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May 29, 2002

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Avista Corporation, et al. FERC Docket No. RM01-35

Dear Secretary Salas,

Please accept the following Protest and Comments of the Affiliated Tribes of Northwest Indians Economic Development Corporation in Docket Number RT01-35. These comments are being filed electronically. If there are any questions, please call me at the above number.

Sincerely,

Margaret M. Schaff

Margaret M. Schaff
For Affiliated Tribes of Northwest
Indians Economic Development
Corporation

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Avista Corporation, Bonneville Power Administration,	**)**	
Idaho Power Company, Montana Power Company,	**)**	
Nevada Power Company, Pacificorp,	**)**	**Docket No. RTO1-35-000**
Portland General Electric Co.,	**)**	
Puget Sound Energy, Inc.,	**)**	
Sierra Pacific Power Company	**)**	

PROTEST AND COMMENTS OF THE AFFILIATED TRIBES OF

NORTHWEST INDIANS ECONOMIC DEVELOPMENT CORPORATION

Table of Contents

I. INTRODUCTION 2

II. THERE ARE SUBSTANTIAL RISKS TO CONSUMERS THAT THE COSTS WILL EXCEED THE BENEFITS OF RTO WEST 4

III. RTO WEST MUST BE REQUIRED TO HONOR ALL FEDERAL OBLIGATIONS AND OTHER ENVIRONMENTAL OBLIGATIONS OF OTHER HYDRO OPERATORS 6

IV. TRANSMISSION CUSTOMERS AND OTHER INTERESTED PARTIES MUST HAVE ACCESS TO RTO WEST INFORMATION AND DISPUTE RESOLUTION 9

V. THE STAGE 2 FILING IS INCOMPLETE AND IS THEREFORE NOT RIPE FOR COMMISSION ISSUANCE OF A DECLARATORY ORDER UNDER ORDER 2000 10

VI. ATNI-EDC PROTESTS THESE LISTED ASPECTS OF THE STAGE 2 FILING AS THEY FAIL TO MEET THE REQUIREMENTS OF ORDER 2000 11

VII. THE TRANSCONNECT PLANNING PROPOSAL SHOULD NOT BE APPROVED 14

VIII. THE FLEXIBILITY OF THE RTO WEST GOVERNING BOARD TO CHANGE RTO POLICIES SHOULD BE REQUIRED 14

IX. ATNI-EDC SUPPORTS MANY ASPECTS OF THE FILING, WHICH SHOULD BE RETAINED 15

X. CONCLUSION 16

I. INTRODUCTION

Pursuant to Rule 211 of the Commissions Rules of Practice and Procedures (18 C.F.R. § 385.211), the Affiliated Tribes of Northwest Indians Economic Development Corporation hereby files this Protest in Docket No. RT01-35-000 the "Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000 " ("Stage 2 Filing") of the above filing utilities. ATNI-EDC separately filed a motion to intervene in these dockets[1] pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR §§ 385.214. That motion was granted in the Commission's April 26, 2001, order in this docket. *Avista Corporation*, 95 FERC ¶ 61,114 at 61,323 (Apr. 26, 2001).

The Affiliated Tribes of Northwest Indians Economic Development Corporation (ATNI-EDC) is a non-profit organization formed over 47 years ago with 54 member tribes located in Alaska, Washington, Oregon, Idaho, Montana, Nevada and California. ATNI-EDC represents issues relevant to its membership including issues related to energy matters. ATNI-EDC has participated as part of the Regional Representatives Group during the consensus building process for development of RTO West. We are also parties to the TransConnect LLC filing[2]. ATNI-EDC's voting member tribes will be directly affected by formation of RTO West, through its rates as consumers of electricity, wholesale customers of RTO West, and as regulators of certain electrical commerce on Indian lands and reservations which are within the RTO West service territories. ATNI-EDC does not claim to address the particular interest of any sovereign tribe, however, some issues represented by ATNI-EDC may be similar to these interests. One of our major concerns is the maintenance of reasonable utility rates for our tribal members. Indian

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[1] See *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. 31,089, (1999) at 31,075, *order on reh'g*, Order No 2000-A, 65 Fed. Reg. 12088 (March 8, 2000) FERC Stats. & Regs. 31, 092 (2000), *review pending sub nom*., *Public Utility Dst. No. 1 of Snohomish Cty., WA v. FERC*, Nos. 00-1174, et al.(D.C.Cir.) (hereinafter "Order 2000"). See also, *Avista Corporation, et al*., 95 FERC 61,114, (2001) at 61,338.

[2] *See* TransConnect, Docket No. RT01-15-000.

people spend a higher percentage of their income on energy than other Americans, have the highest percentage of homes without electricity, and have the least control over quality of service. Our populations are experiencing two to three times the national population growth rate, which leads to the need for more housing and infrastructure. We are primarily small and rural.

The Affiliated Tribes of Northwest Indians, the parent corporation of ATNI-EDC issued a resolution at its 2002 Mid-Year Conference, Resolution #02-40, attached as Exhibit A. The Resolution supports this Intervention and Protest and affirms the tribal interests that ATNI-EDC seeks to protect. The tribal interests represented by ATNI-EDC and approved by our membership are: 1) Energy development and transmission programs should honor our sovereign governmental status. 2) Our land rights should not be adversely affected by changes in the energy industry. 3) Our cultural resources and fish, wildlife and treaty resources should not be harmed by energy operations. 4) Indian people are energy consumers. 5) Tribes are also owners of energy resources and are seeking to use those resources, whether renewable or non-renewable, to generate electricity and for economic development and need access to transmission. 6) Lastly, tribes seek a continued voice in public processes regarding energy matters.

From the publication of Order 2000, ATNI-EDC has conditionally supported the formation of RTO West. The following have been our conditions. First, the cost-benefit analysis must reasonably show that the overall benefits will outweigh the overall costs of RTO West with consideration of the design and implementation of the study. Second, RTO West must be governed independently and provide access to all interested parties. Third, RTO West must be designed to resolve, not institutionalize congestion. Fourth, costs to consumers should not be expected to increase more than they would without RTO West.

We sincerely compliment the Filing Utility professionals who have worked so hard to design an RTO that will be acceptable to all parties, and meet the Commission's criteria. Their attention and dedication has left us fairly comfortable that RTO West as designed is the best effort of many intelligent people. The filing contains many positive aspects and this commentary

on our concerns should not detract from the many aspects of the Stage 2 Filing which we support. The Commission, however, should not grant final approval of the Stage 2 Filing for all of the reasons described in the sections below.

II. THERE ARE SUBSTANTIAL RISKS TO CONSUMERS THAT THE COSTS WILL EXCEED THE BENEFITS OF RTO WEST

Section 205 of the Federal Power Act provides that all rates and charges of a jurisdictional utility must be just and reasonable and not unduly discriminatory[3]. The proposed formation of RTO West does not meet the standard set by the Federal Power Act[4]. ATNI-EDC endorses and incorporates by reference section I of the Protest and Comments of the Public Power Council filed in this proceeding.

In addition to the showings of the Cost-Benefit analyses and their critiques, there are other significant financial risks not considered in those analyses that further jeopardize the benefit of RTO West. Those monetary risks include risks of additional taxes and new taxes[5] placed on transmission and the related activities, risks of scheduling coordinator financial defaults and financial defaults by load serving entities, added liability[6] and insurance costs, understated

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[3] *See*, 16 U.S.C. § 824d(a), (b).

[4] Footnote 52 of the Filing Letter (Page 43) describes this region's long history of coordinated operations under our hydro system. Most of the efficiencies of an RTO can be achieved without an RTO, through system upgrades where needed, more cooperative planning, new systems of power scheduling, standardized interconnection rules, and private secondary markets in transmission rights and generation redispatch**.**

[5] Existing analysis of the potential tax liability does not yet consider the possible imposition of new tribal taxes on transmission activity. Indian tribes have the authority to tax activities within their reservations as an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982). The power to tax is retained by tribal governments unless divested of it by federal law or necessary implication of their dependent status. *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134,152 (1980). Limitations on the types of tribal taxes may be imposed, see *Big Horn County Elec. Coop. v. Adams*,219 F.3d 944 (9th Circ. 2000.)

[6] Footnote 11 of the Stage 2 Filing letter at page 15 notes that because of the potential unavailability of liability insurance and the complexity of exercising termination rights under the TOA, Avista and possibly other filing utilities may not proceed with RTO West if tariff or legislative limitations of RTO West liability are not adopted. Also, the extent of exposure of RTO West to liability judgements significantly

implementation costs, unclear treatment of losses, and a potential for increased rates of return pursuant to requests by some of the filing utilities in the TransConnect filing[7].

In addition to the financial risks, we are exposed to many other risks by forming an RTO. We are establishing a system that is both untried and subject to a changing regulatory and legal context[8]. We simply can not think of everything, in advance, in such a complex system. The highly lucrative nature of this business has been known to lead to market manipulation where the system is imperfect. Environmental consequences of major changes to the power delivery system are not yet known. These consequences could include air quality impacts with the addition of coal-fired generation and transmission, and consequences to endangered and not yet endangered fish species[9] due to potential changes in river operations. RTO West Bylaws or the Transmission Operation Agreement (TOA) may contain provisions that now seem wise but with the passage of time lead to an inflexible and unworkable system. The authority to change direction is shifted to the Commission, and is removed from the local level, where change may be quicker and more tailored to local needs.

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increases because the protections available to Bonneville under the Federal Tort Claims Act will likely be unavailable to RTO West. "This increased tort-liability exposure threatens the ability of RTO West to provide net benefits to the region," *Supra*. In addition, we support the arguments of the Public Power Council in Section V of their Protest under this docket, filed May 29, 2002 regarding the liability concerns and suggestions.

[7] *See* TransConnect, Docket No. RT01-15-000.

[8] For example, the Standard Market Design rulemaking, FERC Docket No. RM01-12-000 is not yet finalized. Many aspects of the Standard Market Design as applied to the region may impact the best operation of RTO West.

[9] For Example, BONNEVILLE enforces protection of environmentally protected areas by refusing to provide transmission for any project in a protected area. BPA's Resource Programs EIS specifically screened out hydroelectric resources in protected areas. In the BPA Resource Programs EIS ROD (April 22, 1993), under "Mitigation", the Administrator noted: BONNEVILLE will not acquire the output of any hydroelectric resource located with any Council designated Protected Area inside or outside the Columbia River Basin. The BPA 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 BPA Business Plan ROD. If RTO West takes over operation of BPA's transmission assets, will these protections be maintained?

Because the proposal fails show that the rates to consumers will be just and reasonable, the Commission must deny the requested declaratory judgment and reject the RTO West proposal. We encourage the Commission to reconsider requiring an RTO for this region, and instead allowing the Filing Utilities 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.

III. RTO WEST MUST BE REQUIRED TO HONOR ALL FEDERAL OBLIGATIONS AND OTHER ENVIRONMENTAL OBLIGATIONS OF OTHER HYDRO OPERATORS

The Bonneville Power Administration ("Bonneville") in particular, as well as other operators of the hydro system, 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 and the Federal Energy Regulatory Commission share a trust responsibility to tribes to protect tribal treaty assets and to honor all fish and wildlife obligations. These protected assets are threatened when hydroelectric generation causes changes to the river systems. In addition to statutory and legally mandated operational issues that my be required under the Endangered Species Act Biological Opinions, there are operational considerations made to non-endangered species, such as sport fish, and to tribal cultural resources such as archeological resources and burial sites which are often found along rivers. It is also recognized that tribal leaders interpret treaties and federal commitments more broadly than do Bonneville and the federal operators of dams. ATNI-EDC supports the Filing Utilities' efforts to address these responsibilities and to implement RTO West in a manner that ensures that no provision of the Transmission Operation Agreement ("TOA")[10] or directive from the RTO can require Bonneville or other hydro operators to violate any of their obligations under applicable statutes or regulations. Under federal law, RTO West, a private corporation, cannot be authorized

[10] *See* Stage 2 Filing, Attachment A.

to require Bonneville to violate *any* of its operational parameters, even if those operational parameters are not contained in statue or regulation but are the subject of agreements, federal policies, rules, biological opinions, or similar appropriate federal decisions. Nor can Bonneville agree to allow a private corporation's decisions to supersede federal decision-making. ATNI-EDC urges that the language of the TOA be altered to clarify this point. ATNI-EDC endorses the language of the Protest of the NW Energy Coalition regarding these environmental considerations.

Many river operations required for the benefit of fish and wildlife and cultural resources do NOT involve generation and transmission, but require the storing of water behind dams, or bypassing generation to spill water. There is no RTO impact on these actions. However, if a dam is not generating due to fish operations (or other reasons), Bonneville may need transmission to bring in replacement power. Under the current RTO West proposal ("accept all schedules"), Bonneville can always acquire enough transmission if it is willing to pay for it, so the cost of transmission is just another "cost" of the spill or storage. Thus this is not an RTO problem, just another case of Bonneville adequately funding its fish responsibilities. With the RTO, Bonneville can always get transmission access, as opposed to the current system where an over-scheduled line is dealt with by reducing all schedules proportionately (if a deal cannot be worked out bilaterally between the conflicting users). The RTO existence will provide an advantage for fish interests over the current system.

It is agreed that there is one other current instance in which transmission *is* required to meet fish or cultural obligations under the biological opinion and could be *directly* impacted by RTO West. That instance takes place in high water periods, when gas levels in the river are high due to too much water spilling over dams. The resolution of this problem is the sending of water through the turbines, generating power which otherwise may not have been generated. This power must then be transmitted. Bonneville officials have made it clear that in times of high water, transmission and generation circumstances are such that there will generally be sufficient

transmission to accommodate this need to generate anyway, so it is unlikely that Bonneville would need to acquire extra transmission rights to meet this need. The transmission rights Bonneville holds to serve its load will be adequate to utilize any supersaturation prompted generation.

ATNI-EDC is concerned that this generation to avoid supersaturation for fish be adequately catalogued as existing rights and therefore be grandfathered in as an RTO West right. In the cataloguing process we suggest that transmission for fish, wildlife and cultural resources protection be specifically mentioned in the catalogue, so there is no question that the rights exist and that funds for this transmission not be required and then subsequently charged to fish and wildlife programs.

The parties to RTO formation have over time, identified the following *indirect* potential impacts of RTO West on Bonneville's fish and wildlife and cultural resource obligations. First, costs should not be shifted to Bonneville as a result of their participation in the RTO, therefore impairing their ability to meet other regional obligations, including fish and wildlife and cultural resource obligations. Second, it is important that Bonneville has the ability to plan for and construct new facilities and RTO West has the authority to allocate costs of any facilities to other parties if the new facilities provide additional reliability benefits, even if they are originally planned for fish and wildlife or cultural resources benefits. Under the current proposal, Bonneville and other Executing Transmission Owners ("ETOs") have the ability to plan their systems, with an RTO "back stop". Under the current RTO West proposal, ETOs may still make independent additions to their own systems. Third, under least cost planning proposals it should be made clear that the options will consider environmental costs. Fourth, section 6.4.4 of the Bonneville TOA now contains a preference for requests for transmission under Section 9(i)(3) of the Northwest Power Act or for load service. Bonneville may direct RTO West to make such deliveries, but must still purchase any rights needed to ensure receipt of the service. We support specifically including environmental and cultural resources obligations to this obligation. Fifth,

Tribes protecting their fish and wildlife and cultural rights should have access to RTO dispute resolution to enforce their rights, including provision of catalogued rights, revisions to catalogued rights, and planning decisions regarding transmission for fish and cultural obligations. Sixth, in the TOA, the definition of "Pre-Existing Transmission Agreements and Obligations" should not be limited to "Agreements and Load Service Obligations" but should specifically include other obligations such as environmental and cultural resource obligations.

IV. TRANSMISSION CUSTOMERS AND OTHER INTERESTED PARTIES MUST HAVE ACCESS TO RTO WEST INFORMATION AND DISPUTE RESOLUTION

Under the Stage 2 Filing, transmission customers[11] will not have full access to a forum for dispute resolution. ATNI-EDC concurs in the arguments made by the Public Power Council, an intervenor in this proceeding, in Section VII of its Comments and Protest filed in this docket on May 29, 2002. Their argument states that there should not be different types of arbitration rights for transmission customers and transmission customers that have signed a TOA. ATNI-EDC is concerned that parties without privity of contract with RTO West and subject to the provisions of the TOA, but who are harmed by actions of RTO West will have limited recourse. In addition, we are concerned that full information rights be granted to the public, subject to standard confidentiality provisions[12]. For example, until the tariff language is drafted, it is not clear how a third party may challenge an RTO West policy that may be causing environmental harm. As another example, until the Market Monitoring proposal and the Implementation Proposal are complete, it is unclear whether parties without privity of contract, but with true interests in RTO activities will have access to information about the markets, or access to the information generated from data collected by RTO West. The access to information is critical to

[11] Here, we refer to any user of the transmission system who otherwise has standing that is not also a signator of a TOA.

outside entities whose interests are different from signators of the TOAs. For these reasons, the Commission should not grant the requested final approval because the Stage 2 Filing fails to satisfy the requirements of Order 2000.

V. THE STAGE 2 FILING IS INCOMPLETE AND IS THEREFORE NOT RIPE FOR COMMISSION ISSUANCE OF A DECLARATORY ORDER UNDER ORDER 2000

ATNI-EDC concurs in the arguments made by the Northwest Requirements Utilities, an intervenor in this proceeding, in Section III(C) of its Comments and Protest filed in this docket on May 29, 2002. The Northwest Requirements Utilites argue that the filing is "owner-centric" and leaves out descriptions of important public rights. In addition to our comments and examples, above, describing the need for a complete Tariff and Market Monitoring Plan, there are other aspects of the filing that are at this time still not complete making a review of the whole RTO West package impossible. Because the tariff is not yet drafted, we also assume that substantial revisions to the TOA may be made during its drafting. Other key issues for transmission customers remain undecided. The Generation Integration Agreement, the Load Integration Agreement, and the Scheduling Coordinator Agreement will all provide either critical assurances regarding third party interaction with RTO West, or will provide further reason to protest RTO West. ATNI-EDC can not support the proposal with these key provisions unknown.

Transmission adequacy standards will be key in understanding the planning protocols for ensuring load service. These standards must be created in a collaborative process prior to the Commission's authorization of RTO operations. Bonneville has committed to develop such standards before RTO west is operational. We remain unclear at this time what authority RTO West will have to enforce these standards. Can they order a utility to purchase generation,

[12] For example, section 18.2 of the TOA, at page 81-82 contains a provision that requires RTO West to prepare and make available to Executing Transmission Owners financial statements in accordance with generally accepted accounting principles. This information should also be made publicly available.

conservation, or transmission? How will this enforcement be accomplished? How will least cost planning be incorporated into these decisions?

We are also concerned that rights of new utilities formed in the service territories of Participating Transmission Owners (PTOs) should receive the share of the PTO's transmission rights they were using. A statement in the tariff, or Load Integration Agreement signed by PTO affiliates[13] to this effect will be necessary to assure fair use of existing transmission rights if the load service obligation of a PTO changes due to formation of a new utility.

VI. ATNI-EDC PROTESTS THESE LISTED ASPECTS OF THE STAGE 2 FILING AS THEY FAIL TO MEET THE REQUIREMENTS OF ORDER 2000

1. Facilities Inclusion for non-discriminatory service

ATNI-EDC concurs in the comments of Northwest Requirements Utilities, an intervenor in this proceeding, in III(B)(2) of its Comments and Protest filed in this docket on May 29, 2002 regarding facilities inclusion. The Filing Letter at page 34 states, "This facilities approach allows RTO West to offer customers true "one stop shopping" for Transmission Services in satisfaction of the Commission's test." However, wholesale customers who must use both RTO West facilities and local utility facilites still must pay two prices. This fails to meet the Commissions requirement for the elimination of pancaked rates. This approach replaces horizontal with vertical pancaking. If, however, the pricing mechanism reflected this concern and somehow eliminated the double transmission payment by these mostly rural, small loads, we would be satisfied with the existing inclusion of facilities.

2. Protection of Existing Transmission Contract Rights and Non-Contract Obligations

ATNI-EDC concurs in the comments of Northwest Requirements Utilities, an intervenor in this proceeding, in III(B)(1) of its Comments and Protest filed in this docket on May 29, 2002

regarding the cataloguing process and the exclusion of third parites from the Cataloguing process. While the draft Transmission Operating Agreement (TOA) evidences a general intention to protect and preserve existing transmission rights, it does not provide any mechanism to enforce those rights and provides significant opportunities to diminish those rights. For ATNI-EDC, enforceable protection of existing transmission rights and obligations and is a crucial feature of any RTO proposal for the Northwest. Transmission contracts do not contain all the rights used by the Public Power community, nor do they contain the "obligations" which are transient depending upon circumstances of water, season, and biological opinions. ATNI-EDC must be assured that Bonneville and other operators of hydroelectric systems retain sufficient rights to enforce all fish and wildlife obligations.

ATNI-EDC expands the Public Power Council argument regarding the exclusion of third parties from the Cataloging process by applying it to those with the rights to enforce transmission obligations which are not documented by contract. Such transmission rights may include the uses of the federal transmission system to support treaties and other legal requirements. We argue that these obligations require special care since they are not available in written form for translation to RTO service. Additionally, these obligations will change over time as legal requirements change. Alterations in the catalogue will be ongoing, and Indian Tribes and others with the rights to enforce these obligations must be parties to their cataloguing. Exhibit P does not clearly apply to the cataloguing of obligations, but references only "Pre-Existing Transmission Agreements.[14]"

The TOA protects Bonneville's statutory and legal obligations in Section 6.4.4. In addition, delegations of authority by federal agencies to private parties are valid only if the federal agency retains final reviewing authority over the private party. *National Park and Conservation Association v. Stanton*, 54 F. Supp. 2d 7, (D.D.C. 1999). Bonneville has also

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[13] Section 5.2 of the TOA states, "RTO West shall develop and implement policies concerning reuirements for generators to execute Generation Integration Agreements and for loads to execute Load Integration Agreements in connection with receiving Transmission Services from RTO West."
[14] See Filing Letter, Exhibit P at page P-2.

incorporated language into the TOA that allows it to immediately terminate its participation in RTO West if the Commission uses the Agreement, the activities of RTO West, or Bonneville's transactions with RTO West to assert authority over Bonneville's generation or power sales activities. We are concerned that any termination under the contract is problematic and we are unclear how "termination" will take place. In the event statutory transmission obligations are not being fulfilled, or the activities of RTO West affect Bonneville's generation function because sufficient rights are not catalogued, these rights should be enforceable by third parties with interests in the matter.

3. Trustees Selection Committee Requirements

ATNI-EDC questions the provision in Section 6.3.2 of the Bylaws[15] at page 29 that allows the Trustees Selection Committee to obtain only the number of candidate names from the executive search firm as there are vacancies. This appears to stifle competition for important jobs that will require a diverse group from which to elect candidates.

4. Environmental Insurance

In 19.1(1) of the TOA, ATNI-EDC suggests that RTO West be required to obtain "environmental" coverage rather than "pollution" liability coverage.

5. Transfer of Transmission Facilities

Sectio 22.4 of the TOA at page 105 fails to consider the transfer of facilities which may happen under certain agreements and by federal law as a result of the expiration of rights-of-ways. An obligation of the Existing Transmission Owner to renegotiate rights-of-ways in a timely manner should be added to the TOA in an appropriate location.

6. Inclusion of Tribal Sovereignty

Section 27 of the TOA, at page 115 references "Cooperation with Implementing State Retail Access Programs". This section should be expanded to include the concept of Tribal programs

[15] Filing Letter, Attachment C.

for Retail Access within tribal jurisdiction. Such an addition would be consistent with the remainder of the TOA and agreements made by the filing utilities through the RRG process.

7. Company Loads

The definition of Company Loads at Page A-3 to A-4 of the Schedule of Definitions Attached to the TOA, in (3) is vague and contains confusing language.

VII. THE TRANSCONNECT PLANNING PROPOSAL SHOULD NOT BE APPROVED

At footnote 63, page 55 of the Stage 2 Filing Letter, the filing utilities note that "There are differences between the RTO West planning approach and TransConnect proforma protocol." In resolving these differences, the Commission should adopt the RTO West Stage 2 approach. TransConnect should not have independent authority to build transmission projects outside the RTO West planning process due to their bias toward transmission solutions. Least cost planning should be encouraged by the Commission.

VIII. THE FLEXIBILITY OF THE RTO WEST GOVERNING BOARD TO CHANGE RTO POLICIES SHOULD BE REQUIRED

Because we are designing a complex system that is subject to regulatory, legal, techonolgy, and practical changes, we must ensure the ability of the RTO West Governing Board to adapt with changing times. This need must be balanced with the requirements of filing utilities to meet their existing obligations and protect their interests. If RTO West is to be formed, certain changes should be made to assure this flexibility. The Commission should have right to amend all RTO tariffs and agreements consistent with federal law, upon it own or other's motion. Provisions of the TOA that may be moved to the tariff should be moved during the drafting of the Tariff. Article III of the Bylaws should be made more flexible to allow RTO West the right to procure congestion redispatch service at every congested node or market hub as well

as ancillary services upon the advent of certain criteria. Most importantly, a clear and detailed termination procedure is critical for utilities that may wish to exit RTO West participation in the event of unacceptable changes.

IX. ATNI-EDC SUPPORTS MANY ASPECTS OF THE FILING, WHICH SHOULD BE RETAINED

In section 10.2.1 of the TOA, RTO West is prohibited from imposing punitive charges on wind generation for imbalance energy "if the energy provider makes reasonable efforts, including making use of best-available resource forecasting technology, to control imbalance." We appreciate this benefit to renewable energy development, however, we suggest that "best-available" be changed to "modern" to avoid constantly updating potentially expensive technologies. Generally, more open flexible markets will benefit the renewable energy industry. At page 54 of the Filing Letter, there is the following statement, "The filing utilities also intend that RTO West's policies relating to planning, expansion and transmission access will be fuel- and technology-neutral." We would like to see a preference for renewable energy technologies, where they are acceptable and feasible.

ATNI-EDC supports Bonneville's position expressed at Note 8 of the Filing Letter that the Commission has no jurisdictional authority over Bonneville's power sales or generation activities, other than the limited authority under the Northwest Power Act, and that there should be no indirect grant of authority to the Commission, or any other party as a function of the Transmission Operating Agreement. Such an indirect grant of authority could lead to an inability to carry out statutory and environmental obligations.

We appreciate the addition of language in Article III of the RTO West Bylaws that comes close to a public interest purpose by including sustainable customer benefits as an RTO purpose. Likewise, in Section 18.1 Page 80 of the TOA, a requirement that RTO West emphasize customer service and promote efficient market-based solutions to transmission needs is a good addition.

ATNI-EDC also supports the addition of the consideration of environmental factors in both of these sections.

X. CONCLUSION

Pursuant to the above Protest and Comments, ATNI-EDC 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 the Filing Utilities 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 ATNI-EDC's request for relief, ATNI-EDC requests that the Commission order the Filing Utilities to revise the filing consistent with this Protest.

Respectfully Submitted,

Margaret M. Schaff

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Certificate of Service

I hereby certify that I have served the foregoing *Protest and Comments of the Affiliated Tribes of Northwest Indians Economic Development Corporation* by First Class U.S. Mail, postage prepaid to all parties on the service list in Docket No. RT01-35-000 before the Federal Energy Regulatory Commission.

Dated this 29th day of May, 2002.

_____
Caroline Tiller, ATNI-EDC

Exhibit A

2002 Mid-Year Conference
Worley, Idaho

RESOLUTION #02-40

"RESOLUTION TO FILE A PROTEST AND INTERVENTION WITH THE FEDERAL ENERGY REGULATORY COMMISSION WITH REGARD TO THE FORMATION OF RTO WEST"

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific Tribal concerns; and

WHEREAS, the Affiliated Tribes of Northwest Indians is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of Affiliated Tribes of Northwest Indians; and

WHEREAS, the Federal Energy Regulatory Commission (FERC) has instituted an Order requiring all electric utility companies owning high voltage transmission which are jurisdictional to the FERC, to file proposals with the FERC for the formation of Regional Transmission Organizations (RTOs) that will manage and operate the regional high voltage systems; and

WHEREAS, the regional FERC jurisdictional utilities and the Bonneville Power Administration have filed such a proposal after two years of discussion in a Regional Representatives Group of which ATNI-EDC has been a participant; and

WHEREAS, a list of Tribal interest has been identified for protection during the formation of an RTO, which include 1) the interest of Tribal sovereignty, 2) the land rights of Tribes, 3) the interests of Tribes as electrical consumers, 4) fish and wildlife and cultural resource protection, and 5) the interests of Tribes as renewable and non-renewable generators of electricity; and

WHEREAS, the RTO proposal filed by these utilities has many elements which may be detrimental to Tribal interests and to the interests of electricity consumers; now

THEREFORE BE IT RESOLVED, ATNI supports an Intervention and Protest against the RTO Proposal be filed with the FERC by the ATNI-Economic Development Corporation; and

THEREFORE BE IT FINALLY RESOLVED, that such Intervention and Protest address the six Tribal interests and the additional issues of whether the costs will exceed the benefits for electrical consumers under the RTO proposal; whether liability and tax issues will undermine the formation of an RTO, whether adequate facilities are included in the formation of an RTO to allow for non-discriminatory service, whether RTO will be able to exert its authority over power functions of utilities, whether the fish and wildlife and cultural resources are protected by formation of the RTO, whether renewable energy projects are encouraged by the RTO.

CERTIFICATION

The foregoing resolution was adopted at the 2002 Mid-Year Conference of the Affiliated Tribes of Northwest Indians, held at the Coeur d'Alene Casino Resort Hotel in Worley, Idaho on May 16, 2002 with a quorum present.

_____/S/_____ ____/S/_____

Ernest L. Stensgar, President Patricia L. Martin, Secretary