



Oregon

John A. Kitzhaber, M.D., Governor

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Office of Energy
625 Marion St. NE, Suite 1
Salem, OR 97301-3742
Phone: (503) 378-4040
Toll Free: 1-800-221-8035
FAX: (503) 373-7806
www.energy.state.or.us

The Federal Energy Regulatory Commission
Office of the Secretary
888 First St., N.E.
Washington, DC 20426.

November 18, 2000

Re: Docket RTO1-35-000
Avista Corporation, et al. (RTO West, Phase 1)

To the Office of the Secretary:

Attached please find the Motion to Intervene and the Protest of the Oregon Office of Energy on the Phase 1 filing for RTO West (Docket RTO1-35-000), including a one page appendix. Fifteen copies and one original are included. Please date stamp one of the copies and return it to me. Also, please send me a service list when one is available. Thank you for your assistance.

Phil Carver
Senior Policy Analyst
Oregon Office of Energy
(503) 378-6874

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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.

Docket RTO1-35-000

November 18, 2000

**Motion to Intervene
And Protest
Of the Oregon Office of Energy**

Pursuant to Rules 212 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR §§ 385.214 and 385.215 (1997), the Oregon Office of Energy hereby moves for leave to intervene in the above-captioned proceedings, and submits the following Protest to the Supplemental Compliance Filing And Request for Declaratory Order filed on Oct. 23, 2000 in this docket.

I. Motion to Intervene

In support of its motion, the Oregon Office of Energy (OE) represents unique interests which will not be adequately represented by any other party. OE is staff to the Oregon Energy Facility Siting Council, which has jurisdiction over most new transmission facilities of 230kV or higher. OE is empowered to intervene with Federal agencies under Oregon Revised Statutes 469.110 for the purpose of "*expressing its views as to the effect of an agency action on state energy resources and state energy policy.*"

All pleadings, correspondence and other communications concerning these dockets should be sent to:

Phil Carver
Oregon Office of Energy
625 Marion St. NE, Suite 1
Salem, OR 97301-3742
(503) 378-6874; fax (503) 373-7806
philip.h.carver@state.or.us

II. Protest

SUMMARY

The Oregon Office of Energy's (OE's) comments here relate primarily to RTO West's proposed Transmission Operating Agreements (TOAs) and Bylaws. Overall, OE is pleased with the Phase 1 filing, especially given the short time to prepare it. By necessity, OE's comments focus on areas that need improvement.

The Bylaws are ready for final approval by the FERC, with perhaps some FERC recommended changes. Prompt approval of the Bylaws is necessary for RTO West to move forward.

The TOAs are not ready for FERC approval and should not be approved, except as part of Phase 2. Phase 2 should include approval of the TOAs, tariffs, interconnection agreements, agreements to suspend pre-existing agreements, paying agent agreements, the agreement to limit liability and any other agreements. The generic TOA and accompanying documents do provide the FERC an opportunity to provide useful feedback to the filing utilities, and FERC should respond as fully as it can. It cannot approve the TOAs because they are not complete. Even if they were, it would be

inappropriate to approve this core piece without understanding all the implications for the other documents.

OE's key issues are Bylaws changes, market power, interconnection standards and planning.

Bylaws

The Bylaws should be changed: (1) to include a more specific purpose statement, (2) to include the director of the market monitoring unit as a officer appointed directly by the board of directors, (3) to allow for dues exemptions, (4) to eliminate the quorum requirement for the annual meeting and (5) to allow access by the states and the FERC to confidential RTO data.

Market Power

How the TOA allocates firm transmission rights (FTRs) to integrated utilities might give their merchant functions market power. Also, the TOA prohibits RTO West from making long-term acquisitions of ancillary services, even if that is the best way to mitigate market power.

Interconnection Standards

The TOA should not give the filing utilities independent authority to set different generation interconnection standards for transmission facilities. Differences may be useful, but the authority should rest with the RTO West board of directors, subject to FERC review.

Planning

Load serving entities (LSEs) should have the sole responsibility for "keeping the lights on", at least initially. Independent transmission companies (ITCs) are poorly situated to do least-cost planning for the transmission system. They should have no special planning role in RTO West. Finally, the Phase 1 filing lacks a vision of a regional planning process.

BYLAWS

The FERC should direct RTO West utilities to adopt an adequate mission or purpose statement.

The Bylaws Purpose section provides that *“The purposes for which this corporation, a nonprofit organization, is formed are to serve as an RTO for the RTO West Geographic Area in accordance with the applicable requirements of FERC, including but not limited to the applicable requirements of FERC with respect to RTO characteristics and functions; provided, however,...”* (Bylaws, Article III, p. 8) This is inadequate to guide the board of directors, especially if RTO West takes on the backstop reliability function (see below). The following should be added to the Bylaw purposes section: “RTO West should assure a reliable transmission system while minimizing costs, where costs include impacts on society at large as well as payments made by customers of RTO West.”

The FERC should direct RTO West utilities to clarify the Bylaws provisions on the authority of the manager of the market monitoring unit.

The Regional Relation Group (RRG), which included all the filing utilities, agreed that the manager of the market monitoring unit (MMU) should be appointed directly by the board of directors and should report directly to the board and not the president or chief executive officer. As such, the manager of the MMU is a officer of the corporation and should be listed in the Bylaws.

The FERC should direct RTO West utilities to give the RTO board of directors the authority in the Bylaws to waive the membership fee for some types of members.

The Bylaws (Article IV, Sec. 3(a), Qualifications and Admission of Members, p. 9) set the annual membership fee at *“\$1000 each year; provided, however, that such fees shall be waived for State or Provincial Energy Authorities and Tribal Utility Energy Regulatory Authorities.”*

The OE appreciate the waiver of its fees. For residential and other non-profit organizations the \$1000 annual fee might discourage participation. The Bylaws should

give the board of directors the authority to waive the fee where it would allow a useful voice to be added. The board selection committee and the board advisory committee are structured so that additional residential or other non-profit members would not dilute the influence of other types of members.

The FERC should direct RTO West utilities to drop the quorum requirement for the annual meeting of all members.

Article IV, Sec. 8(a) states: (a) *“In order for a quorum of the Members to be present at any meeting of the Members in all Member Classes or at any meeting of the Members in any one or more Member Classes or Member Sub-Classes, not less than one-third of the Members in each Member Class who or which are entitled to vote at such meeting (or, in the case of any election pursuant to Section 3(b)(ii) of Article V, not less than one-third of the voting power in the Transmission-Dependent Utilities Class entitled to vote at such meeting) shall be required to be present in person at such meeting.”* This allows any single class to boycott the annual membership meeting and prevent a quorum. No class of members should be able to prevent the annual meeting from amending the Bylaws by refusing to attend. The quorum requirement in Article IV, Sec. 8(a) should be dropped for annual member meetings, but kept for special all-members meetings described in Article IV, Sec. 4 (b) or meetings of classes or sub-classes of members.

The FERC should direct RTO West utilities to amend the Bylaws to allow access by states to confidential RTO data.

The following language should be added to the Bylaws in Article VI, Section 4: “Provide information to regulatory and enforcement agencies of states, provinces and the federal government, as requested. Confidential information would only be supplied if the agency agreed to keep it confidential.” Otherwise states will have less ability to access data on market power issues than they do now. States need information on the efficiency and effectiveness of wholesale power markets issues to make policy decisions related to retail electric restructuring. The states have strong confidentiality laws and handle confidential information today.

MARKET POWER

The FERC should direct RTO West utilities to amend the TOA to allow RTO West to refuse to grant FTRs if they are used to exercise market power on congested paths.

The TOA states “*For the purpose of achieving reasonable comparability with pre-converted firm rights, Firm Transmission Rights (FTRs) shall be based on two (2) feasible dispatches (on-peak and off-peak) for each month (for a total of twenty-four (24) dispatches per year.*” (TOA, Sec. 15.2.2, p. 52). This may enable the merchant function of a filing utility to acquire firm transmission rights (FTRs) that it does not need but it intends to use to exercise market power in the long-term firm power market over other generators trapped behind congested flowgates.

The TOA seems to prevent any mechanisms to deal with the exercise of this type market power. One of the core reasons the FERC is encouraging RTOs is to reduce the exercise of market power on constrained transmission paths by vertically integrated utilities. RTO West should have the authority to deny FTR path designations to utilities that routinely withhold the FTRs only to release them to the spot market.

Under the TOA it is unclear what RTO West could do if a liquid market for FTRs fails to develop. It is unacceptable to give physical congestion rights to the merchant functions of the filing utilities without giving RTO West clear authorities to curb the market power problems this may create.

The FERC should direct RTO West utilities to amend the TOA to allow RTO West to contract long-term for ancillary services if necessary to counter market power.

The TOA allows RTO West to contract beyond day-ahead for only Black Start Service and Voltage Support Service, except for the first six months (TOA, Section 7.1, p. 28). Yet, RTO West may face market power in other ancillary services. The TOA appears to restrict RTO West from long-term acquisition of other ancillary services to counter market power. This restriction is contrary to the FERC’s Open Architecture principle and should be removed from the TOA. RTO West should be able to set cost-based rates or

contract long-term for ancillary services, (including remedial action schemes) subject to a successful showing to the FERC that these are necessary to deal with market power in that ancillary service..

INTERCONNECTION STANDARDS

RTO West, not the filing utilities, should decide, subject to FERC review, whether different generator interconnection standards are justified for Transmission Facilities.

For RTO West Controlled Transmission Facilities arbitrators of disputes are instructed to consider whether the Executing Transmission Owner's interconnection standards are "*in conflict with the interconnection standards adopted by the RTO West board of directors...*" (TOA Sec. 4.2.2, p. 10). But for non-RTO West Controlled Transmission Facilities "*there is no requirement for the interconnection agreement terms of the various Participating Transmission Owners to be uniform*" (TOA, last sentence of Sec. 4.2.2, , p. 11). Interconnection standards for generators affect interstate commerce. Inconsistencies in interconnection standards between transmission owners increase the costs to independent generators. Only if there are valid electrical reasons should generation interconnection standards differ. The transmission owners are ill suited to weigh these competing values, as they see only the short run costs of developing consistent standards. There is also a commercial conflict of interest, as new generators are competitors to integrated transmission owners.

The FERC should direct the filing utilities to change the TOA so arbitrators are instructed to find that generator interconnection standards for all Electric Systems "should not be in conflict with interconnection standards adopted by the RTO West board of directors." The TOA should also be changed to instruct "the RTO West board of directors to adopt standards that include variances for different generation interconnection standards when the transmission owner demonstrates valid reasons for such differences."

PLANNING

The FERC should direct RTO West utilities to amend the TOA to allow RTO West to include the costs of non-transmission alternatives in rates.

The greatest failing of the Phase 1 filing is in planning. The proposal gives RTO West the backstop responsibility for “keeping the lights on” without giving it the responsibility or the authorities to accomplish this at least cost. This “backstop” could become the primary method of building projects.

There is no evidence that large additions to the RTO West Controlled Transmission System would be the least-cost way to meet load growth any time soon. There is inadequate generation capacity in the summer in the Western System Coordination Council region. Building more transmission does not solve this problem. Many areas of RTO West are already summer peaking and summer loads are growing rapidly in most other areas. There are only small difference in the costs to build gas-fired plants in different areas, so building the new generation close to loads adds little cost. The least-cost solutions to load growth are likely voluntary peak demand reductions, increased local generation and local transmission investments.

The RTO West TOA does not allow RTO to include the cost of transmission alternatives in rates. The calculation of Company Rates allows the inclusion of “Transmission Facility Cost Sharing Payments” (see Exhibit G of the TOA), but does not allow inclusion of the costs for transmission alternatives. These alternatives may be much less expensive than transmission improvements. The definition of Company Rates in Exhibit G of the TOA should include the following additional component: “Non-Transmission Cost Sharing Payment”. The following definitions should be added: “Non-Transmission Cost Sharing Payments means such payments as are specified in the RTO West Tariff for Alternatives to Transmission Investments that will benefit the Company Loads served by one or more Participating Transmission Owners with such payments intended by RTO West to equitably allocate the cost related to such Alternatives to Transmission Investments.”; and “Alternatives to Transmission Investments means payments made by RTO West avoid the need for transmission investments.”

The FERC should direct RTO West utilities that initial tariffs should not give RTO West the authority to include transmission and non-transmission costs in Company Rates.

Although it may become necessary to have an RTO become the primary decision maker on building new transmission or paying for alternatives to transmission, load serving entities (LSEs) are better suited than RTO West to make these decisions.

LSEs include local distribution utilities (LDUs), energy service suppliers (ESSs) and the Bonneville Power Administration for its requirements customers. Some ESS's and LDUs will have long term contracts with generators or own generation. So the term LSE can include independent power producers (IPPs) and integrated utilities' generation functions. LSEs should be the decision makers on how to best serve their power customers. LSEs can best choose among transmission investments, generation commitments and measures to reduce demand at peak times. RTO West has less access to transmission alternatives. It can only provide incentives for locating generation or demand reductions. Its involvement in generation construction and demand reductions is inherently more peripheral than LSEs.

There are potential difficulties for LSEs seeking to jointly build large-scale transmission projects. The FERC should retain the option of granting RTO West the authority to include transmission and transmission alternatives in Company Rates in the TOAs.

The potential difficulties for LSEs to jointly build large-scale transmission projects can likely be overcome. Potential difficulties include economies of scale, uncertainty, and free riders. These problems are solvable.

Even transmission projects designed to serve one filing utility will be lumpy with large economies of scale. They will require coordination between the filing utilities, as occurs now. RTO West can facilitate this. RTO West can require that new *“facilities do not impair reliability or bulk transmission capability of the RTO West Transmission System,*

...” (TOA, Sec. 12.1.2, p. 38) Also “*RTO West shall assume primary responsibility for planning of the RTO West Controlled Transmission Facilities and of comparable facilities identified in other Transmission Operating Agreements and shall have the right to review proposals for additions or modification to all such facilities.*” (TOA, Sec. 12.1.1, p. 38) Also, if RTO West determines that a facility is needed, other Executing Transmission Owners are required to cooperate on siting and rights of way and provide for interconnection (TOA, Sec. 11, pp. 35-37)

Uncertainty increases rather than decreases the need for LSEs to be the primary decision maker on the need for new transmission facilities. One of the most important features of transmission investments is their long lives. It is impossible to forecast their congestion and reliability benefits over 50 year with any semblance of accuracy. Any RTO West least-cost plan would be fraught with uncertainty. Any transmission investment will be a gamble. The LSEs should be the ones choosing the gamble, not a large institution with no investment at risk, several steps removed from end users.

There is also the potential problem of free-riders. LSEs can enjoy the reliability benefits of an investment, even if they do not help pay for it. The best strategy for an LSE might be to wait until others feel forced to build a transmission upgrade. If many LSE’s employ this strategy, least-cost transmission projects might not get built.

The free rider problem is likely overblown. A simple example is presented in the spreadsheet in Appendix A. The simple example shows that it is possible to have a willingness to pay to relieve a congested path that is six times as large as the net societal benefit. This is because the pecuniary benefits from price changes to the tight-side loads and loose-side generators determine the willingness to pay. These pecuniary benefits do not include the impact of pecuniary losses to the losers (loose-side loads and tight-side generators). This simple example indicates the FERC should be watchful for over-building of transmission as well as under-building. In many cases there may be more than enough pecuniary benefits to compensate for free rider problems. The pecuniary benefits

will also create strong pressure on RTO West to build unnecessary projects if it takes on the backstop role.

LSEs should have the lead role on decisions on reliability-related transmission projects. LSEs directly serve loads and the loads pay the costs. LSEs have the best relationships with loads and generators to induce strategic generation projects or peak load reductions. The RTO West structure will facilitate cooperation among the filing utilities. The key decision on whether to invest the money should be left to the LSEs. There are no “facts” about the future that would let RTO West know what is best for the future. RTOs should guide the process and mitigate problems related to economies of scale, uncertainty and free riders.

The FERC should direct RTO West utilities to remove from the TOA the special planning authority for independent transmission owners.

OE’s is concerned with the role envisioned for independent transmission company. ITCs have a less direct relationships with generation or loads than either integrated utilities or the RTO. Therefore, they are less qualified to choose among alternatives to transmission. It is unclear how an ITC could pursue least-cost alternatives to transmission and whether it has adequate incentives to do so. Unlike the other required RTO purposes or functions under Order 2000, independence hampers rather than enhances the ability to do planning. Yet the TOA gives an independent transmission owners responsibility for “*making additions, modification and expansions to its Transmission Facilities*”, but denies this explicit responsibility to other filing utilities (TOA Sec. 12.1.2, p. 38).

OE recommends that the following sentence in the TOA Sec. 12.1.2 be deleted: “*With respect to facilities owned or otherwise controlled by the Executing Transmission Owner, the Executing Transmission Owner shall have responsibility for making additions, modification and expansions to its Transmission Facilities if the FERC determines that such Executing Transmission Owner is independent from control of market participants or otherwise entitled to exercise such authority.*”

The FERC should indicate that transmission owners should seek the concurrence of representatives of end users and others on new transmission projects or alternatives before making commitments.

Local distribution utilities (LDUs), state regulatory commissions or other representatives of end users have no direct control over the Bonneville Power Administration or independent transmission owners. However, it is the end users who will pay for commitments made on their behalf. The FERC should indicate to transmission owners and to RTO West that the planning process should seek concurrence on measures to enhance reliability. The RTO West need determination should include consideration of environmental and social values. Because new transmission projects have lifetimes well beyond the ten year period where costs must be assigned to specific Company Rates, all interested parties should be included in the planning process.

APPENDIX A - PHASE I COMMENTS OF THE OREGON OFFICE OF ENERGY ON RTO WEST
 AN EXAMPLE OF SHIFTS OF PROFITS TO GENERATORS AND COSTS TO LOADS FROM REMOVING A CONSTRAINT

AREA A

Load = 200

Types of Gen	Capacity MWH	Op. Cost \$/MWH
A2	250	20
A3	100	30
A4	200	40

AREA B

Load = 450

Types of Gen	Capacity MWH	Op. Cost \$/MWH
B2	100	20
B3	100	30
B4	100	40
B5	100	50

CASE 1 Transfer Capability A to B = 100, Total Gen Area A = 300, Total Gen Area B = 350

Gen	Use MWH	Total Cost \$	Rev \$	Profit \$	Gen	Use MWH	Total Cost \$	Rev \$	Profit \$
A2	250	5000	7500	2500	B2	100	2000	5000	3000
A3	50	1500	1500	0	B3	100	3000	5000	2000
A4	0	0	0	0	B4	100	4000	5000	1000
					B5	50	2500	2500	0
Total A		6500	9000	2500	Total B		11500	17500	6000

	Area A Price	30	Area Prices	50	30	Gen from B	Gen from A	Total to B
A Load	200		Gen. To B Load	350	100	450		
Cost to A Load	6000		Cost to B Load	17500	3000	20500		

CASE 2 Transfer Capability A to B = 200, Total Gen Area A = 400, Total Gen Area B = 250

Gen	Use MWH	Total Cost \$	Rev \$	Profit \$	Gen	Use MWH	Total Cost \$	Rev \$	Profit \$
A2	250	5000	10000	5000	B2	100	2000	4000	2000
A3	100	3000	4000	1000	B3	100	3000	4000	1000
A4	50	2000	2000	0	B4	50	2000	2000	0
					B5	0	0	0	0
Total A		10000	16000	6000	Total B		7000	10000	3000

	Price (A Gen = B Gen)	40	Price (A Gen = B Gen)	40
A Load	200		B Load	450
Cost to A Load	8000		Cost to B Load	18000

Difference (Case 2-Case 1)

Changes:	Use MWH	Total Cost \$	Rev \$	Profit \$	Changes:	Use MWH	Total Cost \$	Rev \$	Profit \$
A2	0	0	2500	2500	B2	0	0	-1000	-1000
A3	50	1500	2500	1000	B3	0	0	-1000	-1000
A4	50	2000	2000	0	B4	-50	-2000	-3000	-1000
					B5	-50	-2500	-2500	0
Diff. A Gen		3500	7000	3500	Diff. B Gen	0	-4500	-7500	-3000

Change in price to Area B generators = 10

Change in price to Area B generators = -10

Cost increase to Load A =

2000

Cost decrease to Load B =

2500

Societal Benefits = 1000 = Net Total Gen. Cost = B decrease (4500) less A increase (3500)

= Net changes to generator profits less costs to loads: A Gens. B Gens. A Loads & B Loads

Societal Benefits = 1000 = Sum of 3500 -3000 -2000 2500

Looking at only the A Gens. and B Loads; their net benefits are much greater than the societal benefits

Their net benefits = 3500 + 2500 = 6000 > 1000

If a project to relieve congestion cost \$5000, B loads plus generators A2 and A3 could pay for it, but it would not pass a benefit-cost test, since net societal benefits are only \$1000.