

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

Avista Corporation,
The Bonneville Power Administration,
Idaho Power Company,
The Montana Power Company,
Nevada Power Company,
PacifiCorp,
Portland General Electric Company,
Puget Sound Energy, Inc., and
Sierra Pacific Power Company

Docket No. RT01 -35-005

**PROTEST OF THE
NW ENERGY COALITION**

Pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 & 214, the **NW Energy Coalition** ("NWE") files this Protest to the "Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000" (the "**Proposal**") made by Avista Corporation, et al. ("**Filing Utilities**") on March 29, 2002. The following person is designated to receive service and communications in this proceeding on behalf of the NW Energy Coalition:

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The **Northwest Energy Coalition** ("NWE") is a private, non-profit alliance of more than 90 consumer groups, low-income action agencies, good-government groups, environmental organizations and progressive utilities. For the past 20 years, NWE has worked to promote cost-effective conservation and renewable energy resources; equity in rate making; and a fair accounting for environmental costs in resource choices. NWE's membership comes from the four Northwest states, California and British Columbia and, thus is directly affected by the outcome of this proceeding.

NWEC intervened and submitted protests on the Filing Utilities' stage 1 filing (the "Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000" made by Avista Corporation, et al. on October 23, 2000) as a member of a group called the "Public Interest Organizations" on Nov. 20, 2000. At this stage in the process, however, we submit these comments as a separate entity.

NWEC representatives have been active participants in RTOWest development, representing environmental concerns on the primary policy group in the RTOWest collaborative process, the Regional Representatives Group (RRG), and in several of RTOWest's collaborative workgroups. NWEC respectfully requests that the Commission afford NWEC the relief requested in this Protest — i.e., that the Commission reject the filing utilities' Proposal as not being in the public interest. If, however, the Commission decides to grant a measure of approval to the Stage 2 filing, NWEC requests that the Commission: 1) only give provisional approval, as the filing is still incomplete; 2) direct the Filing Utilities to modify the proposed Transmission Operating Agreement in accordance with the recommendations made in this Protest; and, 3) give guidance to the Filing Utilities and other parties on the issues we identify in this Protest.

INTRODUCTORY COMMENTS

During the initial formation of RTOWest, and in our previous comments to the Commission, NWEC was cautiously optimistic about the public process within which the Filing Utilities developed their joint filing and the goals which drove the formation of RTOWest. And in fact, there is a great deal in the Filing Utilities' Proposal that we support. However, as the Stage 2 filing developed we became increasingly concerned about its direction and the ultimate consequences of RTOWest formation for consumers and the environment. At the same time we have seen responsible and determined changes in policy at the Bonneville Power Administration ("BPA") and many regional utilities responding to the recent California fiasco which lead us to believe that many of the goals the Commission seeks to accomplish in establishing an RTO in the NW can be accomplished at less cost and less risk by existing entities. We thus urge the Commission to put the RTOWest process on hold while less costly and disruptive alternatives can be put in place in the region.

If, however, the Commission decides to continue in the framework of the Filing Utilities' Proposal, it should not grant any measure of approval unless certain critical changes are made.

We discuss these below at length. Finally, it must be noted that the Proposal is still very incomplete, lacking not only a tariff, but also Load Integration and Generator Integration agreements. We urge the Commission not to give approval to the Proposal until it can evaluate it as a package.

NONEEDFORANWRTOATTHISTIME

NWEChas come to the conclusion that an RTO would not be in the best interests of the NW, neither its consumers nor the environment. We do not come to that conclusion because we feel that the goals the Commission seeks to accomplish by facilitating RTOs are not valid. Indeed, NWEChas long advocated on behalf of those goals which can be encapsulated by the broad idea of facilitating the most efficient use of resources. NWEChas since our creation in 1981 worked for mechanisms compatible with the Commission's vision: good price signals, region-wide least-cost planning, and fair treatment and support for renewables and demand-side resources. We have not simply opposed deregulation and the proper use of markets in accomplishing those goals, and in fact were a key supporter of Oregon's outstanding restructuring law. And, due partly to our active involvement and advocacy, NW institutions have been in the forefront of accomplishing many of the goals the Commission seeks. Thus we believe that an RTO is unneeded in the NW, because other avenues are available in the region to produce significant progress faster without the risks and costs of the huge transformation necessary to create an RTO.

In particular, BPA, which owns over 70% of the transmission system in the region, has recently committed to a least-cost process to create the added transmission capacity it needs to incorporate new generation requests and reliability improvements. Bonneville's spending on conservation and renewables has also increased dramatically, following commitments made by its Administrator to get such investments off a funding "roller coaster." Utilities throughout the region, in part reacting to the California deregulation disaster, have committed to IRP processes, and renewed spending on conservation, load controls and renewable resources. State utility commissions have recognized that new resources are needed, and IPPs have committed to thousands of MW of new power plants. In addition the NW possesses a unique regional planning body already: the NW Power Planning Council. This organization, representative of the four NW states with explicit Federal planning authority over BPA, is uniquely situated to

provide a region-wide planning vision and facilitate the development of meaningful long-term adequacy standards. In fact, it is now in the process of developing such a five-year plan, to be released next year.

The NW also has instituted a well-funded region-wide conservation market transformation organization (NW Energy Efficiency Alliance) to coordinate and implement region-wide efficiency initiatives.

NW utilities and their regulators have also shown a new interest in responding to and passing through to end-user the time-of-use and locational price signals already present in the wholesale market. BPA's power rates are more responsive to time and locational cost differences, and the agency will almost certainly go further in this direction in its upcoming transmission rate case. Finally, virtually every public and private utility in the region has recently signed onto a joint proposal to BPA which would have the effect of allocating the Federal power system, thus causing the utilities to individually face market prices (as opposed to having their needs satisfied by BPA in a milled, postage-stamp delivered power rate) for both energy and transmission. If implemented, this proposal would create the liquidity necessary to further the Commission's goals. With so many more players in the market, we are confident that an ISO approach will evolve voluntarily.

In sum, we see no need to impose a costly RTO on the NW at this time. NW institutions are already undertaking or soon will undertake most of the important tasks the Commission is trying to accomplish with its RTO effort.

FILING UTILITIES' PROPOSAL CRITICALLY FLAWED

If the Commission rejects our request to reject the need for RTOWest in general, NWECA would urge it to reject the *instant* Stage 2 filing unless numerous serious flaws are corrected. That the Proposal needs some critical changes should not come as a surprise.

First, although the Filing Utilities' conducted an elaborate public process to allow for participation by regional stakeholders, it must be noted that the Proposal was not the result of a collaborative or consensual process. It was not imbued with the public interest. The ultimate decisions were made behind closed doors by the Filing Utilities themselves. Unsurprisingly, therefore, the final result is one which does not always represent the interests of regulators, transmission-dependent utilities, IPPs, public interest groups, or the consumers who will actually pay for everything. Many contentious issues were discussed, but they were *all decided* by the Filing Utilities to their satisfaction. In no way should the Proposal be taken by the Commission as a regional stakeholder effort.

Second, the Proposal attempts to lockdown too many details by putting them in the Transmission Operating Agreement ("TOA") instead of a more easily changeable tariff. Doing so has the effect of tying the hands of future Commissions. Given the huge uncertainties this industry faces in the future, (and noting how many fundamental changes the Filing Utilities' own TOA underwent in just the past few months) it is imprudent to limit the ability of the yet-to-be-named RTO Board, and future Commissions, to amend important elements.

Third, the Proposal is biased in favor of the incumbent integrated utilities. The process should not have been expected to produce otherwise, since it was shaped under a fundamental conflict of interest. It would be naive to expect a group of transmission-owning utilities, all of whom, except for BPA, beholden exclusively to their shareholders, to develop a truly neutral RTO, while still allowing merchant generation and serving retail customers.

Fourth, the Proposal is biased in favor of transmission. This too does not come as a surprise, given its authors. However, many of the important decisions RTOWest will have to make regarding markets, congestion and long-term adequacy involve the interaction and trade-offs between transmission, generation and load. It will not lead to efficient outcomes to have an RTO in place operating under rules that explicitly limit its ability to deal with the whole picture.

Finally, despite the filing's size and depth, the Proposal still does not give us the assurance that someone is clearly responsible for keeping the lights on. The problem of determining and maintaining adequate standards was not thoroughly or effectively addressed.

By necessity, NWEC's comments focus mainly on the drawbacks of the filing. However, our protests should in no way be deemed to denigrate the work put in by all parties who worked on the RTOWest proposal. Many of the drawbacks cited in our previous comments directed toward the Phase I filing have been dealt with. Indeed, while NWEC maintains an RTO is not needed in the NW, and would not be the least-cost way to accomplish the Commission's ultimate goals, with Commission assistance and direction the filing could be made more acceptable. With that context as a background, we urge changes in the RTOWest proposal to—

- A) make it more responsive to, and representative of, the public interest;
- B) make the TOA less restrictive and more able to adjust to new circumstances;
- C) remove the Proposal's bias toward the incumbent utilities;
- D) remove the Proposal's bias toward transmission solutions in RTOWest's planning and expansion role; and,
- E) clearly determine who is responsible for setting and enforcing adequate standards.

A. The Proposal fails to recognize valid public interests in addition to those of the Filing Utilities.

1. RTOWest Bylaws and Exhibit P of the TOA unduly limit participation in Arbitration Proceedings.

The Dispute Resolution process described in Section C 1, 3, 3 of Exhibit C of the RTOWest Bylaws fails to protect the public interest because it explicitly excludes state regulators, retail consumers (except Eligible Customers) or their associations, and public interest groups from becoming Parties in disputes. Instead, they must prove to the Arbitrator that they have an interest, and become instead Participants with many fewer rights in the proceeding. Exclusion of these interests from full Party status keeps out the very people who pay most of the bills, or represent their rights or the rights of the states, or the interests of the environment—all of which will be affected by the outcome of disputes. Excluding them from the Dispute Resolution process eliminates their ability to keep RTOWest and the PTOs accountable, or to protect their

rights in numerous situations involving allocation of costs and transmission rights, least-cost planning decisions, etc.

The dispute resolution process described in Exhibit P of the TOA similarly limits the ability of regulators, public interest groups and end-usersto participate in the cataloging of transmission rights. Many of these rights relate to the ability of the Bonneville Power Administration to meet its environmental responsibilities. We support the May 29, 2002 comments and protests of the Public Power Council's ("PPC") and the Associated Tribes of Northwest Indians ("ATNI-EDC") and on this issue.

2. RTOW decisions cannot be permitted to supercede the hydro operating parameters or other environmental protections established by federal laws and policies.

The Bonneville Power Administration in particular, as well as other operators of the hydrosystem, have multiple statutory, treaty, and other responsibilities applicable to the operation of their facilities and, especially, to the Federal Columbia River Transmission System. In addition, Bonneville shares a trust responsibility with tribes to protect tribal treaty assets and to honor all fish and wildlife obligations. These protected assets are threatened when hydroelectric generation causes inappropriate changes to the river systems.

NWEC supports the Filing Utilities' effort to address these responsibilities and to implement RTOW in a manner that ensures that no provision of the TOA or directive from the RTO can require Bonneville or other hydrooperatorsto violate any of their obligations under applicable statutes or regulations, however the effort was not wholly successful. Under federal law, RTOWest, a private corporation, cannot be authorized to require Bonneville to violate any of its operational parameters, even if those operational parameters are not contained in statute or regulation but are the subject of agreements, federal policies, rules, biological opinions, or similar appropriate federal decisions.

For example, BPA enforces its designated Protected Areas (river areas designated by the NW Power Planning Council to be important for fish and wildlife and thus not to be subject to further hydropower development) by refusing to provide transmission for any project in a protected area. The Resource Programs EIS specifically screened out hydroelectric resources in protected areas. In the Resource Programs EIS ROD (April 22, 1993, under Mitigation the Administrator noted: BPA will not acquire the output of any hydroelectric resource located with

any Council designated Protected Area inside or outside the Columbia River Basin. The Business Plan EIS (Section 4.2.4.2) addressed Protected Areas under Transmission Access. Under the description for the Market -Driven alternative, the EIS noted: "BPA would not provide wheeling for those resources within the Columbia River Basin that violated the Council's Protected Area Rule." This alternative was chosen in the Business Plan ROD. Bonneville cannot agree to allow a private corporation's decision to supersede a federal decision -making. NWE Curg est that the language of the TOA (perhaps Sec. 5.3.1) be altered to clearly allow BPA to continue to protect these designated areas. We also support the more extensive May 29, 2002 comments of ATNI - ED on these issues.

B. The TOA (and Bylaws) is replete with overly -restrictive and prescriptive sections which should instead be put into the tariff .

Once the TOA and the Bylaws are signed and approved, it will be very difficult to change, requiring unanimous consent of the signers. Because of this difficulty, they should contain only the minimum needed to protect the Filing Utilities from RTO actions which might affect their rights or a "taking" of property. Anything beyond this minimum becomes an impediment to future Commissions' and RTOWest Boards' flexibility, and must be viewed either as an effort by the Filing Utilities to protect their commercial interests beyond their rights, or of hubris in believing that *this* version of the TOA is perfect. The Commission need only look at the extensive and fundamental differences between the Stage 1 version of the TOA and this Stage 2 version to see how naive one would have to be to believe that no more changes will be needed. We urge the Commission, therefore, to direct the Filing Utilities to pare down the TOA and move the many arbitrary and inflexible strictures now in the TOA to the more readily amendable tariff. To assist the Commission in this effort, we list the most egregious examples, but we do not claim this to be exhaustive.

1. Bylaws, Article III, Pur poses

This section of the Bylaws prohibits the RTO from several activities:

...provided, however, that the Corporation will not (i) own any transmission or distribution facilities, (ii) own any interesting generation facilities or the output thereof (except as necessary to meet its obligations as a provider of last resort for Ancillary Services) or (iii) operate, or have any financial interest in, a power exchange . (emphasis added)

These prohibitions seek to protect the Filing Utilities' merchant functions from competition from the RTO. However, it is premature to limit RTOWest's ability to own an interesting generation as various regions' experiments with ICA or ACA requirements to deal with adequacy issues have proven. Similarly it is premature to conclude that RTOWest might never decide it needs to establish a power exchange as a mechanism to establish appropriated day-ahead and hour-ahead markets for its congestion-management obligations. The emphasized sections should be struck.

2. Sec.6.2.2 of the TOA --RAS

Sec.6.2.2 arbitrarily limits the ability of RTOWest to maintain Remedial Action Schemes by limiting the requirement of Executing Transmission Owners ("ETOs") to maintain existing RAS to only three years, even though ETOs are provided adequate compensation. No one knows whether three years is the amount of time RTOWest will need to negotiate new RAS agreements, or whether the provision of RAS is subject to market power. Arbitrary time limits such as this should not be locked into the TOA.

3. Sec.6.11 --Scheduling Coordinator Default

This section arbitrarily locks into the TOA a controversial and untried scheme to have state and tribal authorities "direct the termination of service to load(s)..." of defaulting Scheduling Coordinators. This issue is a tremendously important and complicated one linked with issues of who is responsible for setting and enforcing adequacy standards, being the ultimate default provider, financial penalties vs. termination strategies, etc. It is a large part of the Commission's recent SMD Options Paper, and remains open to various solutions. It is premature to lock in any one answer, and the Commission should strike this section of the TOA replacing it with language such as: "RTOWest shall work with the Commission, state regulators and other stakeholders to develop workable and effective means to deal with the issue of defaulting Scheduling Coordinators with the goal of protecting other customers from adverse impacts such as an event."

4. Sec.10.1 --Ancillary Services

This section both limits the time period in which RTOWest can offer ancillary services (prescheduled day-ahead or hour-ahead basis only), and the time period in which RTOWest can acquire them (up to one year) in advance. The RTO should have the flexibility to react to unforeseeable market conditions, including the presence of market power in the provision of

these services. The TOA should not be overly restrictive in giving RTOWest the tool to be flexible. This appears to be micro-management of the RTO that should not be "hardwired" into the TOA. It may well turn out that certain ancillary services should be acquired by the RTO through longer term contracts, or that they should be offered by RTOWest differently than just day-ahead or hour-ahead. If so, the RTO should not be prohibited from making and implementing such determinations.

5. Sec.10.2.1 --Wind Generation

NWEC strongly supports the prohibition of punitive charges for imbalance energy on intermittent generators, providing the operator makes reasonable effort to schedule accurately. However, there is no reason to limit this protection to wind only. It should also hold for other intermittent renewable resources, especially solar, and aggregated load control resources such as residential water heater or air conditioner control programs.

6. Sec.10.3.2 --Obligation to Provide Interconnected Operations Services

Once again the TOA attempts to lock in a particular time period, without any justification for whether it is long enough. This section requires the ETO to provide Interconnected Operations Services to RTOWest during the first year if "...no viable short-term or long-term market will exist...." So we have a situation where a viable market doesn't exist, but must miraculously appear after one year. As should well be recognized by now, things go wrong. RTOWest and the Commission should not be trait-jacketed by the TOA. Instead this section should be replaced by language such as: "RTOWest should attempt to acquire Interconnected Operations Services from a competitive market as soon as practicable."

C. The TOA contains numerous sections which discriminate in favor of the filing utilities and their merchant functions.

It may be unsurprising that the TOA is seriously biased in favor of the Filing Utilities and their merchant functions, given the "collaborative" process that developed the Proposal; however, it is unacceptable. We are sympathetic to the proposal set forth by PPC that the Commission set aside the TOA until such time as the RTOWest Board can be seated and directed to rewrite it from an independent viewpoint. Barring that remedy, we draw the Commission's attention to the following specific, but non-exhaustive, list of concerns.

1. Sec.5.1 --RTOWest's ability to determine Interconnection Standards

This section prohibits RTOWest from adopting interconnection standards that might cause a financial impact on an ETO's system or interconnected loads. Clearly, this could lead to anticompetitive behavior on the part of an ETO attempting to protect its own merchant generation. The words "including financial impacts" should be clarified to exclude impacts from the introduction of competition.

2. Sec. 5.3.1 and 5.3.2 -- ETO's obligation to permit new interconnections.

These sections of the TOA require an ETO to cooperate with requests "...by an Electric Utility... or by a Generation Owner..." to interconnect to its system. Notable is the anticompetitive exclusion of other third -parties seeking to build "merchant transmission" for the opportunity to create and sell new transmission rights. These sections should be amended to include other qualified third -party sponsors seeking to expand the system, not only utilities or generation owners.

3. Sec. 14.6.1 -- ETO's ability to extract benefits if third -party sponsored projects or prevent other sponsors from expanding its system

This section contains a provision which unfairly discriminates in favor of the ETO. The ETO has the ability to list future projects on its Pending Project List which effectively requires third-party sponsors to share the benefits of their projects. This is like taking a claim on future speculative projects, with very little investment risk. The definition of the Pending Project List should be restricted so that the ETO (or any other sponsor, for that matter) can list projects only after obtaining siting and other permits, conducting environmental review, and undergone preliminary engineering. These restrictions will ensure that Pending Projects are real, and not just a way to prevent competitive projects from being built.

4. The External Interface Access Fee ("EIAC") in the Pricing proposal discriminates in favor of the ETO's merchant function.

The Pricing proposal shields the ETO's loads from contributing to any shortfall in revenues. The Commission should review PPC's comments, section IV, Pricing, for a detailed discussion of this issue.

D. The Proposal depends exclusively on transmission projects to expand the system, and will thus not provide least -cost out come to many costly decisions.

Restrictions have been placed in the TOA and the Planning and Expansion Proposal (Attachment I) on RTOWest's ability to implement least-cost "non-wires" solutions that could otherwise benefit consumers and the environment. Such restrictions could also threaten the reliability of the system, in that the RTO is prohibited from funding replacements or upgrades to non-wire catalogued assets such as RAS, which cannot be replaced with transmission substitutes.

Section 14.2 lists the four situations where RTOWest could cause upgrades or expansion of the system. These include (1) ensuring compliance with the Transmission Adequacy Standards, (2) remedying insufficiency of an ETO's congestion management assets, (3) restoring total transmission capability as provided under section 6.2.1, and (4) to relieve chronic, significant commercial congestion that has not been mitigated as a result of market failure. However, despite protestations to the contrary in Attachment I¹, the TOA prohibits RTOWest from implementing non-wire solutions in any of these situations, even when its own planning process determines that such solutions would be the least-costly alternative.

Sections 6.2.1.2, 8.4.4, and 14.1 give RTOWest only the right to cause an "upgrade or expansion" to its Transmission Facilities, not to implement non-wire alternatives. Of course the RTOWest Board has the independent authority, outside of any listing in the TOA, to spend money on non-wire alternatives. However, the TOA does not allow any such costs to be put into the ETOs' rates. The last sentence of Sec. 14.2 makes this clear: "RTOWest shall have the right to allocate the costs of such **upgrades or expansions** to the ETO as Transmission Facility Cost Sharing Payments...." (emphasis added) Since it is abundantly clear (see, for example the definition of Transmission Facility Cost Sharing Payments, p. A-20, where "alternatives that avoid the construction of such upgrades or expansions" are explicitly differentiated from upgrades or expansions themselves) that non-wire alternatives are not upgrades or expansions, this sentence effectively prevents the costs of such alternatives being included in ETOs' rates.

During the long process the Filing Utilities went through to develop their Proposal, NWECA and other parties repeatedly argued that the RTO should have the authority to implement all least-cost alternatives when in its backstop role. Indeed, the Commission, in its Order responding to the RTOWest stage 1 filing, expressed its concern about non-wire solutions:

¹ Attachment I claims that "...when exercising its transmission adequacy backstop, RTOWest may also arrange, as appropriate, the implementation of non-wire solutions." (p.7) However, the TOA prevents RTOWest from recovering costs in rates for any non-wire solutions, so this statement is simply false.

Because it is not clear whether, and if so how, RTOWest will reflect least cost planning in its decision making process, we will direct RTOWest Applicants and Trans-Connect Applicant 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 decision making process. (p.54)

NWEC believes the Filing Utilities have still not responded positively to the Commission's direction. Instead, the TOA prohibits the RTO from implementing any non-wires alternatives.

When NWEC's representative asked the Filing Utilities their rationale for excluding non-wires alternatives from the RTO's backstop authority, the answer was that the RTO will be a transmission organization and should not be involved in generation or demand-side activities.

But this answer makes little sense given the fact that the RTO will be deeply involved in non-wires assets to manage transmission rights. Under Sec. 8.4, each ETO must make Congestion Management Assets available to RTOWest sufficient for RTOWest to provide transmission rights to the ETO's non-converted transmission agreements. These Congestion Management Assets include both physical facilities and "...contractual and operational mechanisms such as RAS, redispatch services (or a commitment to pay for necessary redispatch purchased by RTOWest) and rights to restrict service under pre-existing contracts." (Definition, Exhibit A)

A second rationale was also offered by the Filing Utilities for not allowing RTOWest to fund non-wires alternatives. The reasoning was that RTOWest should not be allowed to own generation or demand-side assets. However, this prohibition need not be breached in order to allow RTOWest to cause a non-wires alternative to be constructed. RTOWest can instead provide incentives for generators to locate where needed or commit to pay for redispatch rights, without actually owning any facilities or taking a financial interest in them.

We urge the Commission to direct the Filing Utilities to amend the TOA so that in its backstop role RTOWest can cause the implementation of non-wires alternatives as well as transmission upgrades and expansions.

E. The Proposal leaves unanswered the essential question of who is responsible for keeping the lights on.

Despite the large amount of time dedicated to producing the Proposal, little discussion or resolution was brought to the fundamental question of how adequacy standards should be set and enforced. One reason for this was a doomed attempt by the Filing Utilities to differentiate

between two types of "adequacy" --Transmission Adequacy and Generation Adequacy --and only have RTOWest involved in the first type. However, as the Commission's SMD Options Paper clearly explains, there can be only one type of adequacy given the need for both generation and transmission to keep the lights on. This essential fact is evident from the TOA's own definition:

Transmission Adequacy Standards means,

...standards developed by RTOWest with the input of the Participating Transmission Owners that ensure that the RTOWest Controlled transmission Facilities can deliver required power to the aggregate of Participating Transmission Owners' Interconnected Load irrespective of the cost of the power and congestion costs. Such standards shall be consistent with industry standards regarding reliability. (Definition of Transmission Adequacy Standards, Exhibit A of the TOA)

Obviously, under this definition, or any definition, one cannot decide that a system meets a transmission adequacy standard unless it also has adequate generation. This definitional confusion, NWECA believes, has resulted in a backstop that is limited to wire solutions (see above) and at the same time attempts to overreach into the traditional authority of LSEs and their regulators. This definition and its use in the TOA imply that RTOWest will be the final arbiter for determining and enforcing adequacy standards. It is essentially unworkable unless the Commission wishes to see RTO as new, gigantic, vertically integrated utilities. Even were this the Commission's goal, it is not a realistic solution in that LSEs have traditionally had the role of determining and ensuring adequacy, and we cannot imagine the states and locally elected public utility commissions wishing to give up this role without a prolonged legal battle. NWECA also does not believe that RTOWest is the best entity to have this responsibility, in that it has few tools to ensure adequacy. Unlike LSEs, RTOWest is not well-positioned to acquire generation or conservation.

Therefore, we recommend that the responsibility for ensuring adequacy (and deciding the standard) remain with each LSE rather than being given to RTOWest. Amending the TOA to accomplish this would entail substituting a much narrower short-term reliability and safety standard for the overly broad definition of Transmission Adequacy Standards, and removing the authority of RTOWest to exert backstop authority to ensure general adequacy. In addition, if those changes were made, it would be necessary to provide the authority to RTOWest to be able to prevent an LSE's failure to provide its own adequacy to impact other transmission users either physically or financially. Mechanisms to accomplish this could be to allow RTOWest to (1)

require strict credit requirements on LSEs that failed to live up to an RTO West -determined adequacy standard; and, in the last resort to (2) require curtailment plans from such LSEs.

CONCLUSION

Pursuant to the above Protest and Comments, NWECA respectfully requests that the Commission deny the Filing Utilities' request for declaratory order on the grounds that it is unjust and unreasonable. We encourage the Commission to reconsider requiring an RTO for this region, and instead allowing regional entities to propose another solution that will achieve many of the same goals of an RTO without exposing the region and its consumers to these risks. If the Commission denies our request for relief, NWECA requests that the Commission order the Filing Utilities to revise the filing consistent with this Protest.

Respectfully submitted,

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May 29, 2002