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May 28, 2002

VIA UPS OVERNIGHT MAIL

Magalie R. Salas  
Secretary  
Office of the Secretary  
Federal Energy Regulatory Commission  
Dockets Room, Room 1A, East  
888 First Street, N.E.  
Washington, D.C. 20426

FILED  
OFFICE OF THE SECRETARY  
02 MAY 29 AM 11:32  
FEDERAL ENERGY  
REGULATORY COMMISSION

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

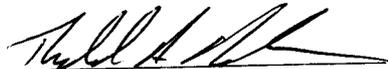
**Docket No. RT01-35-005**

Dear Ms. Salas:

Enclosed for filing in the above referenced docket, please find the original and 15 copies of the **Motion to Intervene and Comments of the Wyoming Industrial Energy Consumers Regarding RTO West Stage 2 Filing.**

Please date stamp the enclosed extra copy and return it to our offices in the enclosed self-addressed, stamped envelope.

Very truly yours,



Thorvald A. Nelson  
for Holland & Hart LLP

TAN:/ed  
Enclosures

FILED  
FEDERAL ENERGY  
REGULATORY COMMISSION  
02 MAY 29 AM 11:32

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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

FILED  
02 MAY 29 AM 11:32  
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	)	

**MOTION TO INTERVENE AND COMMENTS OF THE  
WYOMING INDUSTRIAL ENERGY CONSUMERS  
REGARDING RTO WEST STAGE 2 FILING**

Pursuant to Rules 211 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 214 (2000), the Wyoming Industrial Energy Consumers (“WIEC”) hereby move to intervene and file comments on the Stage 2 filing and request for declaratory order in the above-captioned docket regarding formation of a Regional Transmission Organization (“RTO”), denominated “RTO West,” covering a portion of the Western United States, including a portion of Wyoming. For purposes of this docket, WIEC includes at least the following member companies: BP, Chevron, Church & Dwight, Conoco Pipeline, ExxonMobil, FMC, General Chemical, Howell Petroleum, Kennecott Energy, Marathon Oil, Monsanto, OCI, SF Phosphates and Solvay Minerals.<sup>1</sup> By this filing, WIEC moves to intervene as a party and submits comments with respect to the Stage 2 RTO West filing and request for declaratory order.

<sup>1</sup> The comments contained in this filing represent the position of WIEC as an organization, but not necessarily the view of any particular member with respect to any issue.

## MOTION TO INTERVENE

WIEC is an unincorporated association representing large energy consumers with respect to their operations in Wyoming, and includes manufacturers and members of various industries such as oil and gas, coal and trona production or refining. The operations of WIEC members are currently served by transmission facilities located within the proposed RTO West territory.

WIEC also includes members that generate electricity to meet some of the current power needs of their respective Wyoming facilities, and such generating facilities are or can be interconnected to transmission facilities within the proposed area of operation of RTO West. Both now and after retail access and competition becomes available in Wyoming, WIEC members seek to assure a reliable and competitively priced electricity supply for their operations and nondiscriminatory transmission access for themselves and their suppliers.

As large electricity consumers in Wyoming, a portion of which falls within the currently-proposed geographic scope of RTO West, WIEC members will be directly affected by the outcome of this docket. Given WIEC's unique geographic location, composition and perspective within RTO West, no other party can adequately represent WIEC's interests, and its participation is in the public interest. Therefore, WIEC requests the right to participate in this docket as a party pursuant to Rule 214.

## COMMUNICATIONS

All pleadings, correspondence and other communications regarding this proceeding should be directed to the following person, who should be placed on the official service list for this docket:

Robert M. Pomeroy, Jr.  
Thor Nelson  
Holland & Hart LLP  
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Greenwood Village, CO 80111  
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## SUMMARY OF COMMENTS

WIEC supports formation of a properly-designed Western area regional transmission organization, and finds many aspects of the RTO West Stage 2 filing to be a significant improvement over the transmission status quo in the Western Interconnection. The RTO West filing may provide a solid foundation on which to start to build for the future, but only if (1) the RTO can accommodate and advance meaningful electricity competition at both the wholesale and retail levels (if and when retail competition is allowed in states like Wyoming), and (2) the RTO promotes and encourages construction of needed new generation and transmission facilities in the Western Interconnection area.

There are several significant improvements that must be made to the design and scope of RTO West before it can accomplish the objectives and realize the potential for true open, standardized and non-discriminatory transmission access that FERC seeks

to achieve with properly-designed RTOs. Areas in which WIEC seeks FERC action and direction to improve the initial RTO West Stage 2 filing include:

- Requiring expansion of the geographic scope of RTO West to make it as coextensive as possible with the entire Western Interconnection, which would (1) minimize seams and interregional coordination issues and (2) expand participation in RTO West so as to make it less dominated by Pacific Northwest hydro power concerns.
- Developing a system for allocating transmission rights and associated revenues that better incorporates two critical policy considerations: (1) preserving for end-use consumers and their future electricity suppliers (as opposed to current transmission system owners and users) existing transmission rights presently benefiting and paid for by end-use consumers as part of the bundled service they must purchase from incumbent monopolies, and (2) ensuring that sufficient transmission rights will be made available to new market participants to create a workably competitive and liquid transmission rights market.
- Deferring any ruling on RTO West at this still-preliminary juncture except to order formation of the RTO West independent Board and to require that Board to then develop, revise and submit all subsequent RTO West filings and documents, including final versions of all draft agreements, tariffs and other filings yet to be finally developed or approved.

## COMMENTS

### OVERVIEW OF RTO WEST STAGE 2 FILING

While it may fairly be considered faint praise, WIEC generally regards RTO West as an improvement over the current status quo. To cite just a few examples, the proposed governance structure appears reasonably independent, RTO West has successfully included (to date at least) one of the indispensable public power entities in its region (Bonneville Power Administration), and RTO West will have a large single control area. RTO West is to be commended for having identified and attempted to address many of the critical issues necessary for a successful RTO.

However, despite the encouraging start that its Stage 2 filing represents, RTO West remains only a work in progress. Many of the documents filed to date are mere drafts (or are otherwise not final). More important, there is no firm commitment to participate in RTO West even by all of the filing utilities, let alone those who logically should be added to allow RTO West to encompass a larger, more viable geographic region that would be less centered on and dominated by Pacific Northwest concerns.

At this stage, there is insufficient certainty and documentation provided to determine whether RTO West can meet all of the requirements of Order 2000. The Commission should require greater clarity, and order revisions in accordance with the following comments, before approving RTO West.

## **GEOGRAPHIC SCOPE OF RTO WEST; REGIONAL COORDINATION AND SEAMS ISSUES**

Across the country, the initially-proposed RTOs have proven to be needlessly parochial and undersized in terms of geographic scope, and in general they have proven to be poorly integrated within and among their respective regions. Recent events have made clear the importance and impact of the California ISO market throughout the entire Western Interconnection area, which also includes the proposed territories of both WestConnect and RTO West. In addition, recent allegations of market manipulation by the California ISO itself suggest that particular RTO may not be viable as presently structured and operating. Accordingly, regional integration and seams issues have taken on special and increasing importance in the West.

As presently conceived and proposed, RTO West and WestConnect would split Wyoming into two RTOs, making regional coordination and seams issues especially acute in that state. This confusion and difficulty for Wyoming consumers is compounded by the uncertain role, if any, to be played in RTO development and implementation by the Western Area Power Administration, a major transmission owner and operator in Wyoming and the Rocky Mountain West.

The current proposal to split the Western Interconnection into three separate RTOs would needlessly impede development of new generation and transmission in Wyoming, an energy-rich net exporter of electricity that does not expect major near-term load growth within its borders. For generation resources that might otherwise be developed in Wyoming, such as in the coal-rich Powder River Basin, the reach of RTO West simply does not extend far enough to provide transmission access to critical and fast-growing markets for electricity such as California and the Front Range of Colorado.

While reference is made, at page 56 of the Stage 2 filing, to a “Western Market Vision,” it is clear that not even all of the filing utilities, much less other utilities located outside the proposed RTO West area, subscribe to such a West-wide transmission model. The “Steering Group” proposed to help coordinate the three Western RTOs is a cosmetic solution that is afforded no teeth or real authority to forge any consensus among the three separately-evolving RTOs, and the Commission should not accept it as a meaningful solution to the regional integration and seams issues.

Much new light has been shed on the Western electricity market over the past two years. Before RTO West and WestConnect proceed any further, WIEC urges the Commission to reconsider Western RTO boundaries and to consolidate the two proposed RTOs, with or without including the California ISO, into a single RTO. At a minimum, the Commission should take steps to ensure that the structure and approach adopted at this stage for RTO West and WestConnect (and any revisions required for the California ISO) are as identical as possible so as create more common ground between the Western RTO plans and allow better solutions to emerge on seams and regional coordination issues within the Western Interconnection.

## **ALLOCATION OF TRANSMISSION RIGHTS AND PRICING; DEVELOPMENT OF WORKABLY COMPETITIVE MARKETS AND MARKET MONITORING**

Under the RTO West Stage 2 proposal, Firm Transmission Rights (FTRs) have been recast as “Firm Transmission Options” (FTOs), reflecting the fact that the sum of all FTRs exceeded the capacity of the RTO West transmission system (due to system diversity, not all FTRs would be utilized at the same time). While the shift from FTRs to FTOs is a logical one, transmission rights are still being allocated in the RTO

West Stage 2 filing among existing transmission owners and users in quantities and in a manner that makes it unlikely that any meaningful long-term transmission rights would be available to new market participants at any point in the reasonable near-term.

Under the Stage 2 proposal, the existing transmission rights of participating utilities will stay in effect for at least eight years. The eight-year period is described as “transitional,” but it appears to be a bridge to nowhere. Indeed, at page 30, the Stage 2 filing states simply that after the initial eight-year period, “RTO West has the authority, subject to the terms of Order 2000 and other applicable laws and regulations, to propose whatever rate structure it determines will best meet the Commission’s rules and regulations and the needs of the region.” In the absence of any articulated long-term vision by the architects of RTO West, the Commission must order that a better and fairer way to allocate transmission rights be developed and implemented so as to provide for a liquid and workably competitive transmission market within some reasonable time frame.

In particular, allocation of transmission rights must, unlike the present RTO West proposal, take into account the longstanding property rights of end-use consumers with respect to electricity transmission. Under the present system, consumers pay for and receive the benefit of (directly or indirectly, bundled or otherwise) whatever transmission service is necessary to serve their load. Any allocation scheme approved by the Commission for transmission rights must provide that, if a retail load shifts to a new electricity supplier, the corresponding transmission rights necessary to serve that load must be transferred either to the load or the new supplier.

In essence, necessary transmission rights should “run with the load,” not with the incumbent supplier. While that result might occur under the Stage 2 filing for a few

loads that have contracted for transmission in states that already allow retail choice of supply, there is no similar protection afforded to consumers in states operating under the traditional monopoly system. Without action to the contrary by this Commission, the consumers who ultimately pay for the transmission system will remain captive to the incumbent suppliers even after retail competition is eventually implemented in a state. If a workably competitive market for electricity is ever to develop, it is critical that transmission rights and revenues be allocated in a way that preserves and protects the transmission-related rights of today's native load customers who will become tomorrow's retail access customers.

RTO West's pricing system is also suspect and fails to promote a meaningfully competitive marketplace. For example, while the Stage 2 filing states in footnote 51 at page 42 that "[l]ocational prices under the RTO West congestion management proposal will be marginal," it is clear such prices are not based on marginal costs, and are not cost-based at all. Rather, congestion management depends entirely on a voluntary bidding process to develop price signals, which may bear no relationship to cost.

Importantly, the proposed pricing system also shields existing suppliers from various charges, creating significant barriers to entry for the new market participants and suppliers needed to ensure development of a robust electricity marketplace. In most instances under the Stage 2 proposal, and certainly in Wyoming, only incumbent utility suppliers would hold transmission rights. Accordingly, new market participants will labor under two serious disadvantages not encountered by existing market participants: (1) payment of congestion costs and transmission reservation fees, and (2) a lack of available transmission rights and capacity. This not only stifles competition,

but also precludes the equal access to the transmission system the Commission contemplated in Order 2000.

The problems caused by market manipulation and a lack of meaningful competition are becoming increasingly well-documented throughout the Western Interconnection, including a now-notorious degree of price volatility. The market monitoring proposal at pages 49-52 of the RTO West Stage 2 filing provides no meaningful solution and amounts to little more than a concession that much work remains to be done to develop a still-undefined "West-wide market monitoring entity." Given how large a problem this has proven to be in the West, the Commission must insist on a developed and detailed approach to market monitoring and reject the vague arrangement now proposed in the Stage 2 filing.

### **AN INDEPENDENT BOARD FOR RTO WEST SHOULD BE INSTALLED NOW**

The RTO West Stage 2 filing underscores the difficulty of proceeding to develop any RTO where the only meaningful participants are the existing transmission system users and owners: of necessity, it reflects and protects the status quo above all. RTO West does not promote competition and, so long as it is being designed only by those with a stake in perpetuating the existing system, it cannot be expected to do so.

Until RTO West is redesigned to ensure a workably competitive market, the Commission must not approve it. Instead, the Commission should grant only the limited approval necessary and sufficient to permit RTO West to select and put into operation its independent board and management as soon as possible. Only an

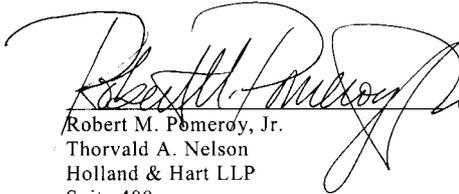
independent Board, operating with a broader perspective than the current framers of RTO West, will be able to make the changes needed to promote a competitive market.

The Commission should then order the newly-formed RTO West independent board and management, not merely the participating transmission-owning utilities, to develop and shape the final versions of all the remaining filings and documents needed to implement the RTO, including the final version of the transmission operating agreement, the load and generation integration agreements and the required tariff and rate filings.

### **CONCLUSION**

WHEREFORE, WIEC respectfully requests that the Commission grant its motion to intervene, afford WIEC party status, and issue orders in accord with WIEC's above comments in the above-captioned docket.

Respectfully submitted this 29th day of May, 2002.

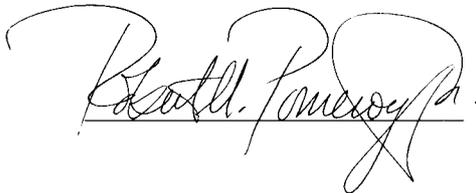


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Attorneys for WIEC

#### CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of May, 2002, I placed in the United States Mail, first class, postage prepaid, a copy of the Motion to Intervene and Comments of the Wyoming Industrial Energy Consumers Regarding RTO West Stage 2 Filing to those persons listed on the official service list compiled by the Secretary of the FERC in the above captioned docket.



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