

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

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

**PROTEST OF
NUCOR STEEL - UTAH, A DIVISION OF NUCOR CORPORATION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211, and the April 9, 2002 "Notice of Filing," the April 10, 2002 "Errata Notice," and the April 17, 2002 "Notice of Extension of Time" in this docket, Nucor Steel - Utah, a division of Nucor Corporation ("Nucor Steel"), hereby protests the *Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000* filed in the above-captioned docket.² In support of its protest, Nucor Steel states as follows:

I. COMMUNICATIONS

All communications related to this pleading should be directed to the following:

¹ Nucor Steel owns and operates a steel production facility near Plymouth, Utah, using an electric arc furnace to melt recycled scrap steel. Nucor Steel is a transmission voltage (138 kV) power customer of PacifiCorp. Nucor Steel purchases hundreds of millions of kWh of electricity annually from PacifiCorp at a cost of millions of dollars, and is one of PacifiCorp's largest retail customers. Because the cost of electricity comprises one of the major costs of Nucor Steel's manufacturing process, the cost and availability of electric power directly affects Nucor Steel's ability to produce steel at a competitive price.

² Nucor Steel has filed concurrently a separate motion to intervene in the above-captioned proceeding pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214.

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II. PROTEST

A. Background

On March 28, 2002, Avista Corporation, the Bonneville Power Administration, Idaho Power Company, NorthWestern Energy, LLC (formerly The Montana Power Company), Nevada Power Company, PacificCorp, Portland General Electric Company, PugetSoundEnergy, Inc. and Sierra Pacific Power Company, joined by British Columbia Hydro and Power Authority, a non –jurisdictional Canadian utility (collectively, the “Filing Utilities”), submitted a *Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000* (“Stage 2 Filing”) with the Federal Energy Regulatory Commission (“Commission”).³ On April 22, 2002, the Filing Utilities submitted a second filing correcting certain errors in the Stage 2 Filing. The Stage 2 Filing, as corrected, is a request by the filing utilities for the Commission to make a complete determination as to whether their proposed “RTOWest” fulfills all of the characteristics

³ The Commission, in its Order on the Filing Utilities’ “Stage 1” filing, conditionally approved the Independence, and Scope and Regional Configuration characteristics of the proposed RTOWest. 95 FERC ¶61,114 (2001).

and functions of a regional transmission organization (“RTO”) required by the Commission’s Order No. 2000.⁴

Nucor Steel protests the Stage 2 Filing because it will result in the formation of an RTO that does not satisfy all of the minimum characteristics and functions mandated by Order No. 2000.⁵

B. Market Monitoring Plan

In accordance with Order No. 2000, RTO West should be truly separate and independent from all market participants.⁶ This applies to the governance structure of the RTO,⁷ and, “if appropriate,” to the market monitor established for the region covered by RTO West.⁸ While the Commission previously conditionally approved RTO West’s governance structure, finding that it meets the Independence requirement set forth in Order No. 2000,⁹ the Filing Utilities’ had not at that time provided all of the details of their Market Monitoring Plan, and the Commission deferred consideration of RTO West’s proposed Market Monitoring Plan until it was filed.¹⁰ The Filing Utilities have submitted a more detailed RTO West Market Monitoring Plan as part of their Stage 2

⁴ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶31,089 (1999) (“Order No. 2000”), *order on reh’g*, Order No. 2000 -A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶31,092 (2000).

⁵ In addition, Nucor Steel presumes that the Filing Utilities will modify all RTO West documents in the future to comply with the Commission’s order on market design and other relevant issues.

⁶ Order No. 2000 at 31,061.

⁷ *Id.*

⁸ *Id.* at 31,155.

⁹ 5 FERC ¶61,114, at 61,328.

¹⁰ *Id.* at 61,332.

Filing.¹¹ Nucor Steel, however, has serious concerns regarding the independence and limited authority of the RTO West Market Monitor as it is currently proposed.

1. The Market Monitor should be independent and not be "part of" RTO West or include RTO West personnel

The Filing Utilities state a desire to have a west-wide market monitor and note that negotiations with other western RTO proponents continue. Stage 2 Filing at 50. In the interim, however, the Filing Utilities propose a Market Monitor limited to the region covered by RTO West that is intended to perform various monitoring and reporting responsibilities in an "independent, impartial, and effective" manner. See Stage 2 Filing, Attachment H2 at 1. According to the Market Monitoring Plan, the Market Monitor will be "created as part of the RTO West organization" and will be staffed, at least in part, by "RTO West personnel," *id.* at 1-2, thereby compromising the Market Monitor's intended function.

Market monitoring is especially important at RTO start-up -- interim period or not -- because it deters and prevents market abuse, which in turn instills confidence in the newly established competitive markets thereby encouraging market development. Nucor Steel believes that a strong, independent and impartial market monitor will be needed in the region covered by RTO West in order to ensure that market participants are not exercising market power.¹² The RTO West Market Monitor proposed by the Filing Utilities is not sufficiently independent. To be truly independent and impartial, the Market Monitor must be independent of all market participants, including the RTO itself.

¹¹Stage 2 Filing, Attachment H2.

¹²The Commission, in its Standard Market Design ("SMD") Working Paper issued March 15, 2002 in FERC Docket No. RM01-12-000, indicates that "[e]ach RTO should have a [market monitor] that is independent of the RTO management." SMD Working Paper at 23.

Therefore, Nucor Steel requests that the Commission require the Filing Utilities to enter into an agreement with an independent third party to perform the market monitoring functions required by Order No. 2000.

2. The scope of monitoring should be expanded

The RTO West Market Monitoring Plan provides that the Market Monitor's responsibilities will extend only toward monitoring "RTO West Markets," which are defined as markets that are operated or administered by RTO West. *Id.* at 3. In addition, the Market Monitoring Plan provides that the Market Monitor "shall not" duplicate the efforts of another independent entity that is monitoring other markets. *Id.* Nucor Steel is concerned that the scope of the market monitoring function is too narrow and restricted under the Filing Utilities' proposal.

Pursuant to the requirements of Order No. 2000, the Filing Utilities should develop a market monitoring plan for each market that will "examine the structure of the market, compliance with market rules, behavior of individual market participants and the market as a whole, and market power and market power abuses."¹³ The Commission should direct the Filing Utilities to develop a more extensive and less restrictive market monitoring plan in order to comply with Order No. 2000.

3. The Market Monitor's responsibility to be independent should be clarified

The RTO West Market Monitoring Plan should be revised to clarify the independent and impartial nature of the Market Monitor. Nucor Steel suggests that a provision be added to the "Responsibilities of Market Monitoring Unit" section of the

¹³Order No. 2000 at 31, 156.

RTOWestMarketMonitoringPlan(Stage2Filing,AttachmentH1,SectionE.1.)tothe effectof:

TheMMUshall:

a. Exercise independent thought, act independently, and exercise judgment independent of all market participants, includingRTOWest.

4. The independent Market Monitor should have broader access to RTOWest information

Under the RTOWest Market Monitoring Plan, the Market Monitor will only have access to information collected by RTOWest in its regular course of business and it shall not have the ability to compel further production of information. *Id.* at 8 -9. While the Commission's Order No. 2000 did not require a market monitoring plan that necessarily involves the collection of specific data, ¹⁴ the Commission should not allow the Filing Utilities to handcuff the Market Monitor in the aforementioned manner. The Commission should direct that the Market Monitoring Plan provide reasonable flexibility as to the collection of data and information by the RTOWest Market Monitor.

5. The independent Market Monitor should have more discretion with regard to its handling of and response to complaints regarding tariff compliance

The Filing Utilities' Market Monitoring Plan unduly restricts the Market Monitor's ability to investigate complaints, transmit advisory opinions to the Commission or third-party arbitrators, and report on matters that "do not clearly indicate that RTO West has failed to comply with the RTO West Tariff." Stage 2 Filing, Attachment H1, Section E.5., at 8. In particular, the Market Monitoring Plan for RTO West mandates that the Market Monitor may not (i) investigate a complaint alleging that

¹⁴Order No. 2000 at 31, 156.

a market participant has not complied with the RTO West OATT unless the Market Monitor determines that such allegation, if proven, “could reasonably be believed to impact the performance of RTO West Markets,” (ii) issue an advisory opinion unless the results of an analysis “clearly indicate” RTO West noncompliance with the RTO West OATT, and (iii) report on matters that “do not clearly indicate that RTO West has failed to comply with the RTO West Tariff.” *Id.* Such restrictions compromise the independence, impartiality, and effectiveness of the Market Monitor and the Commission should therefore order the Filing Utilities to eliminate the restrictions.

C. Ancillary Services Model

1. Demand-side participation in self-supply of ancillary services needs further development

The Filing Utilities state that the RTO West Ancillary Services Model will “[e]nsure that generation, imports, exports and demand-side resources can fully participate in the self-supply of ancillary services and in RTO West’s competitive ancillary services procurement process.” Stage 2 Filing, Attachment G, at 1. In particular, the Ancillary Services Model is said to support the participation of demand-side resources “in all aspects of ancillary services, including participation in self-tracking and self-provision and participation in RTO West’s competitive Interconnected Operations Services procurement process.” *Id.* at 7.

RTO West should not only allow, but also facilitate, the participation of loads in all ancillary services markets. ¹⁵ Loads such as those of Nucor Steel are large and price responsive. These loads can be interrupted or curtailed very quickly, on short notice, and

¹⁵ Furthermore, Nucor Steel supports direct demand-side participation in all RTO West-administered energy and capacity markets. *See* SMD Working Paper at 6.

curtailment is easily verified. Demand-side participation should be developed in a manner that permits the participation on terms similar to those applicable to other resources.

Utilities can use their ability to interrupt large industrial loads as spinning and non-spinning reserves. Similar loads have agreed to interruption on short notice to assist their utilities with frequency control in the event that a generating resource trips. Loads such as Nucor Steel should receive compensation for the benefits they will provide to the RTO West system in the form of ancillary services. The Commission should require RTO West to take affirmative steps to facilitate and encourage direct participation by loads.

2. Penalties should not be imposed on good faith market participants

In the RTO West Ancillary Services Model, the Filing Utilities propose several “incentives” to “encourage” certain scheduling and operating behavior by Scheduling Coordinators. *Id.* at 12. Such incentives include (i) energy imbalance penalties, (ii) load scheduling penalties, and (iii) penalties and charges for failure to perform. *Id.*

Nucor Steel is concerned that the aforementioned penalties could punish large, variable load customers if and when those customers take service under the RTO West OATT. Despite best efforts, large industrial loads can expect to be out of balance on a somewhat regular basis. The Commission’s Order No. 2000 provides that “for purposes of assessing penalties for inaccurate schedules . . . a penalty mechanism that treats loads and generators differently may be appropriate.”¹⁶ Nucor Steel believes that any provision that penalizes market participants that mismatch schedules should be narrowly tailored to

¹⁶Order No. 2000 at 31, 142.

apply only to those market participants who try to game the system, rather than those market participants who make a good faith efforts to submit accurate schedules, only to find themselves out of balance due to the variable nature of their loads.

D. Congestion Management Proposal

1. Native load customers should be the beneficiaries of transmission rights

The Filing Utilities provide an extensive and complex proposed congestion management system for RTO West, which involves the use of both tradable Financial Transmission Options (“FTOs”) and non-tradable Catalogued Transmission Rights (“CTRs”). Stage 2 Filing, Attachment F.

a. FTOs

Native load customers should be entitled to the revenues derived from the auction of FTOs in proportion to their share of the embedded costs.

b. CTRs

Nucor Steel supports direct allocation of CTRs to load-serving entities (“LSEs”) based on the need of LSEs to serve their native load customers. When an LSE is allocated transmission rights, it should be deemed to hold those rights for the benefit of its native load customers. If a native load customer of an LSE chooses to participate in a retail access program, the customer should receive a fair share of the CTRs catalogued to its former LSE.

2. The Filing Utilities should demonstrate a need for balanced-schedules

The RTO West Congestion Management Proposal requires that all Scheduling Coordinators submit balanced schedules. Stage 2 Filing, Attachment F, Section C.2., at

9. The Commission should require the Filing Utilities to provide support for the need for balanced schedules.

III. CONCLUSION

For the reasons discussed herein, Filing Utilities' proposal does not satisfy the requirements of Order No. 2000. The Commission should require the Filing Utilities to submit a revised filing that addresses the aforementioned concerns.

Respectfully submitted,

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Dated: May 29, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties identified on the Commission's official service list by depositing copies thereof in the United States mail, first class, postage prepaid.

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

Shaun C. Mohler