

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Avista Corporation;)	
The Montana Power Company;)	
Nevada Power Company;)	Docket Nos. RT01-15-002
Portland General Electric Company; and)	and ER02-323-000
Sierra Pacific Power Company)	

**APPLICANTS' MOTION
FOR LEAVE TO FILE ANSWER AND ANSWER
TO PROTESTS AND COMMENTS**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2001), the above-captioned parties (collectively "Applicants") answer the motions to consolidate, protests and comments filed in response to "Application of TransConnect, LLC for Preliminary Approval of Transmission Rates, Including Innovative Transmission Rate Treatment; Planning and Expansion Protocol; Compliance Filing; and Modified Governance Proposal" filed on November 13, 2001. By filing this Answer, Applicants seek to provide useful and relevant information that will assist in the Commission's analysis in this proceeding, and help facilitate a full and complete record upon which the Commission can base its decision. Accordingly, Applicants request waiver of Rule 213 to the extent it would otherwise prohibit an answer to protests and comments.

In support hereof, TransConnect states as follows:

I. BACKGROUND

On October 16, 2000, Applicants filed a proposal to form an independent transmission company ("ITC"), comprising TransConnect, LLC ("TransConnect") and TransConnect

Corporate Manager, Inc., that would own and/or operate the interstate transmission assets presently owned and operated by each of the Applicants. In its filing, TransConnect indicated that it intended to participate in RTO West as a single transmission owner by transferring control over its transmission assets over to RTO West. The filing included a description of the governance structure and functions that TransConnect would undertake, including future rate filings, and proposals for transmission and expansion planning.

On October 16 and 23, 2000, a group of utilities comprising the Applicants plus Bonneville Power Administration, PacifiCorp, Puget Sound Energy, Inc., and Idaho Power Company filed an Order No. 2000 compliance filing and request for declaratory order proposing to form RTO West. As proposed, RTO West would be a not-for-profit regional transmission organization that would operate transmission systems in the Western United States.

On April 26, 2001, the Commission issued an order addressing the TransConnect and RTO West filings.¹ The April 26 Order largely approved the TransConnect proposal subject to certain conditions. With respect to TransConnect's proposal to file for innovative rates, the order stated that the Commission would evaluate each pricing proposal by an ITC "on a case-by-case basis to ensure it will operate appropriately in the particular RTO circumstances."² The April 26 Order also provided that the planning and expansion function could be shared between

¹ *Avista Corp., et al.*, 95 FERC ¶ 61,114 (2001) ("April 26 Order"). On July 12, 2001, the Commission denied rehearing of the issues related to TransConnect. 96 FERC ¶ 61,058 (2001).

² 95 FERC at 61,339.

TransConnect and RTO West, but required additional detail and clarity be provided in TransConnect's and RTO West's Stage 2 filings.³

In accordance with the April 26 Order, on November 13, 2001, Applicants submitted for filing their Application for Approval of Transmission Rates, Including Innovative Transmission Rate Treatment; Planning and Expansion Protocol; Compliance Filing; and Modified Governance Proposal ("November 13 filing").

This Answer responds to motions to consolidate, protests and comments filed in response to the November 13 filing.

II. LEAVE TO FILE ANSWER

The Commission's rules generally do not allow answers to protests. See 18 C.F.R. § 385.213(a)(2) (2001). However, the Commission has consistently waived the requirements of Rule 213(a)(2) where a responsive pleading will assist in the Commission's analysis, provide useful and relevant information, or otherwise facilitate a full and complete record upon which the Commission can base its decision.⁴ Applicants believe that their answer is necessary to assist in clarifying the issues raised in the protests, and to ensure that the record is accurate and complete. Accordingly, good cause exists to waive the rule against such answers and grant Applicants leave to answer the protests and comments filed by the Protestors.

³ *Id.* at 61,341.

III. ANSWER TO MOTIONS TO CONSOLIDATE

Motions to consolidate the TransConnect proceeding in Docket No. RT01-15-000 with the RTO West proceeding in Docket No. RT01-35-000 were filed by the Cogeneration Coalition of Washington (“CCW”) and the Nevada Independent Energy Coalition (“NIEC”). They argue that the proposal is incompatible with RTO West’s planning protocols and would result in conflicts and that no action on the Application should be taken until it can be reviewed and approved in conjunction with the corresponding RTO West dockets.

The Commission has already considered and rejected earlier motions for consolidation in the April 26 Order stating that,

While there may be many related issues, we will deny the request for consolidation at this time. Because we are not settling these matters for hearing, no purpose would be served by consolidating the proceedings at this time.⁵

The same reasons given by the Commission for rejecting consolidation earlier in these proceedings should continue to apply. Consolidation of the TransConnect and the RTO West proceedings will not further the public interest and will unduly complicate both proceedings to the detriment of all parties involved.

Consolidation could unnecessarily delay Commission consideration of final approval which is necessary for TransConnect to operate as an ITC. In addition to its ongoing relationship with RTO West, TransConnect has recently engaged in discussions with WestConnect RTO,

⁴ See, e.g., *Potomac Electric Power Co.*, 96 FERC ¶ 61,323 (2001); *Sierra Pacific Power Co.*, 96 FERC ¶ 61,316 (2001); and *Wisvest-Connecticut, LLC*, 96 FERC ¶ 61,100 (2001).

⁵ 95 FERC at 61,324.

LLC, which may provide additional opportunities for combining efforts to create a broad-based RTO in the West. In furtherance of the Commission's stated goals of a comprehensive and well-developed Western electric grid under the RTO framework, Applicants believe that prompt approval of its Application will enable TransConnect to establish planning and expansion protocols with each of the RTOs (if more than one) within which TransConnect operates, and provide the flexibility necessary to operate effectively in a rapidly changing RTO environment.

IV. ANSWER TO PROTESTS AND COMMENTS

The primary issues and comments raised by intervenors relate to: (1) whether TransConnect's proposed modifications affect its status as an ITC; (2) whether TransConnect's duties and obligations under its proposed Planning Protocol are consistent with the duties and obligations required of an RTO; (3) whether TransConnect's proposed transmission rate design and incentive rates are just and reasonable; and (4) whether TransConnect's proposals were developed with adequate stakeholder involvement or other stakeholder process. We address each issue below.

1. TransConnect Operates and Functions As an ITC

In its November 13 filing, Applicants proposed modifications to its governance documents to provide greater flexibility for transmission entities that do not wish to or are unable to divest assets to participate in TransConnect. Instead of transferring legal title, such entities would grant functional control over their transmission assets to TransConnect. TransConnect would then manage these assets and would include any such assets in the applicable RTO operating or control agreement.

Several parties contend that TransConnect’s proposed modifications raise concerns as to whether a for-profit ITC can include owners entities that do not divest themselves of their transmission assets.⁶ The parties question whether the ITC might have an incentive to favor the transmission facilities it owns over those it operates; whether TransConnect and RTO West will exercise operational control over the same transmission facilities; and whether owners of transmission facilities that TransConnect operates will be eligible for the rate incentives TransConnect seeks for itself.

In the recent “Order Providing Guidance on Continued Processing of RTO Filings”, issued on November 7, 2001, the Commission explained that it seeks to support development of a pro-investment marketplace that is flexible enough, under Order No. 2000, to include for-profit transcos. TransConnect has provided a mechanism for participation by entities that would not otherwise be able to take part in a for-profit ITC. Under the modified LLC Operating Agreement, non-divesting entities are permitted to make capital contributions to TransConnect and are able to participate to the extent of the capital contribution in any economic benefits attained by TransConnect. Applicants believe that such a process will enable entities that would not otherwise be able to participate in a for-profit ITC the ability to receive benefits and investment opportunities provided by TransConnect. The ability of additional entities to participate in TransConnect through the transfer of functional control over transmission assets to TransConnect, and TransConnect’s ability to manage those assets in no way undermines or diminishes TransConnect’s independent status.

⁶ These parties include Deseret Generation & Transmission Cooperative, Inc (“Deseret”) and Truckee Donner Public Utility District (“Truckee Donner”).

The current application remains consistent with Order No. 2000 and with TransConnect's prior application, which met the safe harbor and benchmark limitations. No market participant has the ability to direct the exercise of voting rights of more than five percent of the outstanding Class A Common Stock, and no class of market participants owns more than 15 percent of the outstanding Class A Common Stock of the Corporation. As directed by the Commission, TransConnect has clarified in its Application that Members who are not Restricted Persons may own Class C stock, and that any Member that intends to convert all or part of its interest in TransConnect to Class C Common Stock shall notify the Commission at least 30 days prior to its election. Applicants have also clarified the role and duties of the independent compliance auditor in accordance with the Commission's earlier direction.

2. TransConnect's Planning Protocol will be Coordinated With RTO Protocols

Several parties argue that the Applicants' *Pro Forma* Planning and Expansion Protocol ("Planning Protocol") should not be evaluated until after March 1, 2002, the projected date of the RTO West Stage 2 filing, or must be considered in conjunction with the corresponding RTO West protocols in the Stage 2 filing.⁷

While a number of parties have requested Applicants' proposal to be considered in tandem with RTO West filings, Applicants have made their filing to obtain preliminary approval and necessary guidance from the Commission in order to make business decisions, and provide for an organized business process in a timely and informed manner to meet the challenges of a

⁷ These parties include Bonneville Power Administration ("BPA"), CCW and NIEC and Duke Energy North America, LLC ("Duke"), PacifiCorp, PPL Montana, LLC and PPL Energy Plus, LLC ("PPL Parties"), Public Power Council ("PPC") the Public Utility Commission of Oregon and the Oregon Office of Energy ("Oregon State Agencies"), and Puget Sound Energy, Inc. ("Puget").

rapidly changing RTO environment. It is of paramount concern for Applicants that TransConnect to be positioned, ready and able to participate in the RTO framework that is ultimately developed by the Commission. To that end, Applicants have actively participated in the RTO West development discussions and proceedings and will continue to do so. As the Applicants have also recently engaged in discussions with WestConnect RTO, LLC, and may also engage in discussions with other RTOs in the future, Applicants do not believe that reviewing its proposal in tandem with the RTO West proposal in particular is necessary at this juncture. Rather, Applicants believe that preliminary approval of its Application will better enable TransConnect to become an active participant in RTO West and/or any other RTO, once operational.

In addition, several parties assert that TransConnect's failure to engage in least-cost planning will adversely affect other RTO West participants because excess costs may be involuntarily shifted to other participants.⁸ The arguments focus on whether TransConnect will favor transmission solutions for system problems, ignoring generation or demand side remedies that may be of lesser cost. The parties also express concern over the role TransConnect will perform over the Local Area Planning function, and TransConnect's ability to bid on projects that require a competitive bidding process.

Applicants' proposal provides that TransConnect will work with the relevant RTO and other applicable regulatory authorities that may have specific "least cost" planning requirements and will fully comply with any applicable laws or regulations, while permitting TransConnect, as

⁸ These parties include BPA, CCW and NIEC, Deseret, the Mirant Companies ("Mirant"), PacifiCorp, and PPC.

a for-profit enterprise, appropriate incentives to find new and creative ways to transport electricity more efficiently across the existing system and to efficiently and economically construct new transmission that is needed. Although TransConnect will, consistent with its business mission, bring the “wires” option to such least-cost planning processes, as a for-profit ITC, TransConnect’s governance limits it to transmission-related projects, and it cannot implement alternative, non-transmission solutions that may be considered as part of a least cost planning process. Moreover, even outside of a formalized least-cost planning process, market forces, including conditions imposed by financial institutions, will discipline and effectively prevent efforts to plan and construct transmission facilities where there are economic non-transmission solutions.

It is an integral component of TransConnect’s proposal that it have the planning responsibility for facilities that are within the TransConnect service territory or related to TransConnect facilities to meet the requirements of Load Serving Entities (“LSEs”). To that end, TransConnect will coordinate with the LSEs to consider least cost alternatives, including non-transmission solutions. In addition, TransConnect will, among other functions, access and develop expansion plans associated with local area transmission systems; perform studies to determine potential reliability problems; provide study findings and potential solutions to the LSE; and recommend and implement the necessary facility additions, if necessary. The results and recommendations of such Local Area Planning are subject to review and approval by the RTO and would be used in the regional planning process performed by the RTO. However, if such projects are found not to adversely impact the transfer capability or reliability of the RTO, they would not be subject to further RTO overview or approval. Applicants believe that

TransConnect's role as the Local Area planner will ensure that the objectives of RTO to ensure system reliability will be met while allowing TransConnect to meet its business objectives.

Certain parties argue the Planning Protocol should include a competitive bidding requirement for all major transmission expansion projects that TransConnect might propose, with no matching rights for TransConnect based on the Commission's order issued in the *GridSouth* RTO dockets.⁹ In the *GridSouth* proceeding, the Commission rejected a proposal that gave the applicants a right of first refusal to construct transmission facilities in their service areas because the provisions unduly limited the decisional authority of GridSouth over transmission planning and could potentially result in transmission owners favoring their own generation. That is not the case here. First, as an independent transmission company with no generation assets, TransConnect will not have an incentive to favor such generation. Second, TransConnect does not seek an unfettered right of first refusal; rather TransConnect requests the opportunity to match the lowest bid. This provision will not preclude lower cost or superior transmission facilities or upgrades by third parties from being planned. On any given project, TransConnect may or may not match a low bid based on its assessment of whether or not it makes economic sense. Whether or not TransConnect elects not to match the low bid, the bidding procedures will still result in the construction of the most economically viable transmission projects, which will benefit all of the participants on the TransConnect transmission system.

Finally, a number of parties assert that TransConnect's Planning Protocol is ambiguous concerning the facilities over which TransConnect will have planning responsibility, and may

⁹ *Carolina Power & Light Co., et al.*, 95 FERC ¶61,282 (2001), *appeal pending sub nom.*, *South Carolina Electric & Gas Co., et al. v. FERC*, Nos. 01-1934, *et al.*, (4th Cir. July 27, 2001) ("*GridSouth*").

limit or restrict RTO West's primary responsibility for planning and expansion.¹⁰ The parties are concerned that that TransConnect's proposal would unreasonably restrict the RTO's discretion regarding planning and expansion responsibilities because TransConnect has the ability to process all transmission service requests and interconnection requests within its service area and to conduct all studies related to such requests. The parties request that the RTO have an opportunity to review and approve all transmission-related studies and analysis undertaken by TransConnect.

While there are many comments regarding the compatibility of TransConnect's Planning Protocol with RTO West's protocols, the April 26 Order found that TransConnect's initial proposal to share the planning and expansion with RTO West was consistent with the requirements of Order No. 2000, but that Stage I filings lacked sufficient detail and clarity regarding how they will share the transmission planning and expansion responsibilities and how non-wires solutions will be considered in the decision making process.¹¹ Accordingly, Applicants have set forth in TransConnect's Planning Protocol, the planning and expansion processes that will be coordinated with the RTO to ensure that a coordinated interface will be established in the region, and that TransConnect's planning and expansion needs will be met.

Applicants, as in its previous filings, and in this filing do not challenge the broad regional planning responsibility of RTO West, or the rate framework for RTO West, or any other RTO, which are properly addressed in the relevant RTO proceeding. Rather, Applicants seek only

¹⁰ These parties include BPA, CCW and NIEC, Deseret, Duke, the Industrial Customers of Northwest Utilities ("ICNU"), Mirant, Northwest Requirements Utilities ("NRU"), PacifiCorp, PPC, Puget, Truckee Donner, and Utah Associated Municipal Power Systems ("UAMPS").

¹¹ 95 FERC at 61,341.

Commission approval as to the ability of an ITC, to undertake limited planning and expansion responsibilities subject to RTO oversight where it impacts regional concerns, and to make rate filings consistent with the rate framework in the relevant RTO filing.

Although several parties argue that the RTO West's planning protocols may be inconsistent with TransConnect's proposal, the planning proposal of RTO West is still in the developmental phase. Moreover, TransConnect's Planning Protocol was intended to work in tandem with an RTO Planning and Expansion Protocol, whether it is RTO West or another RTO, should the Commission so direct, to ensure a meaningful and well-coordinated sharing of the planning and expansion function. In any event, because the RTO has the final approval authority over specified categories of projects, the RTO can restrain planning and expansion that would harm the reliability of the RTO's control area. If the relevant RTO framework and subsequent filings change in future filings, or as the result of future Commission action, the issue of whether conforming changes to the Planning Protocol are necessary may then be evaluated.

3. TransConnect's Proposed Rate Design and Incentive Rates Are Consistent With Commission Policy and are Just and Reasonable

Several parties argue that Applicants' request for incentive rates are premature and should be rejected, or set for hearing and/or substantially modified.¹² In addition, the parties argue that a hearing is necessary to examine the initial rate design including the requested 14.5% return on equity, the five year rate cap mechanism, the use of the 12CP allocation methodology, the proposed 200 basis point and 15 year accelerated depreciation components of the rate filing,

¹² These parties include CCW and NIEC, Deseret, ICNU, Mirant, PacifiCorp, PPC, Truckee Donner, and UAMPS.

and to consider whether TransConnect should be required to implement a mandatory competitive bidding requirements as part of the planning process for new transmission projects.

Although several parties argue that Applicants' rate filing and incentive rate proposals are premature, Applicants seek preliminary approval for its proposal to allow Applicants to effectively plan and implement the transition to an ITC. As discussed, in a rapidly changing regulatory environment, it is essential that Applicants have a degree of certainty and guidance regarding the filing in order to make the most informed business decisions and commitments to be successful. Applicants have worked diligently to put together a proposal that will accommodate, and work in, an RTO environment which continues to develop and evolve. Accordingly, Applicants believe that the Commission can make its preliminary determination on the Application as filed, without further delay.

The Commission determined in the April 26 Order, that "it is appropriate to allow a transmission entity that is independent of market participants to include a request for innovative rate treatments under Order No. 2000...."¹³ Applicants have submitted such a request in its Application to provide appropriate incentives for TransConnect to construct needed transmission in the Western United States. The innovative and incentive features proposed by Applicants reflect the ratemaking innovations contemplated in Order No. 2000, including a five year rate cap design, with a portion of the rate subject to an indexed adjustment annually, a proposal to establish performance benchmarks over its initial year of operation; and rates which include incentive pricing provisions designed to encourage efficient investment in transmission facilities, including a higher return on equity for certain new transmission investments. These innovative

¹³ 95 FERC at 61,338.

rate treatments will help create incentives to ensure that the transmission assets under TransConnect's control are adequately supported and enhanced even in times of volatility in market conditions, including a financial environment that is increasingly skeptical of the safety of utility investment.

Applicants believe that at this time, setting the Application, or any aspect of the Application for hearing will not lead to resolution of the main components of the filing. Many of the elements of the Application raise issues of Commission policy that do not require the intensive fact finding of a fully litigated proceeding. To the extent the Commission determines a hearing is necessary, Applicants request that it be limited to only specific issues that the Commission enumerates, rather than the entire Application. Alternatively, the Commission may wish to utilize paper hearing or technical conference procedures to narrow and potentially resolve any questions or outstanding issue prior to determine what remaining issues, if any, require a formal evidentiary hearing.

4. TransConnect Engaged in a Collaborative Process

Certain parties assert that the Planning Protocol did not provide an opportunity for stakeholder review and comment.¹⁴

Although as an ITC, TransConnect is not under any obligation or requirement to provide the stakeholder review process that must be undertaken by an RTO, TransConnect nevertheless sought to provide an open and collaborative process to develop the Planning Protocol, and also provided an opportunity for comment on the rate filing. On August 2, 2001, TransConnect

¹⁴ These parties include BPA, PacifiCorp, PPC, and UAMPS.

posted a summary of its proposed rate filing on the RTO West web site and presented and discussed it at an August 24, 2001 meeting of the RTO West regional representatives group. On August 31, 2001, TransConnect posted a draft Planning and Expansion Protocol and solicited comments. On October 3, 2001 and again on October 26, 2001, TransConnect posted revised drafts of the Planning and Expansion Protocols. The revised planning proposals were addressed at various RTO West regional representatives group, planning content group, and caucus meetings. Interested parties had ample opportunity to present their views and make suggestions regarding TransConnect's proposal throughout the drafting stages. As a result of these processes, modifications were made to the rate filing, and the Planning Protocol was substantially revised.

V. **CONCLUSION**

WHEREFORE, Applicants respectfully requests that the Commission grant their leave to file the above Answer, and, for the reasons contained in the Answer, deny the motion to consolidate, reject the arguments made in the protests and comments, and grant preliminary approval of its Application for Transmission Rates, Including Innovative Transmission Rate Treatment, Planning and Expansion Protocol, Compliance Filing, and Modified Governance Proposal.

Respectfully submitted,

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Dated: January 11, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C., this 11th day of January, 2002.

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