

Synopsis of Key Provisions of April 26, 2001 FERC Order on RTO West Proposal

On April 26, 2001, the Federal Energy Regulatory Commission (the “Commission”) responded to filings submitted to the Commission by the RTO West Filing Utilities in October and December 2000 with an “Order Granting, with Modification, RTO West Petition for Declaratory Order and Granting TransConnect Petition for Declaratory Order,” 95 FERC ¶ 61,114 (the “Order”). The RTO West Filing Utilities consist of Avista Corporation, the Bonneville Power Administration (“Bonneville”), Idaho Power Company, the Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company, which the Commission referred to as the “RTO West Applicants.”

The Order is limited. In the Commission’s words, the Order “provides preliminary guidance with respect to Governance, Scope and Configuration, and Liability of RTO West.” Order at 6. The Commission stated that, except as specifically provided otherwise in the Order, it would address the proposed RTO West Transmission Operating Agreement in a future order. *Id.* In areas other than governance, scope and configuration, and liability, the Commission offered limited feedback, which is briefly outlined below.

The Order responded not only to Filing Utilities’ October and December 2000 (“Stage 1”) filings, but to the October 2000 petition filed by the potential participants in TransConnect, L.L.C. (Avista Corporation, the Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company). The Commission elected not to consolidate the RTO West and TransConnect proposal dockets into a single proceeding, however. This synopsis focuses primarily on the Order’s provisions relating to RTO West.

A. Governance.

The Commission’s Order found that the RTO West “governance proposal, as set forth in the RTO West Articles of Incorporation and Bylaws, satisfies the independence standard set forth in Order No. 2000.” Order at 13. The Commission did, however, direct that the proposed RTO West Bylaws be modified in three minor respects, each of which the Filing Utilities had indicated in their December 1, 2000 filing would be acceptable. These were: (1) changing the Bylaws to allow persons elected by members of the Large Retail Customer class to hold four of the six Trustee Selection Committee seats allocated to the Retail Customer class even if there are no Large Retail Customers then serving as scheduling coordinators; (2) modifying provisions relating to weighted voting within the Transmission Dependent Utility (“TDU”) class so that all members of the TDU class participate both in subclass votes that are weighted (by amount of retail load served) and subclass votes that are non-weighted; and (3) changing the Bylaws to give the Board of Trustees discretion to reduce or waive, on a non-discriminatory basis, RTO West membership fees upon written requests by “legitimate public interest participants.” Order at 14 and 20. The Commission declined to require other changes to the RTO West governance proposal that were requested by various intervenors.

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B. Scope and Regional Configuration.

The Commission concluded that RTO West's proposed scope and regional configuration are consistent with Order 2000. Order at 40. The Commission also found that, "RTO West, which encompasses a significant portion of the Western Interconnection, can serve as an anchor for the ultimate formation of a West-wide RTO." *Id.* The Commission also "direct[ed] RTO West Applicants to continue working toward the common goals of minimizing seams issues, improving inter-regional coordination, and ultimately establishing a single West-wide RTO." Order at 41. The Commission instructed the Filing Utilities to file, no later than December 1, 2001, a status report "detailing, among other things, (1) resolutions of seams issues, (2) plans for participation in RTO West by Canadian entities, (3) a framework for formation of a West-wide RTO, and (4) a timetable for achieving a West-wide RTO end state." Order at 41-42 (footnote omitted).

In a footnote, the Commission also noted that it was issuing concurrently with the Order for RTO West an order relating to market monitoring and mitigation in California (Docket No. EL00-95-012). The Commission stated that it "expect[s] RTO West (as well as participants in other RTO efforts under consideration in the West) to work cooperatively with the California ISO to develop comprehensive solutions to the problems confronting western markets." Order at 42, fn. 71.

C. Liability Agreement.

The Commission rejected the proposal to incorporate the Agreement Limiting Liability Among RTO West Participants into the RTO West Transmission Operation Agreement. The Commission declared that the pro forma tariff does not address and is not intended to address liability issues, and that transmission providers are free to rely on state laws for protection from negligence claims. Order at 48. The Commission also indicated the provisions relating to compensation to be paid to redispached generators belong in the RTO West Tariff. *Id.*

D. Other Commission Feedback.

One additional area in which the Commission specifically addressed the provisions of the RTO West Transmission Operating Agreement was with respect to the authority of Participating Transmission Owners to make unilateral filings under Section 205 of the Federal Power Act concerning RTO West Tariff rate design. The Commission drew a distinction between authority granted to Participating Transmission Owners that are independent of market participants and those that are not. The Commission stated:

"TransConnect is not prohibited from entering into agreements with RTO West that will enable incentive proposals to be incorporated into the rate design of the transmission tariff that RTO West files with the Commission, nor is it prohibited from unilaterally making a section 205 filing with the Commission that incorporates incentives or performance based rates as part of its revenue requirement, after consulting with RTO

West. Accordingly, we direct RTO West to amend the Transmission Operating Agreement consistent with this finding.” Order at 34.

The Commission further required that the Transmission Operating Agreement be revised to eliminate any authority of Participating Transmission Owners that are not independent of market participants to file unilaterally with the Commission to establish or change rates under the RTO West Tariff. The Commission was careful to explain that this did not prohibit any Participating Transmission Owner from unilaterally filing with the Commission to recover from RTO West its revenue requirement for the facilities it places under RTO West’s operational control. *Id.*

With respect to transmission planning, the Commission indicated that it would be willing to consider an arrangement in which planning responsibilities are shared between RTO West and TransConnect. The Commission declined to reach any final conclusion on this matter, instead providing the following guidance:

“Because it is not clear whether, and if so how, RTO West will reflect least cost planning in its decisionmaking process, we will direct RTO West Applicants and TransConnect Applicants to further explain in their Stage 2 filings how they will share the transmission planning and expansion responsibilities and how non-wires solutions will be considered in the decisionmaking process. Accordingly, we reserve final judgment on TransConnect’s request until a more detailed planning and expansion proposal is filed.” Order at 38.

The Commission noted that a decision was not before it concerning facilities to be included in RTO West, and deferred significant comment on this topic until further details were submitted in a “Stage 2” filing. The Commission did, however, “emphasize that for an RTO to satisfy our scope and configuration characteristics, most or all of the transmission facilities in a region should be operated by the RTO, as well as those necessary for operational control and management of constrained paths, regardless of the voltage. Some of these facilities may currently operate as higher voltage distribution lines while others may be a lower voltage radial line that is considered essential for wholesale transmission service.” Order at 45.

The Commission declined to take a position with respect to Bonneville’s authority to participate in RTO West, stating that “Bonneville’s decision or ability to join RTO West is not subject to review by this Commission.” Order at 44. The Commission also indicated that it would not require an individual cost-benefit analysis for RTO West, declaring that recent market problems in California and the rest of the West “underscore the regional nature of the electric marketplace and highlight the substantial benefits that a regional transmission organization will provide.” Order at 7 (footnote omitted). The Commission further stated that it was willing to allow RTO West’s Stage 2 process to continue on a voluntary basis (rather than to dictate how it should occur) and would not require that an independent board for RTO West be seated to undertake any future filings with the Commission. Order at 8.