UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Avista Corporation Bonneville Power Administration Idaho Power Company NorthWestern Energy, L.L.C. Nevada Power Company PacifiCorp Portland General Electric Company Puget Sound Energy, Inc. Sierra Pacific Power Company	)	Docket No. RT01-35-005

PROTEST OF DUKE ENERGY NORTH AMERICA, LLC AND DUKE ENERGY TRADING AND MARKETING, LLC

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. § 385.211, Duke Energy North America, LLC ("DENA") and Duke Energy Trading and Marketing, LLC ("DETM") (collectively, the "Duke Companies") hereby submit this protest in the above-captioned proceeding.[1] On March 29, 2002, Avista Corporation, Bonneville Power Administration ("BPA"), Idaho Power Company, NorthWestern Energy, L.L.C., Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., ("Puget") and Sierra Pacific Power Company (collectively, "Applicants"), joined by British Columbia Hydro and Power Authority, filed their Stage 2 Filing seeking a Declaratory Order ("Stage 2 Filing") confirming that their "conceptual proposal" to form RTO West meets the requirements set forth in Order No. 2000[2] and the Commission's

[1]The Duke Companies intervened in Docket Nos. RT01-15-000 and RT01-35-000 on November 20, 2000.

[2] *Regional Transmission Organizations*, Order No. 2000, Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom.*, *Public*
(footnote continued on next page)

April 26, 2001 order in Docket Nos. RT01-15-000 and RT01-35-000 ("April 26 Order").[3]

I. Protest

A. Introduction

On October 16, 2000, as supplemented on October 23, 2000 and amended on December 1, 2000, the Applicants filed a proposal with the Commission to form RTO West as a non-profit independent system operator.[4] Also on October 16, 2000, a sub-group of the Applicants filed a separate application proposing a for-profit independent transmission company ("ITC"), TransConnect, which would operate as a single transmission entity under RTO West.[5] On April 26, 2001, the Commission issued an order granting the requests for declaratory orders of RTO West and TransConnect, subject to certain modifications. The Commission largely approved the governance structure proposed for both the RTO and the ITC, approved TransConnect's proposal for a tiered structure where the ITC members have the right to request innovative rate treatments, and concluded that RTO West appeared to satisfy Order No. 2000's scope and configuration requirements. The Commission noted, however, that many of the detailed criteria and protocols governing RTO West's operations had not been developed and were not

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Utility District No. 1 Snohomish County Washington, et al. v. FERC, Nov. 00-1174, et al. (D.C. Cir. 2001) ("Order No. 2000").

[3] *Avista Corp., et al.*, 95 FERC ¶ 61,114 (2001), *order on reh'g*, 96 FERC ¶ 61,058 (2001).

[4] *Avista Corp., et al.*, Docket No. RT01-35-000.

[5] *Avista Corp., et al.*, Docket No. RT01-15-000.

included in the October 16, 2000 filing (the "Stage 1 Filing").[6] Applicants' Stage 2 Filing addresses some, but not all, of the Commission's concerns about RTO West.

The Applicants included with their Stage 2 Filing for Commission action a revised RTO West Transmission Operating Agreement; amended RTO West Bylaws; lists of transmission facilities the Applicants propose to include in RTO West; and *descriptions* of proposals for RTO West's initial pricing methodology, congestion management system, ancillary services, market monitoring plan, and planning and expansion process. The Applicants, however, failed to file an open access transmission tariff ("OATT") and other pertinent documents, including a Generation Integration Agreement and interconnection procedures. In addition, the proposal descriptions lack sufficient detail for the Duke Companies to critically evaluate the Stage 2 Filing. As such, the Stage 2 Filing should be viewed as a starting point to be improved upon with the Commission's guidance on particular matters raised in this proceeding and further stakeholder input. Following additional development, the Duke Companies anticipate that RTO West will be an improvement over the current landscape and aid in the development of a fully competitive marketplace in the Northwest.

As highlighted herein, the Duke Companies take issue with several aspects of the Stage 2 Filing, including RTO West's grandfathering proposal, which will inhibit a robust and competitive market, and the facilities proposal, which fails to meet the Commission's goals of efficient regional transmission service, one-stop shopping and the elimination of pancaked rates. In addition, the Stage 2 Filing neglects to provide RTO West with sufficient control over planning and expansion of the transmission system and ignores

[6] *See, e.g., Avista Corp., et al.*, 95 FERC at 61,345 (noting that the Commission was not reviewing the specific facilities to be transferred to RTO West, which would be included in the subsequent filings).

FERC's direction to RTO West to limit the authority of transmission owners to seek changes in region-wide transmission rates. The Duke Companies also maintain that FERC should direct RTO West to work toward a locational marginal pricing ("LMP")-based congestion management system/market design in accordance with the Commission's Standard Market Design guidance in Docket No. RM01-12-000. These issues are instrumental to formation of a properly functioning RTO.

II. RTO West Transmission Operating Agreement ("TOA")

The TOA sets forth the basic framework of the Applicants' proposal for RTO West, covering issues such as RTO West's control over facilities and participants, RTO West's authority and obligations, interconnection standards and requirements, transmission service rates, congestion management, transmission rights, planning and expansion, liability and dispute resolution. Each transmission owner that joins RTO West will execute a separate TOA. As currently drafted, the TOA embeds key market design issues in a restrictive bilateral agreement, and limits RTO West's ability to develop an OATT and other RTO documents governing transmission service, market development and operation. Order No. 2000 requires that these matters be dictated not by the incumbent transmission owners and their affiliated generation and marketing affiliates, but by an independent RTO board or governing body.[7]

[7] *See GridFlorida, LLC*, 94 FERC ¶ 61,363, at 62,325-29 (2001); *Alliance Companies*, 94 FERC ¶ 61,070, at 61,305-06 (2001); *Alliance Companies*, 91 FERC ¶ 61,152, at 61,578-79 (2000).

A. The TOA Inappropriately Restricts RTO Authority.

The Executing Transmission Owners ("Transmission Owners") reserve for themselves significant authority to block RTO action.[8] For instance, Section 25.14 of the TOA provides that in the event of a conflict between the terms of the TOA and the terms of the RTO West OATT or the Transmission Owner rate schedules, the terms of the TOA shall govern. In addition, Section 16.2 of the TOA states that nothing contained in the TOA shall be construed as affecting in any way the right of the Transmission Owner to unilaterally make application to FERC for a change in its rates, charges and fees. In conjunction, these provisions limit RTO West's ability to administer its OATT and control its own transmission rates in contravention of Order No. 2000.

B. The Termination Provisions In The TOA Allow The Transmission Owners To Dissolve RTO West At Their Discretion.

The TOA inappropriately contains excessively broad termination rights and reserves too many rights for the Transmission Owner. As drafted, the TOA will be deemed "void ab initio" if it is subsequently revised or modified in a manner unacceptable to either the RTO West or any Transmission Owner. Termination of the TOA is permissible "for any reason upon two (2) years prior written notice,"[9] if RTO West is not complying with its obligations to the Transmission Owner under the TOA,[10] if a state or local government imposes any tax on RTO West regarding the use, operation or control of real or personal property owned by a federal Participating Transmission Owner,[11] if FERC asserts authority over generation or power sales activities of the Transmission Owner through the TOA,

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[8] The TOA defines Executing Transmission Owner as "the transmission owner executing this Agreement and the successors and assignees of that owner." Exhibit A to Attachment A, at A-7.

[9] Attachment A, § 2.3.1.

[10] *Id.* at § 2.3.2.

[11] *Id.* at § 2.3.3.

RTO West's activities or the Transmission Owner's transactions with RTO West,[12] or if BPA terminates its TOA. These overly broad termination rights grant all Transmission Owners excessive leeway to retract their commitment to join RTO West and thus potentially destabilize the entire RTO West formation and development process. The TOA thus reserves far too many rights for the Transmission Owners, granting them veto authority over RTO action, preventing the RTO from controlling its OATT, and inhibiting RTO independence. The Commission should require that (1) the termination provisions be circumscribed to establish an appropriate check on the Transmission Owners' authority;[13] and (2) the Applicants work with all stakeholders to develop an OATT granting the RTO ultimate authority over key market design issues and ensure true independence.

III. The Commission Should Require All RTO Load To Take Service Under The RTO Tariff.

In order to create a viable competitive electricity market, all transmission customers should take service under one tariff, including customers serving bundled native load and load under existing transmission contracts. Although it may be important to "balance the desire to honor existing contractual arrangements with the need for a uniform approach for transmission pricing,"[14] grandfathering existing contracts and excluding load from RTO OATT rates, terms and conditions should be strictly limited. Under the Stage 2 Filing, however, conversion of pre-existing contracts is voluntary for all contract

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[12] *Id.* at § 2.3.4.

[13] The Commission has made clear in previous RTO orders that any withdrawal from an RTO is subject to FERC's approval. *Alliance Companies, et al.,* 96 FERC ¶ 61,052, at 61,135 (2001). As such, FERC should confirm that any withdrawal of a Transmission Owner from RTO West will be subject to FERC's approval and interested parties may raise concerns with such withdrawal.

[14] Order No. 2000 at 31,205.

customers.[15] As such, the Applicants' grandfathering mechanism raises serious liquidity and comparability concerns.

Under the Applicants' current proposal, existing Transmission Owners will receive Catalogued Transmission Rights ("CTRs") that match the customer's pre-existing transmission rights to support unconverted, outstanding pre-existing transmission contracts and load service obligations (including the ability to modify schedules after the close of day-ahead scheduling if a contract so provides and an accommodation for load growth projections).[16] In addition, holders of pre-existing transmission agreements will be granted a one-time opportunity before the RTO West transmission commencement date to extend the term of such pre-existing agreements.[17] Furthermore, if a pre-existing transmission agreement and obligation to serve *load* within the RTO West Transmission System expires during the Company Rate Period,[18] the contract will be rolled over for the remainder of the Company Rate Period (potentially through 2014) with a charge consistent with the rate for the Transmission Owner's OATT service obligations.[19]

The Duke Companies expect that the Commission's requirements for a single system tariff and the conversion of pre-existing agreements to that single tariff will be addressed primarily in the Commission's Electric Market Design and Structure rulemaking ("Standard Market Design" or "SMD").[20] The Duke Companies, however, believe that

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[15] Attachment F at 16.

[16] Attachment F at 20, 23.

[17] Attachment A, § 6.4.2.

[18] Pre-Existing Transmission Obligations are those load service obligations, including those with the merchant function of the Transmission Owner, that are in effect on the date the RTO West OATT becomes effective.

[19] Attachment E1 at 2.

[20] *See generally* Docket No. RM01-12-000.

the Applicants' proposal to grandfather existing contracts and to exclude load from the RTO OATT rates, terms and conditions does not comport with the minimum requirements of Order No. 2000 and will preclude RTO West from satisfying its RTO obligations.

A. The Applicants' Treatment Of Pre-Existing Contracts Will Not Foster A Robust And Competitive Market.

As currently proposed, Applicants' grandfathering proposal will preclude the efficient operation of the RTO West OATT as a regional tariff and will result in few, if any, Financial Transmission Options ("FTOs")[21] being made available to the market because all transmission capacity that is used for pre-existing service to native loads, plus additional allowances for load growth and rollover rights will be excluded from such market. Because the FTO market will not be liquid, new entrants will be unable to avoid congestion charges, giving incumbent Transmission Owners and existing transmission customers a competitive advantage.

B. Lack Of A Clear Cutoff Point For The Execution Of Pre-Existing Transmission Agreements Will Further Compound The Lack of Liquidity.

In addition, the cutoff point for execution of Pre-Existing Transmission Agreements is unclear. The TOA defines Pre-Existing Transmission Agreements as agreements with a term of more than one year. However, it does not define when such contracts must have been executed in order to be considered Pre-Existing Transmission Agreements. The Commission should require RTO West to define Pre-Existing Transmission Agreements as contracts executed prior to the first Commission order approving RTO West. A trigger date for pre-existing contracts of the RTO

[21] As discussed *infra*, FTOs are tradable instruments that allow the holder to avoid congestion costs.

commencement date will simply allow Transmission Owners to execute agreements in the eleventh hour to control additional transmission rights, further reducing the liquidity of the FTO market. In addition, the Commission should require parties to existing contracts to negotiate in good faith to convert existing contracts to the RTO West OATT, or require the Transmission Owners to propose reasonable specific transition rules to convert existing contracts to the RTO West OATT.

In order to rectify the proposal's liquidity and comparability problems, the Commission should require that all existing uses be placed under the RTO OATT,[22] that all existing uses be recognized by awarding FTOs or similar financial transmission rights, and that all FTO holders be required to offer their FTOs through an auction process with auction revenues going back to existing users of the system.[23] With a mandatory auction, transmission rights will be released through the auction process and a liquid market for transmission rights will develop. The mandatory auction will perform a price discovery function for holders of the rights and should eventually result in the allocation of transmission rights to transmission customers for which the rights have the highest value.[24] The Commission should further require parties to existing contracts to negotiate in good faith to convert existing contracts to the RTO West OATT, or require the Transmission

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[22] *See* Duke Energy SMD Comments, filed May 1, 2002, at 8–9 in Docket No. RM01-12-000; *Carolina Power & Light Co.*, 94 FERC ¶ 61,273, at 61,999 (2001) (finding that applicants and other TOA Participants that need to meet their retail load must be placed completely under the GridSouth OATT); *Midwest Independent System Operator, Inc.*, 84 FERC ¶ 61,231, at 62,176 (1998) (approving tariff providing that grandfathered agreements would be subject to the MISO OATT after a transition period); and *Southern Company Services, Inc.*, 94 FERC ¶ 61,271, at 61,392 (2001)(rejecting proposal to exclude portions of total transmission load from Gridco OATT).

[23] *See* Duke Energy SMD Comments at 8–9.

[24] *Id.*

Owners to propose reasonable, specific transition rules to convert existing contracts to the RTO West OATT.

IV. The Facilities Proposal Does Not Meet The Commission's Order No. 2000 Requirements and Goals.

In Order No. 2000, the Commission found that "RTOs must control all transmission facilities that are necessary to support competitive wholesale power markets."[25] In its April 26, 2001 order in this proceeding, the Commission required that "most or all of the transmission facilities in a region should be operated by the RTO, as well as those necessary for operational control and management of constrained paths, regardless of the voltage."[26] The Applicants claim that the TOA gives the RTO operational authority over all facilities placed under its control, but the Transmission Owners do not place all of the relevant facilities under the RTO's full control. This prevents RTO West from complying with the Order No. 2000 requirements of efficient regional transmission services, effective congestion management, one-stop shopping, and the elimination of pancaked rates. The Duke Companies submit that RTO West must control, for all purposes, all facilities necessary to support a competitive wholesale market.

A. The Facilities Proposal Lacks Adequate Information To Fully Evaluate Its Impact.

The Stage 2 Filing does not provide adequate information regarding the parameters of each of the four classes of facilities that the Applicants propose or explain why four classes of facilities are necessary. Further, the Applicants present no rationale as to why Class B transmission facilities should not be in Class A given that they are transmission facilities and presumably are required to provide open access transmission service. Without

[25] Order No. 2000, at 31,209.

[26] *Avista Corp., et al.*, 95 FERC at 61,345.

such information, it is impossible for market participants to determine whether the lines of demarcation among the four classes of facilities provided by the Transmission Owners are appropriate.

For example, PacifiCorp intends to retain control over 8,172 miles of 46 kV–138 kV facilities, subject to RTO pricing, but provides no explanation for withholding such facilities.[27] Avista proposes to retain control over numerous 60 kV–230 kV facilities, including substations by classifying them as Class D facilities, but provides no justification for such classification.[28] In another Commission proceeding, Puget proposes to reclassify all of its 115 kV and 55 kV facilities, with one exception, from transmission to local distribution.[29] In the Stage 2 Filing, Puget appears to classify most of its reclassified transmission facilities as "Certain Distribution Facilities."[30] These Class C facilities will be subject to "segmented pricing" with a wholesale distribution tariff adder and will only be subject to limited RTO authority for planning, access and operational control.

B. The Facilities Proposal Will Not Meet The Goals Of Efficient Regional Transmission Services, Effective Congestion Management, One-Stop Shopping And The Elimination Of Pancaked Rates.

As noted, some Transmission Owners intend, at their discretion, to withhold from RTO control a significant number of facilities that may be needed for open access transmission service. They also intend to relinquish other facilities needed for open access transmission services for some purposes, but not for others, *i.e.*, such as for pricing, but not for control. As a consequence, the Transmission Owners will be able to retain preferential

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[27] *See* Attachment D at 40.

[28] *See* Attachment D at 1-3.

[29] *See Puget Sound Energy, Inc.,* Docket No. EL02-77-000, Petition for Declaratory Order (Apr. 17, 2002).

[30] *See* Attachment D at 45-47.

treatment for themselves and their merchant activities. The exclusion of facilities from RTO West's control will have a serious impact on the Commission's goals of efficient regional transmission services, effective congestion management, one-stop shopping and the elimination of rate pancaking. Simply put, the RTO will not be able to perform the various required functions, functions that are essential to the development of a competitive bulk power market, if the facilities necessary to do so are not under its control.

For example, a customer seeking open access transmission service via excluded or Class B, C or D facilities may have to seek service under two or more OATTs. Presumably, such customer will also face pancaked rates and differing interconnection standards, as discussed further below. Also, the RTO West Congestion Management System ("CMS") only will apply to the RTO West Controlled Transmission System, not to other facilities controlled by the Transmission Owners, further compounding the failure of one-stop shopping.[31] Thus, to a wholesale generator or load connected to the non-RTO West Controlled Transmission Facilities, a Transmission Owner's retained rights over such facilities will have a detrimental impact on the customer's ability to obtain equal and nondiscriminatory access to the main grid. To remedy this problem, the Commission should direct the Applicants to transfer full control of all FERC-jurisdictional facilities to RTO West and ensure that the Transmission Owners are not the entities that decide which facilities (as well as the extent of control over such facilities) are to be included in the RTO West footprint.

[31] *See* Exhibit B and Attachment F at 4-5.

V. The RTO Should Have Ultimate Decisionmaking Authority Regarding The Interconnection Application And Study Process.

In the Stage 2 Filing, the Applicants fail to include a detailed proposal addressing requirements and standards for the interconnection of generation facilities to the RTO West transmission system. RTO West acknowledges that it has failed to include an OATT,[32] which would also address interconnection procedures and requirements. RTO West, however, notes the Commission's ongoing efforts to develop a new *pro forma* OATT for jurisdictional utilities/RTOs and acknowledges that the outcome of this ongoing process will "shape efforts to develop a tariff for RTO West."[33] RTO West further acknowledges that additional work remains to be completed to address such issues as Generation Integration Agreements, Load Integration Agreements and Scheduling Coordinator Agreements.[34]

Although the proposal lacks sufficient detail, there is one issue that bears discussion at this early stage. Contrary to the Order No. 2000 requirement that the RTO possess the sole authority and approval over interconnection matters, the proposal indicates that the Transmission Owners retain such control over the Class B, C and D facilities.[35] As a result, Transmission Owners have the opportunity to develop and apply separate standards governing interconnection to Class B, C and D facilities under their operational control. This arrangement will subject interconnecting generators to different, and perhaps even conflicting, interconnection requirements. In addition, the Stage 2 Filing does not

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[32] Petition for Declaratory Order ("Petition") at 12.

[33] *Id.*

[34] *Id.* There will apparently be a public process by which RTO West will develop interconnection standards, but no details have been provided regarding the targeted time frame for commencing such process. *See* Petition at 12. Also, the purpose and scope of Generation and Load Integration Agreements has not been provided.

[35] *See* Petition at 37.

clearly set forth the extent of the Transmission Owner's ability to exercise sole discretion over the acceptance or rejection of the application of RTO West's interconnection standards to Transmission Owner-controlled transmission facilities.

Interconnection policy cannot be left to participating Transmission Owners that may continue to have generation or marketing affiliates competing in the wholesale market with the generation seeking interconnection to the grid. To ensure that the RTO provides one-stop shopping and treats all interconnecting generators comparably, RTO West should have full authority over all interconnection requests.

The Duke Companies acknowledge that the Commission currently is developing a set of standardized interconnection procedures and a *pro forma* interconnection agreement through a rulemaking proceeding in Docket No. RM02-1-000 (the "Interconnection NOPR"),[36] which will apply to all jurisdictional utilities, RTOs and independent system operators ("ISOs").[37] In the absence of a substantive proposal by RTO West addressing interconnection, the Duke Companies strongly urge the Commission to order RTO West to develop interconnection standards (encompassing both interconnection procedures and interconnection agreements) that meet the minimum requirements ultimately established in the Interconnection NOPR.

VI. The Applicants' Planning And Expansion Process Does Not Adequately Consider Non-Transmission Alternatives.

Order No. 2000 requires a RTO to "have ultimate responsibility for both planning and expansion within its region. The rationale for this requirement is that a single

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[36] *Standardization of Generator Interconnection Agreements and Procedures*, FERC Stats. & Regs. ¶ 32,560, 67 Fed. Reg. 22249 (May 2, 2002).

[37] The Commission has indicated a willingness to accept limited variations to the final interconnection standards based on regional differences, similar to the approach adopted under Order No. 888.

entity must coordinate these actions to ensure a least cost outcome that maintains or improves existing reliability levels."[38] Furthermore, in its April 26 order, the Commission concluded that a planning and expansion system that is not based on least cost solutions may not treat transmission (wires) and non-transmission solutions objectively and neutrally and directed the Applicants to explain how non-wires solutions would be treated.[39]

The Duke Companies maintain that the RTO West planning proposal does not meet the Commission's requirements. As a result of the Applicants' facilities classification proposal, RTO West will have complete planning and expansion authority over only Class A Transmission Facilities, which is only one of the categories of facilities necessary for RTO West to provide open access transmission services.[40] As to Non-RTO West Controlled Transmission Facilities, *i.e.*, Classes B, C and D, the Transmission Owners may use different planning criteria than RTO West, including the use of lower standards, so long as these lower standards "will not adversely impact the reliability of the RTO West Controlled Transmission Facilities."[41] Thus, the proposal could still result in transmission expansion that biases one type of solution, *i.e.*, transmission (wires) solutions versus non-wires (*e.g.*, generation and demand-side action) solutions, contrary to the Commission's April 26 Order. Moreover, even as to the RTO West Controlled Transmission Facilities, the least cost planning proposal is ill-defined and unclear as to whether the least cost option will be given a priority. Furthermore, the RTO West planning proposal does not address any mechanism for providing FTO auction revenues or credits for the third-party construction of transmission upgrades.

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[38] Order No. 2000 at 31,164.

[39] *Avista Corp., et al.*, 95 FERC at 61,341.

[40] *See* Attachment I at 1.

[41] Attachment I at 7.

Finally, the planning and expansion proposal is vague as to whether generators will be allowed to participate fully in the transmission planning process and attend all planning meetings. Generators should be part of such process because they are either affected by proposed transmission plans or they can become an alternative solution to some transmission problems. Therefore, any planning group formed to discuss transmission planning should include representatives from the generator sector as full members. The Commission should require the Applicants to implement a planning and expansion process that treats all solutions equally with priority for least cost solutions.

VII. Transmission and Ancillary Services, Including Pricing Issues

A. The RTO West Pricing Proposal Does Not Meet Commission Requirements.

Section 16.2 of the TOA is inconsistent with FERC's direction to RTO West to revise the TOA "to eliminate the authority of those transmission owners that are not independent of market participants, to unilaterally file with the Commission to establish or change rates under the region-wide RTO tariff."[42] Section 16.2 of the TOA states that:

> [n]othing contained in this Agreement shall be construed as affecting in any way the right of the Executing Transmission Owner to unilaterally make application to FERC, under section 205 of the Federal Power Act or any successor statute and pursuant to FERC's rules and regulations promulgated thereunder, for a change in rates, charges and fees (including, during the Company Rate Period, its Company Costs or Company Billing Determinants) for the services provided hereunder; provided, however, that the Executing Transmission Owner shall not make such unilateral filings to the extent prohibited by law.

The Commission's direction to establish uniform region-wide transmission rates and charges, and to limit the authority of Transmission Owners to seek changes in such rates, charges and fees for services provided, was made clear in its April 26 Order. The

[42] *Arista Corp. et al.,* 95 FERC at 61,339.

Commission stated that it is acceptable for Transmission Owners to "enter into agreements with RTO West regarding their revenue requirement and how it will be recovered through the RTO West Tariff and file such agreements with the Commission as rate schedules."[43] Thus, a Transmission Owner remains capable of seeking changes to its rates, but, consistent with the goals of an RTO, it may only do so with the consent of RTO West and to the extent consistent with the RTO West Tariff. Section 16.2 of the TOA therefore should be deleted consistent with the Commission's April 26 ruling.

1. External Interface Access Fees

An External Interface Access Fee ("Export Access Fee") applies to schedules using withdrawal points at external interconnections.[44] In general, the Duke Companies support an even-handed application of access fees on all exports. Applicants' proposal, however, will exempt from the export access fee those Transmission Owners and customers under Pre-Existing Transmission Service Agreements who are deemed to hold rights to access external interface points. As a result, under the Applicants' proposal, Transmission Owners not only will obtain the transmission rights that enable them to transact without facing congestion costs or to extract the value of congestion from others that desire to use these paths, but will also avoid the additional transaction cost that others pay in the form of an export access fee. The Applicants have not provided any support to justify the need for the disparate treatment of new and existing transmission customers and, as a result, their proposal is plainly unreasonable and must be rejected. The Duke Companies note and encourage the Applicants' commitment to work with neighboring entities to develop

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[43] *Id.*

[44] Attachment E1 at 14.

reciprocity agreements with the ultimate goal of the elimination of the export fee altogether.[45]

2. Revenue Recovery Target

The Duke Companies disagree with the method used by RTO West to calculate the Revenue Recovery Target. The Revenue Recovery Target is a fixed dollar amount equal to the average of nonfirm and short-term revenues collected by PTOs for a period of reference years, beginning with 1999 and running until the last full calendar year immediately preceding RTO West's commencement of operations.[46] The Revenue Recovery Target sets the amount that must be collected pursuant to the Replacement Revenue Pool to protect Transmission Owners from loss of revenues from pre-existing long-term transmission agreements that will expire during the Company Rate Period. In addition, RTO West has the authority to create additional charges or modifications to its pricing policies "if it is necessary to correct a chronic undercollection of the Revenue Recovery Target."[47] The baseline used by RTO West to create the Revenue Recovery Target, however, overstates the reasonably expected revenue loss because it bases estimates of lost revenues on historical transaction volumes that will not be representative of future periods. As the Commission is aware, nonfirm transmission services increased substantially in recent years due to atypical and nonrecurring factors, *e.g.*, the California electricity crises and the extremely abnormal weather patterns. Reflecting these transactions in the baseline improperly presumes that these conditions will be unabated. The Commission must direct the Applicants to recalculate the Revenue Recovery Target to reflect reasonably expected

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[45] *Id.* at 7.

[46] *Id.* at 21.

[47] *Id.* at 22.

transaction volumes that would, absent establishment of the RTO, have been reflected under a pancaked rate regime.

B. The Self-Tracking Proposal Must Be Clarified.

The TOA defines Self-Tracking as "the use by a Scheduling Coordinator of electric generation capacity it controls or contracts for to reduce or eliminate its obligation to acquire Ancillary Services requirements from RTO West. Self-Tracking Scheduling Coordinators must match electric generation to load within an RTO-West-defined time standard."[48] Section 10.3.1 of the TOA further explains that Transmission Owners have the right to Self-Track as permitted by law.[49] The Stage 2 Filing lacks adequate information regarding Self-Tracking and its uses. From the little information provided, it appears as if the Self-Tracking option is only available for Transmission Owners. However, (1) the methods used to obtain information allowing Self-Tracking to occur, (2) whether such information includes confidential data, (3) whether all market participants have access to such data, and (4) whether all market participants may use the Self-Tracking option remains unexplained. The Duke Companies thereby request that the Commission require the Applicants to provide sufficient detail for the proposal to be understood by all and clarify the exact information, methods employed and type of access to the option associated with Self-Tracking.

VIII. Congestion Management and Market Design

The Duke Companies support the basic structure of the market described in the FERC's Working Paper on Standardized Transmission Service and Wholesale Electric

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[48] Exhibit A to Attachment A, at A-17.

[49] Attachment A, § 10.3.1.

Market Design[50] – congestion management based on LMP; financially binding, bid-based, voluntary day ahead and real time markets; the flexibility to submit balanced or unbalanced transmission schedules; financial transmission rights; bid-based reserves and regulation markets; and a revised transmission tariff. Although Applicants' Congestion Management Proposal ("CMP") contains some of FERC's suggested SMD components, variations in the RTO West proposal create potential problems.

- RTO West's scheduling rules require that all schedules be balanced, in direct contrast to the proposed SMD.[51]
- The pre-scheduling process will allow for voluntary, decentralized unit commitment and dispatch, and perpetuate the current congestion management status quo.[52]
- Conversion of pre-existing contracts is voluntary for all Contract Customers, and the CMP creates disincentives for conversion.[53]

The Duke Companies maintain that these deviations will result in a noncompetitive, ill-liquid market.

A. The Commission Should Direct RTO West Proponents To Work Toward An LMP-Based Congestion Management System/Market Design In Accordance With The Commission's Standard Market Design Guidance In RM01-12-000.

RTO West bases its CMP on a security-constrained, least-cost redispatch locational pricing model that relies on voluntary inc/dec bids from generators and dispatchable load. The CMP contemplates a combination of pre-existing transmission rights and financial transmission options. The first type of transmission right, a CTR, is

[50] *See* Docket No. RM01-12-000.

[51] RTO West Congestion Management Proposal, Attachment F at 9.

[52] *Id.* at 7.

[53] *Id.* at 16.

reserved for existing users of the system and is a right to schedule transmission consistent with pre-existing contract and load service obligations, that carries with it the right to receive credits equal to the congestion charges associated with those schedules. Thus, CTR holders are guaranteed transmission access across a pre-defined injection/withdrawal path without the risk of incurring congestion charges. The second type of transmission right, a FTO, is a financial option that would not guarantee access to the system, but would provide the holder with a financial hedge against congestion.

The Duke Companies expect that most issues related to the CMP will be resolved in the Commission's SMD rulemaking. The Duke Companies note, however, that RTO West's proposal does not reflect the LMP market design that the Commission has chosen for SMD.[54] Moreover, in its proposal, RTO West has not presented any explanation of the type of day-ahead or real-time energy markets it presumably will administer.

In the CMP, the Applicants suggest that it would be difficult to implement an LMP-based congestion management/market design in the Northwest due to limitations associated with hydro resources that would make it more complex to determine the resource value of hydro generation.[55] While it may be more complex to place a value on hydro generation, there is nothing prohibiting RTO West from working on or presenting solutions to address these problems. Indeed, in its SMD, the Commission specifically

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[54] Locational prices under the Applicants' congestion management proposal will be marginal, in that they will reflect the lowest bid price for the next increment of energy delivered to a particular location, but those bid prices will not necessarily correspond to marginal production costs for the energy supplier.

[55] Attachment F at 5-8.

recognizes that there may be additional accommodations that may need to be developed to address the special conditions facing energy-limited hydro resources.[56]

1. A LMP-Based Congestion Management System/Market Design Would Eliminate The Need For RTO West's Requirement of Balanced Schedules Under The CMP.

The Commission, in its SMD LMP model, established a set of guiding principles for the day-ahead and real-time energy markets. The Commission declared that "[t]he transmission provider *must run* a voluntary, bid-based, security constrained day-ahead market," meaning that "market participants do not have to buy or sell in the day-ahead market[.]"[57] And, in running such a market, "[i]ndividual market participants *must not* be required to submit balanced schedules (where demand and supply are equal), although they may submit balanced schedules if they choose to."[58]

In direct contravention of the Commission's proposed SMD, the Applicants propose to require balanced schedules as a "tool," apparently to avoid the possibility that operator voluntary bidding may result in an ill-liquid redispatch market.[59] Resorting to a balanced schedule requirement to address problems inherent in the Applicants' CMP, however, is not the answer. Rather, the answer lies in working toward and, ultimately, implementing a LMP system, where imbalances can be charged the real-time LMP for energy. The Commission recognized this in its SMD LMP model, stating:

> one of the problems under the current OATT is the treatment of imbalances. The current rules give a competitive advantage to control area operators because they allow the operator to net out its imbalances over a large load and operate a number of power plants while charging other sellers and buyers penalties for imbalances. The

[56] SMD Working Paper at 14, 17.

[57] *Id.* at 13 (emphasis added).

[58] *Id.* at 14 (emphasis added).

[59] Attachment F at 9.

> remedy for these problems is a balancing market with imbalances charged the real-time price for any excess or deficiency of energy.[[60]]

Because there is no commitment to LMP in the Applicants' proposal, however, the imbalance inequities identified by the Commission will continue. Furthermore, the Applicants state that RTO West "ancillary services provisions are expected to include appropriate penalties for improper reliance on imbalance energy in Real-Time[.]"[61] Rather than allowing proponents to continue suggesting treatments for alleged symptoms that may arise from a CMP that handles congestion through economic redispatch of generation and eligible load, the Commission should order the Applicants to begin working toward implementation of the Commission's SMD LMP proposal now.

B. The CMP Needs Further Clarification In Several Areas.

In addition to the problems involving the lack of an LMP-based congestion management system, the proposal suffers from other inadequacies, notably in the areas of schedule modification and CTRs/Congestion Management Assets.[62]

1. Schedule Modifications

The CMP needs to include guidance as to how and when schedules might be modified. At this point, the CMP only notes that Scheduling Coordinators will be able to modify their day-ahead schedules (as permitted by RTO West scheduling rules yet to be developed), and will be charged for any applicable congestion clearing needed to implement the modifications.[63] The rules for schedule modifications should be submitted

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[60] SMD Working Paper at 12.

[61] Attachment F at 9.

[62] The Duke Companies limited their discussion to schedule modification and CTR issues due to the fact that the Applicants note that more detail is needed in the areas of ancillary services, scheduling and settlement, recommendations for nodes/hubs subsuming more than 1 bus, FTO auction process, coordinated operation of phase shifters/DC ties, testing and validation of CMPS proposal, and seams issues. *Id.*

[63] Attachment F at 2.

sooner rather than later in light of the fact that the Applicants are requiring balanced schedules—and penalties for not adhering to such schedules—and also because the modification rules to be developed must take into account the effect of schedule adjustment rights under CTRs. Favorable CTR schedule modification rules not only will serve as yet another disincentive for CTR holders to convert to FTOs, but also could adversely impact ATC calculations and thereby FTO availability determinations.

2. CTR Issues

The next area of concern relates to the CMP requirement that each Transmission Owner's CTRs and Congestion Management Assets ("CMAs" are those transmission facilities necessary to support existing CTRs) must balance. In the CMP, it appears as though each Transmission Owner must provide RTO West only with those CMAs that are necessary to support the transmission service obligations the Transmission Owner brought with it when it joined RTO West. Only when RTO West's testing reveals that a Transmission Owner's CMAs are not sufficient would the Transmission Owner be obliged to make up any shortfall.[64] The Duke Companies express concern that through the CTR translation process, there will be no, or very little, ATC available from which to offer FTOs over the transferred assets, where those assets may only be sufficient to support the capacity necessary to honor the CTRs. This is especially problematic where, during the cataloguing process for CTRs, the RTO must set aside enough capacity to honor the full exercise of a customer's underlying contract rights.

Similarly, another problem arises where, in order to avoid diminishing a CTR holder's contract rights upon conversion to FTOs, the CTR holder's contract rights must be *fully* converted to FTOs. The problem here, as admitted by the Applicants, is that:

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[64] *Id.* at 4.

> full conversion would require issuing more FTOs than could be simultaneously honored (because options within each set of contract rights would have to be included in the FTOs issued). Contract Customers would re-sell the options they did not need for a particular schedule to others, rather than simply forgoing the other options under the contracts, as they would be required to do under the original contract's terms. Using the CTR mechanism solves this problem because it allows RTO West to honor the rights that are actually exercised through submitted schedules without having to issue credits to others for rights that previously could not have been exercised simultaneously.[[65]]

While using the CTR mechanism may solve the problem in that the FTOs allocated through full conversion would not be simultaneously feasible, it does not answer the question of what *would* happen if all CTRs were converted and there would not be enough ATC to simultaneously honor those FTOs. Would the FTOs associated with the contract holder's rights necessarily have to be diminished so that all FTOs may be simultaneously honored? If so, this would be a clear disincentive for full conversion from CTRs to FTOs.

Additionally, in light of the fact that all existing rights could not be simultaneously honored if converted to FTOs, how would ATC, and thus FTO availability, be calculated? If calculated assuming all potential uses of the system pursuant to existing rights (*i.e.*, no simultaneous feasibility), there clearly would be no FTOs available.

The problems discussed above may be due to lack of clarity in drafting the CMP, or they may be systemic flaws that cannot be adequately addressed under the current congestion management proposal. Either way, the Commission should require the Applicants to address and explain the manner in which they intend to resolve these issues.

IX. Market Monitoring

Order No. 2000 requires RTO proponents to propose a market monitoring plan "designed to ensure that there is objective information about the markets that the RTO

[65] *Id.* at 19, n. 19.

operates or administers and a vehicle to propose appropriate action regarding any opportunities for efficiency improvement, market design flaws, or market power identified by that information."[66] Although RTO West's Market Monitory Plan ("MMP") provides a useful start to establishment and development of an Order No. 2000 compliant market monitor, there are several areas where improvement and expansion are necessary.[67] It appears that the proposed MMP will operate as a division within RTO West.[68] It is unlikely that a market monitor within an RTO will be able to effectively monitor its parent organization, which will itself be a market participant. The Commission should require RTO West to create an independent market monitoring entity operating outside the RTO, with responsibility to monitor the market and the RTO itself.

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[66] Order No. 2000 at 31,156.

[67] The Commission has previously approved detailed market monitoring plans which may be used as a foundation for future RTOs. For example, in the Southeastern RTO mediation process, most parties supported the GridFlorida market monitoring proposal – both "platforms" submitted to the Commission pledged to use the GridFlorida plan. Mediation Report for the Southeastern RTO, 96 FERC ¶ 63,036 (2001); *see also GridFlorida, LLC, et al.*, 94 FERC ¶ 61,363 (2001). The Applicants need not adopt the GridFlorida proposal, but the Commission should require the Applicants to propose a detailed market monitoring mechanism at least as robust as the one proposed by GridFlorida, explaining who will comprise the MMU, how members will be selected, how the MMU will monitor appropriate markets and what authority the MMU will have to remedy abuse of market power.

[68] Attachment H1 at § C.2 defines the MMU as "the RTO West personnel and outside consultants that will carry out the Plan." *See also* Attachment H1 at § E.2.

X. CONCLUSION

WHEREFORE, the Duke Companies respectfully request that the Commission rule on the RTO West filing in a manner consistent with their comments herein.

Dated: May 29, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Protest by U.S. Mail upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 29th day of May, 2002.

Maria Farinella