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01 MAY 29 PM 3:27
FEDERAL ENERGY
REGULATORY COMMISSION



May 29, 2001

VIA HAND DELIVERY

The Honorable David Boergers
Secretary
Federal Energy Regulatory Commission
Room 1-A
888 First Street, N.E.
Washington, Dc 20426

Re: Avista Corporation, Bonneville Power Administration, Idaho Power Company, The Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Public Power Company
Docket Nos. RT01-35-000 and RT01-15-000

Dear Mr. Boergers:

Enclosed for filing in the above referenced proceeding please find an original and fourteen copies of the Request For Clarification or, in the Alternative, Rehearing of the Salt River Project Agricultural Improvement and Power District.

We have included two additional copies that we ask you to stamp and return to our messenger.

Sincerely,

Jessica J. Youle
Jessica J. Youle

Enclosures

cc: Service List (via U.S. Mail)

AS
ENCLOSURES
MAY 29 2001

010601-0012-1

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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REGULATORY COMMISSION

Avista Corporation,)
Bonneville Power Administration,) Docket No. RT01-35-000
Idaho Power Company,)
The Montana Power Company,)
Nevada Power Company,)
PacifiCorp,)
Portland General Electric Company,)
Puget Sound Energy, Inc.,)
Sierra Pacific Power Company)

Avista Corporation, Montana Power)
Company, Nevada Power Company,) Docket No. RT01-15-000
Portland General Electric Company,)
Puget Sound Energy, Inc.,)
Sierra Pacific Power Company)

**REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE,
REHEARING OF THE SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. § 385.713, the Salt River Project Agricultural Improvement and Power District ("SRP") respectfully requests clarification, or, in the alternative, rehearing of the Commission's "Order Granting, with Modification, RTO West Petition for Declaratory Order and Granting TransConnect Petition for Declaratory Order."¹ Specifically, SRP requests clarification that the Commission's preliminary rulings on liability issues in the RTO West Order are

¹ *Avista Corporation, et al.*, 95 FERC ¶ 61,114 (2001) ("RTO West Order").

not intended to restrict innovative proposals on liability issues; by parties seeking to form regional transmission organizations ("RTOs") in other parts of the West and that the Commission will continue to evaluate liability issues on a flexible case-by-case basis, as the Commission committed to do in Order Nos. 2000 and 2000-A.² SRP also requests further clarification and guidance from the Commission on how the Commission intends to permit RTO participants to rely on state laws to protect them from liability. In the alternative, SRP asks the Commission to grant rehearing of its decision to reject the Agreement Limiting Liability Among RTO West Participants ("Liability Agreement") filed by the RTO West Applicants.

I. Background

On October 23, 2000, Avista Corporation, Bonneville Power Administration, Idaho Power Company, The Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company (collectively, "RTO West Applicants") filed a proposal to form an RTO. RTO West plans to cover most of the geographic and population areas of the States of Oregon, Washington, Idaho, Montana, Utah and Nevada, as well as parts of Wyoming and California. As part of their filing, the RTO West Applicants proposed to require parties to execute a multiparty Agreement Limiting Liability Among RTO West Participants, which would then be incorporated into the Transmission Operating Agreement. The RTO West Applicants proposed to limit the liability of parties through:

² Regional Transmission Organizations, 89 FERC ¶ 61,285, FERC Stats. & Regs. ¶ 31,089 at 31,038 (1999) ("Order No. 2000"), *order on reh'g*, Order No. 2000-A, 90 FERC ¶ 61,201 (February 25, 2000).

(1) a "no fault" liability structure for electric system property damage; (2) a tariff limitation on liability for service interruptions; and (3) indemnity provisions for bodily injury. The RTO West Applicants stated that these liability provisions were intended to preserve the status quo of the rate structure of Northwest utilities under the Western Interconnected Systems Agreement. Further, they stated that the liability provisions were similar to provisions that exist for investor-owned transmission utilities operating under tariffs approved by their respective state commissions.

Relying on the policy it developed in Order Nos. 888, *et seq.*,³ the Commission rejected the RTO West Applicants' proposal to incorporate the Liability Agreement into the Transmission Control Agreement. The Commission stated that in Order Nos. 888, *et seq.*, the Commission determined it was not appropriate to require transmission customers to indemnify transmission providers in cases of negligence or intentional wrongdoing by the transmission provider.⁴ The Commission also stated that the pro forma open access transmission tariff developed in Order Nos. 888, *et seq.*, was not intended to address liability issues and that transmission providers may continue to rely on state laws to protect them from claims founded in ordinary negligence. Thus, even

³ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 Fed. Reg. 21,540, FERC Stats. & Regs. ¶ 31,036 at 31,636 (1996) ("Order No. 888"), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274, FERC Stats. & Regs. ¶ 31,048 (1997) ("Order No. 888-A"), *order on reh'g*, Order No. 888-B, 62 Fed. Reg. 64,688, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd*, Transmission Access Policy Study Group, *et al.* v. FERC, Nos. 97-1715 *et al.* (D.C. Cir. June 30, 2000).

⁴ RTO West Order, Mimeo at 53.

though the Commission was rejecting the Liability Agreement, the Commission indicated it was "not making any determination regarding the merits of the liability provisions under applicable law."⁵ The Commission stated that "RTO Participants have alternatives with respect to liability matters" and "there is nothing in the pro forma tariff that would preclude those entities from relying 'on the protection of state laws, when and where applicable protecting utilities or others from claims founded in ordinary negligence' or intentional wrongdoing."⁶

II. REQUEST FOR CLARIFICATION AND ALTERNATIVE REQUEST FOR REHEARING

SRP is involved in the formation of an RTO to serve parts of the West not covered by the RTO West proposal. Liability issues will affect SRP's decision to participate in an RTO. SRP is concerned about the rulings made by the Commission in the RTO West Order because, in the absence of clarification, the Order could be viewed as setting a binding precedent that limits the flexibility of other RTOs to develop innovative limited liability provisions. Such a rigid approach would discourage – rather than encourage – participation in an RTO, contrary to the Commission's goals. SRP is also concerned about the rulings made by the Commission in the RTO West Order because the Commission stated, in that Order, that RTO West may "serve as an anchor for the ultimate formation of a West-wide RTO."⁷

⁵ RTO West Order, Mimeo at 54.

⁶ *Id.* at 54 (footnote omitted) (quoting Order No. 888-A at 30,301; Order No. 888-B at 62,081).

⁷ RTO West Order, Mimeo at 44-45.

When the Commission adopted its RTO policy in Order Nos. 2000 and 2000-A, the Commission committed to take a flexible approach to RTO formation that encourages voluntary participation.⁸ The Commission also clearly stated that it would address liability issues on a "case-by-case basis."⁹ Consistent with the Commission's pronouncements in Order Nos. 2000 and 2000-A, SRP respectfully requests clarification that the rulings made by the Commission on liability issues in the RTO West Order are not intended to pre-judge or otherwise rigidly prohibit parties seeking to form RTOs in other parts of the West from developing innovative proposals to limit liability with the aim of encouraging RTO participation.

SRP also respectfully requests further clarification from the Commission regarding the "alternatives" available to RTO participants to limit their liability and how the Commission envisions state laws will continue to apply in an RTO setting after transmission owners turn over functional control of their transmission facilities to an RTO. While states have provided liability protections to transmission owners through retail tariffs, SRP is concerned that transmission service will be provided predominantly by RTOs in the future under tariffs filed at FERC. In the absence of further clarification by the Commission, litigation battles may result if an RTO's tariff is silent on the ability of states to limit the liability of transmission owners.

In the alternative, SRP requests rehearing of the Commission's decision and respectfully asks the Commission to approve the Liability Agreement as proposed. In

⁸ See, e.g., Order No. 2000, at 31,028, 31,038.

⁹ Order No. 2000-A, at 31,373.

the RTO West Order, FERC noted that it was not making a determination on the merits of the liability provisions, rather it ruled that such a determination could be made under state law.¹⁰ It is SRP's understanding that the Liability Agreement was drafted in conformance with limitations of liability that presently exist for investor-owned transmission utilities operating under tariffs approved by their respective state commissions. Therefore, to the extent the Commission expects liability issues to be resolved under state law, the Liability Agreement arguably meets such expectation.

Furthermore, SRP believes it is inappropriate for the Commission to preclude provisions limiting the liability of transmission owners in the context of the formation of an RTO based on the Commission's past rulings on open access transmission tariff provisions in Order Nos. 888, *et seq.* Significant differences exist between the Commission's flexible RTO policy and the Commission's rigid pro forma open transmission policy. Indeed, the fact that transmission owners will no longer control the operation of their own facilities in and of itself warrants a more flexible approach to limits on liability in the context of an RTO.

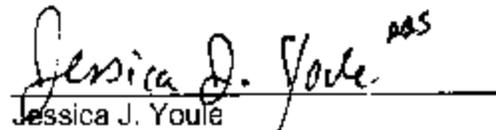
In addition, if the Commission rigidly denies RTO participants the ability to design appropriate liability limitations, it will discourage participation in RTOs and cause costs to consumers to increase. Transmission owners will be forced to pay substantially more in insurance premiums or may be prevented from obtaining insurance coverage altogether.

¹⁰ RTO West Order, Mimeo at 54.

III. CONCLUSION

WHEREFORE, SRP respectfully requests clarification, or in the alternative, rehearing of the Commission's RTO West Order as detailed herein.

Respectfully submitted,

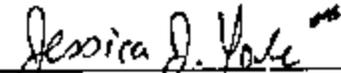
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Attorney for Salt River Project Agricultural
Improvement and Power District

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Request For Clarification Or, In The Alternative, Rehearing Of Salt River Project Agricultural Improvement and Power District 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.



Jessica J. Youle
Attorney for Salt River Project Agricultural
Improvement and Power District