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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

FILED  
THE SECRETARY

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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.,  
Sierra Pacific Power Company

Docket No. RT01-35-000

**MOTION TO INTERVENE AND COMMENTS OF  
TRUCKEE DONNER PUBLIC UTILITY DISTRICT**

On October 23, 2000, the above-captioned utilities (referred to herein as the "RTO West Utilities") tendered for filing in this docket a "Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000" relating to the proposed RTO West ("Supplemental Filing"). Pursuant to the Commission's notice issued October 24, 2000 and Rules 212 and 214 of the Commission's Rules of Practice, 18 C.F.R. §§ 385.212 and 385.214, the Truckee Donner Public Utility District ("Truckee" or "the District") hereby moves to intervene in this proceeding and provides its comments on the Supplemental Filing, principally as it relates to the treatment of transmission service under existing contracts.

**I. MOTION TO INTERVENE**

**A. *Truckee's Interest in the Proceeding***

Truckee is a public utility district of the state of California engaged in the transmission, distribution, sale and delivery of electric power and energy. The District is a transmission-dependent utility located high on the Eastern slope of the Sierra Nevada,

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within the control area of one of the RTO West Utilities, Sierra Pacific Power Company ("Sierra"). Truckee is not interconnected with any other utility. The District serves 10,534 electric customers, with a 1999 peak load of 28.6 MW.

Truckee receives network transmission service from Sierra, and currently brings in all of the power necessary to serve its load from sources outside of the Sierra control area, pursuant to a network service agreement and other agreements filed with and accepted by the Commission in Docket No. ER99-4455-000. *Sierra Pacific Power Co.*, 89 F.E.R.C. ¶ 61,156 (1999). Truckee's network transmission rights are subject to grandfathering under the arrangements proposed by the RTO West Utilities. Therefore, the District has a direct interest in this case that will not be represented by any other party, and the intervention of the District is in the public interest.

**B. Communications**

The names, addresses and telephone numbers of the persons to whom communications concerning this matter should be addressed are as follows:

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**II. COMMENTS ON RTO WEST FILING**

**A. Background for Truckee's Comments**

As noted above, Truckee currently takes network transmission service from Sierra under its open access tariff. Truckee's network service agreement was placed into effect as of September 15, 1999, and by its terms it will remain in effect through December 31,

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2027 unless terminated earlier by the District. Thus, Truckee's network service agreement qualifies as a "Pre-existing Transmission Agreement" under the RTO West Utilities' proposal (*see* page 86 of Attachment S to the Supplemental Filing).

It can hardly be disputed that Sierra's control area is a load pocket. The total load within Sierra's transmission service territory significantly exceeds the internal generating capacity, and geography and other factors have limited Sierra's ability to interconnect with other utilities. The District's network service agreement was the centerpiece of a settlement between Truckee and Sierra of their differences in several proceedings, including a long-standing dispute regarding Truckee's rights to use of Sierra's limited import capacity, which was before this Commission in Docket No. ER97-3593-000.<sup>1</sup>

The parties negotiated the terms of the network service agreement in mid-1999, against the backdrop of the development of the Mountain West Independent System Administrator ("MWISA") tariff.<sup>2</sup> The MWISA tariff included congestion management provisions, based on auctioned physical Firm Transmission Rights, that are very similar to those proposed by the RTO West Utilities in the instant filing.<sup>3</sup>

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<sup>1</sup> The settlement of which the network service agreement was a key component also resolved, *inter alia*, issues relating to the merger of Sierra and Nevada Power and Sierra's then-pending transmission rate case.

<sup>2</sup> The MWISA was designed as a single, independent entity to provide service over the transmission facilities of Sierra and Nevada Power Company upon the commencement of retail access in Nevada, which had been scheduled to take place on March 1 of this year, until such time as a regional transmission entity of considerably greater scope was developed. *See Mountain West Independent Scheduling Administrator*, 90 F.E.R.C. ¶ 61,067 (2000). Due largely to significant delays in implementing retail competition in Nevada, and the desire of Sierra and Nevada Power (which have merged since Truckee's network service agreement was executed) to devote their energies toward development of RTO West, MWISA appears to have been put on indefinite hold, and Truckee understands that the MWISA tariff will likely never go into effect.

<sup>3</sup> Sierra and Nevada Power have filed, and the Commission has approved (with modifications), a tariff that will take effect when retail access begins in Nevada, which also includes congestion management provisions based on the MWISA model, although it uses the term "Firm Import Rights" instead of FTRs. *See Sierra Pacific Power Co.*, 93 F.E.R.C. ¶ 61,107 (2000).

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This context highlights the importance to Truckee of the provisions of its network service agreement expressly entitling the District to certain levels of use of Sierra's import capability without additional charge or need to obtain firm transmission rights. The agreement allows Truckee to import its entire network load (up to stated annual limits based on Truckee's projected load growth plus losses through 2027) over certain of Sierra's interfaces with other utilities; if the District wishes to use other interfaces to import its network resources, certain additional limits may apply. These provisions were negotiated with the understanding and intention that Truckee's network service agreement — and the import rights provided therein — would be grandfathered under the MWISA tariff. Truckee made a number of concessions and agreements in the settlement as a *quid pro quo* for its exemption from any requirement to pay congestion management costs (in the form of purchasing FTRs or otherwise) for use of import capacity as set forth in the network service agreement.

Truckee fully expects that each of Sierra's interconnections will be subject to the congestion management provisions proposed by the RTO West Utilities. Truckee's principal interest in this proceeding is thus to ensure that its bargained-for import rights will not be eroded by the advent of RTO West. As a general matter, Truckee favors the development of RTO West, and believes that truly independent RTOs of significant scope are to be encouraged. In reviewing and commenting on the Supplemental Filing, however, Truckee has focused its limited resources on the provisions regarding treatment of existing contracts.

It is likely the case that some of the comments and questions Truckee raises below stem simply from the District's imperfect understanding of the Supplemental Filing, and

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some of these matters may be readily cleared up in future submittals by the RTO West Utilities. After having invested considerable time and resources in the development of the MWISA, Truckee — a system of less than 30 MW — could not justify making the even greater commitment of time and money that would have been necessary to be intimately involved in the RTO West collaborative process. While Truckee sought to stay generally abreast of the process and to familiarize itself with the primary features of the RTO West, Truckee did not participate in the ground-level formulation of the documents comprising the RTO West filing that is the subject of this proceeding.

It is also possible that some of Truckee's questions and comments may be premature. One thing that is clear from the Supplemental Filing is that it is not the last word on treatment of existing transmission contracts. The District anticipates that further (and/or different) provisions regarding existing agreements will be included in the amended Transmission Operating Agreement that may be filed by December 1, 2000 as a result of further negotiations among the RTO West Utilities (*see* Supplemental Filing at 13, 94) and the Stage 2 filing to be made in Spring 2001 (*id.* at 12, 66-67). And Truckee is cognizant of the fact that the RTO West Utilities are currently seeking Commission action only as to very limited portions of their Supplemental Filing (*see id.* at 93-95), among which the provisions relating to treatment of existing contracts appear not to be included.

Nonetheless, Truckee wishes to register its comments and questions discussed below at the earliest possible opportunity, in order to forestall any objection that its concerns were not timely raised. Truckee also hopes that by airing these issues now, its

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concerns will be factored into — and amicably resolved through — the further collaborative processes that will culminate in the future filings referenced above.<sup>4</sup>

***B. Concerns and Questions Regarding Transfer Capacity Rights of Customers Under Existing Transmission Agreements***

The District is generally pleased that the RTO West Utilities have included a number of provisions intended to preserve the rights of customers under existing transmission contracts, while also providing those customers the option of “converting” their contracts to service under the RTO West tariff (in which case they would receive, at no cost, an allocation of FTRs equivalent to their existing contract rights). However, Truckee has a number of questions and concerns regarding certain details of the RTO West’s proposed treatment of preserving transfer capability rights under existing contracts (and, in particular, non-converted contracts).

**1. Set-Asides vs. FTRs for Non-Converted Contracts**

One of Truckee’s concerns is that the RTO West Utilities propose to leave open, for later determination by the RTO, a decision that may affect the degree to which customers who do not wish to convert their transmission agreements will be assured of having the capacity rights to which they are entitled under their existing contracts. The basic choice is outlined at page 30 of the Supplemental Filing:

To satisfy obligations the participating transmission owners have under transmission agreements that their transmission customers do not elect to convert to RTO service, RTO West, under rules to be determined by RTO West, will either grant FTRs to the participating transmission owners sufficient to meet such obligations or will withhold

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<sup>4</sup> Of course, the District also reserves its right to renew its existing claims if they are not adequately addressed in future filings, and to raise further comments and questions in response to those filings.

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transmission capacity sufficient for RTO West to meet such obligations under the agreements.

*See also* Attachment M at 2, § 15.1.2 of the Transmission Operating Agreement (Attachment S at 51), and Attachment T at 7.

One of the reasons Truckee currently is of the view that it will not likely wish to convert its network service agreement to RTO West service in exchange for an allocation of FTRs is that the concept of network service — based as it is on the customer's actual load-service needs as they may fluctuate from time to time — is not easily translated to a system of fixed amounts of FTRs. The set-aside approach, being more flexible, seems the only one properly suited to dealing with non-converted contracts that provide for transfer capability rights tied to load requirements rather than in stated amounts.

Indeed, the option of allocating FTRs to transmission owners with which to meet their obligations under non-converted contracts is tantamount to a mandatory conversion of the customer's contract rights, except that it would be the *transmission owner* receiving the allocation of FTRs, rather than the transmission customer whose contract entitlement is the source of the FTR allocation. In such a regime, it seems almost inevitable that either the customer would be at risk of receiving less than its contractual entitlement, or the transmission owner would receive a windfall.

Whether the customer would be shortchanged would depend on the mechanism used to determine the number of FTRs appropriate for the transmission owner to be allocated in order to serve the customer's non-converted contract entitlements. Truckee suspects that the RTO West Utilities would use the same mechanism that they propose to apply to voluntary conversions, which is based on historical load data and "feasible

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dispatch” scenarios.<sup>5</sup> While Truckee does not fully understand the proposed mechanism, the District is concerned that any such formula will lack the flexibility for load-matching that is the hallmark of network service.

Given such lack of flexibility, a transmission owner would have to receive a very generously calculated allocation of FTRs in order to be assured of having sufficient transfer capability to meet its non-converted contractual obligations at all times. This means, however, that during many periods the network service customer would not need the full allocation of FTRs (and thus the transmission owner would not need them to fulfill its obligations to the customer). During those periods, the transmission owner would be able to make use of the excess FTRs for its own purposes, or could sell them on a secondary market. There is no reasonable justification for providing such a windfall to the transmission owner.

These problems would be easily avoided by having the RTO West set aside in advance the transmission capacity necessary for service under non-converted contracts. Based on monthly, daily, and hourly load projections or schedules of customer requirements under those contracts, the RTO West can determine how much of the reserved capacity will be needed, and how much can be released and auctioned as shorter-term FTRs, RTRs or NTRs. This would be consistent with the treatment of all other transfer capability that is not required for transmission owners’ existing obligations,

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<sup>5</sup> See Attachment M at 2 (“Rights for Load Service Obligations and for *nonconverted* transmission agreements providing for service to loads are determined based on non-coincidental peak and off-peak loads from 1998-2000.”) (emphasis added), *id.* at 3 (“FTRs will be based on two feasible dispatches (peak and off-peak) for each month.”).

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and would redound to the benefit of the entire RTO West system, rather than the individual transmission owners who are party to the non-converted contracts.

2. Proposed Limitations on Initial Set-Asides for Non-Converted Rights

The RTO West Utilities seem to propose that customers' transfer capability rights under non-converted contracts may be unilaterally reduced:

*An initial listing of transmission rights, including FTRs and non-converted rights set-asides, granted on each initial flowpath to holders of pre existing contracts and load service obligations will be included in the stage 2 filing. If during the initial allocation of rights it is determined that rights exceed flowpath capacity thus requiring a reduction of rights, FTRs and set-asides for non-converted rights will be treated comparably.*

Attachment M at 3 (emphasis added).

Sierra has certain obligations as a provider of network transmission service, and one of those obligations is to plan, construct, and maintain its transmission system to meet the projected needs of its network customers. Truckee, as a network customer, is entitled to rely on Sierra to fulfill those obligations, and it should not have its contractual entitlements reduced if Sierra fails to do so.

Moreover, it may be expected that the very process of converting existing contract rights to FTRs will — because of the flexibility limitations discussed above — result in oversubscriptions of available transfer capability that are more apparent than real. Customers who choose not to convert to RTO West service should not have their rights diminished on such an artificial basis. If Truckee does not convert, it will presumably have decided that it does not wish to accept the greater risk and potentially greater cost of a “converted” quantity of FTRs in exchange for the considerable benefits it could obtain

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by taking RTO West service.<sup>6</sup> If customers such as Truckee are to be given a truly meaningful choice regarding conversion (as they should be), such customers should be given set-asides that are not subject to reduction even if it appears that the initial allocation is oversubscribed. Only those customers who have elected conversion (including the transmission owners *vis-à-vis* their agreements with each other), and have thus consciously exposed themselves to such risk, should be subject to *pro rata* reductions in the event of initial oversubscriptions.

3. Treatment of Load Growth Provided for Under Non-Converted Contracts

Whereas the question of set-asides versus FTRs is left to the RTO West for initial allocations, the filing can be read as dictating that set-asides will not be available for load growth. The following passage implies that FTRs will be the only mechanism for implementing customers' load-growth entitlements, even when they have chosen not to convert their agreements to FTRs and RTO West service:

Rights for Load Service Obligations and for *nonconverted* transmission agreements providing for service to loads are determined based on non-coincidental peak and off-peak loads from 1998-2000. During the Company Rate Period (through December 14, 2011), additional FTRs will be made available without charge to each participating transmission owner and each transmission customer that has converted to RTO West service, as needed to meet the following year's reasonable load growth projections, up to the amount of (1) any unencumbered transmission capability of the transmission facilities of the applicable participating transmission owner plus (2) any unencumbered transmission capability of each of the other participating transmission owners, but only to the extent

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<sup>6</sup> The most obvious benefit Truckee would forgo would be getting access to a much larger transmission system — the entire RTO West grid — for its payment of the Sierra company rate, versus the access just to Sierra's system that Truckee will get for payment of the same company rate if it does not convert.

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that underlying transmission agreements provided for service to meet such load growth.

Attachment M at 2-3 (emphasis added). *See also* § 15.2.1 of the Transmission Operating Agreement (Attachment S at 51-52) and Supplemental Filing at 31.

As discussed in Section 1 above, where customers opt not to convert, their existing contract rights should be protected through set-asides, rather than allocation of FTRs to the transmission owner. Load growth provided for in the non-converted contracts should likewise be protected through set-asides. Truckee doubts that the RTO West Utilities intended to propose that a customer's non-converted rights could be limited solely to a set-aside based on 1998-2000 historical load levels (without any provision for load growth), even where the underlying contract provides for load growth. Nor would it make any sense to combine set-asides (for existing/historical load) and FTRs (for load growth) for meeting the needs of a customer under a non-converted contract. The RTO West Utilities' Stage 2 filing should make clear that *all* capacity needed for service under non-converted contracts, including load growth as provided for in the contracts, will be set aside before FTRs for the remaining transfer capability are allocated or auctioned.

Furthermore, it should be made clear that, in determining the set-asides for Truckee (assuming it does not convert), the limits described in the above-quoted passage will not diminish the express load growth rights set forth in Truckee's network service agreement. Truckee's contract already includes specific annual limits on the amount of its load growth for which it may use import capacity (although Sierra is still required to plan and operate the remainder of its system to meet Truckee's full network load even if it exceeds the import capacity entitlements). Sierra has an obligation to plan sufficient

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import capacity for this load growth, and RTO West will likewise have to plan for that load growth when it takes over the transmission planning/maintenance obligations. The set-asides for Truckee's load growth should be limited only by the terms of Truckee's contract. Of course, under its network service agreement, Truckee's *usage* rights will at all times be limited to its actual load, and so any excess capacity that has been set aside can be released as short-term FTRs, RTRs, or NTRs, as discussed above with respect to initial allocations.

#### 4. Curtailments

The provisions for curtailment of use if force majeure reduces transfer capability after the initial allocation are set forth in Sections 15.3 and 15.4 of the Transmission Operating Agreement (Attachment S at 53). Truckee presumes that these provisions were intended to preserve the status quo; however, Truckee doubts that the allocation of capability based solely on the transmission owner's initial allocation of FTRs would properly achieve that end. First, the allocation of capability in the case of curtailments should take into account all set-asides of capacity for meeting obligations under non-converted contracts, in addition to initial FTR allocations. Second, it is not clear to Truckee why the allocation of capability in the event of curtailments would not include all FTRs (and set-asides) held by each transmission owner at the time of the curtailment, whether they were acquired in the initial allocation or subsequently.

#### C. *Other Comments*

The RTO West Utilities' proposed method for allocating auction revenues (*see* Supplemental Filing at 38-39) is rather complex. Each transmission owner's share of auction revenues goes first to offset its share of the RTO West uplift (which is to recover

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“lost revenue” amounts), then to offset other transmission owners’ transfer payments to the transmission owner for short-term and non-firm wheeling, then to compensate for transfer charges no longer made under terminated agreements. Any remaining auction revenues finally are credited against the company’s annual transmission revenue requirement. No particular explanation or rationale for this scheme appears to be provided. Truckee submits that all auction revenues should be used as an offset to the company’s ATRR, as is required by the Commission’s precedents.<sup>7</sup>

To one not directly involved in the development of the RTO West proposal, the delineation of facilities that will be subject to RTO West’s control (*see* Supplemental Filing at 41-43) is not entirely clear, and may be unduly narrow. Truckee is uncertain what it means that RTO West can “schedule” power flows to a TDU’s point of receipt, even if that point of receipt is connected to facilities that are not subject to the control of RTO West. Will such customers have to deal with two sets of tariffs and pay two sets of rates? Or does RTO West take the service under the individual transmission owners’ tariffs as necessary, allowing the customer to deal only with RTO West?

Adding to Truckee’s confusion on the point of facility inclusion/exclusion and dual tariff structure is the plethora of options for transmission owners with respect to their non-qualifying facilities. As Truckee understands it, each transmission owner may choose whether to put such facilities (1) under the full control of RTO West under the RTO West tariff, or (2) in company rates and schedulable under RTO West tariff but not

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<sup>7</sup> *See Sierra Pacific Power Co.*, 93 F.E.R.C. ¶ 61,107 (2000); *Central Hudson Gas & Elec. Corp., et al.*, 86 F.E.R.C. ¶ 61,062, at 61,211, 61,228 (1999), *opinion on reh’g*, 88 F.E.R.C. ¶ 61,138, at 61,402 (1999); *PJM Interconnection, L.L.C.*, 87 F.E.R.C. ¶ 61,054, at 61,219 & n.19 (1999); *California Indep. Sys. Operator Corp.*, 87 F.E.R.C. ¶ 61,143, at 61,570 (1999); *San Diego Gas & Elec. Co., et al.*, 88 F.E.R.C. ¶ 61,208, at 61,708-09 (1999).

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subject to RTO West planning or operational control, or (3) not under the RTO West tariff at all (but, it appears, schedulable by RTO West under the individual transmission owner's tariff). To the extent various transmission owners select different options, their customers would seem to be subject to non-comparable treatment, and possibly pancaking to varying degrees. Not knowing whether, in practical terms, the non-qualifying facilities are expected to be a substantial portion of each transmission owner's system, it is hard for Truckee to gauge the potential significance of transmission owners taking divergent approaches to these facilities.

Although the materials filed to date have various provisions regarding ancillary services and existing contracts, there does not appear to be anything relating to the intersection of these two subjects. Truckee assumes that this is something that will be covered in the Stage 2 filing. Truckee believes that the subject should be covered by a provision in the RTO West tariff exempting customers taking service under non-converted contracts from having to obtain or provide any ancillary services required by RTO West that are not also required under the customers' existing contracts.<sup>8</sup>

Another matter as to which Truckee expects the Stage 2 filing will shed further light is the intended scope of the dispute resolution provisions of the Transmission Operating Agreement. The language of Section 18.1 — making the dispute resolution provisions applicable to “any dispute arising under this Agreement or under the RTO West Tariff” — is very broad, and could possibly be read as extending to disputes that may arise with respect to customers' rights under non-converted contracts (inasmuch as

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<sup>8</sup> See, e.g., Section E.8 of Appendix E to the Mountain West ISA tariff.

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those rights are affected by the TOA and will likely be affected by the RTO West tariff as well).

Depending on what sort of default arrangements are provided to be in place pending resolution of such disputes (*i.e.*, whose position is implemented while the ADR process runs its course), a customer could be placed at a great disadvantage during the time it takes to get through the dispute resolution procedures. Unless the customer's rights are fully preserved, it would be unfair to allow the other party (or parties) to invoke ADR and thereby delay the customer's ability to get resolution of the issues at this Commission or elsewhere. Further, the baseball-style arbitration and limitations on the Commission's review of arbitration awards seem poorly suited to issues relating to customers' rights under existing contracts, and imposition of these new ADR provisions on customers who have chosen not to convert to RTO West tariff service would constitute a unilateral change to their contracts, contrary to the apparent intent of Section 23.5 of the TOA.

Finally, Section 23.12 of the TOA disclaims third-party beneficiaries. Although this is the type of "boilerplate" provision that does not normally raise eyebrows, Truckee is concerned that this provision could be read to preclude it from taking any action against RTO West, *e.g.*, if the RTO failed to set aside sufficient transfer capability to allow Sierra to meet its obligations under Truckee's network service agreement. It would place customers at a significant disadvantage if they are forced to rely on the transmission owners to enforce the customers' non-converted rights (or if the customers are forced to take action against the transmission owners to get them to take action against the RTO to enforce the customers' rights). A customer, as the real party in interest under a non-

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converted contract that is to be partially implemented by the RTO West, should be recognized as a third-party beneficiary with rights to directly enforce RTO West's obligations that benefit the customer.

Respectfully submitted,



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