

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

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

**INTERVENTION AND PROTEST
OF
NORTHWEST TIPPS/MARKETERS GROUP**

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**INTERVENTION AND PROTEST
OF
THE NORTH WEST IPPS/MARKETERS GROUP**

I. INTERVENTION

A. Procedural Background to Intervention

The Northwest IPPs/Marketers Group (“IPPs/Marketers”) was granted intervenor status in this proceeding pursuant to Rule 214, 18 C.F.R. § 385.214, of the Federal Energy Regulatory Commission’s (the “Commission”) Rules of Practice and Procedure, making IPPs/Marketers party to these proceedings. *Avista Corp., et al.*, 95 FERC ¶61,114 at 61,323 (April 26, 2001) (the “April 26, 2001 Order”). As a party to this proceeding, IPPs/Marketers need not file a motion to intervene in this sub -docket. *Public Service of New Hampshire v. New Hampshire Electric Cooperative, Inc.*, 88 FERC ¶61,110 at 61,259. Since the April 26, 2001 Order, IPPs/Marketers have gained three

newmembers,Calpin eCorporation,UBSAG,andtheWesternPowerTradingForum,
andIPPs/Marketersrespectfullyrequeststhatthisinterventionandprotestbeacceptedon
behalfoftheNorthwestIPPs/MarketersGroupasawhole.

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IPPs/Marketers also request a waiver of Commission Rule of Practice and Procedure 203(b)(3), 18 C.F.R. § 385.203(b)(3), to allow service to be made and communication to be addressed to each of these persons.

C. Description Of The Parties

The Northwest IPPs/Marketers Group is an ad hoc group of independent power producers and power marketers,¹ which are active participants in the transmission and power markets in the Pacific Northwest. IPPs/Marketers have been, and remain, actively involved in the Northwest regional stakeholder process relating to the proposed formation of RTOWest.

The members of IPPs/Marketers have a substantial interest in the Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000 (the “Stage 2 Filing”), submitted to the Commission by Avista Corporation, British Columbia Hydro and Power Authority, Bonneville Power Administration, Idaho Power Company, The Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific Power Company (the “Filing Utilities”). The individual members of IPPs/Marketers utilize the transmission facilities of the Filing Utilities for a great variety of transactions, providing the Northwest region with an active power market. Members of IPPs/Marketers have generating facilities interconnected to the transmission facilities that will be controlled and operated by RTOWest. IPPs/Marketers may also sell ancillary services in bilateral and RTOWest - sponsored markets. Over 80 percent of generation capacity currently under development in the Western Interconnection will be owned by merchant generators, rather than

¹Participants in the Northwest IPPs/Marketers Group include: Calpine Corporation, the Cogeneration Association of California; the Cogeneration Coalition of Washington; National Energy Systems Company; Nevada Independent Energy Coalition; PG&E National Energy Group, Inc.; PPL Energy Plus, LLC; PPL Montana, LLC; Reliant Energy Services, Inc.; TransAlta Energy Marketing (U.S.), Inc.; UBSAG; and the Western Power Trading Forum. These comments reflect the views of the Northwest IPPs/Marketers Group generally and collectively, but not necessarily the view of any particular member with respect to any specific issue.

vertically integrated utilities. ²The members of IPPs/Marketers are therefore necessarily and vitally interested in compliance by RTOWest with each of the four minimum characteristics required by Order No. 2000, ³ as amended and supplemented, since these four characteristics were designed by the Commission "to ensure that any RTO will be independent and able to provide reliable, non-discriminatory and efficiently priced transmission service to support competitive regional bulk power markets." Order No. 2000, Order No. 2000 at 31,046. In addition, the manner in which RTOWest performs each of the eight functions required by Order No. 2000 will have a material impact on both the economic welfare and the physical security of the members of IPPs/Marketers and their facilities.

II. INTRODUCTION

A. Executive Summary

IPPs/Marketers strongly support the formation of RTOWest. IPPs/Marketers believe that RTO -facilitated markets provide the key to cost -effectively meeting the Northwest's future energy needs and that the Stage 2 Filing provides a solid framework for creating a workable RTO for the Northwest. In addition, IPPs/Marketers believe that the formation of RTOWest, which should be carried out as soon as practicable, is a critical first step towards creating a well -coordinated, seamless, West -wide market that will provide benefit to all market participants in the West.

²According to the Western Electricity Coordinating Council's Proposed Generation Data Base, roughly 25,000 MW of generation capability is proposed for the RTOWest area (excluding British Columbia and Alberta). Of this total, merchant generators, rather than vertically integrated utilities, are proposing over 20,000 MW or 80 percent, of this total. (Source http://www.energy.ca.gov/electricity/wscg/proposed_generation.html).

³ See *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶31,089 (1999), 65 Fed. Reg. 810 (2000) ("Order No. 2000"), *on reh'g*, Order No. 2000 -A, FERC Stats. & Regs. ¶31,092, 65 Fed. Reg. 12,088 (2000) ("Order No. 2000 -A") (codified at 18 C.F.R. §35.34).

IPPs/Marketers have consistently supported RTO design elements that would assure independent grid operation, non-discriminatory transmission access, and cost savings for consumers. We support much of the Stage 2 Filing, including: the proposed governance provisions; the inclusion of Bonneville Power Administration (“BPA”) and British Columbia Hydro and Power Authority (“BCHydro”); the backstop RTO planning role; parts of the congestion management proposal related to financial rights and locational marginal pricing; and the license plate load-based access fees. These proposals are consistent with the Commission’s Order 2000 and advance the goals of standard market design.

1. Aspects of the Stage 2 Filing are Inconsistent with Order 2000

There are, however, several elements of the filing that are not consistent with Order 2000. These should be modified to comply with Order 2000 and subsequent Commission decisions. In this Protest, IPPs/Marketers will recommend to the Commission remedies for the following deficiencies:

a) The Transmission Operating Agreement (“TOA”) improperly reserves decision-making authority for the existing transmission owner that appropriately belongs to RTOWest to ensure operating independence. The Commission should reject the TOA as filed and order the Filing Utilities to either remove sections of the TOA that inhibit RTOWest’s independence or move sections that more appropriately belong in the RTOWest tariff to the tariff.

b) As proposed, the voluntary conversion of contracts and load service obligations to RTOWest service would create a bifurcated, discriminatory market

for transmission users. The Filing Utilities' existing rights would be exempt from RTOWest service requirements, providing them a distinct advantage over other market participants who would be required to operate under a different and inferior set of rules. While we acknowledge that an orderly and possibly extended transition may be necessary for BPA's public power and direct service industrial customers, the Commission should specifically limit such exceptions to BPA and specifically reject exceptions for jurisdictional utilities.

c) The generation interconnection proposal assigns too much control to the Filing Utilities. Generation interconnection authority should be under the control of the RTO, as required in Order 2000 and the Commission's forthcoming interconnection policy.

d) IPPs/Marketers are concerned with the delays that RTOWest has experienced to date in its formation and with the proposed implementation plan. RTOWest is consequently not expected to become operational until 2006, which the IPPs/Marketers believe is an excessively lengthy start-up and well outside a reasonable time frame for forming an RTO. The IPPs/Marketers also believe that the proposed eight-year transition period for the retention of company rates is excessive and inimical to the interests of creating competitive markets.

e) The proposed External Interface Access Fee, or export charge, is unnecessary and discriminatory. It creates a market barrier to efficient power trading in the Western Interconnection. Should the Commission choose to approve such a charge, however, it should do so for a limited duration, make it

apply to all transactions exiting RTOWest, and subject to elimination through reciprocity negotiations with the other RTOs in the West.

2. Aspects of the Stage 2 Filing are Incomplete or Missing

There are other aspects of the filing that are incomplete, not filed in sufficient detail or completely missing. IPPs/Marketers recommend the Commission order the Filing Utilities to file these elements within a specified time frame and further require that an open, stakeholder process be undertaken to complete the effort.

a) The IPPs/Marketers believe RTOWest's market design is incomplete as filed and missing critical elements that the Commission should ultimately require in its standard market design. Among the deficiencies of the Stage 2 Filing are: the lack of a day-ahead energy and ancillary services markets; the undeveloped proposal for cataloging non-converted contracts and allocating Congestion Management Assets; and related questions regarding RTO control over such assets.

b) The lack of detail in the market design also applies to the ancillary services proposal. Substantially more specificity is required to demonstrate that there will be a workable and vibrant market for ancillary services in the RTOWest service area.

c) The Market monitoring proposal is incomplete. The Filing Utilities seem to suggest that a west-wide market monitor may be desirable, but then provide a market monitoring plan limited to RTOWest. IPPs/Marketers recommend that the Commission require and facilitate the development of a

single, regional market monitoring institution for the entire Western Interconnection.

d) The means to effectively address and resolve seams issues among the RTOs is another incomplete element of the filing. The Filing Utilities' proposal for a closed, voluntary process among the RTOs will be insufficient to resolve critical seams issues like pricing reciprocity and a common congestion model. IPPs/Marketers believe that a Commission-ordered process, open to stakeholder participation and including all three proposed RTOs, will be far more effective in both preventing the creation of seams as well as resolving those that are unavoidable.

There are many critical documents missing from the Stage 2 Filing that the Commission must request and examine before determining whether RTO West actually complies with Order 2000. These documents include the tariff, generation integration agreement, load integration agreement, scheduling coordinator agreement, and credit policy.

B. The Filing Must Be Reviewed in the Context of the Commission's Proposed Standard Market Design

In the recently published "Federal Energy Regulatory Commission Working Paper on Standardized Transmission Service and Wholesale Electric Market Design," issued March 15, 2002 ("SMD"),⁴ the Commission noted that:

⁴ Located at <http://www.ferc.us/electric/RTO/Mrkt-struct-comment/e-1finalSMD.pdf>.

In Order No. 2000, the Commission recognized the need to make further changes to its regulations to address...inefficiencies and discrimination problems. However, Order No. 2000 primarily dealt with the structure and independence of new RTOs. It did not directly address market rules that were needed to achieve the objective of competitive wholesale power markets.
SMDat5.

The Commission must consider this very important insight alongside the requirements of Order No. 2000 when judging the RTO West proposal. Many aspects of the Stage 2 Filing, such as the pricing, congestion management and interregional coordination proposals, are better judged in the context of both the standards proposed in the SMD and the requirements of Order No. 2000, since any proposal must meet all the Commission's announced standards and not just any one particular rule, no matter how important that rule may be.

The Working Paper includes as a major goal a point that is particularly relevant for RTO West:

[The Commission] must act *now* to remedy any undue discrimination and unjust and unreasonable pricing caused by problems highlighted above and to achieve the reliability and cost-saving benefits of competition. We must restructure electric transmission service to provide comparability for *all sellers of electricity*, use transmission assets more efficiently, and reduce inefficiencies by standardizing market rules.

Transmission providers should be required to offer a non-discriminatory, standard transmission service, "Network Access Service," for *all* customers, including vertically integrated utilities.... This allows *all* customers to have a system of tradable transmission property rights that will expand their transmission options and enable and enhance competition in wholesale electric markets. *All transmission services should be performed under a single set of market rules.*"
SMDat5,7 (emphasis added)

The Commission's response to the Stage 2 Filing will determine the shape of the energy market in the Pacific Northwest. Any proposal relating to that market should

provide for transmission services under a single set of market rules. To the extent the Stage 2 Filing, including special terms for BPA, results in multiple sets of rules, Commission approval of RTOWest should be subject to compliance with the Commission's SMD or an explanation by the Filing Utilities detailing why such compliance is infeasible.

III. THE FILING HAS MANY POSITIVE ATTRIBUTES

IPPs/Marketers welcome and support the formation of RTOWest, and believe that its formation will provide significant benefits to the Northwest by assuring independent operation of the transmission system, resulting in reduced wholesale energy costs, more efficient management of grid congestion, reduced cost of providing operating reserves, and other benefits.⁵ In addition, RTOWest is critical to fostering investment in the Northwest's interconnected electric system that is necessary to provide for the region's future energy needs. April 25, 2001 Order at 61,343. Finally, RTOWest will improve the reliability of grid operations by ensuring that a single, independent entity is responsible for operation of the entire regional grid.

IPPs/Marketers believe that the Stage 2 Filing provides a solid framework for creating an RTO that will capture these benefits, and commends the Filing Utilities for their efforts. IPPs/Marketers therefore suggest that the Commission approve the following areas of the Stage 2 Filing, with the minimal changes outlined herein.

⁵See "Economic Assessment of RTO Policy" cost-benefit study, presented to the Commission February 26, 2002 (http://www.ferc.gov/electric/rto/mrkt-strct-comments/rtostudy_final_0226.pdf) and the TCAP Preliminary Status Report, RTOWest cost-benefit study, summarized therein.

A. Governance

IPPs/Marketers believe that the amended bylaws submitted by the Filing Utilities create an independent organizational structure that meets the Commission's requirements, and IPPs/Marketers support Commission approval. The Commission should direct the Filing Utilities to replace RTOWest's interim bylaws with the Commission-approved bylaws within thirty days after Commission approval. The Commission also should order RTOWest to complete selection of the Board of Trustees within 180 days from the date of the Commission's order approving the bylaws. Until RTOWest is able to secure alternative funding, the Commission should order the Filing Utilities to provide sufficient funding for RTOWest to complete its organization, hire staff, and assume responsibility for future RTOWest filings with the Commission. However, as this protest will discuss further, there are other aspects of the Stage 2 Filing that are missing, or must be modified, before the Commission can determine that RTOWest will be able to operate independently of market participants.

B. Pricing

RTOWest proposes to use load-based access fees to recover the majority of the fixed costs of the transmission system, generally eliminating pancaking of transmission rates within the region. Stage 2 Filing at 27-30 and Attachment E1, Section B.2 at 4-8. Such a system is critical to achieving the operational efficiencies that will provide many of the benefits associated with RTO formation. However, changes in cost recovery methods inevitably raise the possibility of cost shifting. The Stage 2 Filing, with "license plate" transmission access fees and transfer payments among Filing Utilities, reflects

historical cost responsibilities, and strike the right balance between improving efficiency and protecting existing customers from cost shifting. *Id.* at Section B.2.a at 5. With the exception of the External Interface Access Fee, the Commission should approve the Stage 2 Filing's Pricing Proposal. *See id.* at Section D.2.a at 20-21.

C. Planning and Expansion

The Filing Utilities propose a workable planning process that looks at transmission and non-transmission solutions to system problems and provides a backstop should markets fail to make critical investments in RTOWest's system. Stage 2 Filing at 52-55 and Attachment I. IPPs/Marketers generally support the proposed planning and expansion process.

D. Scope and Configuration

Order No. 2000 requires an RTO's service region to be "...of sufficient scope and configuration to permit the RTO to effectively perform its required functions and to support efficient and nondiscriminatory power markets." Order No. 2000 at 31,079. Lack of sufficient scope was specifically cited by the Commission as a leading reason for denying RTO status when it found that the Alliance RTO lacked sufficient scope to exist as a stand-alone RTO. *Alliance Companies, et al.*, 97 FERC ¶61,327 at 62,525 (2001). A entity that is found to have insufficient scope "...will not be deemed to be an RTO, and its participants will not be deemed to be RTO participants." Order No. 2000 at 31,080.

Under this analysis, RTOWest requires the inclusion of the Bonneville Power Administration ("BPA"). BPA is the largest transmission owner in the proposed RTO

West service territory, owning and operating over 70 percent of RTOWest's proposed transmission system. Without BPA, RTOWest cannot meet Order No. 2000's scope and configuration requirements that "[t]o satisfy the scope... characteristic... *all or most of* the transmission facilities in a region *must be included* in the RTO." Order No. 2000 at 31,086 (emphasis added). IPPs/Marketers suggest that the key to addressing BPA's participation is to create a workable transition for BPA.

Because BPA is not subject to Commission jurisdiction to the same extent as the other Filing Utilities, and, further, because BPA is subject to its unique organic authorities and federal law not applicable to the other Filing Utilities, the Commission may permit special considerations in order to accommodate BPA's legal needs. The Commission noted that the legality of Bonneville's decisions is within the purview of Bonneville and the Department of Energy. *See* April 26, 2001 Order at 61,344 -345 (where Commission noted that BPA is not required to comply with Order No. 2000, and is subject to only limited Commission jurisdiction). The Commission should take care that special exceptions or terms necessary for BPA's participation are kept to a minimum and apply only to BPA and not to the other Filing Utilities.

Many of the challenges associated with including Bonneville are similar to those involved with including the transmission system of the BCHydro. As with BPA, certain exceptions and specialized terms may be required in order to satisfy Provincial and Federal Canadian legal requirements for BCHydro's participation. The Commission

should encourage the Filing Utilities to accommodate these requirements to the extent necessary, but should not allow them to dilute RTOWest's authority in critical areas such as access.

The Commission should reaffirm its Stage 1 decision approving RTOWest's scope and configuration, while encouraging RTOWest to incorporate additional non-jurisdictional transmission owners in the Western Interconnection. *See* April 26, 2001 Order at 61,342.

IV. SOME ASPECTS OF FILING MUST BE MODIFIED TO REALIZE THE FULL BENEFITS OF RTO FORMATION

The IPPs/Marketers believe that the Stage 2 Filing provides a strong foundation for an RTO that will provide significant benefits for the Northwest region. However, RTOWest, if implemented as currently described in the Stage 2 Filing, will fall far short of achieving the full benefits envisioned by Order No. 2000. In particular, the Stage 2 Filing: 1) restricts the ability of the RTOWest Board of Trustees, and possibly the Commission, to make adjustments to critical components of the RTOWest structure; 2) perpetuates a regime of discriminatory access to the transmission system by granting superior rights to some classes of service; 3) retains Filing Utility control over the generation interconnection process; and 4) delays the anticipated startup date of RTOWest beyond any reasonable period of time required to develop the systems required for operations.

To remedy these fundamental flaws in the Stage 2 Filing, the Commission should:

- 1) direct that sections of the Transmission Operating Agreement (TOA) that improperly tie the hands of the Board and usurp Commission jurisdiction over ongoing RTOWest

operations be revised and be moved to the tariff; 2) require the Filing Utilities to take RTO service for all their transmission needs and direct them to develop incentives for third-party conversion to RTO service; 3) reject Filing Utility control over generation interconnection and direct the Filing Utilities to file those portions of the TOA dealing with this topic in conjunction with a generation interconnection agreement; and 4) establish a reasonable target date for RTOWest startup and direct the Filing Utilities to expeditiously take the steps required to meet that target.

A. The TOA is Egregiously Restrictive of RTOWest Authority

Order No. 2000 establishes “Independence” as the first mandatory RTO characteristic: RTOs “must have a decision-making process that is independent of control by any market participant or class of participants.” Order No. 2000 at 31,046 - 047. RTO independence “is the bedrock upon which the ISO must be built” and this principle “must apply to all RTOs, whether they are ISOs, transcos or variants of the two.” *Id.* at 31,047. In order to reach this goal, any proposed RTO must be “independent in both reality and perception.” *Id.* at 31,061 (emphasis added).

Whether an RTO meets this test cannot be determined solely by examining its governance structures. Order No. 2000 at 31,061 (“To achieve independence... RTOs must satisfy three conditions,” only one of which deals exclusively with issues of governance, mandating “a decision-making process that is independent of control by any market participant”). It is of little benefit to establish independent governance if key

elements of an RTO's operations cannot be modified without the consent of filing utilities. The Commission recognized this dilemma in establishing the tariff administration and design function in Order No. 2000:

To provide truly independent and nondiscriminatory transmission service, the RTO must administer its own tariff and have the independent authority to file tariff changes.
Order No. 2000 at 31,108.

RTOWest, as proposed in the Stage 2 Filing, does not satisfy this function. The participating transmission owners ("PTOs"), through the TOA, would improperly reserve for themselves much of the decision-making authority that ought to belong to RTOWest. Topics improperly addressed in the TOA include transmission rates, generation interconnection, the disposition of transmission rights, modifications to the congestion management system, and dispute resolution, among others. Because all transmission owners must agree to any changes to the TOA, RTOWest will not be able to make the changes to its market design, operating procedures, and other practices that will inevitably be needed without each transmission owner's acquiescence.

This is directly contrary to this Commission's ruling that in forming RTOs, "TOs cannot be permitted to have veto privileges regarding filings that affect pricing." *Midwest ISO*, 97 FERC ¶61,326 at 62,505; *accord Alliance Co.*, 91 FERC ¶61,152 at 61,579 (2000) and 94 FERC ¶61,070 at 61,305 (2001). Under Order No. 2000, an RTO "must have *exclusive and independent authority* ... to propose rates, terms and conditions of transmission service." *Id.* (emphasis added).

Moreover, the TOA provides that, "In the event of a conflict between the terms of this Agreement and the terms of (1) the RTO Tariff or (2) the Executing Transmission

Owner Rate Schedules, this Agreement shall prevail.” Stage 2 Filing, Attachment A, TOA, Section 25.18 at 35. This provision clearly usurps the Commission’s authority over RTOWest tariffs and operations.

The appropriate purpose of a TOA is to define the relationship between the Filing Utilities and RTOWest for transferring, operating and maintaining the transmission facilities. In her report to the Commission regarding the mediation required to create the Southeastern RTO, Administrative Law Judge Bobbie McCartney found it necessary to recommend standardized TOAs between the parties that “will ensure transparency such that all the requirements of Order No. 2000 will be satisfied by the RTO.” 96 FERC ¶63,036 at 65,206. This decision highlights the importance TOAs have in ensuring “transmission owners will not be able to exert control that could affect the reliability of the system or provide them with an unfair competitive advantage.” *Id.* To the extent that TOA terms intrude on tariff matters, the TOAs should not retain dispute supremacy over the tariff. While the TOAs safeguard the interests of the transmission owners, only the tariff protects other market participants.

The Commission should direct the Filing Utilities to file revised TOAs removing sections inhibiting RTOWest’s independence. Some TOA sections should be moved to other RTOWest documents, including the RTOWest tariff, and others should be deleted entirely. These sections are summarized in Attachment A.

B. The Proposed Conversion of Existing Transmission Rights is Discriminatory

The Stage 2 Filings specify three tiers of transmission service: 1) Catalogued Transmission Rights (CTRs) for non-converted contracts; 2) Financial Transmission Options (FTOs) for converted contracts and other available capacity; and 3) service without financial hedges which would be subject to congestion charges. Stage 2 Filing, Attachment F, section C.4. This system not only perpetuates a regime of discriminatory access to the transmission grid, but also threatens RTOWest's ability to achieve the efficiency benefits by defeating liquidity in secondary transmission markets.

The current RTOWest proposal is likely to result in the vast majority of the transmission capacity in the region would be committed to non-standard, catalogued transmission service,⁶ with consequent negative impacts on secondary market liquidity.

1. Transmission Contracts Among Filing Utilities Should be Converted to RTOWest Service

A utility's choice to participate in an RTO is a voluntary one. *Public Utility Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607, 617 (D.C. Cir. 2001). The Commission can and has developed conditions for participation. A specific contract conversion requirement qualifies as a reasonable condition for the development of a viable RTO. Such conditions have been imposed by the Commission in connection with other RTO proposals. While Order No. 2000 did not abrogate all existing contracts between Filing Utilities, the Commission has adopted a measured approach allowing RTOs to propose contract reforms that they conclude are necessary. *Carolina Power &*

⁶The Filing Utilities noted that in 2000, 18% of transmission revenues resulted from short-term transactions (PR -4). All other transactions took place under long-term contracts or utility load service obligations that the filing utilities propose to exempt from conversion and handle outside the RTO congestion management process.

LightCo., 94FERC ¶61,273 at 61,999 (2001). In approving the Midwest ISO, the Commission accepted a proposal to leave grandfathered agreements in place only during the transition period, directing the parties to negotiate these agreements prior to, or soon after, the commencement of RTO operations. *Midwest Independent Transmission System Operator, Inc.*, 99FERC ¶61,117 at 61,502 (2002).

The Commission should make conversion of all transmission agreements between Filing Utilities to RTOWest service a condition of participation in the RTO. Participation in the RTO, without conversion of these agreements between the Filing Utilities, would exacerbate an already bifurcated transmission market and allow Filing Utilities to bypass the congestion management mechanisms.

2. Transmission Service for Filing Utility Native Load Should Be Provided Under RTOWest Service

The Filing Utilities further propose to keep their load service obligations separate from RTOWest service, treating them as CTRs that are reserved using Congestion Management Assets (CMAs). Stage 2 Filing, Attachment F, Section B at 3-4. Special treatment for load service obligations is inconsistent with the SMD and unnecessary to preserve transmission service for native loads. In both the Stage 2 Filing and the Filing Utilities' comments to the Commission's "Options" paper (RM01-12-000), the Filing

Utilities express the concern that historical users⁷ may face increased pricerisk through exposure to congestion charges. Allocation of FTOs, or preferably FTO auction revenues, to native load would provide as sufficient hedge against this increased pricerisk.

3. Jurisdictional Utilities Should Reform Transmission Agreements with Non-Participating Customers

While some transmission customers of jurisdictional Filing Utilities will convert to RTOWest service, others may not. The Commission has disfavored ordering the abrogation of contracts, but it may order such contracts reformed. See Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶31,036, at 31,663 and *Pacific Gas and Electric Co., et al.*, 81 FERC ¶61,122 at 61,470 -471. The Commission also has held that while under Order No. 888 “existing contracts must not be eliminated as a result of restructuring” they may be reformed through an FPA Section 205 or 206 filing. *Pacific Gas and Electric Co., et al.*, 88 FERC ¶63,007 at 65,051 (1999). Contract modification required by Order No. 888 is decided on a case-by-case basis, and will be ordered by the Commission where existing contracts are found to be unjust and unreasonable. *Village of Belmont, et al.*, 95 FERC ¶61,334 at 62,193 (2001).

In Order No. 2000, the commission adopted the rationale that it was unreasonable and discriminatory to maintain pancake rates in existing contracts for others when

⁷“Historical customers, i.e., those with whom transmission owners have pre-existing agreements and load service obligations, must receive transmission rights when service begins under the revised *pro forma* transmission tariff so that they are not exposed to new costs for their existing service. Without transmission rights, the historical users may face price shock from exposure to congestion costs. The size of this cost increase and the resulting economic dislocation cannot be reasonably estimated until an RTO actually begins to operate and a history of nodal clearing prices and congestion costs is accumulated. For this reason, historical users must receive transmission rights to protect against these unknown costs.” Joint Comments of RTOWest Filing Utilities on FERC’s April 10, 2002 “Options for Resolving Rate and Transition Issues in Standardized Transmission Service and Wholesale Electric Market Design” at 11.

transmission-owning utilities had designed a non-pancaked rate approach for their own transactions. Order No. 2000 at 31, 205. As a result, the Commission held out the possibility that conversion may be ordered where voluntary conversion is either impractical or proves impossible. *Id.*

4. New OATT Contracts Should Terminate or Convert at RTO Startup

The Filing Utilities propose language in the TOA that will require all new OATT contracts entered into after some future date to automatically convert to RTO service. Stage 2 Filing, Attachment A, TOA, Section 6.4.3 at 37-38. Instead, the Commission should order that new OATT contracts executed after the date the Commission issues its Order in response to the Stage 2 Filing include a provision automatically terminating such contracts on the date RTO West initiates transmission service. Transmission customers will have the option of converting to RTO West service prior to the date RTO West initiates transmission service.

5. The Need for Special Treatment for Hydroelectric Generation Has Not Been Demonstrated

One justification for retention of certain existing contracts is coordinated operation of hydroelectric generating resources in the Pacific Northwest. While the nature of these resources may justify a variance from certain market design elements that might otherwise be considered standard,⁸ it does not justify special treatment for all

⁸E.g., the ability to submit bilateral schedules, the requirement that adjustment bids for congestion management be voluntary, and recognition of the concept of opportunity cost for owners of projects with hydro storage, all of which are included in RTO West market design.

transmission contracts that might possibly be used for “hydrothermal optimization,”⁹ nor does it require superseding the RTOWest congestion management system. Indeed, under the RTOWest congestion management model, the only consequence for moving generation from one project to another is financial.

These financial consequences result, through the locational marginal prices, from differing dispatches of thermal resources necessitated by a given pattern of hydro generation. Exempting these resources from the congestion management system could result in hydro operation that takes no account of effects on the dispatch of non-hydro resources, unnecessarily raising the cost of energy in the RTOWest region. Before granting special treatment for existing contracts, the Commission should require the Filing Utilities demonstrate that such treatment is necessary. To the extent possible, the Commission should direct the Filing Utilities to account for the operation of these resources through RTOWest tariff provisions applicable on a non-discriminatory basis to all market participants.

6. BPA’s Existing Transmission Agreements with Publicly Owned Utilities and DSIs May Require Special Consideration

BPA’s wholesale power customers include cooperatively owned utilities, public and people utility districts, and municipal utilities (collectively, “publicly owned utilities”) and DSIs. BPA provides service to these customers under both pre-Order No. 888 contracts and OATT service agreements. In order to ensure that as much transmission capacity as possible is available in the secondary market to facilitate an efficient energy market, service to these customers should be converted to RTOWest service.

⁹Stage 2 Filing, Attachment E1, Section B.2.cat6.

IPPs/Marketers recognize that the Commission's jurisdiction over BPA is limited. It may be appropriate to allow a longer transition to RTO service for publicly owned utilities than for other participants, if doing so is necessary to secure BPA participation in RTO West.

7. Filing Utilities Should Not Retain Control Over Generation Interconnection

Order No. 2000 requires an RTO to have "sole authority for the evaluation and approval of all requests for transmission service including requests for new interconnections." Order No. 2000 at 31, 108. Independent authority over generation interconnection is a critical piece of creating a truly competitive market for new generation resources. For example, in *PJM Interconnection, L.L.C., et al.*, 96 FERC ¶61,061 at 61,233 -234, the Commission examined the sufficiency under Order No. 2000 of a proposed TOA that purported to give the RTO sole control over interconnection issues while allowing transmission owners a continuing role in performing the necessary interconnection feasibility and impact studies and to propose alternatives to RTO decisions. The Commission found this arrangement insufficient, compromising the fundamental RTO characteristic requiring independence. *Id.* at 61,234. The Commission noted that while "Order No. 2000 emphasizes that [interconnection] decision-making authority should rest with the RTO," mere "final decision-making authority is not enough." *Id.* The Commission concluded that:

efficient decision-making on investments in transmission facilities requires that the entire interconnection process must be under the decisional control of the RTO. [The RTO] *must be responsible for all aspects of the interconnection process*. Customers should deal with and sign interconnection and study agreements with [the RTO] alone. To the extent that [the RTO] requires the expertise and services of the TOs or

others in providing interconnection service, [the RTO] may enter into appropriate contracts with such entities.
Id. (emphasis added)

The Stage 2 Filing does not give RTOWest the required authority over interconnection under this standard and, thus, does not meet the requirements of Order No. 2000. Section 5 of the TOA limits RTOWest's ability to adopt its own standards because such standards cannot "have a material adverse impact on the Executing Transmission Owner's Electric System... (including financial impacts)." Stage 2 Filing, Attachment A, TOA Section 5.1 at 26. The TOA also improperly provides for analyses and studies related to interconnection requests to be performed by each transmission owner, for each transmission owner to approve or deny such requests, and for each transmission owner to present its own form of service agreement to the customer. *Id.* at Section 5.3.1 at 27 -28. These provisions improperly restrain the authority RTOWest should have over interconnection issues and permit a level of transmission owner involvement already found by the Commission to compromise RTO independence.

If the Commission adopts an interconnection rule in Docket No. RM02-1, many of these issues may be rendered moot. Until such a rule is effective, the Commission should direct the Filing Utilities to -submit a tariff revision to those modified portions of the TOA that deal with interconnections in order to ensure that RTOWest has the authority and the resources to a) perform such studies in consultation under contract with the Filing Utilities, b) approve interconnection requests, and c) develop regional *pro forma* interconnection agreements.

8. A Twelve Year Transition Period is Unprecedented

The Northwest will not realize all the benefits of RTO formation until RTOWest has full control of the region's transmission grid and all customers are taking RTOWest service. Continued delays of the RTOWest startup date, and excessively lengthy transition periods, will only delay achieving the benefits that RTOWest promises.

a) Suggested Startup Date of 2006 is Unreasonable

In the "Illustrative Summary of An RTOWest Implementation Plan," the Filing Utilities propose that RTOWest start operation January 18, 2006. Stage 2 Filing, Attachment Lat 5. Formation of an RTO in the Pacific Northwest requires resolution of complex operational, economic, legal and political issues, and some lead time is necessary. However, most RTOs have been established in far less time, and have done so while managing the disadvantage of being among the first to test their proposals against Order No. 2000. See, e.g., *Grid Florida LLC*, 94 FERC ¶61,363 and *Carolina Power & Light Co.*, 94 FERC ¶61,273 (where RTO status granted 14 months after issuance of Order No. 2000), and *PJM Interconnection, L.L.C.*, 96 FERC ¶61,061 (where RTO status granted 18 months after issuance of Order No. 2000). IPPs/Marketers believe that a startup date of May 2004 is realistic. This would provide RTOWest a further two years to get up and running, comparable to the time required to establish other RTOs. Reliance on SMD elements will allow RTOWest to make use of off-the-shelf systems that should allow for a shorter implementation period than proposed by the Filing Utilities.

b) Preservation of Company Rates Until 2014, or Longer, is Unprecedented

The Filing Utilities propose a "Company Rate Period" that lasts for eight years

from the date RTOWest is operational. Stage 2 Filing, Attachment A, Exhibit A at A -4
 (“Company Rate Period means the period commencing on the Transmission Service
 Commencement Date and extending for a period of eight years”). This means that RTO
 West effectively will be in transition until 2014, 12 years from the date of the Stage 2
 Filing, 14 years from the issuance of Order No. 2000, and 18 years since the Commission
 recommended in Order No. 888 that independent system operators (“ISOs”) be formed.
 A 12 -year transition is unsupported and exceeds any transition that the Commission has
 approved to date. See, e.g., *Grid Florida, LLC*, 94 FERC ¶61,363 at 62,348 (2001) (where
 the Commission approved a five year transition from company to RTO rates); *PJM
 Interconnection L.L.C.*, 96 FERC ¶61,060 at 61,220 (2001) (where a three year transition
 was approved), and *Midwest Independent Transmission System Operator, Inc.*, 98 FERC
 ¶61,141 (2002) (where the Commission directed the parties to convert to RTO rates
 within three years of start-up).

IPPs/Marketers are sensitive to the desire of the Filing Utilities and other parties
 in the region to avoid the cost shifts that may accompany the end of the transition period.
 However, these entities have already had years to prepare themselves for this eventuality.
 The Commission first recommended in Order No. 888, issued in April, 1996, that
 jurisdictional utilities participate in an ISO, and Order No. 2000 was issued in December,
 1999. The Commission should insist on a transition period no longer than five years,
 comparable to the transition period approved for other RTOs.

c) Enforced Transition Plan is Necessary

While the Commission has recognized that the timeline of RTO development is in

various stages in different regions across the country, it reaffirmed its determination to order “progressive, but appropriately measured, timeline[s] for continuing RTO progress in each general region.” *Electricity Market Design and Structure*, 97 FERC ¶61,146 at 61,634. The Commission found it of “critical importance” to keep parties focused “on performing RTO functions now” if the wider goal of inter-regional integration is to be met. *Id.* In Order No. 2000, the Commission noted that “given the urgent needs of electricity markets... we have an obligation to promote RTO operation *at the earliest feasible date*.” Order No. 2000 at 31,178 (emphasis added).

In order to ensure such continued progress toward establishing a functioning RTO West that achieves the goals of Order No. 2000, the Commission should develop an enforced transition plan with specific goals and timelines. This plan must delineate not only the steps necessary for initial RTO West operation, but also set performance goals for RTO West operations after startup. Such goals and timelines would provide badly needed certainty to enable market participants to develop investment plans. It will take some time after the RTO West commencement date for the full benefits of RTO West to be realized, as market participants adjust to new procedures and market realities. Transmission rightsholders may be unwilling to release significant quantities of transmission rights into the secondary market (to the extent such capacity is not tied-up in catalogued transmission rights and is able to be released at all) and market participants will be hesitant to participate fully in energy and capacity markets. This uncertainty can be eased by the establishment of quantitative targets for energy, capacity, and transmission markets, as well as for the conversion of transmission contracts to RTO

West service.

Such a transition plan should include, at a minimum, the following essential elements:

- a) Deadline of 120 days after Commission's order on RTOWest for filing of additional required documents;
- b) Deadline of thirty days after Commission's order approving RTOWest bylaws for RTOWest to adopt such bylaws, and a deadline of 180 days after the Commission's approval for RTOWest to complete selection of the new, independent Board of Trustees;
- c) RTOWest to commence operation by May, 2004; and
- d) Five -year transition plan with specific targets for performance of RTOWest markets.

9. External Interface Access Fee Should be Rejected

The Commission has already ruled that any export fee proposed by RTOWest "will necessarily involve seams issues," that must be properly addressed in the Stage 2 Filing in accordance with Order No. 2000's requirements. *Avista Corp., et al.*, 96 FERC ¶61,058 at 61,179 -180. The export fee found in the Stage 2 Filing does not meet those requirements.

The Filing Utilities propose an "External Interface Access Fee" (export fee) to reimburse them for "lost short -term revenues" due to RTOWest formation. *See* Stage 2 Filing, Attachment A, TOA Section 17.3.2 at 92 and Exhibit I, External Interface Access

Fee, Replacement Revenue Cost Pool and Backstop Recovery Mechanism. Such a charge is unnecessary because (1) the retail rate effect of cost shifts associated with these revenues does not exceed a reasonable *deminimis* threshold; (2) the fee is discriminatory since it exempts market participants with pre-existing or converted contract rights; and (3) the fee distorts the energy market by imposing a "tax" on certain transactions. The Filing Utilities failed to make the case that they should be entitled to lost revenues. They are already proposing to recover these lost revenues by extracting congestion rents from new users of the transmission system. IPPs/Marketers strongly object to the concept of taking a revenue stream that is currently fully incremental, with no assurance of recovery, and converting it to a guaranteed revenue stream for an extended period. The Commission should reject the export fee as proposed and direct the Filing Utilities to demonstrate that additional cost recovery is necessary. Should the Commission find that an export fee is justified, it should be a non-discriminatory, should be transitional in nature, and should be the subject of mandatory reciprocity negotiations among the three Western RTOs.

a) Export Fee Unnecessary and Collects Twice for the Same Service

The Filing Utilities propose to collect some \$130 million through the export fee and congestion rents. This is significantly less than two percent of the total retail revenues of the Filing Utilities – below a reasonable *deminimis* threshold. Even worse, if congestion rents produce the entire \$130 million, the Filing Utilities will continue to receive revenues from the export fee. This amounts to double charging of export transactions not covered by pre-existing or converted contracts.

b) Export Fees Discriminatory

As currently proposed, this fee would apply only to exports scheduled that are not covered by existing converted or non-converted contracts that include other payment provisions. Stage 2 Filing, Attachment A, TOA Section 17.3 and Exhibit I at I -1. This constitutes discriminatory treatment of non-incumbents and gives a competitive advantage to the Filing Utilities and their merchant generators at the expense of other market participants. This advantage applies to export transactions that have nothing to do with serving “native load.” If an export fee is justified, it must apply to all transactions that leave the RTOWest system, and only those transactions. ¹⁰

c) Export Fee, if Any, Should Only Be Transitional

The export fee will reduce the benefits that accrue from RTOWest formation by acting as a barrier to increased trade with Alberta, California, West Connect, and the Eastern Interconnection. If the Commission finds that an export fee is justified, it should approve it only as a transitional mechanism. Such a transitional charge should also maintain the discountable feature described in the Stage 2 Filing. *See Id.* at I -2. To the extent that “lost revenues” are the result of cost-shifting among different regions in the West, the Commission should direct the three Western RTOs to enter into “reciprocity” negotiations, the purpose of which would be to replace volumetric export charges with fixed transfer payments among RTOs.

¹⁰The Filing Utilities propose to apply the export fee to schedules to anyone of a defined list of “External Interface Points.” Stage 2 Filing, Attachment A, TOA Section 17.3 and Exhibit I at I -6. However, there is no requirement that the schedules actually leave the RTOWest system. A number of the interface points that were listed in the “External Draft of External Interface Facilities” are commonly utilized for transactions that stay within the RTOWest system, including schedules to the commonly used California-Oregon Border (COB) trading hub. In these cases, the “export fee” will act as a form of rate pancaking and will reduce market efficiency. Should an export fee be necessary, the Commission should require the Filing Utilities to clarify that the charge applies only to schedules that actually leave the RTOWest system.

V. THE COMMISSION SHOULD DEFER OR CONDITION APPROVAL OF THOSE PARTS OF THE FILING THAT ARE INCOMPLETE

A. The Congestion Management Model is Incomplete

The congestion model proposed in the Stage 2 Filing is a substantial improvement over the Stage 1 proposal. The Filing Utilities now propose that RTOWest manage and price congestion on an nodal, rather than zonal, flowgate or other basis. *See* Stage 2 Filing at 41 -43 and Attachment F. Transmission rights are to be based on injection and withdrawal points and are to be financial, rather than physical, in nature. *Id.*, Attachment F, Section C.3 at 13. Such a system will create incentives for entities to behave in ways that are beneficial, rather than detrimental, to the competitiveness of the wholesale energy markets and to the reliability of the regional grid. This model is a better fit for the Northwest than the physical rights model proposed in Stage 1. ¹¹

However, the proposed congestion management model is incomplete and does not conform with Order No. 2000's requirement that "the RTO... implement a market mechanism that provides all transmission customers with efficient price signals regarding the consequences of their transmission use decisions." Order No. 2000 at 31, 126. The proposal is also unnecessary to odds with the SMD in a number of critical areas. IPPs/Marketers ask the Commission to provisionally approve the basic framework of the Congestion Management Model with the following exceptions: the Commission should require the proposal to be updated and made consistent with the standard market design

¹¹ IPPs/Marketers have concluded that reliance on financial rather than physical rights makes the transition from the present system more manageable in light of the current potential over-allocation of transmission rights in the Northwest.

that emerges from the upcoming rulemaking; the Commission should direct the Filing Utilities to incorporate a voluntary day-ahead energy market and dispatch process; and the Commission should reject the proposed “cataloguing” of existing rights and direct the utilities to file additional detail regarding contract conversion and the disposition of “congestion management assets.”

1. Balanced Schedules Are Inconsistent with a Day-Ahead Energy Market

The RTOWest congestion management model is designed to facilitate scheduling of bilateral trades. The primacy of bilateral arrangements is manifested in the requirement for Scheduling Coordinators (“SCs”) to submit “balanced schedules”, i.e., schedules in which each MW injected into the system is matched with a 1 MW withdrawal¹². *Id.*, section C.2 at 8–9. While the desire to emphasize bilateral trading is understandable in light of the extent and complexity of multilateral arrangements governing operations of interconnected hydroelectric systems, IPPs/Marketers believe that requiring all Scheduling Coordinators to balance their schedules will impede efficiency and jeopardize liquidity.

A requirement that all schedules be balanced clearly advantages the Filing Utilities, which have both generation and load to balance their portfolios in the forward market. The Stage 2 Filing already effectively calls for RTOWest to operate a market through its congestion redispatch process.¹³ The IPPs/Marketers propose a simple modification to correct this problem by requiring RTOWest to provide redispatch

¹² Injections and withdrawals can include bilateral energy exchanges. An SC that purchases power from another SC at a particular location schedules an injection at that location, while the selling SC schedules a withdrawal at that location.

¹³ By matching incremental and decremental redispatch from different scheduling coordinators, RTOWest would be creating unbalanced schedules to relieve congestion. The Stage 2 Filing maintains the fiction of balanced schedules only by providing for congestion redispatch after the close of the pre-scheduling period.

whenever it finds overlapping incremental and decremental energy bids that could be accommodated, regardless of whether congestion existed during that hour. This modification would improve the system dispatch by allowing a lower-priced resource to displace a higher-priced resource that could be dispatched off. It also would eliminate the need for special market rules to handle disposition of overlapping bids.

Without a full day-ahead energy market there will be no assurance that locational prices set in the RTOWest congestion redispatch market will match prices in bilateral trading hubs. If the RTO determined prices do not match hub prices, the transmission rights sold by RTOWest will be imperfect hedges and RTOWest will pose needless risk to participants that will only further exacerbate the inefficient use of the transmission system.

2. Contract Conversion is Needed for Secondary Market Liquidity

As previously discussed, liquidity in secondary transmission markets is critical to achieving the efficiency benefits that RTOWest promises. However, the Filing Utilities propose to tie up over 80 percent¹⁴ of grid capacity in non-standard, non-tradable CTRs, raising concerns about whether such liquidity will exist. A day-ahead energy market would provide a mechanism for entities without transmission rights to gain access to the transmission grid. However, as currently proposed, the Stage 2 congestion management model provides neither a voluntary day-ahead energy market nor a liquid secondary market in transmission rights thus inhibiting a functioning energy market.

¹⁴See Footnote 2, supra.

3. The Cataloguing Process and Provision of Congestion Management Assets are Not Clearly Defined

The Stage 2 Filing requires Filing Utilities to make available Congestion Management Assets (“CMAs”) for RTOWest to use to honor Catalogued Transmission Rights.¹⁵ Each Filing Utility’s CMAs must be sufficient to honor any CTRs accruing from transmission rights sold on its system. *Id.*, Attachment F, section B at 4 (“Each PTO’s CTRs and Congestion Management Assets must balance”). The filing does not clearly specify how the cataloguing process would take place, the mechanism for evaluating the adequacy of CMAs, or the means by which RTOWest would manage needed CMAs. To the extent CMAs are used outside of the RTO’s market structure (e.g., if transmission capacity is reserved for unscheduled CTRs on the basis of potential need), maintaining CTR obligations could result in a bifurcated market in which participants without CTR rights will be at a distinct disadvantage. Given the importance of these processes, the Commission should defer approval of the concepts of cataloguing and congestion management assets until the details of the mechanisms are clearly developed.

Because of the potentially enormous impact of these proposals on all market participants, the Commission should direct the Filing Utilities to develop new proposals utilizing an open, stakeholder-driven process. The new proposals should provide greater detail and specificity.

Therefore, IPPs/Marketers request that the Commission clarify that RTOWest must have operational control of all transmission assets necessary to honor outstanding

¹⁵CMAs are defined as the physical facilities and contractual and operational mechanisms that are made available to RTOWest by transmission owners so that RTOWest has the means to honor and manage the Executing Transmission Owner’s Catalogued Transmission Rights pursuant to section 8.4 of the TOA. Stage 2 Filing, Attachment A, TOA, Exhibit A at A-4.

transmission contracts and direct RTOWest to be the exclusive operator of these assets under the same terms and conditions used for all other RTOWest service.

4. Additional Detail Necessary

The congestion management process involves a number of complex issues that need to be resolved prior to development. While the Stage 2 Filing addresses some of the basic issues, substantially more development work is needed to have a workable plan.

Some of the issues that need to be considered include:

- FTO obligations on certain paths to create additional capacity;
- An installed capacity market to enhance reliability;
- Market hub to maximize liquidity;
- Schedule adjustment timing to maximize flexibility;
- Incorporation of inc/dec bids into FTO schedules;
- FTO auction process; and
- FTO requirements for ancillary services capacity reservation.

Such issues clearly affect the interests of a broad variety of market participants and not just the Filing Utilities. The Commission should, therefore, direct the Filing Utilities to address these shortcomings in this aspect of their filing through a process involving all market participants.

5. The Ancillary Service Paper Lacks Sufficient Detail

Order No. 2000 requires that “an RTO must ensure that its transmission customers have access to a real-time balancing market” with regard to ancillary services, a mandatory RTO function. Order No. 2000 at 31, 142.

The ancillary service paper included as part of the Stage 2 Filing does not provide for the required ancillary service market. The Stage 2 Filing describes in a general sense RTOWest's obligation to serve as provider of last resort for the ancillary services. IPPs/Marketers strongly support development of a vibrant ancillary services market. While the Stage 2 Filing appears to be superficially consistent with a competitive ancillary services market, there are some areas of concern, discussed below. More important, the Stage 2 Filing provides insufficient information to the Commission for it to make a final determination of the merits of the ancillary services proposal.

a) Limited Self Provision of Reserves Should be Eliminated

The Stage 2 Filing allows "limited self provision" of reserve services, where one or more scheduling coordinators instruct RTOWest to dispatch their reserve resources only for contingencies on the SCs' own resources. Stage 2 Filing, Attachment G, section E.1 at 8. The Commission should reject this type of private reserve sharing pools as against the public interest in a reliable electric transmission system.

b) Self -Tracking Should be Available to All Market Participants

Self-tracking is the means by which "Scheduling Coordinators use their own resources or resources under contract to meet their needs for Regulation and Frequency Response Service and Load Following (Up and Down) services in order to be exempt from all or a part of RTOWest charges for those services." *Id.*, section E.2 at 8. By this definition, self -tracking would appear to apply to SCs with appropriately metered areas under their control, permitting these SCs to monitor and provide real time services.

While clearly intended to apply primarily to utility service areas, self -tracking should not

be defined in a way that precludes non-utilities that are capable of meeting the necessary and appropriate technical requirements from using the service.

6. Market Monitoring

The Stage 2 Filing includes a market monitoring plan. Stage 2 Filing at 49-52, and Attachment H1. The Filing Utilities assert that this plan satisfies the market monitoring requirements of Order No. 2000. RTOWest Stage 2 Filing Letter at 52. In addition, the Filing Utilities state their commitment to develop a single West-wide market monitor because such an entity is “a key component of achieving a seamless western market.” *Id.* at 50. To this end, the Stage 2 Filing attaches a short list of “areas of likely consensus” regarding a West-wide market monitor. *See* Stage 2 Filing, Attachment H2. The filing does not explain how its proposed market monitoring plan relates to the West-wide effort, other than to say RTOWest would file its mitigation plan to satisfy FERC Order No. 2000, and that the efforts to develop a West-wide market monitoring effort are “still underway.” RTOWest Stage 2 Filing Letter at 50.

IPPs/Marketers recommend that the Commission direct RTOWest to develop a region-wide market monitoring plan in conjunction with the other RTOs in the Western Interconnection. Such conditions should also be required of California ISO and WestConnect. It makes little sense to develop separate market monitoring functions for each RTO when the Commission has already made it clear that “a West-wide RTO is the most efficient outcome for the West” and has directed RTOWest “to work toward this ultimate goal.” April 26, 2001 Order at 61,342. A Commission order directing one West-wide market monitor would facilitate creation of a West-wide monitor and cause

the region to waste far less time and resources in the process.

7. Resolution of Western Seams Issues

In order to achieve the broad, competitive and liquid transmission market in the Western Interconnection the Commission advocated in the April 26, 2001 Order, the Commission should condition acceptance of the Stage 2 Filing on modification of the filing's interregional coordination provisions. ¹⁶Seams represent inefficiencies in the market place that will prevent achievement of the full benefits of RTO formation for the Western Interconnection.

The central interregional coordination issue raised in this filing, and also addressed in the Western Market Vision that the Filing Utilities filed with the Commission in December, ¹⁷is whether the three RTOs in the West Interconnection can voluntarily agree to resolve seams issues. Many issues can be resolved through a seams agreement among the three RTOs, although the parties involved had the option of minimizing seams creation by more effectively coordinating their market designs. IPPs/Marketers generally support the dialogue and commend the Filing Utilities for initiating this process. However, voluntary efforts will be insufficient, particularly if they are the result of the closed process currently implemented by the Filing Utilities. Many contentious issues, such as pricing reciprocity and common congestion models between the three RTOs, are capable of being resolved only with clear direction from the Commission.

¹⁶The California ISO and West Connect are not the subject of this docket. Even so, Commission imposition of similar inter-regional conditions on the California ISO and West Connect is reasonable in light of the Commission's long-term goal of a united West-wide RTO. It is especially important that the three RTOs file market structure elements with the Commission that are not only mutually compatible, but also avoid the creation of seams.

¹⁷Status Report Concerning Development of RTO West, RT01-35-000 (filed December 4, 2001).

IPPs/Marketers agree with the definition of a seamless market as it relates to congestion management described in a draft report prepared by the Western Market Interface Committee (“WMIC”) ¹⁸Seams Work Group:

Market participants should be able to provide or obtain a full range of services continuously through the sea m including but not limited to forward and spot energy, reserves and transmission. A seamless market is one in which the boundaries of different transmission operating entities, of and by themselves, do not define the scope or change the conditions of the market.

CORE ELEMENTS OF SEAMLESS WESTERN MARKET, WMIC Seams Congestion Management Work Group, Working Draft – 15 February 2002 at 1 (Located at Attachment B).

The WMIC Seams Work Group identified core elements of a seamless market. These core elements include: 1) common commercial models; 2) common congestion management approaches, as opposed to the Western Market Vision’s “compatible” congestion practices; 3) coordinated ancillary services markets; 4) identical schedule definition and scheduling protocols; 5) identical product definitions for forward markets; 6) identical scheduling coordinator criteria; 7) same number of settlements and 8) price reciprocity between the RTOs. (Working Draft at 2 – 5). While there is not full agreement within the Seams Work Group, IPPs/Marketers believe that these key elements define the requirements for a seamless Western Interconnection market with multiple RTOs.

The Filing Utilities have proposed a Steering Group to resolve seams issues in a closed process not open to other market participants. Stage 2 Filing at 56 – 61. The IPPs/Marketers are particularly concerned about the ability to participate in the Steering

¹⁸“On October 28, 1999, the Western Market Interface Committee (WMIC) was established by agreement of the Western Electricity Coordinating Council (WECC), the Western Regional Transmission Association (WRTA), the Southwest Regional Transmission Association (SWRTA) and the Northwest Regional Transmission Association (NRTA). The WMIC is an authorized Standing Committee of the Western Electricity Coordinating Council (WECC) that was formed by the merger of WSCC, WRTA and SWRTA on April 18, 2002.” At <http://www.wecc.biz/committees/WMIC/index.html>.

Committee process based on prior experience. The RTOS Steering Group, which consists of the Filing Utilities on behalf of RTOWest, the California ISO and WestConnect, has been meeting regularly in sessions that are closed to all but the Filing Utilities and the two RTOs. *Id.* at 56. In the future, after RTOWest is established, RTOWest representatives will replace the Filing Utilities on the Steering Group. *Id.* at 57. The Steering Group would “provide for meaningful participation by state and provincial representatives,” but does not provide for participation by other stakeholder interests in the West. *Id.* The Stage 2 Filing would have Steering Group’s authority limited to preparation of recommendations that “are sent to each RTO’s Board of Directors (or Trustees) for approval.” *Id.*

The IPP/Marketers recommend an alternative approach that we believe is far more conducive to resolving the major seams issues that presently exist between the RTOWest, California ISO and WestConnect filings. The Commission should further require resolution of seams issues as a condition of RTOWest approvals since it *in* a previous order directed the issue be resolved. April 26, 2001 Order at 61,342 *–* 343.

To ensure that seams are largely avoided or resolved between the three RTOs in the West, the Commission should require the following actions:

1. Establish a Commission sponsored Workshop to support and provide for broad based input to a new Interregional Coordination Development Group ;
2. Require the Development Group establish a Stakeholder Advisory Committee;
3. Require that the Development Group specifically address *the* —and propose means to avoid *the* —market structure incompatibilities among the three RTOs;

4. Require the Development Group to examine seams creation resulting from RTO tariff proposals, balancing markets proposals, congestion management regimes and related secondary markets for transmission options or rights and proposals for day-ahead and forward energy markets, and provide recommendations for resolution;
5. Require the Development Group to provide for mandatory mediation in the event a member of the Development Group or the Stakeholder Advisory Committee believes that such mediation is necessary to resolve a disagreement. If a party is not satisfied with the outcome of mediation, the matter will be resolved on filing of the agreement among the RTOs; and
6. Establish deadlines for the Development Group's recommendations.

VI. ALL NECESSARY DOCUMENTS HAVE NOT BEEN INCLUDED IN THE FILING

In making a determination regarding whether a RTO is independent, one key determination is whether it will be able to operate independently of market participants. Order No. 2000 at 31,046. Only by reviewing the tariff, protocols and other pro forma RTO West agreements that delineate RTO West's relationship with market participants, can the Commission make such a determination. Unfortunately, some of these key documents are missing from the filing, hindering the Commission's ability to determine if RTO West is truly independent. The Commission should therefore require the Filing Utilities to file the missing documents within 120 days of the Commission's order in this proceeding.

A. Tariff

The RTO West tariff is the umbrella document for the Generation Integration Agreement, Load Integration Agreement and Scheduling Coordinator Agreement. More important, the tariff governs the pricing and other terms for using the RTO West system.

Without the tariff, IPPs/Marketers and the Commission cannot know the specific terms and conditions of using the RTOWest system, and hence cannot evaluate their compliance with Commission orders and policies.

B. Generation Integration Agreement (GIA)

The GIA is the key document that establishes the terms and conditions for interconnection of new and existing generation to the RTOWest System. As such, its terms will determine whether RTOWest will be independent in its dealings with all generators. The Generation Integration Agreements should apply to all generators on the RTOWest system and have standard terms and conditions for all generators, including generators owned by the Filing Utilities. Should there be a need to exempt smaller, older generators from the terms and conditions of the GIA, the exemptions should be applied fairly and in a non-discriminatory fashion to all generators, regardless of ownership.

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The GIA should also include a standard interconnection agreement for all new generators wanting to interconnect to the RTOWest system. The Commission's efforts to standardize these terms and conditions should allow RTOWest to readily adopt such standards.

C. Scheduling Coordinator Agreement (SCA)

The SCA contains the technical and financial requirements that any party must meet to become a scheduling coordinator. The filing utilities included an "illustrative" SCA in their filing, but have not requested Commission approval of the draft.

IPPs/Marketers are concerned about some of the terms of the illustrative SCA,

¹⁹Standardized GIAs may not be possible for Corps of Engineers ("COE") and Bureau of Reclamation ("BOR") hydroelectric projects, and BPA and the COE and BOR can develop interagency Memorandum of Understanding that incorporate essential features of the GIA.

particularly regarding credit terms and conditions that RTOWest might impose on scheduling coordinators. However, IPPs/Marketers question the need to comment on an “illustrative” document, and suggest instead that the Commission require RTOWest to develop a specific SCA and utilize an open process that involves market participants.

D. Load Integration Agreement (LIA)

The LIA determines how loads will interact with RTOWest. This is not of primary concern to IPPs/Marketers, but the LIA is an important agreement that will determine how RTOWest interacts with key outside parties and, as such, is an important element for determining RTOWest’s independence.

E. Credit Policy

A key document that most RTOs have filed with the Commission is a credit policy. IPPs/Marketers believe the Commission should direct RTOWest to file a credit policy as part of its next filing and that it adhere to the following key principles:

1. The credit policy should enable, not limit, the proposed RTOWest market design;
2. The credit policy should be non-discriminatory in its application;
3. The credit policy should be flexible enough to allow for many different ways of proving security, including, but not limited to, corporate guarantees, letter credit, and deposits;
4. The RTO should continually monitor and assess credit risk and take prompt actions should there be a reduction in credit quality or default. Parties should be given a fair opportunity to remedy deficiencies; and
5. The rules for liability in the event of a default should be simple and clear.

The IPPs/Marketers believe that the only way the Commission can ultimately make a determination of RTOWest's independence is by ruling on the tariff, GIA, LIA, and SCA, in addition to the bylaws. However, the absence of these documents should not keep RTOWest from moving forward. IPPs/Marketers recommend the Commission compel RTOWest to file these documents within 120 days of its order on the Stage 2 Filing and further require that these documents be developed in an open, stakeholder driven process.

VII. CONCLUSION

The RTOWest Stage 2 Filing accomplished much, but failed to conform to the requirements of Order No. 2000 and the April 26 Order. The Commission should direct that the Stage 2 Filing documents be modified to correct these defects. On the basis of this Protest, the IPPs/Marketers respectfully request that the Commission:

1. Order the Filing Utilities to comply with a specific transition plan that, at a minimum, includes the following key elements:
 - a. Requires:
 - i. Filing Utilities to adopt the bylaws approved by the Commission within thirty days after approval by the Commission;
 - ii. RTOWest to select the Board of Trustees within 180 days of the Commission's approval of RTOWest's bylaws; and
 - iii. Filing Utilities fund RTOWest until RTOWest secures an alternative source of funds; and
 - b. Commencement of RTOWest operation by May 20 04;
 - c. A five year transition period from company rates to RTOWest rates; and

d. Require the Filing Utilities file a plan for initial RTOWest operation, with timelines, milestones, and transition plans, within thirty days of the Commission's order in response to the Stage 2 Filing, followed by regular status reports to the Commission; and

2. Order the filing of a modified RTOWest TOA that:

a. Removes all provisions related to RTOWest responsibilities, including:

- i. RTOWest rates;
- ii. RTOWest operations;
- iii. Generation interconnection;
- iv. ETO rates;
- v. Disposition of transmission rights;
- vi. Congestion management; and
- vii. Dispute resolution terms that attempt to limit the Commission's jurisdiction and the ability of market participants to intervene in arbitration proceedings; and

b. Amends or removes other TOA sections identified in Attachment A; and

3. Order the Filing Utilities to file complete proposals within 120 days of Commission's order on the Stage 2 Filing on the following documents or topics:

a. TOA modified to conform with the Commission's order in response to the Stage 2 Filing;

b. Tariff, including:

- i. Generation Integration Agreement;
- ii. Load Integration Agreement;
- iii. Scheduling Coordinator Agreement, and
- iv. Credit Policy;
- v. A complete market design that is closer to the Commission's standard market design and that provides for a day-ahead and balancing energy market; and
- vi. An Ancillary Services proposal that:
 1. Provides sufficient detail;
 2. Eliminates "limited self-provision" of reserves; and
 3. Permits self-tracking by all market participants; and

c. Further direct the Filing Utilities to develop these proposals in an open, stakeholder-driven process; and

4. Order the Filing Utilities to modify the RTOWest congestion management model and file a revised proposal with the Commission that requires:
 - a. Converting pre-existing transmission agreements between jurisdictional Filing Utilities to RTOWest agreements as a condition of participation in RTOWest;
 - b. Converting pre-existing transmission contracts for service on native load, and transmission service for native load that is not provided under a contract, into RTO service;
 - c. Jurisdictional Filing Utilities request BPA to terminate transmission service BPA provides to the jurisdictional Filing Utilities pursuant to General Transfer Agreements;
 - d. Filing Utilities demonstrate that special RTOWest service is necessary for transmission service among ETOS for hydroelectric coordination;
 - e. Filing Utilities' new transmission contracts, executed after the Commission's Order on the Stage 2 Filing, terminate or convert on the date RTOWest commences operation;
 - f. Filing Utilities submit a detailed description of the process by which CTRs will be identified and catalogued;
 - g. Filing Utilities clarify RTOWest's control of CMAs; and
 - h. Filing Utilities develop a modified congestion management model in an open, stakeholder-driven process; and
5. Order the Filing Utilities to modify the proposal for interregional coordination and resolution of seams issues by:
 - a. Developing a West-wide market monitoring process through a Commission-sponsored process involving the RTOs in the West; and
 - b. Opening the presently closed RTO coordination process the Filing Utilities are participating in on behalf of RTOWest with the California ISO and West Connect to fully accommodate meaningful market participant involvement; and
6. Order a Commission-directed process for resolving the major seams issues between the three RTOs in the Western Interconnection that are present in the three different filings that the California ISO, West Connect, and the Filing Utilities, on behalf of RTOWest, filed with the Commission. The

Commissions should further direct that this process be open to meaningful participation by all market participants; and 1

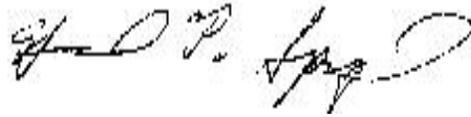
7. Reject the Proposed External Interface Access Fee; and

8. Approve the RTOWest bylaws; the regional scope and configuration that includes BPA and BC Hydro; the RTOWest planning and expansion proposal; RTOWest's use of a financial right's model with locational marginal pricing; and RTOWest's use of license plate load -access fees to recover the fixed costs of the transmission system during a five-year transitional period.

DATED this 29th day of May, 2002.

Respectfully submitted,

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ATTACHMENT A

Northwest IPPs/Marketers Comments and Concerns With RTOWest Transmission Operating Agreement

The Stage 2 Filing's Transmission Ownership Agreement ("TOA"), Stage 2 Filing, Attachment A, is a 158 -paged document, including definitions (TOA Exhibit A), but not including other Exhibits. The TOA sharply contrasts with similar Commission approved agreements between RTOs and participating transmission owners. The PJM Interconnection, L.L.C. Transmission Owners Agreement is a mere 21 pages.²⁰ As a consequence, the Filing Utilities will control, either directly, by veto, or by protracted arbitration, functions that limit the independence of RTOWest to set its own tariffs, interconnection agreements, congestion management plan and membership of additional transmission owners. These provisions would relegate IPPs/Marketers and other market participants to a secondary status, and limit the Commission's jurisdiction over RTOWest and the Filing Utilities.

In this Attachment the IPP/Marketers provide the Commission with a section -by- section assessment of the most significant provisions of the TOA that either restrict RTOWest's ability to operate independent of Filing Utility control or provisions that more appropriately belong in the RTOWest tariffs. This attachment is intended to identify these provisions to the Commission with the expectation that the Commission direct RTOWest to refile a modified TOA that creates an independent RTO, with key operating and tariff provisions filed more appropriately in tariffs, rather than the TOA.

Section 2 is a lengthy list of conditions permitting an Executing Transmission Owner ("ETO") to terminate its TOA. The reasons for termination range from "without cause" to unacceptable allocation of taxes in RTOWest rates. However, termination would not be subject to Commission approval. Section 2 also includes detailed instructions for winding up obligations on termination, also without Commission approval. Neither RTOWest, nor other market participants, will be able to put their case against termination to the Commission. As structured, RTOWest's Board of Trustees and managers will work under threat of TOA termination, compromising their independent discretion. The Commission should order the Filing Utilities to replace Section 2 with a sentence providing that an ETO may terminate upon approval of the Commission.

Section 2.3.1 permits an Executing Transmission Owner ("ETO") to terminate its participation "for any reason upon two (2) years' prior written notice" without cause. ETO termination must be subject to Commission approval.

Section 2.3.2 allows an ETO to "demand" RTOWest take corrective action if the ETO believes RTOWest is "not complying with its obligation to the" ETO, and then

²⁰Transmission Owners Agreement at <http://www.pjm.com/>

allows the ETO to terminate its TOA “immediately” if the ETO is not satisfied with RTOWest’s response. ETO complaints about RTOWest’s performance should be filed with the Commission under Rule 206, and terminations should be subject to Commission approval.

Section 2.3.3 allows ETO termination if certain taxes are imposed on RTOWest. Taxes raise transmission costs, but should not be a reason for termination, and not without Commission approval.

Section 2.3.4 adds conditions permitting ETO termination. Although the language is somewhat unclear, and certain of the conditions may be intended only for the Bonneville Power Administration (“BPA”) (e.g., “assert authority over generation or power sales of the” ETO), terminations should be subject to Commission approval, and provisions applicable only to BPA should be identified as applicable only to BPA.

Section 3.2 gives ETOs the right to prevent participation of Canadian entities in RTOWest, all without Commission approval. This section is inconsistent with the Commission’s long-standing interest in securing the participation of Canadian entities in RTOWest.

Section 3.3 gives ETO a “most favored nation” status with respect to additional transmission owners’ participation, including Canadian entities. Since Canadian entities, or municipally owned transmission owners, may require special conditions for participation, conditions related to their non-territorial and/or extra-territorial status should not be subject to ETO disapproval.

Section 4, imposing requirements and conditions on RTOWest’s decision to allow participation of Canadian entities, should be deleted. This section is an attempt by ETOs, each a market participant, to set the standards and limitations on Canadian transmission owner participation in RTOWest. Instead, Canadian entity participation should be determined by RTOWest, subject to Commission approval.

Section 5.1 allows RTOWest to adopt interconnection standards that supersede an ETO’s standard only if RTOWest’s standards meet certain conditions, including no “material adverse impact on the Executing Transmission Owner’s Electric System or Interconnected Loads (including financial impacts).... The Executing Transmission Owner may contest any such new standard through Dispute Resolution.” This section strips RTOWest of control over its own tariff for generation interconnection, and requires that an arbitrator, not the Commission, determine whether RTOWest’s standards should apply.

Section 5.2 would make an ETO the point of contact for generation interconnection, and the agent of RTOWest for execution of generation interconnection agreements. Generation interconnection agreements would be subject to provisions of section 5.1, including the requirement that the generation interconnection will not have an adverse financial impact on an ETO. It is unclear whether the Filing Utilities propose to object on a case-by-case basis to requests for interconnection. RTOWest must be the sole administrator of its tariffs.

Section 5.3.1 would allow an ETO to bar new physical interconnections by making such interconnections subject to “compliance with reasonable terms and conditions” imposed by the ETO, and subject to “appropriate mitigation of any negative physical impacts to any Electric System or its operational capability.” An ETO need only “reasonably cooperate” with the generation owner seeking a new interconnection to “reach a mutually acceptable agreement governing the construction, financing, ownership and maintenance, operation and other pertinent obligations relating to any such physical interconnection.” This is a step backward from Section 211 of the Federal Power Act, 16 U.S.C. § 824j. The provision that, “Nothing herein shall be interpreted to prohibit the Executing Transmission Owner from adopting a non-actional alternative under applicable environmental law” only can apply to BPA and other governmental transmission owners. BPA’s is an lead agency under the National Environmental Policy Act (See, 40 C.F.R. §§ 15.01.5, 1502.14 and 1505), and some governmentally owned transmission owners are subject to similar laws, e.g., Washington’s State Environmental Policy Act (43 R.C.W. 21(C)).

Section 5.3.2 would have RTOWest seek arbitrated dispute resolution if a generation owner will not accede to an ETO’s conditions pursuant to Section 5.3.1. Instead, if an ETO is unhappy with RTOWest’s administration of its own tariffs, an ETO should file a Section 206 complaint with the Commission.

Section 5.4.1 would require an ETO to “negotiate in good faith” with an existing generation owner that wants to replace an existing generation agreement with RTOWest’s generation agreement. A condition of participation should be that all existing generation agreements, like agreements for transmission service, should be converted to RTOWest’s tariffs. The only reason to require an existing generation owner to negotiate with an ETO for conversion is to allow the ETO to extract concessions or compensation from the existing generation owner. The Commission should direct the Filing Utilities to allow conversion to RTOWest generation interconnection agreements. If an ETO incurs stranded costs associated with the conversion, the ETO can include these costs in its section 205 revenue requirement filing.

Section 5.4.2 allows an ETO, a market participant, to “negotiate in good faith” with the generation owner for “instructions to RTOWest...that will govern the terms and conditions of integration with the RTOWest Transmission System.” In effect, the generation owner would have to get “instructions” from an ETO market participant to

seek an RTOWest interconnection agreement. This is a limitation on RTOWest's ability to deal directly with other market participants.

Section 5.4.3 allows RTOWest and the generation owner to seek arbitration if the generation owner cannot agree to the ETO's "instructions" to RTOWest. This is a constraint on RTOWest's control of its tariffs, access to its system, and independence. The Commission is the forum for an ETO protest regarding RTOWest's actions.

Section 6.1.2 makes subject to arbitration RTOWest's decision that ETO constructed or purchased transmission facilities be a part of RTOWest's system. Effectively, an arbitrator would decide whether facilities are used in providing wholesale transmission service, not the Commission. The Commission has been unwilling to cede this authority even to state regulatory bodies. If RTOWest is to be the sole transmission provider, this section should be deleted.

Section 6.1.2.1 would, by contract, make wholesale transmission service over distribution facilities "subject to applicable State regulation governing the use of such facilities...." The provision is contrary to the Commission's decision to retain such authority and should be deleted.²¹

Section 6.2.1.2 places ETO limits and conditions on RTOWest's authority to expand transmission capacity on its system. Disputes about the application of the ETO conditions would be resolved by an arbitrator. Since one of the purposes of an RTO is to provide for region-wide planning and to assure that needed transmission facilities be constructed, this section produces a result that is directly contrary to Order 2000's requirement that an RTO have control not only of planning, but expansion of the transmission system.

Section 6.2.2 gives ETOs wide discretion regarding Remedial Action Schemes (RAS). In the Pacific Northwest RAS are essential for maintaining capacity on the region's highly stressed system. The Commission should direct Filing Utilities to modify this section to require that ETO's maintain existing RAS to the extent that an existing RAS is not used to interrupt retail customer's load service, and add additional RAS as instructed by RTOWest.

Section 6.2.3 requires that RTOWest support ETOs' recovery of RAS costs. As in similar sections below, the Filing Utilities would require RTOWest to accept their costs. ETOs can include such costs in their section 205 revenue requirements filings.

Section 6.4.2 obligates ETOs to seek regulatory approval to modify their OATT's to "eliminate terms granting Rollover Rights." However, the Filing Utilities propose that this modification not apply to their transmission agreements necessary to serve their

²¹ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmission Utilities, Order No. 888, FERCS Stats. And Regs., ¶31,036 at xxx, fn. 546.*

loads. The Filing Utilities propose to preserve their existing transmission rights for load service (including “rights” that are not covered in a pre-existing transmission agreement), but force transmission dependent utilities to use RTOWest service when their existing, unconverted transmission agreements terminate. This discriminatory, preferential treatment proposed by and for Filing Utilities should be deleted.

Section 6.4.4 would establish a Northwest priority for access to and use of BPA transmission facilities. Requests for service to serve loads in the Pacific Northwest would receive a priority over requests to serve loads outside the Pacific Northwest. At present, Northwest Preference applies only to BPA’s sale of federal power directly (16 U.S.C. §§ 837a, 837b, and 839f(c)) or indirectly (16 U.S.C. § 839f(c)) outside the Pacific Northwest. BPA is required to make transmission service available on a fair and non-discriminatory basis (16 U.S.C. § 838d), including BPA’s capacity on the Pacific Northwest – Pacific Southwest Intertie (16 U.S.C. § 837e).²² In its April 26 Order, the Commission stated that it will defer to BPA and the Department of Energy in interpretation of BPA’s authorities (April 26 Order at 61,344). However, the Commission should not approve a TOA section establishing a major barrier to the West-wide wholesale power market without requesting a clarification from BPA.

Section 6.5 limits RTOWest’s use of ETO distribution facilities used for wholesale transmission service. Use, operation and expansion of these facilities for wholesale transmission service is subject to FERC jurisdiction, and should be subject to RTOWest control and operation.

Section 6.5.1(4) provides that disputes regarding use of ETO distribution facilities shall be subject to arbitration. Such issues should be subject to resolution by the Commission, as they are at present between any jurisdictional transmission owner and any wholesale transmission customer.

Section 6.6 conditions operation of ETO facilities on unspecified ETO “parameters” and other specified conditions. The Commission should instruct the Filing Utilities to limit this section to conditions that are reasonable, e.g., safety standards, and eliminate those that are unreasonable, e.g., “not materially impair reliability to load,” a matter within the responsibility of RTOWest, and not an ETO.

Section 6.7, in general, requires by agreement between the ETO and RTOWest that RTOWest do what is required by Order 2000. RTOWest tariff administration is subject to Commission jurisdiction, and should not be a matter for ETO enforcement through the TOA.

Sections 6.7.7 requires RTOWest to establish a market power and a price mitigation program subject to specified conditions. This section is inconsistent with RTOWest independence and the requirement that RTOWest have final decision-making authority over its tariffs, subject to Commission approval.

Section 6.7.9 imposes ETO requirements on RTOWest's operation of balancing market. For the reasons stated above, this is an inappropriate subject for agreement between an ETO and RTOWest, and is more suitably part of RTOWest's tariff and congestion management plans submitted to the Commission for approval.

Section 6.8.4 and **Section 6.8.5** should be modified to remove the brackets surrounding the reference to distribution facilities used in providing wholesale distribution service.

Section 6.8.6 should be deleted both because (i) reliability is a function of RTOWest, and (ii) because **Section 6.10** makes security coordinator function the responsibility of RTOWest. RTOWest will decide how that function shall be performed.

Section 6.11 instructs RTOWest on the actions to take in the event of a default by a Scheduling Coordinator to protect ETOs from "any material adverse financial impact." This is a function that should be exclusively within RTOWest's control.

Section 7.1 would limit RTOWest's congestion management plan to the Congestion Management Proposals submitted by the Filing Utilities "as it may be further defined." RTOWest will develop, and from time to time modify, a congestion management plan for submission to the Commission for approval.

Section 7.3 requires special review of RTOWest's congestion management plan, and should be deleted for the reasons described above.

Section 7.4 would contractually obligate RTOWest to the Filing Utilities' "Principles Governing Modification" of RTOWest's Congestion Management Plan. The Filing Utilities should be free to argue the merit of their Principles to RTOWest, and to the Commission, but they should not be contractually locked on RTOWest's proposed modifications submitted to the Commission. The Commission should advise the Filing Utilities to delete Section 7.4 from the TOA.

Section 7.5 requires that RTOWest file a congestion management plan, or modifications, that limit points of injection or withdrawal to RTOWest transmission. This should be a tariff matter within the independent judgment of RTOWest, subject to Commission approval.

Section 8 preserves ETO's pre-RTOWest transmission rights. ETOs would receive RTOWest Transmission Service "on a comparable basis with rights held before the Transmission Service Commencement Date." The Filing Utilities not only propose that such rights be preserved to enable the ETO to enable it to serve "Pre-Existing Transmission Agreements," but also any "pre-existing" obligations "not covered by a Pre-Existing Transmission Agreement." Under Section 6.1, the ETO would turnover

control of its transmission facilities to RTOWest. Under Section 6.4.1, RTOWest as
made the exclusive transmission provider, including service to non -converted
transmission agreements. Section 8 is inconsistent with Sections 6.1 and 6.4.1, and
unnecessary for the provision of service for non -converted transmission agreements. The
Filing Utilities' demand for RTOWest service for service "not covered by a Pre -Existing
Transmission Agreement. Such service is not eligible for CTRs. ETO should request
transmission service for "obligations not covered by a Pre -Existing Transmission
Agreement." The Commission should require that any transmission agreement executed
by a Filing Utility to cover "obligations not covered by a Pre -Existing Transmission
Agreement" be subject to termination on the date RTOWest commences operation.
The Commission should request that the Filing Utilities modify the TOA by deleting
Section 8.

Section 8.1 through **Section 8.3** should be deleted for the reasons described
above, and because they intrude on RTOWest's authority for operation of the
transmission system and obligation to establish and administer RTOWest's tariffs.

Section 8.4, including subsections 8.4.1 through subsections 8.4.4 provides for
the availability of Congestion Management Assets to meet non -converted transmission
agreements and ETO transmission obligations not covered by a pre -existing transmission
agreement. For the reasons described above in the comments to Section 8, all references
to ETO obligations not subject to pre -existing transmission agreements should be deleted,
including the phrase "And Obligations."

Section 9.1 gives an ETO the right to not convert its pre -existing transmission
agreements for service to its merchant function, and **Section 9.2** describes non -converted
transmission service. For the reasons described in the Pro test, ETO's should be required
to convert all pre -existing transmission agreements with their merchant affiliates. The
reference to transmission service not covered by a pre -existing transmission agreement
("And Obligations") should be deleted.

Section 9.3.4 provides that BPA "shall not voluntarily suspend any General
Transfer Agreement without agreement of the Executing Transmission Owner customer
whose load is served by such General Transfer Agreement." The Filing Utilities seek
preferential treatment for service to their loads and want to avoid exposure to RTOWest
service. The Commission should order the Filing Utilities to supplement this section with
terms requiring jurisdictional ETO's to request BPA to terminate the General Transfer
Agreements under which they receive service.

Section 9.3 governs and restricts the process by which RTOWest may seek to
convert pre -existing transmission agreements to RTOWest service. ETO's should be
indifferent to this matter, and the subject should be solely within RTOWest's
responsibility.

Section 9.5 and **Section 9.5.1** would provide unspecified incentives for CTRs to pre-schedule and make the ETO responsible for any transmission charges accruing from the unspecified incentives. Scheduling and tariff administration are within the authority of RTOWest, not the ETOs. Incentives to pre-schedule are disincentives to convert to RTOWest service.

Section 10.1 and 10.2 directly condition RTOWest's provision of Ancillary Services. The subject is a tariff matter, and the Commission should direct the Filing Utilities to delete these provisions from the TOA and file them in the tariff.

Section 14.3.4 permits an ETO to adopt a "no-action alternative" under applicable law. The Commission should instruct the Filing Utilities to clarify that this provision is applicable only to ETOs that as government agencies have responsibilities under NEPA or similar state laws. The choice of adopting a "no-action" alternative is uniquely that of a lead agency charged with complying with NEPA or similar state laws.

Section 14.6.1 grants special rights to ETOs to proceed with upgrades to transmission facilities. These rights would preempt RTOWest's responsibility for planning and assuring construction of needed transmission facilities. The Commission should review this section for interference with RTOWest authority. This section also provided that an ETO has the "right to receive a portion of the transmission rights resulting from such upgrade or expansion in exchange for an appropriate cost-sharing responsibility in accordance with the following provisions." It is unclear what an ETO would or should do with transmission rights. RTOWest is the exclusive provider of transmission service, and operator of all ETO transmission facilities. The Filing Utilities seem to propose bifurcated ownership and management of transmission assets and capacity. The Commission should order the Filing Utilities to revise the TOA by deleting **Section 14.6.1**, including **Section 14.6.1.1** and **Section 14.6.1.2**.

Section 14.7 covers upgrades to distribution facilities used for wholesale transmission service. Disputes between an ETO and RTOWest must be arbitrated. Since the Commission has jurisdiction over ETO distribution facilities used to provide wholesale transmission service, disputes should be raised to the Commission by a complaint, and resolved by the Commission.

Section 15.1 permits RTOWest to share its planning responsibility with an ETO, and requires that RTOWest share its planning responsibility with an ETO that is "independent from control of market participants." This section would require that RTOWest share its planning responsibility with an ETO that was an affiliate of a market participant. At the least, this creates the appearance of lack of independence and should be rejected.

Section 15.2 through **Section 15.3** impede, condition, or muddy RTOWest's responsibility for planning, and should be deleted.

Section 16 deals with ETO rates, and would lock RTOWest into limitations and agreements with ETOs. It is beyond the scope of TOA, and the Commission has held that jurisdictional transmission owners are responsible for unilaterally filing under section 205 their revenue requirement for facilities used by an RTO. Pre-filing deals, locked into the TOA, are not consistent with an independent RTOWest. The Commission should instruct the Filing Utilities to delete all of Section 16 from the TOA.

Section 17.1 through **Section 17.3.6** lock RTOWest into rates and rated designs, subject to change only by amendment to each TOA. RTOWest should have sole responsibility for its rates. As part of the filing to establish RTOWest, either the Filing Utilities or RTOWest should file proposed rates with the Commission. The Commission should advise the Filing Utilities to delete these sections from the TOA.

Section 17.5 assures that certain BPA costs, i.e., “costs that would not be allowed under FERC standards applicable to public utilities,” be paid only by loadstake service from BPA. This section creates the opportunity for disputes about whether specific BPA costs “would not be allowed under FERC standards and guidelines to public utilities.” If this section remains, and is not clarified, RTOWest must decide (subject to arbitration), in filing its rates, whether BPA has such costs, and whether such costs must, as the section requires, be recovered from BPA loadstake service from BPA’s system. The Commission has disfavored separate RTO rates.

Section 18.1 through **Section 18.4** specify how RTOWest will conduct its business activities and provide preferential treatment for ETOs, e.g. RTOWest would be required to submit its budget to ETOs 90 days before adoption and seek ETO advice and comment. If after two years of operation, RTOWest’s budget shows a material increase, then RTOWest must “consult with the Existing Transmission Owner with respect to potential budget reductions and financial controls. These sections are intrusive, preferential, and inconsistent with RTOWest independence from market participants and should be eliminated from the TOA.

Section 20 provides for dispute resolution for virtually all disputes arising under the TOA. RTOWest would have limited ability to take disputes with ETOs directly to the Commission. Appeals of arbitration decisions to the Commission is strictly limited (Section 20.5.1). The Commission would act solely as an appellate body, forced to make its decision based on the record compiled in the arbitration (Section 20.5.2). Section 20 purports to limit the Commission by providing that the Commission “should afford substantial deference to the actual findings of the arbitrator. Special terms apply to disputed interconnection agreements (Section 20.7.2). Only ETOs and RTOWest can intervene in an arbitration (Section 20.3.5.1); other market participants are locked out, and have no right of appeal (Section 20.5). Materials submitted in an arbitration may be determined to be confidential, and not be published or included in the arbitration award (which would make the Commission’s review more difficult) (Section 20.3.8). The

arbitrator must accept an ETO's interconnection agreement, and not RTOWest's agreement, if the ETO's proposal meets minimum terms, and even if the ETO proposal is inconsistent with RTOWest's and other ETO interconnection agreements. Section 20 is not in the public interest, and greatly disadvantages other market participants in dealings with RTOWest.

ATTACHMENT B

CORE ELEMENTS OF SEAMLESS WESTERN MARKET WMIC Seams Congestion Management Work Group Working Draft – 15 February 2002

INTRODUCTION

The Seams Steering Group – Western Interconnection (SSGWI) has asked the WMIC RTO Seams Committee to suggest a set of core elements that need to be common to the three RTOs in order to achieve a seamless Western market, while recognizing that there can be elements that differ to reflect regional differences.

As a starting point, we adopt the following definition of a seamless market as it relates to congestion management:

Market participants should be able to provide or obtain a full range of services continuously through the seam including but not limited to forward and spot energy, reserves and transmission. A seamless market is one in which the boundaries of different transmission operating entities, of and by themselves, do not define the scope or change the conditions of the market.

The Work Group is proposing this set of common core elements below as a basis for further discussion. This proposal is based in large part on the analysis of example transactions in the Congestion Management Work Group's working paper "Coordination of Firm Transmission Rights and Schedules Among Western Regional Transmission Organizations," as well as incorporating some elements from earlier seams discussions.

Note that this list is only intended to capture those congestion-related features that appear to be necessary and (eventually) sufficient for the market to be seamless. It is not intended to describe all the desirable features of a seamless Western market.

CORE ELEMENTS

Several of the core elements are related directly to the congestion management system to be employed by the RTOs. While there is not yet agreement on a specific approach among the RTOs, the RTO Seams Committee believes that an examination of seams examples in its earlier paper demonstrates the necessity for a common approach among all of the RTOs. ²³The following four bullets highlight the most basic features of this recommendation.

²³RTO West and the CAISO are recurrently focusing on an approach characterized by scheduling using injection and withdrawal pairs rather than specific paths, congestion management using inc and dec bids and offers, and hedging of transmission cost risk through financial transmission rights (collectively, "an I-approach" in the rest of the paper).

- Common network representation: A common west-wide, closed-loop network representation of the physical system, with sufficient detail, should be employed by each RTO. Such an approach could be built upon the OATI work being done for WSCC on a “Western IDC” that would improve the ability of schedulers and dispatcher to handle flow problems, like those currently falling under the UFMP.
- Common commercial model: A common west-wide, commercial model that defines the relationship between commercial transactions and the underlying physical power flows represented in the network models should be employed by each RTO, and their participants, for scheduling, congestion management, redispatch and hedging purposes.
 - The level of detail necessary for each of the above common models, physical and commercial, needs further discussion, as does the relationship of the common models to any (likely more detailed) internal models, including security models. Because of the focus of CSIC on development of common information systems and computer applications among the RTOs, this is probably an important area for their examination as well.
- Common congestion management approach: Mechanisms for managing congestion across the RTOs need to be identical or determined through a single process. If an I-W approach were chosen as the common commercial model, in particular, a coordinating mechanism or common market for generator redispatching and decommitment and load shedding that can significantly affect power flows across seams would be needed. Without it under those circumstances, management of congestion between the RTOs will be difficult and could result in transactions being denied.
 - A common congestion management approach also implies that congestion prices on each side of the seam will send the same signals for the value of investment and redispatch (regardless of the definition of the congestion management model). This is important because mismatches in value will frustrate infrastructure development.
- Coordinated Ancillary Services Markets: Ancillary services markets need to be coordinated to act like a single market. Suppliers must be free to bid into all markets simultaneously. Bids accepted by one system operator must be removed from bid lists of other operators, so that suppliers do not have multiple acceptance of the same supply bids. Alternatively, ancillary services are provided through a single market.

In addition to these four basic features, the following bullets highlight the elements that the RTO Seams Committee believes need to become common to the three RTOs’ transaction and congestion management approach.

- Coordinated phaseshifter operation: Phaseshifter operation need to be coordinated to meet the same objectives in each RTO, to the extent phaseshifter operation is not required to support existing rights and obligations.
 - If the I -W approach were adopted by all three RTOs, the need for phase shifter operation under the UFMS would be eliminated, because it eliminates unscheduled flow by definition ²⁴. The phaseshifters would still be needed to maximize the capacity of the system and could then be incorporated into the forward market to do so in the most economically valuable way, through one of several approaches suggested earlier in the Phase Shifter Work Group's report.
- Common end -point definitions: Zone, node, hub and bus definitions for the common commercial model that are consistent and defined in a way to facilitate efficient trading are needed. Irrespective of superficial differences in the three RTOs' congestion management models, the analysis of system secure transfer capability to support schedules will be carried out on a nodal model of the interconnected network. See the appendix to this paper for the definitions supplied by the RTOs. A suggested set of definitions based on the Appendix is shown below.
 - Bus: The network model element in a bus -breaker representation. A bus could potentially, but not necessarily, be a node in a network model used for congestion management.
 - Node: A collection of busses with zero impedance between them.
 - Zone: A collection of busses –often electrically and geographically close to each other and with a distinct boundary –that can be treated as equivalent or as an aggregate for the purpose of CM. For discussion purposes, it might be useful to apply “zone” only to the load and generation ends of the transaction. For example, loads may be scheduled to a Load Delivery Zone: the scheduled load being allocated to individual busses in the CM analysis according to agreed distribution factors. The same principle could be applied to Generation Zones, both to allocate scheduled generation among a set of closely -grouped units, or to apply a single congestion price to the group. Note that this is not necessarily the same as a Congestion Zone (more accurately a congestion free zone) which is a collection of nodes between which congestion is expected to be negligible and which can be treated as a single node in the congestion management model (leading to a single congestion price for the zone).
 - Hub: A collection of nodes defined for commercial transactions. “Hub” is a more ambiguous term than “zone.” In the sense of an Energy Trading Hub, it may be no more than a locus (e.g. a trading screen) where bids and offers are

²⁴ The remaining differences between schedules and actual flows would be due only to modeling errors, inadvertent flow and any non -RTO participants using other scheduling approaches.

displayed and contracts struck, with no physical connection to the actual network. In the context of tradable transmission rights, it is necessary to define a Transmission Hub as a specific network bus (or group of buses), since a transmission right can only be defined in relation to a pair of such hubs connected to the network.

- Identical products: Identical transmission products, including ancillary services, that provide the same service (e.g., firmness, price hedging, physical vs. financial rights, scheduling priority, option vs. obligation characteristics, and release conditions) across the three RTOs are needed. This is essential to allow parties to effectively complete transactions that span the Western Interconnection. [The RTO Seams Committee will work further on the specific product characteristics in parentheses, to clarify whether some need not be identical.]
- Identical scheduled definition: Schedules should be defined in the same way. Specifically, previous analyses have identified significant translation problems when contract path and distributed flows scheduling protocols are brought together at seams.
 - Existing contracts that require contract path scheduling contribute to these translation problems and, if an I - W approach were chosen as the common model, RTOs should attempt to incorporate existing contracts into a scheduling regime based on distributed flows (their actual use of the system) and to create incentives for their conversion.
- Identical scheduling protocols: Scheduling and dispatch logistics and protocols need to match in all markets. These should include identical scheduling timelines for all activities requiring market participant action, including forward markets, spot markets, and arranging for ancillary services. This would be achieved by the “one - stop shopping” goal in the SSGWI Western Market Vision.
- Identical product definitions for forward markets: Standard product definitions, terms and conditions and timelines for major forward market releases, or auctions, of transmission products by the RTOs are needed. A common transmission exchange could facilitate the ability to acquire these transmission products across the RTOs in the secondary market. This could be a feature of the common OASIS, could be provided by a third party or both. [There may be a set of common definitions being developed by the NERC MIC; if so, these will be reviewed by the RTO Seams Committee and forwarded to SSGWI.]

- Samenumberofsettlements: Thesamesettlementapproach,eitheraonestageortwostageapproach,shouldbeusedbyallthreeRTOs.Adifferentnumberofsettlementsmayelicitunpredictedmarketstrategiesfromparticipants that may have noothergroundthantheexistenceofthesedifferences.
- IdenticalSchedulingCoordinatorcriteria: SchedulingCoordinatorcertificationandfinancialcredit-worthinesscriterianeedtobeidentical.[Theremaybeothersaswell.]
- CommonTransmissionOutagePlanningProcessattheInterfacePoints: Plannedtransmissionmaintenanceoutagesatinterfacepointsorontransmissiondirectly affectinginterfacecapacityshouldbecoordinatedthroughasingleprocess.
- Pricereciprocity: PricingreciprocityorothermethodstoeliminatetransactionalpricesacrosstheseamsshouldbeusedwhentransactionalpricingisnotusedwithintheRTOs.This is particularlyacomparabilityissueforgeneratorsandcanhavea potentialimpactoncongestionmanagementandonefficiencyofdispatch.TheRTO SeamsCommitteesupportsresolutionoftheissues,includingequity issues,within theSSGWIPriceReciprocitySubcommittee.

WHATCOULDBEDIFFERENTWITHOUTCREATINGSEAMSPROBLEMS

- Whetherornotthereisanavailablecapacityrequirement(likeICAPintheEast ortheACAPproposaloftheCAISO)intheRTO.However,thatparticularformarequiredrequirementmaytakecouldhaveseamsimplicationsifthecapacityistobe acquiredfromoutsidetheRTO.
- RTO requiredunitcommitmentrequirements.Unitcommitmentcanbe accomplishedbyseveralmeans,however,what is importantistheresultingcapacity beingavailabletotheRTOsinatimelymannerforcongestionmanagementand generatorredispatchindayahead,houraheadandrealtime markets(orwhateverthe energyandancillarymarkettimelinesare).

APPENDIX

Definitions from CAISO and RTOWest

The RTO Seams Committee has received two sets of definitions of the terms “node,” “bus,” “zone” and “hub” which are consistent with each other but not identical. They are listed below as they were received. The body of the paper suggests, for discussion purposes, a set of definitions that is derived from what is below, but that eliminates some specific terminology (e.g., “branch group” is only used by CAISO). If additional definitions are received from WestConnect, they will be incorporated.

CAISO:

Bus: The network model element in a bus-breaker representation. A bus could potentially, but not necessarily, be a node in a network model used for congestion management.

Node: A collection of buses with zero impedance between them. It is used in a node-branch network model for congestion management.

Hub: A collection of nodes defined for commercial transactions. (Different hubs may have overlapping nodes).

Zone: A collection of nodes that are topologically connected with a well-defined boundary (defined by branches in the node-branch model). Zones generally do not have overlapping nodes; if two zones do have overlapping nodes, then one is completely a sub-zone of the other.

RTOWest:

Terminology Common to all RTOs

- i. Irrespective of superficial differences in the three RTOs' CM models, the analysis of system secure transfer capability to support schedules will be carried out on a nodal model of the interconnected network. Nodes are the fundamental unit of a CM model.

- ii. A network Node is a location (port) at which current or power may be injected into the model. Buses are a subset of these nodes, and may be considered as locations at which actual sources and loads may be represented in the model. Nodes are often taken as synonymous with buses.

A **Zone** is a collection of buses – often electrically and geographically close to each other – that can be treated as equivalent or as an aggregate for the purpose of CM. For example, loads may be scheduled to a **Load Delivery Zone**: the scheduled load being allocated to individual buses in the CM analysis according to agreed distribution factors. The congestion price applied to the scheduled load could be either that of a **representative bus** in the zone, or a weighted average of the individual bus prices. Thus a load delivery zone can be synonymous with a **Load Pricing Zone**.

The same principle could be applied to **Generation Zones**, both to allocate scheduled generation among a set of closely -grouped units, or to apply a single congestion price to the group. Note that this is not necessarily the same as a **Congestion Zone** (more accurately a congestion free zone) which is a collection of nodes between which congestion is expected to be negligible and which can be treated as a single node in the CM model (leading to a single congestion price for the zone).

A **Hub** is a more ambivalent term. In the sense of an Energy Trading Hub, it may be no more than a locus (e.g. a trading screen) where bids and offers are displayed and contracts struck, with no physical connection to the actual network. In the context of tradable transmission rights, it is necessary to define a **Transmission Hub** as a specific network bus (or group of buses), since a transmission right can only be defined in relation to a pair of such hubs connected to the network. Firstly this is because such rights are ultimately underwritten by the physical capacity of the transmission system, which can only be determined between actual injection and withdrawal points on the system, and secondly, because the value of the TR as a financial hedge against congestion charges is priced between end -points (hubs) which are either representative nodes in the CM model or a weighted average of CM nodes.

CERTIFICATE OF SERVICE

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

DATED at Portland, Oregon, this 29th day of May, 2002.



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