

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

Avista Corporation,
The 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 No. RT01-35-000

**MOTION TO INTERVENE AND PROTEST OF
PUBLIC INTEREST ORGANIZATIONS**

Pursuant to Rules 211 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.211 & 214, **Northwest Energy Coalition, Renewable Northwest Project, Natural Resources Defense Council, and Project for Sustainable FERC Energy Policy (“Public Interest Organizations” or “PIOs”)** move to intervene in the above-captioned proceeding and file their Protest to the “Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000” made by Avista Corporation, et al. (**“Filing Utilities”**) on October 23, 2000. The following persons are designated to receive service and communications in this proceeding on behalf of the PIOs:

Steven Weiss
Sr. Policy Associate
Northwest Energy Coalition
NRDC/FERC Project
4422 Oregon Trail Ct. NE
Court
Salem, OR 97305
22314

Rachael Shimshak
Executive Director
Renewable Northwest Project
1130 SW Morison, Suite 330
Portland, OR 97205

Terry R. Black
Attorney
107 Roberts
Alexandria, VA

Phone: 503/393-8859
703/836-9547
Fax: 503/390-6287
<steve@nwenergy.org>

Phone: 503/223-4544
Fax: 503/223-4554
<rachel@rnp.org>

Phone:
Fax: 703/836-3034
<tblack@igc.org>

The **Northwest Energy Coalition (NVEC)** is a private, non-profit alliance of more than 90 consumer groups, low-income action agencies, good-government groups, environmental organizations and progressive utilities. For the past 20 years, NVEC has worked to promote cost-effective conservation and renewable energy resources; equity in ratemaking; and a fair accounting for environmental costs in resource choices. NVEC's membership comes from the four Northwest states, California and British Columbia and, thus, will be directly affected by the outcome of this proceeding.

The **Renewable Northwest Project (RNP)** is a non-profit regional coalition of public interest organizations and energy companies, and its mission is to promote renewable energy development in the Northwest. RNP works in Oregon, Washington, Idaho and Montana to implement renewable energy projects and policies to combat air pollution and global warming emissions produced from electricity generation. Its members and member organizations will be directly affected by the outcome of this proceeding.

Natural Resources Defense Council (NRDC) is a national nonprofit organization with 400,000 members and a staff of lawyers, scientists, and other environmental specialists. NRDC's mission is to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. NRDC staff have worked on electric

industry restructuring issues in the Northwest for many years, and its members will be directly affected by the outcome of this case.

The **Project for Sustainable FERC Energy Policy (Project)** is an education and advocacy initiative of a large, nationwide consortium of public interest groups which is focused on the regulatory options available to the FERC as it responds to and provides direction for electric industry restructuring. Project groups include national and regional non-profit organizations that represent public interests on energy, environmental and consumer policy issues, and members of these groups reside in all regions of the country.

NWEC, RNP, and NRDC representatives have been active participants in RTO West development, representing environmental concerns and renewable interests on the primary policy group in the RTO West collaborative process, the Regional Representatives Group (RRG), and in several collaborative workgroups. Thus, the participation of these Public Interest Organizations in this case will facilitate Commission understanding of problems related to Applicants' filing that are of greatest concern to the environmental community and renewable energy advocates and of greatest import for the long-term public interest. Thus, PIOs respectfully request that the Commission grant their motion to intervene and that they be afforded the relief requested in the Protest—i.e., that the Commission 1) declare that the proposed governance structure of RTO West, modified in accordance with the PIO recommendations, satisfies the independence characteristic for RTOs; 2) reject the proposed finding that the “concepts” in the draft Transmission Operating Agreement and other agreements not yet finalized are consistent with Order 2000 requirements; 3) direct

the Filing Utilities to modify the proposed Transmission Operating Agreement, treatment of FTRs, planning and expansion approach, and interconnection procedures in accordance with the recommendations made in this Protest; and 4) give guidance to the Filing Utilities and other parties on the issues identified by protesting parties.

INTRODUCTORY COMMENTS

Public Interest Organizations applaud the open public process within which Filing Utilities developed their joint filing, and we strongly support the formation of RTO West. There is a great deal in the Filing Utilities' proposal that we support, including the RTO governance structure and the broad geographical scope and contiguous configuration. In addition, we support many of the yet to be completed concepts reflected in the draft documents accompanying the filing. However, we also have concerns about parts of the proposal and suggest that they need the Commission's critical attention and guidance so that they may be appropriately modified.

The goal of PIOs in the Northwest is to have central station renewables and demand side measures, including distributed renewables, contribute along with myriad other resources to an economically efficient, broad, and deep market-based electric system in the region. We believe that if we achieve this goal, the Northwest will continue to have abundant and reasonably priced electric power in the years ahead. Thus, to advance the goal, PIOs have dedicated a substantial amount of resources to the RTO West collaborative process, and we are pleased to report that issues related to renewable resources and demand side measures have received serious attention by the Filing Utilities and other parties. We,

therefore, intend to continue the cooperative work with other parties to make sure that RTO-West becomes a reality.

Although we support the efforts of the Filing Utilities and others who worked through the public process to get us to where we are today, we have specific concerns with a few elements of the draft filing. We believe with the appropriate changes, as indicated below, RTO West can be the premier RTO in the country and our goals can be achieved. *However, there are critical flaws in the filing that would keep RTO West from achieving the most important gains the Commission envisioned in Orders 888 and 2000.* Without important changes that move the industry away from the status quo, RTO West will not fulfill its promise, and we fear that, like California, we will have to revisit design problems that can and should be fixed now.

SUMMARY OF PROTEST

While there is much to be applauded in this filing, RTO West will only be as strong as its weakest links. In this case, the weakest links strike right at the heart of what the Commission is trying to achieve—i.e., efficient competitive markets operating throughout the country to provide electric power customers. Although the Commission's authority does not cover the entire electrical system, it can affect the ability of markets to develop throughout the system by what it approves and what it prohibits under its authority. In the RTO West proposal there are many elements under the Commission's authority that can be changed to facilitate the development of efficient markets. Because an overly long transition period to achieve efficient markets would be both risky and costly to the Northwest, we urge that the Commission order these changes immediately, requiring well-designed structures, rules and procedures up front. The most critical of these necessary, up-front changes relate to the ownership and allocation of firm transmission rights across congested paths and interconnection standards. In addition, the Commission should order changes to assure the operational independence of RTO West and provide for planning and expansion process that assures efficient, least cost grid enhancement.

PIOs believe the RTO West proposal, as filed, will neither remove the strong barriers to efficient market development nor reduce the constraints that have made it historically difficult for renewables, demand side measures, and other innovative measures to become major solutions to serving loads efficiently. We have fought market imperfections for years, pursuing programmatic solutions to fix market flaws. Often,

programmatic, second-best solutions were imposed by utility regulators, and they were both more expensive than they needed to be and less effective than they could have been. PIOs urge that this route should be avoided in the future by fixing the problems now and letting efficient markets work. To assure workable markets in the Northwest, however, changes are needed in several proposed concepts in the draft RTO West proposal.

Utilities in the past have been efficient in the delivery of power to loads within the given infrastructure. In the development of that infrastructure, however, risks to ratepayers have not always been well managed; nor have innovative ways to serve load been encouraged. *In our opinion, addressing these two fundamental issues is the main reason for restructuring the industry.* If RTO West is created without removing the market barriers that have haunted us historically, a great deal of pain will have been incurred in the near term without any assurance of receiving reasonable benefits in the long-term. We would incur great costs in manpower and dollars to achieve marginal efficiency improvements in the operation of the grid, while leaving behind the huge benefits that innovation and competitive markets could bring.

PIOs' specific concerns about the filing are set forth below. These concerns reflect the strong desire to have efficient markets operating throughout the entire electric system—from generators through loads. Portions of the current filing, we believe, will thwart development of these markets. We believe renewable and demand-side resources will compete well if conditions are ripe for efficient markets to develop. Without efficient markets, PIOs will again have to push for non-market, second-best solutions to address

market flaws. Our approach in these comments and in future collaborations with the Filing Utilities, other parties, and the Commission will be to identify potential concerns that we can fix now to avoid risks, costs and conflicts in the future.

By necessity, PIO comments focus mainly on the drawbacks of the filing. However, our protest should in no way be deemed to denigrate the tremendous progress made by all parties in working on the RTO West proposal. Indeed, working relationship created by the collaborative process provide the assurance that, with Commission assistance and direction, the deficiencies in the filing can be modified to all parties' satisfaction. With that context as a background, we urge changes in the RTO West proposal to—

- 1) enhance the RTO's operational independence,
- 2) modify the proposed approach to ownership and allocation of FTRs,
- 3) require the development of reasonable and uniform interconnection standards, and
- 4) redesign the planning and expansion approach to eliminate ambiguity and inconsistency.

PROTEST

Because the RTO West (**RTOW**) filing is not yet complete, the major concerns of Public Interest Organizations are focused on problems with draft (or preliminary) documents which, with proper FERC direction, will be modified appropriately. Although PIOs share concerns focused by other parties, we will limit our protest comments to three significant areas: RTO independence; the proposed approach to congestion management; and the planning and expansion proposal in the RTOW and TransConnect filings.

PIOs support much of what is proposed in the RTOW filing as congruent with Order 2000 requirements. However, to assure that the final proposal merits FERC approval, this Protest will focus on the changes necessary to meet the four characteristics and eight functions set forth in the Commission's Final RTO Rule.

I. Although PIOs Support The Proposed Governance Structure For RTOW, There Are Provisions In The Draft “Transmission Operating Agreement” And Bylaws Which Could Compromise RTO Independence, And Those Provisions Must Be Modified.

PIOs strongly support the basic governance structure established in the Bylaws for RTO West, Attachment J, believing that it provides an excellent institutional basis for the independence mandated by the Commission as the bedrock for effective ISOs or RTOs. However, there are a few specific problems with the proposed bylaws, and there are broader concerns with elements of the Transmission Operating Agreement (TOA), Attachment S, which may partially compromise the structural independence of the RTO.

PIOs understand that the TOA is a work in progress—that the Filing Utilities are not yet submitting it for final approval but are seeking Commission guidance for a subsequent "Phase II" filing which will include other critically intertwined documents, such as the Load and Generation Integration Agreements. However, three utilities are asking for a Commission declaration that the “concepts as a package embodied” in the TOA and other agreements “are appropriate as part of arrangements otherwise acceptable” and consistent with the requirements of Order 2000. Supplemental Compliance Filing, p. 95 While PIOs believe that Commission feedback on the TOA will be very helpful, we are skeptical about the value or meaning of “approving” a set of concepts. Commission approval of “concepts

as a package” may simply foster debate over whether a particular detail fits within the approved "concepts." Moreover, without reviewing the other interdependent documents in final form to determine how they fit together, it would be inappropriate to approve TOA concepts at this time. Further, as noted below, many provisions of the TOA should be eliminated because they unduly limit RTOW authority and independence.

A. Draft TOA provisions which appear to limit critical RTO operational authority could, unless modified, undermine RTOW independence and narrowly circumscribe essential RTOW functions, thereby jeopardizing FERC approval under Order 2000.

In the protests filed by Independent Power Producers and Power Marketers, the Oregon Office of Energy, the Energy Division of the Washington Office of Trade and Economic Development, and the Northwest Power Planning Council in this docket, a number of concerns have been identified that are shared by PIOs. Although we have not been able to study those concerns in detail, we urge that they receive careful Commission review and be specifically addressed in the Commission’s order in this proceeding.

More specifically, the apparent limitations on transmission facilities to be under RTOW control, along with the constraints imposed by the TOA, the continuing involvement of transmission owners in certain key grid operations, and the delegation of RTO security coordination to an entity that is not wholly independent of vertically integrated transmission owning utilities, raises significant concerns for Public Interest Organizations. Thus, we urge the Commission to direct the Filing Utilities to make the modifications required to assure that RTO West has operational, as well as structural, independence.

A major concern of Public Interest Organizations is that too many details have been placed in the TOA which should be left to the RTOW tariff. Since the TOA cannot be changed without the consent of the Executing Transmission Owners (**ETOs**) and cannot be enforced by affected third parties, it is appropriate to lock into the TOA only provisions critical to protecting ETO investments and provisions on RTO authority to compel ETO performance of the duties necessary to implement the RTO's essential functions. RTO policy details that do not impinge on those fundamental arrangements should be left to the RTOW—i.e., they should be subject to RTOW change, along with other tariff provisions, in response to changing market needs.

The Commission has explicitly noted a similar concern in a recent order in Docket EL00-95-000 et al dealing with the California Markets: "The California experience has highlighted the dangers of hard-wiring a market design that is inflexible and cannot adapt to needed changes." (p.18) This draft TOA contains many instances of similar "micro-managing" that should not be locked into place. Such an approach is contrary to the Commission's open architecture goal.

Another major PIO concern is that the TOA seems to have been written with a broad assumption that transmission rights will belong to the ETOs, rather than the loads they serve. However, a bedrock principle underlying the physical rights model proposed for RTOW is that loads (along with other pre-existing transmission users, including generators) will receive the FTRs and have the right to use them or sell them. The TOA, however, fails to incorporate this principle and, rather, proposes to give all FTRs to the ETOs, assuming

the ETOs will be the gatekeepers of these rights. To remedy this problem the TOA (and Attachment M, “Description of RTO West Congestion Management Model”) must be amended in numerous places to be consistent with the physical rights approach. It must be clear in these documents that load-serving entities and generators, not transmission entities (unless they are one and the same), receive and control the rights.

The TOA language on transmission service over non-RTO controlled facilities is confusing. In Sec. 5.4.1 of the TOA, the RTO has the exclusive right and obligation to provide transmission services to any *eligible customer* if it is over the "Transmission Facilities," which are essentially the RTO West Controlled Transmission Facilities except “generation-integration transmission facilities." Section 5.5 then modifies the exception so as to include,

...generation facilities interconnected with the Electric System of the Executing Transmission Owner (whether or not such interconnection is with the Transmission Facilities) and (2) to Electric Utilities interconnected with the Electric System of the Executing Transmission Owner (whether or not such interconnection is with the Transmission Facilities.)

PIOs are concerned that this language seems to leave out non-generating eligible customers such as scheduling coordinators for loads that have been granted direct access rights under state law. These *loads*, not their utilities (as we noted above), should own the FTRs without regard to whether their interconnection is with the “Transmission Facilities," and they should be able to purchase services directly from RTO-West. Such eligible customers should not have to first negotiate with their local utility.

Another concern of PIOs is the limit imposed on RTOW contracts for ancillary services. Section 7.1 prohibits the RTO from securing long-term contracts for ancillary services (except in the first six months). This appears to be micro-management of the RTO that should not be "hardwired" into the TOA. It may well turn out that certain ancillary services should be acquired by the RTO through longer term contracts. If so, the RTO should not be prohibited from making and implementing such determinations. Thus, we support the comments of the Oregon Office of Energy on this issue.

B. The TOA should include limitations on RTOW's authority that are necessitated by existing law and policy.

1. RTOW decisions cannot be permitted to supercede the hydro operating parameters established by federal laws and policies.

The Bonneville Power Administration in particular, as well as other operators of the hydro system, have multiple statutory, treaty, and other responsibilities applicable to the operation of their facilities and, especially, to the Federal Columbia River Transmission System. In addition, Bonneville shares a trust responsibility with tribes to protect tribal treaty assets and to honor all fish and wildlife obligations. These protected assets are threatened when hydroelectric generation causes inappropriate changes to the river systems.

PIOs support the Filing Utilities' efforts to address these responsibilities and to implement RTOW in a manner that ensures that no provision of the TOA or directive from the RTO can require Bonneville or other hydro operators to violate any of their obligations under applicable statutes or regulations. Under federal law, RTOW, a private corporation,

cannot be authorized to require Bonneville to violate *any* of its operational parameters, even if those operational parameters are not contained in statute or regulation but are the subject of agreements, federal policies, rules, biological opinions, or similar appropriate federal decisions. Nor can Bonneville agree to allow a private corporation's decisions to supersede federal decision-making. PIOs urge that the language of the TOA be altered to clarify this point, and we support the more extensive comments of the Associated Tribes of Northwest Indians (ATNI-EDC) on these issues.

While the PIOs support moving as many issues as possible from the TOA to the tariffs in order to give RTOW maximum flexibility to carry out its role, RTOW discretion must not extend to overriding Bonneville's authority to make operational decisions regarding the hydro system to carry out its duties.

Section 5.5 and other parts of Section 5¹ contain italicized language that is to be put into Bonneville's TOA—the result of Operating Standards proposed by Bonneville during the TOA drafting process. PIOs believe that similar terms, without reference to federal obligations, should be included in all TOAs. All TOs will be subject to various laws, constraints and licenses for the operation of their generation and transmission facilities. In the case of hydroelectric generation, if it is allowed to operate outside its licensing parameters, it can damage fish and wildlife and their habitat.

Further, the italicized language and other language implementing Bonneville's Operating Standards must encompass not only the utility's obligations under "law" and

¹ 5.5, 5.7.6, 5.7.7, 5.7.9, and 5.11.

“treaty”, but also obligations imposed by federal agreements, biological opinions, rules, regulations, and orders, as well as federal decisions based thereon. RTO West should have no authority to undermine or thwart properly authorized federal decision-making. Thus the TOA language must be clarified to encompass not just the letter of the law, but the duly authorized federal decisions based on those laws.

Section 5.6 authorizes RTO West to modify the thermal and other operating parameters established by a TO for its Transmission Facilities through dispute resolution. This language must be clarified to exclude operating standards required by any of the federal authorities noted above. Because RTO West should have no authority to undermine or thwart properly authorized federal decision-making, this language should be modified accordingly.

2. Neither TOA provisions nor RTOW actions can be permitted to prevent BPA’s recovery of stranded cost.

PIOs support TOA Section 13.4, Recovery of Stranded Costs, on the ability of BPA to recover power costs through the implementation of a transmission surcharge to its applicable loads. BPA, which is not a jurisdictional utility, has independent statutory authority and the obligation to collect revenues from its customers that are sufficient to cover its costs, including fully funding its fish and wildlife responsibilities. This obligation and authority is not "unbundled" or allocated separately between transmission and power. Bonneville, however, has voluntarily attempted to separate these two functions into two businesses for accounting purposes to comply as much as practicable with the Commission's goals.

While PIOs support this decision, in the unlikely event that BPA is unable to recover adequate revenues from its power business, neither the TOA nor the existence of RTOW can be allowed to prevent the shifting of unrecovered costs to BPA's transmission business. Thus, we fully support the language in this section which protects BPA's ability to recover these so-called stranded costs.

C. The Commission should require a few important changes in the proposed RTO bylaws to add a public interest purpose, reduce participation burdens, and eliminate the ability of one class of RTO members to prevent meetings.

The most serious problem with the Bylaws is its narrow statement of purposes. Except for proscribing certain activities (e.g., the RTO cannot own an interest in generation, operate a power exchange, etc.), Article III is essentially a promise to obey FERC directives—something transmission owners must do anyway. However, because the provision of transmission services is, and ought to be, imbued with the public interest, a strong affirmation of its obligation to act in the public interest should be included in the purposes governing the RTO.

Adding an explicit public interest requirement to the purposes is not a symbolic gesture. Throughout the filed documents there are references to important decisions RTO West must make, often without criteria or standards for making them. For example, the RTO has the authority to "review" expansion proposals and approve a new project if it is "needed." To make such a determination, RTO West must have an "in the public interest" standard for guidance—a standard similar to that to which state utility commissions are subject. Such a standard can and should be meaningful, practical and quantifiable. Thus,

PIOs propose the following addition to RTOW purposes: "RTO West shall act in the public interest to assure an efficient and reliable transmission system at minimum long term cost to customers, with due consideration to the impacts of its actions on society at large."

PIOs also urge a change in the membership fee requirements in Article IV, Sec. 3(a). A fee of \$1,000 is prohibitive for public interest and residential consumer groups, and it conflicts with the recommendations of the collaborative working group, which had agreed upon a \$200-\$300 range during the RTO West process. Although the high fee was adopted by filing utilities as a measure to bar frivolous or trouble-making parties, the bylaws provide ample opportunity to challenge the credentials of applicants for membership. Because the high fee will be a significant barrier to those representing small consumers, the environment and the larger public interest, the Commission should reject it and to direct either a lower fee, as agreed in the collaborative, or give the Board the discretion to reduce or waive the fee for bona fide public interest applicants who can show that the high fee represents a significant barrier to their participation.

Article IV, Sec. 8(a) of the bylaws requires that one-third of each class of members must be present to conduct business at a general membership meeting. It thus allows any single class to prevent a quorum for doing business by boycotting the meeting. This provision cedes too much authority to a single class and should be modified to eliminate such single class control.

Finally, although the RTO's Market Monitoring Unit is discussed fairly well in Attachment O, it is not mentioned in the bylaws. PIOs urge the Commission to direct both

that the Market Monitoring Executive be included in the list of required officers not subject to CEO discipline and that the Executive be given explicit authority to take matters directly to the RTO Board.

II. Although PIOs Support The Use Of Flowgate Based Physical Rights To Allocate Use Of Facilities And The Related Suspension Or Conversion Of Existing Rights In Exchange For RTO Service, The Proposed Ownership And Allocation Of Transmission Rights Will Hinder The Development Of Markets Throughout The System.

As noted in the summary, vertically integrated utilities already deliver power relatively efficiently. What they fail to do well is manage ratepayers' risks and stimulate innovative ways to supply customers' needs. The massive efforts to restructure the electric industry and to create RTO-West should assure more than marginal improvements in the efficiency of grid operations. The major benefits of restructuring will come from better management of risks and more innovation over the long term. These benefits have come to industries with efficient, competitive markets.

In the collaboration to develop RTOW, discussions within the Regional Representatives Group and the Congestion Management Workgroup assumed that system "loads"—retail customers and transmission dependent utilities—would own the firm transmission rights (**FTRs**) because the loads have paid (and will continue to pay) for the transmission lines. An important goal of these groups was to craft a mechanism that would require or encourage holders of FTRs and others to engage in market activity to gain or maintain transmission rights and to discover the value of FTRs. The market activity to gain access to and discover the value of FTRs, in the collaborators' view, would create the

metric against which to measure non-transmission alternatives to meeting system needs and addressing congestion such as conservation, distributed generation, load management, location of generators, etc. Without such a metric, innovative alternatives to serving loads would likely be inhibited. Thus, the desire to achieve efficient markets for the trading of FTRs was the focus of significant attention.

Several participants in the process raised valid concerns—e.g., that requiring a pure market for FTRs could jeopardize their ability to serve loads for which they are responsible. In particular, it was thought that very small, publicly owned utilities would not have the expertise to enable them to compete adequately in such a market. To address this valid concern, proposals were made during the discussions that would have required the holders of FTRs to place them in the auction, allowing the holders to receive the proceeds of the auction. All of these proposals would have allowed entities that accurately bid FTRs' value (based on looking at their alternative means of meeting loads) to be held harmless if outbid. Alternative proposals would also have allowed arbitrarily high bids by those who absolutely had to retain the FTRs, or who did not want to be bothered with the process. A concerted effort is required to create a mechanism that protects loads, while requiring them at a minimum to address FTRs values and competing alternatives. A requirement to put the rights on the market, coupled with a requirement that revenues from the sale of the rights would go back to the rights holder, is an approach that would work.

The Commission has spoken on the importance of accurate price signals in its recent order to correct flaws in the California electric system:

“The current congestion management system is fundamentally flawed and needs to be overhauled or replaced. This market redesign is crucial for providing transmission schedules that are based on physical reality and accurate price signals (f)or the siting of new generation.” Order, Market Order Proposing Remedies for California Wholesale Electrics, Section 5, Congestion Management Redesign. (Issued November 1, 2000)

A. The proposed allocation of FTRs will inhibit the development of efficient markets to clear congestion and will assure sub-optimal decisions regarding generation location, transmission upgrades, and investments in end-use conservation and load management.

PIOs strongly believe that the Transmission Operating Agreement (TOA), as a foundational document of RTO-West, should permit (if not encourage) the development of efficient markets throughout the electric systems of RTO-West, but it does not. The congestion management mechanism embodied in the TOA requires anyone who wishes to schedule power to have one or more FTRs. The number of FTRs available on any given congested path is equal to that path’s capacity. Because holders of FTRs would not be required to put them on the market, market participants without FTRs would be able to schedule on congested paths only if they could make independent bilateral redispatch arrangements with other market participants or were willing to wait until as little as two hours before real time to see if there are any FTRs that will not be used. *The proposed allocation method, therefore, will make it virtually impossible to develop efficient markets to clear congestion. And, as importantly, it will lead to sub-optimal decisions by various market participants as they decide where to locate generation plant, whether or not to invest in end-use conservation, and whether to implement load management measures.*

B. Ownership of FTRs should be vested in load rather than transmission owners.

In the proposal made by Filing Utilities, the problem of illiquid markets in FTRs would be exacerbated by the fact that not only is there no requirement for FTR holders to discover the true worth of FTRs they are allocated, but the ownership of FTRs would be vested in the transmission owners (**TOs**) instead of retail customers and transmission dependent utilities. If TOs own the FTRs, loads will have little incentive to seek alternative solutions to transmission, even if there were an efficient FTR market operating to indicate their value. For example, consider a full requirements customer of BPA. If that customer owns FTRs and there exists a market that yields their true values, the customer could benefit if it found lower cost conservation measures that reduces transmission needs—it could then sell its unneeded, but still valuable, FTRs in the market. However, if BPA's transmission business owns the FTRs, such cost saving innovative solutions, if they were to happen at all, would have to be encouraged programmatically, because the customer would not benefit directly. The customer might benefit indirectly through a reduction in BPA's transmission rate, but the benefit would be spread to all customers. This situation does not create a strong incentive to take action because, as the Commission has pointed out, proper price signals are crucial to a well functioning electric system.

The Northwest already suffers from this situation in energy markets. BPA sells power to its customers at an average cost of about 22 mills, regardless of market rates. If customers were to conserve, BPA, not the customers, would be able to sell the power into

the market at higher prices much of the time. But, since the customers do not benefit directly—cannot respond to the price signal—they do not conserve. This is bad economics, and the RTO should not do the same thing with transmission rights. The proposed ownership and allocation methods coupled with the ability of the incumbent utilities to withhold FTRs from the auction is unlikely to lead to efficient markets.

Finally, the fact that these features are built into the TOA, which would have precedence over other agreements, including the tariff, makes it likely that any proposals to fix problems as they develop would be very difficult to implement—essentially out of the control of RTO West. Thus, the Commission should require modification of the proposed approach.

C. Limited liquidity in FTR markets will have a significant adverse effect on grid connected renewable resources.

Intermittent renewable resources are affected in at least two crucial ways by the lack of liquidity in markets for FTRs. First, while these resources (e.g., wind facilities) have extremely low operating costs, the availability of their “fuel” cannot always be known in advance. When the wind is blowing, wind units (or scheduling coordinators with wind resources in their portfolios) are well positioned to bid for transmission capacity because of their lower variable operating costs. Thus, it is important that markets for transmission capacity through congested paths be sufficiently liquid to allow scheduling coordinators to arrange for transmission capacity when renewable resources are running. The ability to buy transmission capacity before hand and to sell it if the fuel is not available, or to buy transmission capacity close to real time when the fuel is known to be available is extremely

important to renewable resources. However, the ability to do so will require deep and liquid markets for transmission capacity through flow gates.

The treatment of FTRs proposed in the RTOW filing will inhibit, if not prevent, the development of efficient markets for transmission capacity. Under the RTOW proposal, after allocations of FTRs to serve existing contracts and obligations, it appears that few if any FTRs will remain. Given this likely result, it is difficult to see how deep, liquid markets for clearing transmission congestion will evolve unless FTR holders are required to place their FTRs in an auction, with appropriate safeguards as discussed above. If this is not required, it is quite possible that there will be no FTRs available to non-incumbents at any price. In this case, owners and advocates of renewable resources would once again be faced with pushing for programmatic, non-market solutions to allow renewables to compete. It is not in the public interest to go over that ground again, given the opportunity to fix the problem now.

Second, when the value of FTRs is known and end-users are faced with paying prices consistent with their values, non-transmission solutions to reduce congestion will be examined, some of which may be attainable at lower costs than buying FTRs or planning new transmission. These actions, which cannot be fully anticipated, but which may include on-site renewable units, will reduce congestion and lower transmission costs. Reduced congestion will not only lower costs for all users of the grid, but it should mitigate concerns about the intermittent nature of renewable resources. With no congestion,

concerns about the system impacts of intermittent resources should be completely eliminated.

It is not in the interest of the Northwest to squander opportunities to foster renewable resources. Without efficient markets for FTRs in a constrained system, however, a significant opportunity would, in fact, be lost.

D. Failing to develop efficient markets now will increase the potential for additional stranded costs in wires and generators.

As noted above, it is crucial for the development of markets that will facilitate efficient solutions, including non-transmission solutions such as load management, onsite renewables, other distributed generation, and conservation, that users of electricity understand and face the price of power and its delivery. While many parties believe that accurate pricing at the meter will ultimately come to be, the transition is likely to take a long time. In the meantime, it will be business as usual with more generating capacity and T&D being built to supply peak loads in conventional ways. When real-time pricing does happen, many investments made between now and then could be stranded by end-use technologies entering the market. Thus, it is ill-advised to postpone implementation of a well designed program to move from a system that charges average prices and hides real prices to one that allows discovery of prices and brings innovation to bear in the provision of services derived from electricity. The Commission should not permit this to happen in the Northwest.

III. The Planning And Expansion Approach In The RTO West Proposal, Including The Suggested Interconnection Procedure, Is Fundamentally Flawed And Should Be Rejected.

A. The Commission should reject Filing Utilities' planning and expansion proposal as confusing, inconsistent and fundamentally flawed.

The planning and expansion approach embodied in the TOA, Attachment P (Planning and Expansion), and the TransConnect ITC filing has significant conceptual inconsistencies and basic structural flaws that cannot be approved. PIOs believe that this portion of the filing is the least developed and, thus, is often confusing and contradictory. Because of the critical importance of planning issues to the environment and consumers, PIO representatives were actively involved in the RTO collaborative's Planning Workgroup, and they can confidently report that the confusion and ambiguity in the final draft reflects to a great degree the confusion and ambiguity within the workgroup.

From the beginning, the issue of where responsibility should lie for making expansion decisions flip-flopped between two basic alternatives:

1. "Market Approach" – The RTO essentially needs to send good price signals and then help coordinate and assist with the actions of "market participants" (broadly meant to include load-serving entities, TOs, or any third party that thought it could get a return from actions inspired by those price signals) to react to them. Proponents of this view also believed that the market approach could be seriously undermined by any RTO "backstop" role or more direct RTO acquisition authority—i.e., they feared that an activist RTO with the ability to socialize costs—and a terror of allowing the lights to go out—would preempt and inhibit the market.

2. "RTO Backstop Approach" – The market may not work quickly enough to avoid disastrous situations and that although price signals were important, they might not be enough to induce needed actions. Thus the RTO must have the ultimate authority to fund projects to "keep the lights on." To implement this role, the RTO must have a fairly large planning staff and, more controversial still, the authority to assign costs to company rates in order to get facilities built when needed.

While both of these positions have their merits,² they are also fairly incompatible with each other. After much discussion of the options, the Workgroup decided on the market approach and forwarded a detailed proposal to the Regional Representative Group (**RRG**). Workgroup members also advised that if the RRG wished to switch to the backstop approach, a workable mechanism could be designed but it might undermine the market mechanisms they preferred and might be administratively contentious to implement.

The RRG adopted the backstop model. In its early discussions there seemed to be no real consensus. However, after the FERC aide to the process indicated he thought this Commission would want an active backstop role for the RTO, the RRG voted for a backstop model and sent it back to the Planning Workgroup for elaboration. The Workgroup returned some weeks later with a more fully developed backstop approach which was then approved by the RRG—albeit with some misgivings.

² That both approaches have merit appears to be reflected in Order 2000 at 910: "...while market approaches to expansion are the subject of much discussion, they are also in the early stages of development. It is not the intent of the Commission either to mandate a market approach to the exclusion of an executive decision by the RTO..."

Filing Utilities then translated the proposal into what has been filed. Unfortunately, they didn't get it right, and, as a result, the Commission has been given a confusing and contradictory proposal. A significant reason for the confusion is the time constraint with which the filers were faced. However, it also appears that the proposal got changed at the last minute because of the desire to accommodate the planning and expansion role proposed for TransConnect (which was not the product of the Working Group). In order to provide considerable decisional authority to TransConnect, it was impossible to maintain the activist least-cost planning role for the RTO that was built into the Workgroup's proposed backstop approach. Thus the ROTW proposal now lies somewhere between the two approaches, having mutated into something which will lead to much poorer decisions than either of the original options.

PIOs urge that the two most important criteria to be used to judge the proposal should be (1) does the approach ensure that reliability will be maintained and enhanced, and (2) will the actions taken to further that goal be at least cost to society—i.e., will they be fairly chosen among transmission and non-transmission (e.g., new central station, distributed generation, or load side) solutions? We believe the Commission shares the goals underlying these criteria and should use them to judge the proposal's adequacy.

The proposal appears to meet the first test, but it leaves important questions unanswered. RTO West has the responsibility to assure reliability and has the authority needed to allocate the costs to transmission companies' rates. However, the proposal is not clear on how this would work in a direct-access state. Under Attachment P (Planning and

Expansion), the TOs are given the responsibility to prepare plans to ensure transmission adequacy, but how that will be done in a direct-access state is not specified. Are the discos responsible for adequacy for their direct access customers? It may be that this gap would best be addressed by State commissions, but we believe it would help to spell things out more clearly in this filing.

The proposed approach, however, clearly fails the second test—i.e., assuring least-cost solutions for reliability and congestion management. In the view of PIOs, the proposal assures that transmission solutions will be the only options likely to be pursued in an effective manner. Among the more important reasons for this conclusion is the fact that the proposal specifically prohibits RTOW from providing incentives for non-transmission solutions (See Attachment P, p3: "RTO West cannot cause generation to be built."). This prohibition is reinforced in Exhibit A, Definitions. In Exhibit A, the "Transmission Facility Cost Sharing Payments" which RTOW may place in company rates for upgrades and expansion projects are limited to costs related to "Transmission Facilities." Non-transmission solution costs are not included, so the RTO could not fund non-transmission solutions such as providing incentives for generators to build in critical locations, contracts with interruptible loads, or incentives for strategically targeted DSM.

Second, although the RTO is given the authority in the TOA to fund through the allocation of costs, projects "...determined by RTO West to be *needed*..." (Sec. 11.1, emphasis added), there is no specific criterion (or overriding policy in the RTO's Bylaws) for making that determination in a least-cost manner. This missing element is evident again

in Sec. 12.1.1 where the RTO is given primary responsibility for “planning” of the RTO-controlled facilities and the “right to review proposals.” However, “review” may not mean a full least-cost planning assessment. What are the standards for this review? Does review include the ability to veto a proposal? What if there are competing proposals—what are the standards for choosing among them? Because the TOA does not provide any answers to these questions, the process could easily become quite arbitrary.

Third, Sec.12.1.2 of the TOA (Planning by an ITC), requires the RTO to give substantial deference to expansion proposals put forward by an ITC. The justification, mirrored in the TransConnect filing, is that since an ITC is “independent from control of market participants,” it will be able propose solutions in an unbiased manner. But because the ITC is to be a transmission owners-only organization, it will have no reason to put forward non-transmission solutions. Having no direct generator or end-user interests, it will have little or no incentive to propose solutions, whether transmission or non-transmission, which advance these potentially competing interests. Instead, having a fiduciary duty to shareholders, ITC proposals are most likely to be designed to maximize shareholders’ interests. Further, since it is regulated only by FERC, the Commission will be in the position of having to arbitrate local least-cost planning conflicts. It makes no sense, however, for the region to ask FERC to decide these questions, and it is difficult to imagine the Commission’s wanting to review them prior to review by the RTO.

For all these reasons, PIOs believe the Planning and Expansion approach presented in this filing is fundamentally flawed, and we endorse the Oregon Office of Energy's

detailed comments on the issue. The RTO needs the authority to develop its own proposals and to review and, if necessary, veto the proposals of others. And, the basis for such review must be a least cost to society standard which treats transmission and non-transmission proposals on a fair basis.³

For the same reasons PIOs urge the Commission to reject TransConnect's requested role vis-à-vis the RTO for planning and expansion. As an entity with no relationship to generators or end users, an ITC is institutionally incited not to carry out least-cost planning in a fair and unbiased manner. TransConnect will have an inherent bias toward transmission solutions over peak-demand management or strategic location of new generation, or (maybe) less expensive transmission fixes. TransConnect cannot have a lead role in choosing among these alternatives, and the Commission should not approve the proposed relationship which requires deference from the RTO and precludes meaningful review.

B. The Commission should require the adoption of reasonable and uniform interconnection standards for all portions of the RTO.

Although demand side measures, including conservation and distributed resources, both active and passive, many of which are renewable, can offer cost-effective market solutions to meeting customers needs, outdated and unnecessary interconnection standards

³ As we noted above, the proposal criticized here is based on the RTO backstop model which requires an active role by the RTO in determining and funding reliability projects. If the Commission were to decide that a more market-oriented model is more appropriate, many of our comments would be different. In particular, we would advocate a number of ideas proposed by the Planning Workgroup which would go far toward encouraging parties to come forward with least-cost projects. We would also support a proposal to give the sponsors (funders) of projects the FTRs created by their action, which should not have to be released into the market—i.e., they could be "hoarded" or withheld so that the sponsor could maximize its return and prevent free riders from devaluing the FTRs created. Although PIOs generally support the more centralized backstop RTO role, we believe that with careful thought, a satisfactory market approach can be workable.

can be used to hinder the development and use of these resources. Transmission entities that must implement interconnection standards have to recognize and be required (or incented) to achieve all of the inherent cost-effective energy and capacity benefits associated with all available resources, whether they are generation, transmission, distribution, or load. In addition, appropriate interconnection standards must also be adopted at the distribution level, and work on these standards would benefit from consistent treatment throughout the electric system. As was clear from the recent evidentiary hearings in California on interconnections for distributed generation, not all utilities are inclined to help resolve interconnection problems faced by developers at distribution voltages, even though benefits during peak load periods, measured in energy and T&D capacity savings, may be enormous.

PIOs believe interconnection standards must be reasonable and consistent across the RTO-West geographic area if the benefits of demand side and distributed resources are to be achieved. We also believe that interconnection standards should be designed to encourage non-traditional solutions to serving customer needs. For many PIOs, this concern is paramount. It would be quite unlikely to achieve the benefits associated with all resource alternatives if interconnection standards are not consistent across RTO-West.

It appears that the Commission may share some of these concerns. For example, in a very recent order the Commission stated:

“While siting issues are not within this Commission's jurisdiction, we note that tariff interconnection policies are. Further, we note that standard procedures to facilitate the interconnection of new generators or existing generators seeking to increase the rated capacity of their facilities are needed

in California. In this regard, we find that the ISO tariff lacks any such procedures and we direct the ISO to file generation interconnection procedures no later than sixty (60) days after the Independent Board is seated. This will ensure that the Commission may facilitate the matters under its control in a timely manner.” FERC Order, Market Order Proposing Remedies for California Wholesale Electrics, Section B (4), Interconnection Procedures (Issued November 1, 2000)

PIOs, therefore, oppose the following language in Section 4.2.2 of Attachment S of the

RTO-West Transmission Operating Agreement:

“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.”

Finally, PIOs believe that in order for interconnection standards to be reasonable they must differentiate between large and small projects. Interconnection requirements for distributed generation and relatively small renewable capacity additions with little potential for large system impacts should not be required to undertake all of the procedural and technical steps necessary for large projects with significant impacts on the grid. Thus, PIOs urge the Commission to direct the Filing Utilities to differentiate reasonably in the interconnection standards for RTOW between the very small generators with minimal impacts and larger projects.

REQUESTED RELIEF

For all of the reasons noted above, Public Interest Organizations respectfully seek an order that conveys Commission affirmation of the RTO West collaborative process as a model for other regions and Commission commendation for the progress made to date by Filing Utilities and other parties in developing an RTO that will meet Order 2000 requirements. In addition, PIOs request an order that—

- 1) **declares** the proposed governance structure of RTO West reflected in its Articles of Incorporation and Bylaws, modified in accordance with the recommendations made in this Protest, to satisfy the independence characteristic for RTOs;
- 2) **rejects** without prejudice the proposed finding, based on the filings made to date, that the “concepts” in the draft Transmission Operating Agreement and other agreements not yet finalized are consistent with Order 2000 requirements and are otherwise acceptable to the Commission;
- 3) **directs** the Filing Utilities to modify the proposed Transmission Operating Agreement, treatment of FTRs, planning and expansion approach, and interconnection procedures in accordance with the recommendations made in this Protest; and
- 4) **gives guidance** to the Filing Utilities and other parties on the issues identified by PIOs and other parties, as well as concepts proposed in the Supplemental Compliance Filing’s draft documents.

Respectfully submitted,

Terry R. Black, Attorney

on behalf of

Northwest Energy Coalition
Renewable Northwest Project
Natural Resources Defense Council &
Project for Sustainable FERC Energy

Policy

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first class mail, the foregoing Motion to Intervene and Protest of Public Interest Organizations upon each person designated on the official service list compiled by the Secretary in this proceeding.

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

Signed:

Terry R. Black
107 Roberts Court
Alexandria, VA 22314
Phone: 703/836-9547