

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

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)
_____)

**PETITION FOR REHEARING AND CLARIFICATION OF THE
COMMISSION’S DIRECTIVE CONCERNING INCENTIVE-BASED
RATE RECOVERY ON BEHALF OF IDAHO POWER COMPANY AND
PACIFICORP**

I. BACKGROUND

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, **Idaho Power Company** (“Idaho Power”) and **PacifiCorp** (collectively “Petitioners”) respectfully request rehearing of the Commission’s Order Granting, with Modification, RTO West Petition for Declaratory Order and Granting TransConnect Petition for Declaratory Order issued on April 26, 2001 (hereinafter “Order”).¹ The Petitioners seek rehearing and clarification of the portion of the Order insofar as it addresses the ability of transmission

¹ 95 FERC ¶61,114 (2001).

owners that remain integrated utilities to request performance-based rates and other incentive-oriented rate recovery mechanisms.²

A. Procedural Background

On October 16, 2000, as supplemented on October 23, 2000, and amended on December 1, 2000, the filing utilities³ submitted a proposal in Docket No. RT01-35-000 to form a regional transmission organization, RTO West. The October 23 filing, as supplemented and amended, included a general description of the proposed characteristics and functions of RTO West, including the governance structure, the rate structure proposal and the allocation of firm transmission rights by RTO West. The October 23 filing also included a request for a declaratory order for Commission approval of the “concepts as a package embodied in the Transmission Operating Agreement” and certain other agreements.⁴ The October 23 filing, as supplemented and amended by the December 1, 2000 filing,

² Order at 61,336-9. The term “integrated utilities” is used throughout this petition to refer to jurisdictional utilities that have generation and transmission under common ownership.

³ The filing utilities include: Avista Corporation (Avista), Bonneville Power Administration (Bonneville), Idaho Power Company (Idaho Power), The Montana Power Company (Montana Power), Nevada Power Company (Nevada Power), PacifiCorp, Portland General Electric Company (PGE), Puget Sound Energy, Inc. (Puget Sound), and Sierra Pacific Power Company (Sierra Pacific).

⁴ This request for preliminary guidance in the petition for declaratory order was made by Bonneville, Idaho Power and PacifiCorp. (October 23, 2000 Supplemental Filing at 95.) The Concurring Utilities joined this request in the December 1, 2000 filing. (Amended Supplemental Filing at 23.) In the RTO West Stage 1 filing, all the filing utilities also requested (1) approval of the RTO West Articles of Incorporation and Bylaws, and (2) determination that the proposed scope and

(continued...)

comprised RTO West's Stage 1 filing, which will be followed by a Stage 2 filing later this year. The Stage 2 filing will, assuming significant issues such as the availability of appropriate incentives for voluntary participants in RTOs⁵ can be resolved, seek approval of the RTO West Tariff and other agreements which are currently being negotiated among the RTO West Participants.⁶

The Commission states that its April 26, 2001 Order provides "preliminary guidance" with respect to Governance, Scope and Configuration, and Liability of RTO West, and also states that "[a]s further changes to [RTO West] proposals are submitted . . . for review, [the Commission] will afford all interested parties an opportunity to comment, and we will address remaining issues in a subsequent order."⁷ In effect, the Commission declined to provide preliminary guidance regarding the concepts as a package embodied in the Transmission Operating Agreement, including the RTO West pricing scheme. Yet, when addressing and approving the request by the TransConnect applicants in Docket No. RT01-15-000, to provide those applicants flexibility to propose mechanisms that will provide

⁴(...continued)
configuration of RTO West satisfies Order No. 2000. The instant petition for rehearing does not address these latter issues.

⁵ Another example of unresolved issues is RTO West's comprehensive risk allocation package. The Petitioners are also parties to a Petition for Rehearing and Clarification of the Commission's Order addressing RTO West's proposed Liability Agreement.

⁶ Stage 2 is planned to include various forms of agreement among RTO West and market participants to implement the RTO West arrangements; a schedule of transfer charges; the allocation of firm transmission rights; and a more detailed explanation of the planning and expansion process.

⁷ Order at 61,324.

incentives for actions within their control to improve grid operations, the Commission directed:

“that the Transmission Operating Agreement be revised to eliminate the authority of those transmission owners that are not independent of market participants to unilaterally file with the Commission to establish or change rates under the region-wide RTO tariff.” Order at 61,339.

Idaho Power and PacifiCorp are integrated utilities that, although organized to comply with Order 888’s requirements for functional separation, expect to remain affiliated with market participants when RTO West is operational. They are the only investor-owned utilities among the filing utilities that are not TransConnect applicants. Thus, these Petitioners are directly and adversely affected by the Commission’s directive to amend the Transmission Operating Agreement (TOA), if indeed that directive is intended to prevent these utilities from proposing incentive pricing.

B. Request for Clarification and Reconsideration

Petitioners respectfully request rehearing of the Commission’s directive to clarify whether the Commission intends to require the TOA to be amended to remove authority of Petitioners to unilaterally file with the Commission to include in its revenue requirement filings a request for performance-based rates and other incentive-oriented rate recovery mechanisms, and if so to reconsider that directive for the reasons discussed below. In the alternative, these parties request that the Commission reconsider this issue after Stage 2 of the RTO West compliance filing is completed and final approval of the TOA is requested by the RTO West filing utilities. This latter alternative would permit the Commission to assess the appropriateness of permitting all Participating Transmission Owners to file innovative pricing proposals in the context of review of the RTO West pricing proposal and its more fully-developed

planning process.⁸ Because the Petitioners believe that the Commission may have misunderstood the nature of the RTO West proposal, further consideration and review of this issue in connection with review and approval of the final TOA seems appropriate.

II. ARGUMENTS IN SUPPORT OF CLARIFICATION AND RECONSIDERATION

A. The Commission May Have Misunderstood the Intent of the Filing Utilities' Proposal and Effect of the TOA

The October 23, 2000 filing contains a description of the tariffs of RTO West Participating Transmission Owners.⁹ That description addresses a proposal under which jurisdictional transmission owners would file tariffs with the Commission establishing their revenue requirement and proposing pricing for the use of the owner's transmission facilities by RTO West. These tariffs are subject to review and approval by the Commission before becoming effective. These tariffs would include company costs and billing determinants to be used by RTO West in setting load-based charges for transmission during the company rate period, which is through December 14, 2011. The filing noted:

⁸ The Commission has asked for more detail on RTO West's planning proposal. Order at 61,341. Because incentive rate recovery mechanisms could relate to cost recovery from loads for expansion of the grid, Petitioners urge the Commission not to foreclose consideration of such pricing schemes by integrated utilities participating in RTO West. In any event, we request that the Commission reconsider its directive after the Stage 2 proposal is completed and pricing and planning proposals are considered as a whole.

⁹ October 23, 2000 filing at 83.

“Subject to the Commission’s acceptance or approval, these tariffs could include incentive or performance-based rate features.”¹⁰ This is the only discussion of incentive or performance-based rate features in the RTO West Stage 1 filing.¹¹

To implement the RTO pricing proposal the TOA provides that transmission owners shall establish their company costs and billing determinants (Section 13.1.1) through rate schedules accepted for filing by the Commission (Section 13.2). Section 13.2 also states that:

“Nothing contained in this Agreement shall be construed as affecting in any way the right of the Executing Transmission Owner to unilaterally make application to FERC for a change in its rates, charges and fees, including during the Company Rate Period its Company Costs or Company Billing Determinants, for the services provided hereunder under Section 205 of the Federal Power Act or any successor statute and pursuant to FERC’s rules and regulations promulgated thereunder.”

Section 13.3 of the TOA specifically addresses incentive rate making, reiterating that by joining RTO West a transmission owner does not relinquish the right to make unilateral filings for performance-based rates and other incentive-oriented rate recovery mechanisms *if it can do so consistent with the Commission requirements and in a manner that does not impose unduly discriminatory results*

¹⁰ Id.

¹¹ The TransConnect applicants discussed incentive and performance-based rate features at greater length in their filing in Docket No. RT01-15-000. In fact, the Commission’s directive to amend the TOA to eliminate Petitioners’ authority to file unilaterally to change rates was made in the context of a response to TransConnect’s request to be permitted to seek incentives. Order at 61,336-9. The Commission also directed RTO West to amend the TOA to make the agreement consistent with the finding that TransConnect applicants may make such unilateral filings. However, Petitioners do not believe that the TOA is inconsistent with the Commission’s finding regarding TransConnect.

for other participants in RTO West. Section 13.3 further expressly limits a transmission owners' right to file an incentive proposal unilaterally to the situation where "the FERC determines that such Executing Transmission Owner is independent from control of market participants or otherwise is entitled to obtain such recovery." Thus, the TOA contemplates that a different incentive rate hurdle will apply to a Transmission Owner that is not independent from control of market participants. By the terms of the TOA, such Transmission Owner has the burden of demonstrating to the Commission's satisfaction that the particular incentive requested should be granted, despite the Transmission Owner's lack of independence from control by market participants.

The RTO West pricing proposal permits all participating transmission owners subject to section 205 to make unilateral filings with the Commission for incentive rates to be charged to the utility's company loads¹² through the company rate, but only if the transmission owner is independent of market participants or can demonstrate it is otherwise entitled to make such a filing under the Commission's standards and policies. The TOA does not affect in any way the Commission's ability to set the standards for consideration of performance-based or other incentive rate mechanism, to decide that a requested incentive when proposed is inappropriate for a transmission owner that is not independent of market participants, or to review incentive rate proposals on a case-by-case basis to ensure— among other things—that a proposal would not unduly discriminate against non-affiliated market participants.

¹² The RTO West Stage 1 filing defines "company loads" as loads interconnected with a utility's integrated grid and "company rates" as the rates charged to company loads as determined in Exhibit G to the TOA. See Exhibit A to the TOA for definitions of these and other terms used in the TOA.

Petitioners want to clarify that the RTO West proposal simply permits a transmission owner affiliated with market participants, such as Idaho Power and PacifiCorp, *to retain whatever right the jurisdictional utility might otherwise have as part of a revenue requirement filing to make incentive proposals tied, for example, to reductions in operating and maintenance costs or incentive proposals or to expansion of transmission capacity.* This proposal ensures that voluntarily joining RTO West will not deprive a transmission owner of the right to make filings such owner may make absent joining RTO West, subject to the Commission's right to accept or to reject any such filing.

If an integrated utility can improve its efficiency in carrying out its obligations to maintain its RTO West controlled transmission facilities through an incentive mechanism, it should be permitted to put forth a proposal to the Commission to do so. It is counterproductive to contractually deny an integrated utility the right to make an incentive proposal to the Commission so long as the utility participates in RTO West. This contractual limitation would deny the Commission the opportunity to consider, on a case-by-case basis, proposals for more efficient operation of transmission facilities, improvements for enhanced reliability or expansion of the grid, even where such a proposal would be consistent with Commission standards and policies and more effective than a traditional cost-of-service proposal.

Such a categorical denial also is unnecessary and may discourage participation in RTO West. The Commission already has adequate tools to address the circumstances under which incentive rate mechanisms are approved.

B. If the Commission Intends to Require Petitioners to Relinquish Any Right (Now and in the Future) to Make Incentive Proposals in Connection with Revenue Recovery Filings to the Commission as a Condition of Participation in RTO West, Then the Order Does Not Constitute Reasoned Decision-Making

The Order states that it is appropriate to allow a transmission owner that is independent of market participants to include a request for innovative rate treatments in its section 205 revenue requirement filing “because an independent entity will not have an incentive to submit a proposal that would discriminate among particular market participants.”¹³ This conclusion is offered in support of the Commission’s finding that TransConnect applicants may request innovative rate treatments and the Petitioners do not dispute the appropriateness of this finding with respect to the TransConnect applicants.

The Commission offers no express rationale for its directive to the filing utilities to amend the TOA to eliminate the right of those transmission owners that are not independent of market participants to unilaterally propose performance-based or other incentive proposals in filings to the Commission that establish or update an owner’s revenue requirement and billing determinants.¹⁴ However, the context

¹³ Order at 61,338 (emphasis added).

¹⁴ Petitioners assume that when the Commission directs the filing utilities to eliminate the Petitioners’ right “to unilaterally file with the Commission to establish or change rates under the region-wide RTO tariff,” it meant to order the removal of authority to file incentive proposals as stated in the (continued...)

of the Order suggests that the Commission has assumed implicitly that to permit such filings would lead to discrimination among market participants. For the reasons set forth below, Petitioners respectfully submit that such an assumption is unfounded and has no basis in the record.

First, as noted above, Section 13.3 of the TOA expressly prohibits incentive rate proposals that would unduly discriminate against other participants in RTO West. Second, nothing in the RTO West proposal limits or prevents the Commission from rejecting an innovative pricing proposal on the ground that it will unduly discriminate against market participants (or unduly favor the transmission owner's affiliated merchant). Most importantly, however, the structure of the RTO West proposal is such that incentive proposals made in connection with revenue requirement filings by transmission owners that have affiliated marketers will not have any detrimental impact on other market participants.

There are two reasons why the RTO West structure removes any incentive that might otherwise exist for a participating transmission owner to submit a proposal that would discriminate among

¹⁴(...continued)

text above. Because the RTO is obligated to collect from its customers revenues sufficient to permit the RTO to pay transmission owners' rates approved by the Commission for use of RTO West controlled transmission facilities, there is a direct connection between transmission owner revenue requirement filings and RTO West tariff rates to customers. During the company rate period through 2011, this relationship is defined by the TOA: The RTO West tariff will charge loads within RTO West the particular company rate established to recover the revenue requirement of the pre-RTO West transmission provider to those loads. During the company rate period, RTO West also will use the billing determinants established by that transmission provider in its revenue requirement filing with the Commission.

particular market participants.¹⁵ The first reason is that all participating transmission owners in RTO West must turn over full operational control of all RTO West controlled transmission facilities to the RTO. As a result, any facility with a material impact on the grid's transfer capabilities will be operated by RTO West. The owner will receive compensation for the use of its facilities by RTO West and will retain certain obligations for maintenance and planning, but the owner will no longer function as a transmission provider. Transmission service is within the sole purview of RTO West. This separation between facilities' ownership and the provision of transmission services, as a practical matter, makes it much more unlikely that a proposal for innovative rate treatment can be designed to discriminate against unaffiliated market participants.

The second—and more important—structural feature that should eliminate the Commission's concern that integrated utilities will submit an innovative rate proposal that unduly discriminates against unaffiliated market participants is the RTO West pricing proposal itself. RTO West's proposal is based on the premise that transmission costs will be recovered through a load-based access charge,¹⁶ and consequently establishes a company rate for the loads of each participating transmission owner.

Through December 14, 2011, the loads served by each filing utility—including the loads of integrated

¹⁵ The Commission cited the removal of such an incentive as an adequate basis under Order 2000 to allow a transmission owner to request innovative rate treatments in its section 205 revenue requirement filings. Order at 61,338.

¹⁶ The RTO West pricing proposal is described in the October 23, 2000 filing at 35-41 as supplemented or revised by the December 1, 2000 filing, *passim*. The Commission did not address the proposal in its Order.

utilities like Idaho Power and PacifiCorp—will pay a load-based access charge equal to the transmission costs of such utility, less the transfer charges, other adjustments, and revenues received from FTRs.

Idaho Power's and PacifiCorp's loads will pay their RTO West revenue requirements. Consequently, other market participants, such as generators, power marketers, and brokers, need not (and typically will not) pay these company rates.¹⁷ Because loads will pay the company costs, there is little or no danger that the inclusion of innovative rate proposals in a company's revenue requirement filings could result in discrimination against unaffiliated market participants.

Nor, if one examines the costs paid by market participants under the RTO West pricing proposal, is there any meaningful risk of cost shifting to other market participants by an integrated utility through incentive rate recovery mechanisms. First, market participants may pay access or scheduling charges established by and based on RTO West costs. These charges bear no relationship to company rates and are not based on a participating utilities' revenue requirement.

Second, the market participant may pay congestion charges to the RTO (or through purchase of FTRs on a secondary market). In some cases, a market participant may also pay transfer charges to

¹⁷ A market participant such as an unaffiliated generator could have a pre-RTO West contract with a participating transmission owner that it retained after RTO West commences operation. Under that circumstance, RTO West would provide service based on the terms of the pre-existing contract and the generator would pay the company rate of the transmission owner. Although this circumstance may present itself when RTO West is operating, it is expected to be the exception and could be addressed on a case-by-case basis during the Commission's review of any incentive rate recovery mechanism.

an integrated utility. Neither congestion charges nor transfer charges would be adversely affected by a performance-based or incentive rate proposal of an integrated utility—assuming such a proposal even were approved by the Commission.

Congestion pricing proposals are the exclusive province of RTO West. Requests for incentive pricing in connection with an integrated utility's company rate or post-2011 revenue requirement filings will not directly impact the rate design for congestion pricing by RTO West. RTO West is independent and will have no incentive to discriminate against or in favor of any particular market participant in designing recovery of congestion management charges. Moreover, any utility (integrated or not) that includes expansion costs in its revenue requirement will only be able to propose a rate design to spread those charges to its load, and not to other market participants.

Transfer charges are not subject to manipulation to favor an integrated utility's affiliated merchant. They are fixed charges paid to a participating transmission owner by other filing utilities or holders of long-term transmission contracts converted to RTO service in exchange for FTRs. Thus, a market participant with a pre-RTO West long-term firm transmission agreement with an integrated utility may choose to convert that contract to RTO service, receive FTRs from RTO West, and pay a transfer charge to the integrated utility.¹⁸ Transfer charges are based on historical use and historical rate levels and as such the initial determination of the transfer charge would not be affected by any future

¹⁸ Market participants affiliated with a filing utility must suspend pre-existing contracts and take RTO service. Costs of RTO transmission service are charged to the utility's loads. Only unaffiliated parties to long-term firm contracts have the option to retain service under pre-existing agreements (see footnote 16) or convert to RTO service and pay a transfer charge.

requests by a utility for incentive pricing. Transfer charges may be fixed or may be adjustable on a unit cost basis that is strictly delimited in the TOA.¹⁹ Whether an innovative rate proposal results in additional costs (where reliability is enhanced or the grid expanded) or cost savings (where greater efficiencies are achieved), the effect on a transfer charge is based on the unit cost formula in the TOA and not the rate design proposal submitted by the utility to establish its company rate. As a result, even if the Commission approved an incentive rate recovery mechanism in establishing an integrated utility's revenue requirement for its company rate, the incentive would not result in discrimination against other market participants that pay transfer charges.

For these reasons, Petitioners submit that the RTO West pricing structure limits the risk of discrimination among market participants from innovative pricing proposals. More importantly, however, the Commission need not make a determination in response to this petition as to whether the risk of such discrimination is mitigated. Rather, as set forth in section A above, if the Commission reconsiders and permits the proposed TOA language addressing incentives, it can review proposals for incentive rate recovery mechanisms on a case-by-case basis and determine whether those proposals are acceptable based on the facts then presented.

¹⁹ The calculation of the company rate and transfer charges are set out in Exhibits F and G, respectively, to the TOA. The unit cost adjustment for transfer charges that are not fixed for the entire period through December 2001 is set out in Exhibit G.

C. Summary Statement of Errors

If indeed the Commission intended to condition the participation of integrated utilities in RTO West upon those utilities contractually agreeing never to file for incentive rate recovery mechanisms, the Commission erred by: (1) failing to engage in reasoned decision-making; (2) issuing an over broad order in connection with the TransConnect applicants' request for a declaration approving their filing incentive proposals in connection with RTO West; and (3) acting arbitrarily and capriciously by failing to consider the mitigating effects of the RTO West pricing proposal on the potential for discrimination among market participants resulting from incentive proposals by integrated utilities participating in RTO West and ordering action on a basis not supported by sufficient evidence on the record.

III. CONCLUSION

As Petitioners noted above, the Commission may have simply misunderstood the nature of the filing utilities' request for declaratory order or the effect of the relevant TOA provisions. The RTO West petition for declaratory order was not intended to seek advance approval of performance-based or other incentive rate recovery mechanisms for integrated utilities such as Idaho Power and PacifiCorp. The petition and the relevant provisions of the TOA sought simply to preserve the *status quo ante* under which a utility's ability to seek incentive pricing is judged on a case-by-case basis and measured against the Commission's then-applicable standards and policies. If this clarification satisfies any concern the Commission may have had, Petitioners request confirmation of that fact. If that is not

the case, then Petitioners respectfully request rehearing or reconsideration of this issue during Stage 2 of these proceedings. In that event, the Commission should reconsider its directive to require the TOA to be amended for the reasons set forth below.

First, no amendment is necessary to ensure consistency with the Commission's order allowing TransConnect applicants to make incentive proposals. Second, the directive to remove Petitioners' right to unilaterally file to establish or change rates is over broad in that the RTO West pricing proposal as a whole establishes an appropriate scheme for pricing and rate setting that involves unilateral filings by participating transmission owners with the Commission and that pricing scheme is not addressed in the Commission's Order.²⁰ Third, assuming the Commission intended that the TOA be amended to prevent an integrated utility from including in its revenue requirement filings a request for performance-based rates and other incentive-oriented rate recovery mechanisms, the directive is not a reasoned decision supported by the record and is therefore also arbitrary and capricious.

Most importantly, as a practical matter, Petitioners urge the Commission not to impose an unnecessary and disadvantageous contractual condition on RTO participation by integrated utilities such as Idaho Power and PacifiCorp. In Order No. 2000, the Commission stated:

²⁰ Order at 61,339. The TOA contains the agreement between RTO West and each participating transmission owner as to the rules for setting the revenue requirement and the flexibility to establish billing determinants for loads (subject to FERC or Canadian regulatory authority approval) for the company rate period through 2011. Those rules require transmission owners to submit their revenue requirement filings to the Commission. Once the Commission approves the transmission owner's revenue requirements and corresponding company rates, RTO West will establish rate schedules as part of the RTO tariff and serve as the sole administrator of its tariff.

“To the extent consistent with ensuring that transmission rates are just, reasonable, and not unduly discriminatory, we believe transmission pricing disincentives to joining an RTO should be eliminated so that transmission-owning utilities will find RTO participation to be a dynamic business opportunity.”

65 Fed. Reg. 809, 914 (2000). PacifiCorp and Idaho Power submit that the RTO West TOA as drafted simply ensures that there will be no disincentive to transmission owners to

participation in the RTO. Consequently, we urge the Commission to reconsider its directive and address the RTO West pricing proposal and TOA as a whole in Stage 2.

Dated this 29th day of May, 2001.

Respectfully Submitted,

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