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By Hand Delivery

David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Docket No. RT01-35-000

Dear Mr. Boergers:

Enclosed for filing in the above-referenced docket are an original and 14 copies of the "Protest and Motion to Intervene of Utah Associated Municipal Power Systems."

Please file-stamp and return the extra copy of the foregoing document by the delivering courier.

Very truly yours,



Heather H. Anderson

Enclosures
cc: Service List

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PROTEST AND MOTION TO INTERVENE OF
UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

On October 16, 2000, Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company (the "Filing Utilities") filed with the Federal Energy Regulatory Commission (the "Commission") an "Alternative Filing Pursuant to Order No. 2000."^{1/} On October 23, 2000, the Filing Utilities^{2/}

¹ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), F.E.R.C. Stats. and Regs. ¶31,089 (2000) at 30,993 (hereafter "Order No. 2000"), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), F.E.R.C. Stats. and Regs. ¶ 31.092 at 31,354 (2000) (hereafter "Order No. 2000-A"), *review pending sub nom, Pub. Util. Dist. No. 1 of Snohomish County, WA v. F.E.R.C.*, nos. 00-1174 et al. (D.C. Cir).

² On October 16, 2000, six of the above-listed utilities, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company, filed a contemporaneous proposal to form an "independent" transmission company, TransConnect. See Docket No. RT0-15-000. As set forth in the Protest of Utah Associated Municipal Power Systems, Western Public Agencies Group, Public Utility District No. 1 of Snohomish County, Washington, Market Access Coalition, Pacific Northwest Generating Cooperative, Northwest Requirements Utilities, Idaho Energy Authority, and Idaho Consumer-Owned Utilities Association, filed today in that docket, the six remaining "distribution" companies would retain substantial active and possible ownership interests in TransConnect. Because it and its interests are thus fully represented by the Utilities
(continued...)

filed a “Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000” with the Commission (the “RTO West Filing”).

Pursuant to 18 C.F.R. § 385.214 and the Commission’s October 20, 2000, Notice of Filing in this docket, Utah Associated Municipal Power Systems (“UAMPS”) hereby moves to intervene in this proceeding. In addition, UAMPS Protests the RTO West Filing pursuant to 18 C.F.R. § 385.211. As noted below, most of UAMPS’ views on the RTO West Filing are set forth in the consolidated Protest and Comment of Idaho Consumer-Owned Utilities Association, Idaho Energy Authority, Northwest Requirements Utilities, Pacific Northwest Generating Cooperative, Power Resources Managers, LLP, Public Utility District No. 1 of Snohomish County, Washington, Utah Associated Municipal Power Systems, and Western Public Agencies Group (the “Consumer-Owned Utilities’ Joint Protest”), which is being filed contemporaneously with this Motion and which is incorporated by reference herein.^{3/}

However, unlike UAMPS’ members, most of the other utilities within the Consumer-Owned Utilities group are located in the Pacific Northwest and take service primarily from BPA and/or BPA’s transmission system (pursuant to General Transfer Agreements with other utilities). In contrast, most of UAMPS’ members are in the southern and western areas of the

²(...continued)
filing here, throughout this Protest the term “Filing Utilities” should be read to include TransConnect.

³ UAMPS did not join in the last section of the Consumer-Owned Utilities’ Joint Protest, which argues that the Commission should require a cost-benefit study of the proposed RTO before approving it. That argument was substantially based on what were perceived to be only modest improvements by RTO West over the consolidated transmission facilities already operated by BPA in the Pacific Northwest. UAMPS, which as noted in the text does not generally rely on the BPA transmission system, does not share that view. UAMPS, however, joins fully in all other parts of the Consumer-Owned Utilities Joint Protest.

proposed RTO West territory, outside of BPA's service area, and are dependent primarily on the transmission systems of jurisdictional, investor-owned utilities. Moreover, because it also has members and resources in the proposed Desert STAR RTO, UAMPS will be critically affected by "seams" issues that are less important to the other Consumer-Owned Utilities. UAMPS therefore has a somewhat unique perspective on many of the issues raised in this docket, and writes separately to present additional views and emphasize issues that are particularly important to it.

1. Communications. All communications and correspondence relating to this proceeding should be addressed to:

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and

Marshall Empey
Planing Manager
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2825 E. Cottonwood Parkway, Suite 200
Salt Lake City, Utah 84121

2. UAMPS' Interest in this Proceeding. UAMPS is a Utah interlocal association and political subdivision of the State of Utah, consisting of 43 municipal and other public power systems in six western states, that provides power pooling and related electric services to its members.^{4/} UAMPS' members are Transmission Dependent Utilities that rely on the transmission systems of others to serve their loads and access their resources. Indeed, UAMPS

⁴ A list of UAMPS' members is attached.

and its members were the first TDU's that were formally recognized as such by the FERC.⁵ For this reason, UAMPS has long been a strong and active supporter of the Commission's efforts to establish open and nondiscriminatory access to transmission facilities, and, specifically, the formation of RTOs, particularly in the western United States.

Most of UAMPS' members and resources are directly dependent upon the transmission facilities of utilities that intend to participate in RTO West, and all of them will likely take at least some service from RTO West.⁶ In addition, UAMPS owns limited transmission assets (a part interest in one 345 kV transmission line that crosses the proposed RTO West/Desert STAR seam and a 345 kV/138 kV/69 kV system in southern Utah) that it anticipates placing under the control of RTO West. While these comments and UAMPS' position in the RTO West (and Desert STAR) workgroups and negotiations primarily reflect UAMPS' TDU perspective, we are also evaluating the proposals from a transmission owner's perspective.

As a widely dispersed, growing organization of transmission dependent utilities and resources, UAMPS is critically interested in RTO West's operational practices, rates, and planning. It has thus been an active participant in the extensive discussions and negotiations that have occurred in an effort to reach consensus with respect to the formation of RTO West. UAMPS participated in many of the RTO West workgroups, and a UAMPS representative sat on

⁵ The term "Transmission Dependent Utility" was coined by UAMPS and first used by the FERC (Order No. 318) in connection with the 1988 merger of Utah Power & Light and Pacific Power & Light. See Order No. 318, 45 FERC ¶ 61,095.

⁶ Four of UAMPS' members (Kanab, UT, Fredonia, AZ, Gallup, NM, and Page Electric Utility, AZ), are directly dependent upon the transmission systems of utilities that plan to participate in the Desert STAR RTO. In addition, measured in megawatts, more than one-third of UAMPS' firm resources are located within the proposed Desert STAR territory.

the RTO West Regional Representatives Group. See RTO West Filing, Attachment D. UAMPS intends to remain active in RTO West's development, and accordingly, seeks to intervene in this docket.

3. UAMPS' Position in this Proceeding. The RTO West Filing requests four specific orders: (1) that RTO West meets Order No. 2000's independence requirement, (2) that RTO West's Articles of Incorporation and Bylaws are otherwise consistent with Order No. 2000, (3) that RTO West's scope and configuration satisfy Order No. 2000, and (4) that RTO West's proposed liability and insurance structure are appropriate. RTO West Filing at 93. In addition, although these documents are incomplete and are not currently supported by most of the Filing Utilities, three of the Filing Utilities request a Commission declaration that the "concepts as a package" embodied in the Transmission Operating Agreement ("TOA") and the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements are "appropriate" and "consistent with the requirements of Order 2000." RTO West Filing at 94-95.

In brief, UAMPS: (1) protests the requested finding of "independence," (2) protests the request for an order that RTO West's governance documents are otherwise consistent with Order No. 2000, (3) protests the request for an order that RTO West satisfies Order No. 2000's requirement of appropriate scope and configuration (although UAMPS' agrees that RTO West meets that Order's requirement with respect to geographic scope), and (4) has no comment on the proposed agreements with respect to liability and insurance. UAMPS further believes that the Commission should refrain from issuing any order with respect to the proposed TOA or Agreement to Suspend Provisions of Pre-Existing Transmission Agreements until the Filing

Utilities are able to present a unified proposal containing all of the information the Commission (and other participants to the process) must have to adequately evaluate that proposal.⁷

In addition, to facilitate further discussions regarding RTO West's development, the Commission should, at the least, affirm (1) that RTO West must be independent of the Filing Utilities' control and must specifically have control over its own rates and tariffs; (2) that the Filing Utilities may not unilaterally discard elements of a consensus package to which they have previously agreed; (3) that RTO West must have control over all participants' facilities that serve wholesale customers or otherwise are necessary to ensure reliable service and competitive markets within the RTO's geographic territory; and (4) that significant seams issues must be addressed before an RTO may be approved.

I. RTO West Does Not Meet Order No. 2000's Independence Requirement.

Several aspects of the Filing Utilities' proposal, particularly in combination, permit those utilities to retain an unacceptable degree of control over RTO West and its operations, and thereby destroy RTO West's "independence" for purposes of Order No. 2000. The Filing Utilities' proposal (1) denies RTO West the ability to independently administer its tariff establishing rates, terms and conditions for service, (2) ensures that the Board of Trustees will

⁷ UAMPS (and the other Consumer-Owned Utilities) have now expended substantial resources responding to documents that are incomplete, or that cannot realistically be evaluated in isolation from other documents or proposals that have not yet been presented or finalized. Indeed, the Filing Utilities themselves disclaim any ability to fully evaluate the TOA until the rest of the RTO West proposal has been finalized. RTO West Filing at 93. Generally speaking, although it might appropriately provide guidance, the Commission should refrain from approving any of the RTO West documents filed now or in the future, until it has before it a final and complete proposal, and it should specifically permit interested parties to comment on all aspects of the final proposal at that time, regardless of when the relevant element of the proposal was first presented to the Commission in draft form.

not be neutral or “independent” but will represent the Filing Utilities’ interests, (3) ensures that the Filing Utilities will enjoy disproportionate influence among the RTO West membership, and (4) ensures that RTO West will be dependent upon the existing vertically-integrated utilities to perform many of its operational responsibilities. The proposal thus fails to satisfy Order No. 2000’s first required characteristic.

A. The Filing Utilities Will Control RTO West’s Rates and Tariffs.

First, and perhaps most important, under the Filing Utilities’ proposal the existing vertically integrated utilities retain full authority over the tariffs that will control the rates for service that RTO West may offer. RTO West cannot be deemed to be “independent” under these circumstances. Order No. 2000 at 31,075-76. Although UAMPS fully supports the concept of “Company Rates” as a means of avoiding cost shifts among customers of RTO participants, that concept may not be used as an excuse for leaving full rate-making authority with the Filing Utilities. Consumers can be protected from the substantial cost-shifts inherent in a postage-stamp rate, as the participants in the RTO West process intended, without ignoring Order No. 2000’s independence requirement.

Order No. 2000 unequivocally states that to ensure independence, an RTO must have “the independent and exclusive right to make Section 205 filings that apply to the rates, terms and conditions of transmission services over the facilities operated by the RTO.” Order No. 2000 at 31,075. The Commission carefully balanced the right of individual transmission owners to ensure an adequate revenue recovery with the RTO’s need to control the tariffs governing the service provided over its facilities by ordering that while transmission owners would retain the right to make independent filings under § 205 of the Federal Power Act to establish their overall

revenue requirements or the payments they are entitled to receive from the RTO, the RTO must have exclusive authority to design rates and file tariffs establishing rates, terms, and conditions for service. Order No. 2000 at 31,075-76.

Several utilities sought rehearing of the Commission's initial decision on this very point, arguing strenuously that they must retain the right to file rate schedules and tariffs under § 205 of the Federal Power Act in order to ensure that their costs are recovered. The Commission squarely rejected that argument. Order No. 2000-A at 31,370-71. In Order No. 2000-A, the Commission reaffirmed that, as it had previously stated, transmission owners can adequately protect their assets by making § 205 filings to establish their own revenue requirements; they can not go further and establish actual rate tariffs that will govern service provided by the RTO. *Id.*

In flat contradiction of this clear requirement, the Filing Utilities' current proposal requires RTO West to charge the rates established by the Filing Utilities' themselves for service over their facilities, for a minimum of 10 years and perhaps indefinitely. This procedure is not necessary to implement the anti-cost shifting "Company Rate" concept, and should not be countenanced by the Commission.

RTO West's power to establish rates or file tariffs is not discussed in either the proposed Articles of Incorporation or the proposed Bylaws. Rather, the relevant provisions are all set forth in the draft TOA, which appears as Attachment S to the RTO West Filing. Specifically: Section 13.1 of the TOA explicitly states that "[t]he Executing Transmission Owner retains its rights to file rate schedules for use of the Transmission Facilities as provided hereunder."

Section 14.2.1 then specifies the rates that RTO West will be required to charge customers, at least through December 14, 2011: "Notwithstanding any other provision of this

Agreement, during the Company Rate Period, RTO West's charges for all Transmission Service . . . shall be comprised of": (1) "Company Rate charges" which must be calculated by applying the formula specified (by the Filing Utilities) in Exhibit G to the TOA to costs and billing determinants unilaterally established by the Transmission Owners pursuant to their own tariffs;⁸ (2) "Transfer Charges" that will be negotiated by the Transmission Owners among themselves and set forth in Exhibit H to the TOA; (3) "compensation to RTO West for its costs of operations"; and (4) "any allocation of Stranded Costs" established by the Transmission Owners pursuant to Section 13.4 of the TOA. Thus, pursuant to the "agreement" that the Filing Utilities have drafted, during the Company Rate Period, the only discretion RTO West will have with respect to the structure or amount of the rates it charges will be the dollar figure of that element of the rates attributable to RTO West's own costs of operation. Everything else will be determined by the Transmission Owners unilaterally, and specified either in the Transmission Owners' own tariffs, or in attachments to the TOA. In keeping with its ministerial role with respect to rate matters, during the Company Rate Period "RTO West shall have no ownership interest in the proceeds or receivables of the amounts billed by RTO West as the billing agent for the Executing Transmission Owner." TOA Section 14.2.3.

Although permitting the Filing Utilities to control RTO West's rate tariffs even for ten years would be unacceptable, in fact it appears that under the TOA the Transmission Owners may continue to exercise full authority over RTO West's rates and tariffs even after the Company

⁸ Section 13.1.1 makes clear that "[d]uring the Company Rate Period [through December 14, 2011], the Executing Transmission Owner shall establish Company Costs and Company Billing Determinants to be applied to its Company Loads by RTO West, acting as billing agent for the Executing Transmission Owner." These specific costs will be as set forth in Section 14 of the TOA, and Exhibit G thereto. *Id.*

Rate Period specified in the TOA. Pursuant to Section 14.1, "RTO West and the Executing Transmission Owner agree to cooperate, prior to any termination of the Company Rate structure, in developing such rate structure." The Filing Utilities' proposal would thus apparently guarantee that RTO West and its Board of Trustees may not alter the specified "Company Rate" structure without the Filing Utilities' consent. Under the draft TOA, then, those utilities may continue to control RTO West's rates and tariffs indefinitely.^{9/}

B. The Board of Trustees Will Not Be Neutral or Independent.

Second, the Filing Utilities' proposal ensures, through both direct and indirect methods, that the Board of Trustees will not be "independent," but instead will seek to serve those Utilities' interests. Most important, the Filing Utilities' proposal would permit the existing vertically integrated utilities to name a total of eight members to the Trustee Selection Committee:^{10/} enough to block either the election of any proposed candidate for the Board of Trustees or the efforts of the rest of the Trustee Selection Committee to remove a sitting

⁹ In UAMPS' view, provisions respecting rates, terms and conditions of service are out of place in the TOA. Instead, such terms should be in the RTO Tariff, where they can be changed by RTO West to adapt to development of the markets the RTO is intended to serve. The TOA properly should set out the obligation of RTO West to assure payment to the transmission owners of their approved revenue requirements, but should not establish the actual rates to be charged for RTO service.

¹⁰ The transmission owners' class, including TransConnect, would elect six members, while under the Filing Utilities' last minute alteration to the Bylaws, the utilities spinning (at least some of) their transmission assets off to TransConnect would elect an additional two representatives from the "transmission dependent utility" class. ("Affiliate" is specifically defined in the RTO West Bylaws to exempt TransConnect and its "distribution company" affiliates from the restrictions that would generally apply to "affiliates" within the RTO West framework. Absent the exemption, TransConnect and its affiliates could not all be members of RTO West.) The mechanics of this proposal are set forth in detail in the Consumer-Owned Utilities' Joint Protest, Section I.1 at 10-13.

Trustee.^{11/} Unlike the other members of RTO West, the Filing Utilities will therefore be in a position to ensure that all of the Trustees elected to the Board are individuals who will represent their interests. Through their ability to block removal of a sitting Trustee, the Filing Utilities will then be able, again unlike the other members of RTO West, to protect any Trustee who overtly favors them.^{12/}

In addition to this direct control over the Board's membership, the Filing Utilities' proposal uses more indirect methods to ensure that the Board of Trustees will be populated overwhelmingly (if not exclusively) with individuals who would tend to represent them. The Bylaws accomplish this by in effect requiring that two-thirds of the nominees for the Board must be former executives of large, privately owned companies.^{13/} There is no legitimate reason for

¹¹ See Bylaws, Art. VI Sec. 3(d) ("The members of the Board of Trustees shall be elected by the affirmative vote of not less than 24 of the 30 members of the Trustee Selection Committee."); Art. VI Sec. 6 (imposing same majority for the removal of any Trustee without cause).

¹² The common interests of the nine vertically integrated utilities filing in this docket will not disappear simply because six of them transfer (at least some of) their transmission assets to a new company that they have designed and which they will continue to own. The "distribution companies" that will remain if and when TransConnect forms will still be receiving substantial revenues from the transmission assets integrated with their "distribution" systems, and they will therefore remain vertically integrated utilities for all practical purposes. See Article 6.1 of proposed Form of Limited Liability Company Operating Agreement for TransConnect LLC, Docket No. RT01-15-000, Attachment C to Filing Letter at p. 17-18 (requiring TransConnect to distribute bulk of its revenues to distribution company members on a quarterly basis). After all, at least in theory, none of the other vertically-integrated utilities will retain "control" over their transmission systems after RTO West is implemented, either. Allowing the six future "distribution utilities" filing in this docket to elect an additional two representatives from the "TDU" class would indeed increase the Filing Utilities' total representatives to eight.

¹³ Article VI, Section 2(d) of the Bylaws specifies: "[N]ot less than two-thirds of the nominees for election as a Trustee shall be required to have substantial experience as a member of the board of directors or as a chief executive officer, president, chief operating officer, chief

(continued...)

such a requirement. Individuals with public service, non-profit, professional, or academic backgrounds or experience could make able and valuable directors of a non-profit organization like RTO West. In fact, UAMPS' experience with the Board of Desert STAR suggests that individuals accustomed to working in a for-profit environment find it difficult to adjust to a not-for-profit organization. The requirement could, however, tend to bias the resulting board in the Filing Utilities' favor. An individual's background and experience, obviously, both shape and reflect that individual's outlook and biases. It stands to reason, then, that even if these individuals do not have a financial interest in one or more of the Filing Utilities, a Board populated with former officers of large for-profit utilities or other companies will in fact make decisions that tend to favor large, for-profit companies, rather than customers, competitors, or regulators of those companies.^{14/}

C. The Filing Utilities Will Have Disproportionate Influence Within the RTO Membership.

Third, and again through a variety of mechanisms, the Filing Utilities' proposal would ensure that those utilities will be disproportionately influential both with the Board of Trustees and with respect to decisions made by the RTO West membership. For example, through a series of unilateral changes to the previously agreed-to consensus proposal, the Filing Utilities seek to

¹³(...continued)

financial officer, chief information officer, executive vice president or senior vice president, or in a position of equivalent responsibility, of at least one publicly or privately held, for profit or not-for-profit corporation, or government entity having revenues or an operating budget greater than or equal to five percent (5%) of the gross book value of the assets operated by the RTO." As a practical matter, only large private companies have revenues or budgets of that magnitude.

¹⁴ A similar point is made, and solution proposed, in the Consumer-Owned Utilities' Joint Protest, Section I.2 at 17.

restrict the Board Advisory Committee's – and thus the general membership's – right or ability to access or provide input to the Board of Trustees.^{15/}

In addition, the Filing Utilities seek to make it more difficult for other stakeholders to either become members of RTO West, or to participate effectively in those decisions that the RTO West Articles of Incorporation reserve for the members. For example, the Filing Utilities have arbitrarily established a membership fee of \$1,000 annually – an amount that is of no consequence to themselves, but that is high enough to create a serious impediment for smaller municipal utilities like some of UAMPS' members.^{16/} By contrast, the membership fee Desert STAR is proposing is only \$250: one quarter of the RTO West amount.

Then, the RTO West Bylaws make it unnecessarily difficult for smaller entities who do pay the \$1,000 membership fee to participate effectively as members. For example, the Articles prohibit proxy voting, providing specifically that “Members may not vote by proxy, and shall be required to be present in person at a meeting in order to vote on any matter coming before the Members at such meeting.” Bylaws, Art. IV Sec. 9. This provision is particularly problematic when applied to the TDU class, if, as the Filing Utilities contemplate, the six TransConnect “distribution” utilities are each permitted to join the class. These six for-profit companies, of course will have no difficulty being present in person to vote at any and all meetings of the Members. Indeed, they will be able to recover the costs of such participation in their rates paid by their customers. Being required to appear in person will be a much larger burden for small

¹⁵ This point is presented in detail in the Consumer-Owned Utilities' Joint Protest, Section I.3 at 18-23.

¹⁶ Bylaws, Art. IV Sec. 3(a).

municipalities that, given the large geographic area covered by RTO West, may be located a great distance from the scheduled meeting site. This provision thus tends to ensure that the existing utilities will be able to wield disproportionate power in the TDU class, in addition to the power they wield through the Transmission Owners' class, and thus will have disproportionate power and influence in the membership as a whole.

D. RTO West Will Be Dependent on the Filing Utilities to Perform Its Functions.

Finally, the Filing Utilities' proposal undermines RTO West's independence by ensuring that it will be dependent upon them to perform essential functions. As discussed below, for example, the proposal permits the Filing Utilities to withhold critical facilities from RTO West's Control. See Section III.B., *infra*. RTO West may therefore be entirely dependent upon those Transmission Owners to meet applicable reliability standards, perform adequate planning, and, especially in contingency situations, complete scheduled transactions. Indeed, because the Filing Utilities apparently contemplate that RTO West will "control" its facilities only by providing direction to the Filing Utilities' own employees, RTO West will be dependent upon the Filing Utilities for even this critical function. See Section V *infra*.

Compounding this problem, the proposed Articles of Incorporation specify that RTO West "will not . . . own any transmission or distribution facilities." Articles of Incorporation, Art. III.1; see also Bylaws Art. III (containing same language). This provision cannot be changed unless 2/3 of the Filing Utilities consent. Articles of Incorporation, Art. VII. Thus, this restriction ensures that the power and influence retained by the Filing Utilities will be maintained, by guaranteeing that the Filing Utilities will continue to own all significant portions

of RTO West's transmission system. RTO West's ability to engage in independent decisionmaking with respect to issues as diverse as transmission expansion, rate filing, and the FTR auctions will thus be significantly impaired.

For all of these reasons, the RTO that would emerge from the Filing Utilities' proposal currently before the Commission would not satisfy Order No. 2000's independence requirement. The Filing Utilities' proposal would deny RTO West the ability to file its own rate tariffs as "independence" for purposes of Order No. 2000 requires; would ensure a Board of Trustees both predisposed to favor the Filing Utilities and elected or retained by those Utilities' good graces; would unduly and impermissibly enhance the Filing Utilities' influence within RTO West's membership; and would ensure RTO West's dependence by, among other things, withholding critical facilities and retaining hands-on operational control – even of RTO West facilities – for themselves. Moreover, the proposal precludes RTO West from acquiring greater control over its own operations within the Filing Utilities' scheme by prohibiting it from "owning" any facilities. The Commission should therefore deny the Filing Utilities' request for an Order that as proposed, RTO West would meet Order No. 2000's independence requirement.

II. The Proposed Bylaws and Articles of Incorporation are not "Otherwise Consistent" with Order 2000.

In addition to an order affirming RTO West's "independence," the Filing Utilities ask the Commission to order that the proposed Articles of Incorporation and Bylaws are otherwise consistent with Order No. 2000. RTO West Filing at 93. For the reasons detailed in the Consumer-Owned Utilities' Joint Protest in this docket, however, any such order would be manifestly inappropriate.

In Order No. 2000, the Commission emphasized that it expected RTOs to develop pursuant to a collaborative process “whereby transmission owners, market participants, interest groups, and governmental officials [would] reach mutual agreement on how best to establish RTOs in their respective regions.” Order No. 2000 at 31,221. In accordance with this directive, UAMPS and the other Consumer-Owned Utilities worked diligently with the Filing Utilities and other stakeholders in the RTO West region, and developed a consensus proposal – to which the Filing Utilities agreed – for most aspects of the RTO West Articles of Incorporation and Bylaws. In the days immediately preceding October 16, 2000, however, the Filing Utilities unilaterally discarded various elements of the consensus proposal in favor of their own preferences.^{17/} As presented, then, RTO West’s governance documents are not “otherwise consistent” with Order No. 2000. To achieve consistency with that Order, the Filing Utilities should be ordered to restore those elements of the consensus proposal that they unilaterally changed or abandoned in the RTO West Filing.^{18/}

III. RTO West Does Not Satisfy Order No. 2000's Scope and Configuration Requirement.

Order No. 2000 requires that an RTO both (1) cover an appropriate and sufficiently large geographic area, and (2) exercise control over all or virtually all of the transmission facilities

¹⁷ The consensus proposal and the ways in which the RTO West Filing deviates from that consensus is detailed in the Consumer-Owned Utilities’ Joint Protest.

¹⁸ As noted above, many if not all of the Filing Utilities’ changes increase their own influence over RTO West while diluting or silencing other constituencies voices, and thus destroy the independent governance structure that the consensus proposal sought to establish. Except insofar as these documents impact RTO West’s independence, Order No. 2000 simply does not speak to the substance of any of the subjects covered in the Articles of Incorporation or Bylaws. There is no other respect, then, in which these documents can meaningfully be “consistent” with that Order.

within that area. See Order No. 2000 at 31,164. If both elements are not met, the RTO will not be able to adequately perform many if not all of its required functions, and will not result in the expected benefits for consumers. UAMPS agrees that RTO West covers an adequate geographic area for purposes of Order No. 2000.¹⁹ However, it does not appear that RTO West will exercise control over enough of the transmission facilities within its area to satisfy Order No. 2000's requirements. The Filing Utilities' request for an order that RTO West satisfies Order No 2000's scope and configuration requirements, should therefore be either strictly limited to RTO West's *geographic* scope, or denied outright.

A. Geographic Scope.

As proposed, RTO West would cover a very large, contiguous geographic area, spanning the states of Washington, Oregon, Idaho, Montana, Nevada, and Utah. This size and configuration of this geographic area is certainly adequate to facilitate the development of a large, competitive power market and to significantly promote efficient grid operation and planning. Like the other Consumer-Owned Utilities, then, UAMPS believes that RTO West would meet Order No. 2000's requirement that an RTO have an appropriate geographic scope.

B. Facilities Inclusion.

Although RTO West is appropriately sized geographically, it does not meet Order No. 2000's second required characteristic because it does not appear that its control will extend to all significant or necessary facilities within that geographic area. The RTO West Filing does not identify the specific transmission facilities that the Filing Utilities will include in RTO West.

¹⁹ As detailed in Section IV below, a larger geographic scope could eliminate substantial "seams" issues and might provide even greater benefits to consumers and power markets.

The TOA's definition of "RTO West Controlled Transmission Facilities" ("Controlled Facilities") would require the Filing Utilities to cede to RTO West control only: (1) those facilities that would change the "transfer capabilities of RTO West managed constraint paths between its congestion zones" or between different RTOs, and (2) those facilities that "carry 10% or more of the power transferred across parallel paths" within a congestion zone. RTO West Filing at 41-43 & Attachment S at 90.

1. The Definitions May Exclude Critical Facilities.

Even on their face, these definitions may exclude necessary facilities from RTO West's control. By its terms, for example, the requirement to include any facilities that would change the "transfer capabilities of RTO West managed constraint paths," will include all facilities contributing to a significant constraint path only if the path itself is otherwise "RTO West managed." There is nothing in the TOA (or the rest of the RTO West filing) to independently define which "paths" must be "RTO West managed."

The definition that applies within a congestion zone, "facilities that carry 10% or more of the power transferred over parallel paths," is even more problematic. At the outset, UAMPS notes that the 10% criteria is entirely arbitrary, and is not justified in the filing. It could just as easily have been set at 5%, or even 1%. Moreover, the definition will exclude facilities that RTO West must control to provide efficient, reliable and non-discriminatory transmission service.

First, this definition permits the Filing Utilities to exclude facilities that could be parts of significant constrained paths by internalizing them within unidentified "congestion zones."^{20/}

²⁰ If the congestion zones were defined to avoid any internalized congestion, the particular problem caused by withholding constrained facilities from RTO West's control –
(continued...)

Under the Filing Utilities' proposal, an internalized facility that is constrained and limiting the market but individually only carries up to 9.99% of the total flow through a congestion zone will nevertheless not fall under RTO West's control. The market-based congestion management model, proposed by the filing, will not even have the opportunity to address the internal facility's limit. Moreover, the 10% criteria may exclude any number of the facilities that together could be deemed to make up a flowpath ("flowpath"), so long as each facility in isolation carries less than 10% of the flow. The transfer capability that could be excluded over a flowpath thus may well be even more substantial than 10%, depending on the number of facilities excluded from RTO West Control.

The Filing Utilities could attempt to internalize as many potentially constrained facilities as possible, by their initial congestion zone designation. It would be very difficult for RTO West to obtain control over facilities because of the 10% rule. Because the constrained facilities would be outside of RTO West's control, they will not be included in RTO West's congestion management model. In most cases, redispatching the Filing Utilities' generators (or, in TransConnect's case, its affiliates' generators) will be the only remedy for the internal congestion. And of course, the transmission customer, through RTO West's up-lift charge, will pay the Filing Utility (or its affiliate) for the service, without the benefit of market signals that

²⁰(...continued)

although not the other problems detailed below – could be avoided. However, the RTO West filing does not indicate how the congestion zones will be determined, and it does not appear that RTO West will ever have any independent ability to set or modify these zones. UAMPS understands that the Filing Utilities are currently working this issue out among themselves. The potential for strategic behavior, then, is apparent.

might prompt facilities expansion. This would create a guaranteed, non-transparent market for the Filing Utilities' (or their affiliates') generation.

Second, the RTO West filing fails to explain how the facilities meeting the 10% standard will be identified. On its face, the definition therefore gives the Filing Utilities discretion to limit its application to those facilities meeting the standard under a single set of "normal" operating conditions. If applied in this way, the 10% criteria will almost surely exclude parallel paths that provide critical system support, particularly in important and system-limiting N-1 or N-2 situations.

It would be inappropriate to take one snap shot of the system, under "normal conditions," to determine which facilities satisfy the 10% rule. Over time, different facilities are taken out for maintenance, load levels and generation dispatch patterns differ, and system characteristics change due to adjustment of transformer taps or phase-shifters. The transmission system is dynamic and does not operate under a single static set of "normal conditions." It is of course important for RTO West to be able to operate its transmission system under "normal conditions," but it is equally if not more important that it be able to do so under stressed or "contingency" conditions.

A transmission provider such as RTO West must be able to evaluate, study and operate its system to assure reliability under all potential conditions. The Western Systems Coordinating Council's ("WSCC") "Reliability Criteria" require that at a minimum, the transmission system should be able to operate under a "single contingency or multiple contingencies of sufficiently

high likelihood."^{21/} Therefore, according to the WSCC Reliability Criteria, in order for RTO West to assess the security and reliability of its transmission system and the transactions it is approving, it will need to evaluate N-1, N-2, and, under some circumstances, even N-3 or more conditions.^{22/} Further, in order for RTO West to effectively coordinate transmission maintenance it will need to evaluate the system during line maintenance outages and subsequent N-1 conditions, which would actually be N-2 conditions compared to so-called "normal" operations.

Third, the TOA definition's focus on "parallel paths" entirely excludes radial transmission lines (or even looped lines that are typically operated with an open switch) that are nevertheless used to transfer bulk power to wholesale customers like UAMPS' members. RTO West must have control over these facilities in order to ensure nondiscriminatory, reliable service to wholesale load.

2. **There Will Be Discretionary "Exceptions" to Facilities that Would Otherwise Meet the Definitions.**

Compounding the problems engendered by the TOA's inadequate definition of "Controlled Facilities," the Filing Utilities explicitly state that there will be "exceptions" to that definition. According to the RTO West Filing, "There are facilities in the RTO West region that . . . meet the definition of main grid transmission facilities because the facilities may have secondary impacts on the transfer capability of some regional grid paths. . . . the facilities may provide an alternative path for bulk power flows and thus limit transfer capabilities in the event of a contingency on the bulk system." RTO West Filing at 43. Confirming their integration with

²¹ Western Systems Coordinating Council , "Reliability Criteria", Part IV, page 8.

²² RTO West, of course, will be required to act as the Security Coordinator for its region. Order No. 2000 at 31,090-91.

and importance to the transmission system, the Filing Utilities state that these excluded facilities must be taken into account “along with other main grid facilities” in the RTO West planning process, and that any upgrades “necessary to support or improve bulk transfer capability or for regional reliability” may be allocated (by RTO West) to the parties that benefit. *Id.* at 43-44.

However, the Filing Utilities assert that despite their evident importance to regional transmission, these facilities somehow “serve primarily a local purpose,” and therefore may be excluded from the RTO’s independent operations. *Id.* In short, the Filing Utilities state that they will exclude facilities that are necessary for regional transfer capability and reliability and that would fall within the TOA’s definition of “RTO Controlled Facilities,” if the relevant utility in its discretion deems the facility to serve “primarily a local purpose.” *Id.* at 43. The potential for discrimination here is self-evident and enormous.

3. The Filing Utilities May Add and Remove “RTO West Controlled” Facilities at Will.

Finally, creating a somewhat different but related set of problems, Section 5.1.3 of the TOA explicitly permits each transmission owner to elect, “from time to time,” to change the designation of at least some of its transmission facilities, either putting them under or taking them from, RTO control. In addition to creating a high likelihood that functionally similar transmission facilities may be treated differently on various existing systems within RTO West (and even that the same facilities on the same system may be treated differently “from time to time”), thereby raising concerns about comparability and potential discrimination that RTOs were supposed to mitigate, such a provision unnecessarily and substantially adds to the pricing, planning, and operational weaknesses of the TOA as proposed.

4. Conclusion.

In summary, the defining facilities criteria (complete with qualification), coupled with the absence of identified congestion zones or constrained paths, gives a participating transmission owner enormous discretion to limit the facilities turned over to RTO West control. And, most of the Filing Utilities have made clear in RRG and other discussions that in accordance with the discretion granted them in the TOA, they in fact intend to withhold significant amounts of transmission facilities from RTO West control. These withheld facilities are likely to include both facilities directly serving wholesale customers, and transmission facilities that are critical to maintaining reliable service and a competitive market, particularly under N-1 and N-2 situations.

In UAMPS' view, RTO West must have control over all of the facilities that are necessary to (1) serve wholesale loads, and (2) provide a reliable and commercially viable transmission system. In addition to radial (and looped) facilities serving wholesale customers, this includes all parallel paths, especially constrained paths, that are used to maintain transfer capability and reliability in N-1 and N-2 contingency situations. Particularly with the flow-based scheduling and congestion management system the Filing Utilities propose, all facilities that provide transfer capability under N-1 or N-2 conditions must be under the operational control of RTO West. Without this control, RTO West simply will not be able to provide reliable service and engage in sensible regional planning, as Order No. 2000 requires. UAMPS urges the Commission to reject the Filing Utilities' attempt to segment the transmission system.

IV. The Commission Should Ensure that Seams Issues Are Addressed.

Unlike the other Consumer-Owned Utilities, UAMPS has members and resources in two different proposed RTO regions: RTO West and Desert STAR. As noted above, while most of its members and resources are dependent upon RTO West utilities, four of its members and more than a third of its firm resources, measured in megawatts, are located within Desert STAR's proposed territory.^{23/} Because of the substantial number of transactions that UAMPS will therefore have to schedule across proposed RTO borders, UAMPS has a great appreciation for the difficulties that seams issues may cause, and a unique perspective on the benefits that may be gained by further expanding or combining RTO West's geographic scope. UAMPS therefore believes that although RTO West's proposed geographic scope meets Order No. 2000's standards, a larger scope eventually may be desirable. And, regardless of whether RTO West ever expands, the various RTOs in the Western Interconnection must be able to operate compatibly across their borders. To accommodate the possibility of further RTO consolidations and to permit the market to function under more than one RTO, the Commission must ensure at this stage that "seams" issues are adequately addressed.

As an initial matter, UAMPS believes that expanding the geographic scope of RTO West could better serve Order No. 2000's goals by achieving even more efficient regional operations and planning and creating an even larger, more competitive market. But UAMPS recognizes the very real practical impediments in forming an RTO covering a larger geographic area, at least at this stage. Reaching agreement on knotty political, technical, and economic issues that must be

²³ Historically, and including both firm and nonfirm resources, nearly half of UAMPS' resources have come from the proposed Desert STAR service area.

resolved before any RTO can form would become even more difficult if the cast of participants were substantially increased, and the expanded infrastructure that would be necessary to support a significantly larger RTO may be even more difficult to design and construct. However, the currently-proposed RTOs should be formed in a manner that minimizes their differences by adequately addressing seams issues and ensuring compatible operations, to facilitate a merger of the RTOs in the WSCC, if and when such a merger seems practical and desirable.

Aside from these longer-term considerations, serious and immediate problems will result if the operations and practices of the various RTOs operating in the Western Interconnection are not compatible. And, as UAMPS is well aware, the three potential RTOs in the West have devoted very little time thus far to coordinating plans or proposals, and so serious incompatibilities in fact appear to be developing. While this lack of focus on inter-RTO coordination is perhaps understandable given the significant internal issues that each of the RTOs has been facing, the consequences of continued neglect will be unacceptable. For this reason alone, then, the Commission should make clear that any seams and compatibility issues must be satisfactorily addressed before an RTO will be approved.

As we have previously noted, UAMPS will have members in both RTO West and Desert STAR, as those two RTOs are currently configured. UAMPS has therefore actively participated in the workgroups and policy committees of both RTO West and Desert STAR, and has consistently focused on trying to ensure that those two organizations' operations, pricing, congestion management, and planning will be as compatible as possible. UAMPS hosted the only meeting specifically held between some of the participants of the two organizations, and has

participated in Western Market Interface Committee meetings where the issues of compatibility between RTO operations were discussed.

While their respective filings are not complete, the existing RTO West and Desert STAR documents suggest that serious incompatibilities are developing, particularly with respect to the congestion management and operational models proposed by each RTO. RTO West is proposing to alter the current contract path method of reserving transmission to a flow based model, in which RTO West will use a source, a sink, and powerflow distribution factors to determine what specific flowpaths the proposed transaction will use. Desert STAR has considered flow-based models, but because of the topology of its transmission system has determined that they are not needed. Finally, we understand that the CAL ISO intends to propose flow-based scheduling within its borders, but will continue to use contract path methodology at its interfaces with other RTOs or control areas.

In real time, of course, these methodologies must be coordinated. If UAMPS schedules a delivery from Powerex at the Canadian Border to serve load in Utah, under the RTO West model a significant amount of this energy will flow over facilities controlled by the CAL ISO and/or Desert STAR. Neither the RTO workgroups nor the RTO West RRG have resolved how this flow would be handled by RTO West, the California ISO and Desert STAR, respectively. This hodgepodge of methodologies, most of which are incomplete, will cause substantial operational problems if the differences are not accommodated or reconciled well before the RTOs are implemented.

RTO West, Desert STAR, and the CAL ISO are each focused internally, and have dedicated very few resources to talking to each other on all of the needed levels with the

appropriate personnel to reconcile their differences. Moreover, the limited resources that both RTO West and Desert STAR have committed to these issues have largely been focused on their interfaces with the CAL ISO. The equally significant seams issues between Desert STAR and RTO West are receiving even less attention, and will cause operational, reliability and control area accounting problems upon the implementation of the RTOs.

As UAMPS has stated in both RTO West and Desert STAR forums, reconciling differences will become increasingly difficult as methods and practices are agreed to, and then institutionalized and implemented within each RTO. Despite its efforts, UAMPS has not been able to convince the two organizations to commit the resources required to solve these differences at an early stage of development. To avert the serious potential problems the situation poses, UAMPS requests that at the least, the Commission make clear that any RTO in the Western Interconnection must be compatible on an operational and reliability level with its adjoining RTOs before it may be approved.

V. The Draft TOA Is Not Consistent With Order No. 2000.

Given that the draft TOA is patently incomplete; that most of the Filing Utilities (1) have not fully reviewed the draft TOA and other documentation included in the RTO West Filing, (2) are not sure if the drafts are acceptable and may well file revised filings next month (to be followed by additional filings next spring) and (3) do not now request any Commission order with respect to those documents; and that “None of the filing utilities will be able to give their final approval to [the TOA] until all of the material components of RTO West are resolved,” see RTO West Filing at 93 (emphasis added), the Commission should refrain from “approving” the TOA or any other portion of the RTO West Filing at this time. A Commission Order

“approving” the TOA – even its “concepts as a package” – would at best be premature. At worst, any such order may unfairly bias the development of a final, complete RTO West proposal and hamper other stakeholders’ ability to participate in the regional process by permitting the Filing Utilities to claim that the Commission has already “approved” isolated aspects of that complete proposal. UAMPS has no idea which specific “concepts” are a part of the “package” that BPA, Idaho Power, and PacifiCorp would like approved, or what the actual impact of a Commission Order approving the “concepts as a package” might be.

If it does not reserve judgment on this ground, however, the draft TOA contains provisions that would prevent RTO West from meeting Order No. 2000’s requirements, and therefore it should not be approved. Some of these problematic provisions are discussed at length above. Perhaps most significantly, as discussed in Section I, the TOA’s extensive provisions establishing the Filing Utilities’ authority to file tariffs and all but completely eliminating RTO West’s discretion to independently establish the rates that will be applicable to its service flatly defeat RTO West’s “independence” under Order No. 2000. For this reason alone, the “concepts as a package” contained in the existing TOA are plainly not “consistent” with Order No. 2000. In addition, as discussed in Section II above, the TOA’s definition of “controlled facilities” is inadequate, and would prevent RTO West from satisfying Order No. 2000’s required “scope” characteristic or otherwise adequately performing its contemplated functions. Similarly, and as described in the Consumer-Owned Utilities’ Joint Protest, the authority over planning and expansion that the TOA retains for the Filing Utilities would preclude RTO West from meeting Order No. 2000’s requirement that it be responsible for those

functions on a regional basis. See Consumer-Owned Utilities' Joint Protest Section III.2. at 42-49. These portions of the "package" are thus flatly inconsistent with Order No. 2000 as well.

In addition to these glaring inconsistencies, the TOA as it currently stands contains less obvious, but still significant, problems. For example, the TOA requires RTO West to include in its charges an amount necessary to compensate the Filing Utilities for any alleged "lost revenue recovery" that occurs subsequent to RTO West's formation. There is no indication, however, that a utility's assertion of "lost revenue" can or will be reviewed to ensure either that the amount is accurate, or that it may appropriately be charged to RTO West customers. It is possible, of course, that one or more of the Filing Utilities may "lose" revenue from one year to the next, totally independent of any RTO participation. RTO West and its customers should not be required to absolutely guarantee that the Filing Utilities' current revenues will be maintained or increased in perpetuity. At the very least, the amount of any "lost revenue" chargeable to RTO West and its customers should be limited to verifiable "losses" that are unambiguously caused by the utilities' participation in RTO West.

Another problem involves the TOA's definition of the "operational control" that RTO West will have over its system. As proposed, "operational control" will mean only the ability to "direct the Executing Transmission Owner to operate the RTO West Controlled Transmission Facilities for the purpose of affording comparable nondiscriminatory transmission access and meeting applicable reliability criteria for the RTO West Transmission System." TOA, Ex. A (Schedule of Definitions). It is impossible to tell exactly how, under this definition, RTO West will "control" or "operate" its system as Order No. 2000 requires. If the Filing Utilities actually contemplate that RTO West will only provide direction with respect to facilities operation and

will exercise no real-time control, the TOA may be inconsistent with Order No. 2000 for that reason as well.

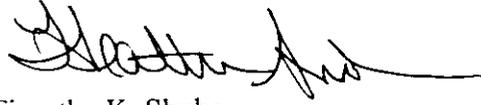
To give one final example, the TOA must accommodate the Bonneville Power Administration's (and comparable entities') special statutory responsibilities. Although the draft TOA attempts to do this, it currently contains ambiguous language that may make it difficult for Bonneville to honor the regional preference rights established by the Northwest Power Act.²⁴ The Commission should not approve the TOA until important details like these are clarified and resolved.

VI. Conclusion.

For the reasons described above, as well as for the reasons set forth in the Consumer-Owned Utilities' Joint Protest, the Commission should deny each of the Filing Utilities requested orders. In addition, to facilitate further discussions regarding RTO West's development, the Commission should affirm that: (1) RTO West must be independent of the Filing Utilities' control and must specifically have control over its own rates and tariffs; (2) the Filing Utilities may not unilaterally discard elements of a consensus package to which they have agreed; (3) RTO West must have control over all facilities that serve wholesale customers and all facilities that are otherwise necessary to ensure reliable service and competitive markets, including all facilities that affect transfer capability under N-1 and N-2 conditions; and (4) that significant seams issues must be addressed before an RTO may be approved.

²⁴ See Consumer-Owned Utilities' Joint Protest, Section III.6 at 62-64. As the Joint Protest suggests, other regions may be subject to similar preference rights under other statutory provisions. *Id.* at 64 n.23.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Timothy K. Shuba", with a long horizontal flourish extending to the right.

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Dated: November 20, 2000

MEMBERS OF UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

Beaver, UT	Lehi, UT
Blanding, UT	Logan, UT
Bountiful, UT	Meadow, UT
Brigham City, UT	Monroe, UT
Central Utah Water Conservancy District, UT	Morgan, UT
Eagle Mountain, UT	Mt. Pleasant, UT
Enterprise, UT	Murray, UT
Ephraim, UT	Oak City, UT
Fairview, UT	Page Electric Utility, AZ
Fallon, NV	Paragonah, UT
Fillmore, UT	Parowan, UT
Fredonia, AZ	Payson, UT
Gallup, NM	Price, UT
Heber Light & Power, UT	Santa Clara, UT
Holden, UT	Spring City, UT
Hurricane, UT	Springville, UT
Hyrum, UT	St. George, UT
Idaho Falls, ID	Strawberry ESD, UT
Kanab, UT	Truckee-Donner PUD, CA
Kanosh, UT	Washington, UT
Kaysville, UT	Weber Basin Water Conservancy District, UT

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document 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.

A handwritten signature in black ink, appearing to read "Heather H. Anderson", written over a horizontal line.

Heather H. Anderson
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