

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., |) | |
| Sierra Pacific Power Company |) | |
| _____ |) | |

**MOTION FOR CLARIFICATION OR,
IN THE ALTERNATIVE, REQUEST FOR REHEARING
OF THE RTO WEST FILING UTILITIES**

Pursuant to Section 313(a) of the Federal Power Act and Rule 713 of the Commission’s Rules of Practice and Procedure, 18 CFR ‘ 385.713, Avista Corporation (“Avista”), Bonneville Power Administration (“BPA”), Idaho Power Company (“Idaho Power”), The Montana Power Company (“Montana Power”), Nevada Power Company (“Nevada Power”), PacifiCorp, Portland General Electric Company, Puget Sound Energy Inc. (“PSE”), and Sierra Pacific Power Company (collectively “RTO West Utilities”) move for clarification, or in the alternative, request rehearing of the Commission’s Order Granting Rehearing in Part and Granting Clarification in Part issued July 12, 2001, 96 FERC ¶ 61,058 (the “July 12 Order”).

I. GROUNDS FOR CLARIFICATION OR, IN THE ALTERNATIVE, SPECIFICATION OF ERRORS

The Commission should not have required RTO West Utilities to make a compliance filing within 30 days of the July 12 Order because there is no filing before the Commission under either Section 203 or 205 of the Federal Power Act that supports the Commission's direction to make such a compliance filing. Rather, the Commission was considering a request for declaratory order in this proceeding.

II. PROCEDURAL BACKGROUND

Our discussions on RTO formation are being conducted in two stages. As a result of Stage 1, on October 16, 2000, as supplemented on October 23, 2000, and amended on December 1, 2000, RTO West Utilities filed a request for a declaratory order under Order No. 2000.¹ On April 26, 2001, FERC granted the declaratory order for the proposed RTO West structure, with some modifications (the "April 26 Order").² The April 26 Order directed RTO West Utilities to continue working toward the common goals of minimizing seams issues, improving inter-regional coordination, and ultimately establishing a single West-wide RTO. Timely requests for rehearing and/or clarification of the April 26 Order were filed by various parties including third parties who are not RTO West Utilities. FERC then issued its Order Granting Rehearing in Part and Granting Clarification in Part on July 12, 2001, 96 FERC ¶ 61,058 (the "July 12 Order"), in which the Commission addressed the May 29, 2001 request by the RTO West Utilities for

¹ Docket No. RT01-35-000

² Avista Corp., et al., 95 FERC ¶ 61,114

rehearing of its determination on liability issues.

These issues were first presented to the Commission in the RTO West Utilities' Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000, filed October 23, 2000 (the "October 23 Petition"). The request for a declaratory order asked the Commission to determine that:

- a. The proposed governance structure of RTO West as set forth in its Articles of Incorporation and Bylaws satisfies the independence characteristic of a regional transmission organization as set forth in 18 C.F.R. ' 35.34(j)(1) and that the proposed Articles of Incorporation and Bylaws of RTO West otherwise meet the Commission's regional transmission organization policy.
- b. The proposed scope and configuration of RTO West as set forth in this application would satisfy the scope and regional configuration characteristic of a regional transmission organization as set forth in 18 C.F.R. ' 35.34(j)(2).
- c. The proposed liability and insurance structure as set forth in the Agreement Limiting Liability Among RTO West Participants would be appropriate as part of arrangements otherwise acceptable to the Commission for creating RTO West and is consistent with the requirements of Order 2000.³

Addressing the proposed liability structure, the Commission ruled that it "will accept

³ October 23 Petition at 93.

for filing the RTO West Applicants’ proposal to allocate risk among the transmission owners and the RTO,” but declined to “accept the RTO West applicants’ proposal to the extent it seeks to limit the rights of transmission customers and other third parties.”⁴ It then directed “RTO West Applicants to submit a compliance filing in accordance with these determinations within 30 days of the date of this order.”⁵

On July 25 the RTO West Utilities filed a response to the July 12 Order (“July 25 Response”). The July 25 Response explained that the filing utilities had considered the Commission’s guidance, and would take it into account in their Stage 2 filing. It further stated, “[a]ccordingly, the filing utilities hereby withdraw the liability proposal elements of their Stage 1 filing, including the Agreement Limiting Liability Among RTO West Participants designated as Attachment Y to the October 23 Petition.” In addition, the July 25 Response argued that it was “premature for the Commission to require a compliance filing on these matters because the filing utilities have not yet made any filings under Sections 203 and 205 of the Federal Power Act.”

The filing utilities intend to submit a revised liability proposal as part of their Stage 2 filing. This will permit an opportunity to tailor the liability provisions to reflect the framework for Canadian participation in RTO West,⁶ to consult with transmission owners and other RTO West stakeholders, to further review the manner in which state laws or regulations might address liability in the RTO context, and to address seams issues relating to liability.

⁴ 96 FERC ¶ 61,058 at 61,181.

⁵ 96 FERC ¶ 61,058 at 61,182.

⁶ In its July 12 Order, the Commission expressed its expectation that materials related to liability submitted in

III. ARGUMENT

A. Preliminary Statement

This filing reiterates the contentions in the July 25 Response. Should the Commission enter an order on the July 25 Response accepting the contentions therein that a compliance filing in premature, then this filing would become moot. This filing is being made because the Commission has not yet acted on the RTO West Utilities July 25 Response, other than to issue a notice of the filing on August 2, 2001. The deadline for the RTO West Utilities to seek clarification or rehearing of the Commission's July 12 Order is fast approaching. Therefore, in order to technically preserve the RTO West Utilities' position in this matter, we are also submitting the contentions contained in the July 25 Response in the form of motion for clarification or, in the alternative, a request for rehearing.

B. The Order for Compliance Filing is Premature

In the July 12 Order, the Commission directed the RTO West Utilities to submit a compliance filing in accordance with its determinations concerning their liability proposal, within 30 days of the Order.⁷ The October 23 request for a declaratory order asked only whether the proposal would qualify for RTO status under Order 2000. No submissions under Sections 203 and 205 of the Federal Power Act (FPA) were before the Commission. It is therefore premature for the Commission to require a compliance filing at this time because the RTO West Utilities have not yet made any filings under Sections 203 and 205 of the Federal Power Act.

Stage 2 would be "tailored to reflect the framework for British Columbia participation in the RTO." *Id.* at 22.

The RTO West Utilities intend to make appropriate filings in Stage 2 addressing the Commission's concerns, assuming satisfactory resolution of the conditions identified in Section II.B.2 of the October 23 filing.⁸ We intend to work diligently to achieve that goal, and to submit on December 1, 2001 the status report specified in the Commission's April 26 Order.⁹ At the present stage of the proceedings, however, there is no basis for the July 12 Order's direction for a compliance filing within 30 days. Therefore, we request that the Commission clarify its July 12 Order to acknowledge that no filing has been made under Sections 203 or 205, and to hold that no compliance filing therefore is required. As noted above, the RTO West Utilities will consider the Commission's guidance when they submit their State 2 filing. Alternatively, the RTO West Utilities request rehearing of the Commission's July 12 Order with respect to the requirement that the compliance filing be made. Since no filing was made under Sections 203 or 205, there is nothing to "accept for filing," and a compliance filing is not necessary.

IV. CONCLUSION

It is clear that there is no Section 203 or 205 filing that has been made that could be accepted for filing subject to a compliance filing being made. The RTO West Utilities respectfully request that the Commission either so clarify its July 12 Order, or grant rehearing of its July 12 Order with respect to the requirement that the compliance filing be made.

⁷ July 12 Order, *Id.* at 25.

⁸ Since RTO formation is voluntary under Order No. 2000, pursuant to § 202(a) of the FPA, 16 U.S.C. § 824a(a), the RTO West Utilities reserve their right not to file under section 203, 205, and 206 if a satisfactory proposal cannot be developed.

⁹ 95 FERC ¶ 61,114 at 61,343.

Respectfully submitted, on behalf of the following:

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August 13, 2001