the cost/benefit analysis of transmission expansion and maintaining reliability. In particular, the PUCN would like to know how payment responsibilities will be determined. Presumably, if discreet facilities can be identified, it will be those entities which will be billed – thus maintaining the status quo. However, if the RTO cannot identify the loads that are benefitted, then the expansion

³⁰ ITC Filing at 20.

³¹ Id.

³² Id.

³³ RTO West Filing at 74. "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." Id.

costs may be allocated throughout the system – with potential adverse effects for Nevada consumers.

4. Load Forecasting Regulations

Pursuant to the Nevada Revised Statutes ("NRS") § 704.988 (1999), the PUCN is obligated to "develop regular forecasts of electric capacity and energy." The PUCN recently concluded a Rulemaking on draft regulations that require the transmission provider to provide the necessary information for the state commission to comply with NRS § 704.988 (i.e., by determining whether a company has enough capacity to meet its load).³⁴ The ITC and the RTO West proposals do not address this issue. In order to meet its statutory obligations, the PUCN requires unrestricted access to the same information that it would have had prior to the transfer of assets by Sierra Pacific and Nevada Power as contemplated in both filings. The PUCN asks that FERC direct the ITC and/or RTO to provide the state regulators with the information necessary to enable the PUCN to continue to meet its statutory obligations.

B. The ITC Filing

1. Distribution of Capital

The PUCN requests information as to how the distribution of capital will be treated within the ITC among the Member utilities. The transmission assets of the Member utilities are to be assessed at the net book value as opposed to the market

³⁴ NRS § 704.988.

value.³⁵ Because these assessments are not allocated equitably, the PUCN requests that the allocation mechanism used to distribute the capital that the ITC attracts be fair and reasonable.

2. Operating Agreement

Section 2.13(f) of the ITC's Limited Liability Company Operating Agreement states that "[t]here are no claims, either administrative or judicial, at law or in equity, pending or, to the knowledge of such Member, threatened against it which could, if continued, have a material adverse affect on the business, operations, properties, assets or condition (financial or otherwise) of such Member, or the ability of such Member to perform its obligations under this Agreement." However, the Alturas proceeding currently pending before the FERC in Docket No. ER99-28-000 could potentially result in a claim contrary to the warranty. Therefore, the Applicants, in particular Sierra Pacific and Nevada Power, should take such potential claims into account in connection with providing such a warranty.

3. Mortgage Bonds

The transfer of assets contemplated in the two filings may violate certain covenants in Sierra Pacific and Nevada Power mortgage bonds, which are currently outstanding. Prior to transferring such assets, Sierra Pacific and Nevada Power should ensure that no such violation will occur.

³⁵ ITC Filing, Limited Liability Company Operating Agreement at § 3.2 (a)-(b).

C. RTO West**1. Additional Information Should Be Provided**

The PUCN notes that there are a number of documents related to the RTO West filing that still must be developed. In particular, the PUCN requires information on: (1) the RTO West Rates and Tariff; (2) the Congestion Management Schedule; (3) Market Monitoring; and (4) the method for calculating the transfer charge – particularly for pre-existing transmission agreements. The PUCN's ability to evaluate significant aspects of this proposal is limited because of the incomplete nature of this filing. The PUCN further notes that the RTO Applicants have requested a declaratory order from the Commission determining that a number of the RTO West submissions (e.g., Articles of Incorporation and Bylaws; scope and configuration; form of Agreement Limiting Liability; Transmission Operating Agreement and Agreement to Suspend Provisions of the Pre-Existing Transmission Agreements) are acceptable to the Commission. Given the insufficient information provided in this filing, such a declaratory order appears to be inappropriate at this time with respect to the Transmission Operating Agreement ("TOA") and the Agreement to Suspend Provisions of the Pre-existing Transmission Agreements ("PTA Agreements"). Instead, it will be important to review the filing in its entirety in order to determine whether it meets the Commission's requirements. Therefore, the PUCN reserves the right to submit comments regarding the RTO West TOA and the PTA Agreements following submittal of revisions to the TOA.

2. Transfer Charges

According to the RTO West filing, “[a]ll participating transmission owners will suspend transmission services under long-term transmission agreements in return for FTRs of comparable value received from RTO West. A transmission customer under such agreements, in turn, would be obligated to pay company rates and transfer charges to the former transmission provider (and would receive FTRs to support comparable transmission service provided prior to the existence of the RTO) for such portion of the company rate period as the FTR rights would remain in effect.”³⁶ With regard to short-term firm and non-firm transmission service, “[e]ach participating transmission owner will owe during the company rate period an additional transfer charge to each of the other participating transmission owners equal to the representative levels of pre-RTO short-term firm and non-firm transmission revenues paid by the participating transmission owner and its affiliates before RTO West’s commencement of operations.”³⁷ The PUCN requests clarification as to how the contemplated transfer charges will be calculated and how the same interrelate to the existing payment from the transmission owners for the existing agreements.

³⁶ RTO West Filing at 36.

³⁷ Id. at 37.

3. Provider of Last Resort

According to the ITC Applicants, the proposed ITC will not be a market participant and does not intend to play a role in ancillary service procurement or provision.³⁸ Instead, RTO West will "serve as the provider-of-last resort of all ancillary services required under Order 888 (as supplemented)."³⁹ The PUCN requests clarification concerning the extent to which the RTO's provider-of-last resort function will impact transmission rates.

4. Transmission-Dependent Utilities Class Voting

Pursuant to RTO West's Bylaws as set forth in Appendix J of that filing, the Transmission-Dependent Utilities Class ("TDUC") may select six members of the Trustees Selection Committee.⁴⁰ Of the six members the TDUCs may select, the voting is broken down as follows:

- (A) In the nomination and voting for two members of the Trustee Selection Committee, the voting power of each Member in the TDUC 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 TDUC.
- (B) In the nomination and voting for the remaining four members of the Trustees Selection Committee, each Member in the TDUC shall have one vote; provided, however, that those Members comprising 50% or more of

³⁸ ITC Filing at 19.

³⁹ RTO West Filing at 69.

⁴⁰ Id., Attachment J at p. 18.

the voting power in the Member Sub-Class described in the above section shall not be permitted to vote in this Member Sub-Class.⁴¹

The PUCN seeks clarification as to how the above process will work. The PUCN notes that the vote of utilities in small jurisdictions could have a disproportionate weight on the voting process.

5. Liability Agreement

The filing states that RTO West may maintain \$150 million of general liability insurance and \$150 million of errors and omission insurance for end use customers' claims.⁴² The PUCN would like clarification on how any such liability limitation would affect the Transco and the ratepayers, as well as information demonstrating why such limitation is adequate.

6. Native Load Priorities

Under the FERC approved Open Access Transmission Tariff filed by Sierra Pacific and Nevada Power in Docket No. ER00-3188-000, the companies offered to relinquish their entitlements to transmission rights to serve native load customers in exchange for access to the energy output supplied under the Transition Power Purchase Agreements by the generation facilities to be divested by the utilities. The

⁴¹ Id.

⁴² Id. at 88 and Attachment Y at § 9.2.1.

PUCN requests that Applicants explain what accommodation has been made to facilitate this arrangement within the operations of the RTO.

WHEREFORE, the PUCN requests that FERC take notice of the PUCN's Intervention and Comments in these proceedings.

Respectfully submitted,

Renee L. Lacey / by KAD

Jeff E. Parker, Esq.
General Counsel
Renee L. Lacey, Esq.
Assistant General Counsel
Office of the General Counsel
Public Utilities Commission of Nevada
1150 East William Street
Carson City, NV 89701

Attorneys for the
Public Utilities Commission of Nevada

November 20, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November 2000, I have served this "Notice of Intervention and Comments of the Public Utilities Commission of Nevada" upon each person designated on the official service list for this proceeding compiled by the Secretary of the Federal Energy Regulatory Commission.

Renee L. Lacey / KAD.
Renee L. Lacey