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FILED  
MAY 29 2002  
FEDERAL ENERGY  
REGULATORY COMMISSION

May 29, 2002

Via Hand Delivery

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

Re: Avista Corporation, et al., Docket No. RT01-35-005

Dear Ms. Salas:

Enclosed for filing in the above-referenced docket please find an original and fourteen (14) copies of the Protest and Comments Regarding the RTO West Stage 2 Filing on Behalf of the Montana Consumer Counsel. An additional two (2) copies are included to be time-stamped and returned to my office.

Montana Consumer Counsel, which is a party to these proceedings, requests that the attorneys listed below please be added to the service list in this proceeding:

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Magalie Roman Salas

May 29, 2002

Page 2

Thank you for your assistance in this matter. Please do not hesitate to contact me if you have any questions.

Yours truly,

A handwritten signature in black ink, appearing to read "David B. Lieb". The signature is written in a cursive style with a large initial "D" and "L".

David B. Lieb

Enclosures

cc: parties

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# ORIGINAL

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Avista Corporation, *et al.*

| Docket No. RT01-35-005

**PROTEST AND COMMENTS REGARDING  
THE RTO WEST STAGE 2 FILING  
ON BEHALF OF  
THE MONTANA CONSUMER COUNSEL**

On March 28, 2002, Avista Corporation, the Bonneville Power Administration, Idaho Power Company, Nevada Power Company, NorthWestern Energy, L.L.C., PacifiCorp, Portland General Electric Company, Puget Sound Energy Company, Sierra Pacific Power Company, and British Columbia Hydro (collectively, "RTO West Participants") submitted the RTO West "Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000" ("Stage 2 Filing").<sup>1</sup> Pursuant to Commission Rule 211, 18 C.F.R. § 385.211 (2001), and the Commission's April 9, 2002, Notice of Filing (as corrected on April 10, 2002 and modified on April 17, 2002), the Montana Consumer Counsel ("MCC") submits its protest of the Stage 2 Filing.<sup>2</sup>

MCC's principal concerns with respect to the Stage 2 Filing are set forth in detail in the attached affidavit of William H. Dunn, Jr.. Based upon his review of the Stage 2 Filing, Mr. Dunn concludes, *inter alia*, that the RTO West proposal is incomplete in

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<sup>1</sup> On April 22, 2002, the RTO West Participants filed an Errata to the Stage 2 Filing (Docket No. RT01-35-007). MCC's submittal pertains to the Stage 2 Filing as corrected by the errata filing.

<sup>2</sup> On October 23, 2000, MCC filed a Motion to Intervene in Docket No. RT01-35-000. MCC's Motion to Intervene was granted in *Avista Corp., et al.*, 95 F.E.R.C. ¶ 61,114 (2001). MCC therefore assumes that a separate motion to intervene in the captioned subdocket is unnecessary. However, in the event the Commission believes a separate motion to intervene is required, MCC requests that this pleading be treated as such, and incorporates by reference in support of such motion the grounds for intervention set forth in its October 23, 2000 submittal.

essential respects, and that the proposal is a work in progress on which “much work remains to be done.” Dunn Affidavit at ¶ 5. Mr. Dunn further explains that “[d]ue to the still conceptual nature of significant portions of the Stage 2 Filing, it is difficult, if not impossible, for potential market participants and State regulators to evaluate the risks and benefits associated with participation in RTO West.” *Id.* Moreover, certain provisions of the Stage 2 Filing depart from Commission precedent (*see, e.g., Id.* at ¶ 11) and the Commission’s Standard Market Design proposal without explanation as to why such departures are justified. *Id.* at ¶ 6.

RTO West Participants’ proposals and request for declaratory order should be carefully examined, and, where appropriate, denied. As explained by Mr. Dunn, “the Commission should take great care and be very precise in its decisions with respect to the Stage 2 Filing and recognize in such decisions the considerable detail that remains to be developed.” Dunn Affidavit at ¶ 5. Given the lack of explanation and needed detail for many elements of the Stage 2 Filing, the Commission should not grant the RTO West Participants’ request for a declaration that the RTO West proposal satisfies applicable Commission regulations. Until the necessary detail and explanation are furnished, any such request is premature. Specifically, we refer the Commission to the matters discussed in more depth in Mr. Dunn’s affidavit, and submit as follows:

- In light of the lack of detail included in the Stage 2 Filing with regard to the provision of ancillary services (Dunn Affidavit at ¶ 5), the Commission should deny the RTO West Participants’ request for a finding that their proposal satisfies the ancillary services function of an RTO (See paragraph J.3.f of the Request for Declaratory Order).

- In light of the Stage 2 Filing's lack of detail regarding the treatment of real power losses, the funding and operation of the Backstop Recovery Mechanism, the unreasonable proposal to establish the Annual Transmission Revenue Requirements on a two-year prospective basis, and the other deficiencies discussed in Mr. Dunn's affidavit (*Id.*), the Commission should deny the RTO West Participants' request for a finding that their proposal satisfies the Commission's requirements with respect to the design of an RTO tariff (See paragraph J.3.c of the Request for Declaratory Order).
- The lack of necessary detail on the proposed congestion management mechanism, as well as the unexplained inconsistencies between the Stage 2 Filing and the Commission's SMD Working Paper, are such that the Commission should deny the RTO West Participants' request for a finding that their proposal satisfies the Commission's requirements with respect to the congestion management function (See paragraph J.3.d of the Request for Declaratory Order).
- The lack of detail concerning the proposed RTO West planning process, as well as the inconsistencies between that process and the planning process proposed by TransConnect (see Dunn Affidavit at ¶¶ 10-12), are such that the Commission should deny the RTO West Participants' request for a finding that their proposal satisfies the Commission's requirements with respect to the planning and expansion function (See paragraph J.3.i of the Request for Declaratory Order).

- In light of proposed exemptions for BPA that appear to exceed what is necessary to satisfy express statutory requirements (Dunn Affidavit at ¶ 17), including in particular proposed exemptions from market monitoring requirements, the Commission should deny the RTO West Participants' request for a finding that their proposal satisfies either the Commission's requirements with respect to the scope and regional configuration of an RTO (see paragraph J.2 of the Request for Declaratory Order) or the Commission's requirements with respect to the market monitoring function (*id.* at paragraph J.3.h).

By listing several specific elements of the RTO West Participants' declaratory order request that we believe are inadequately supported, MCC does not mean to imply that the other elements of that request are deserving of favorable action by the Commission. Rather, MCC has listed those elements of the Participants' request that are most clearly deficient, based on the discussion in the Dunn Affidavit. The Commission might reasonably conclude that other elements of the declaratory order request also suffer from inadequate support, and might properly deny the request for declaratory order on that basis. Furthermore, MCC reserves the right to raise additional issues and objections regarding the RTO West Stage 2 Filing as our review of the filing continues and as additional information concerning the filing is developed.

WHEREFORE, for the foregoing reasons, MCC respectfully requests that the Commission take the following actions with respect to the RTO West Stage 2 Filing: (1) deny the RTO West Participants' request for a declaratory order that the Stage 2 Filing (either alone or in combination with the Stage 1 Filing) presents the elements of an

Order No. 2000-compliant regional transmission organization; (2) direct the RTO West Participants to make a compliance filing that remedies the various inconsistencies and deficiencies in the Stage 2 Filing that are referred to above and in the attached Dunn Affidavit; and (3) in any event, direct the RTO West Participants to develop (in open collaboration with stakeholders, including MCC on behalf of Montana consumers) and file for comment and Commission approval a mechanism for protecting Montana consumers from adverse cost impacts resulting from the formation of RTO West.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan J. Roth", is written over a horizontal line.

Alan J. Roth  
Gary J. Newell  
David B. Lieb

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Counsel

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May 29, 2002

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**AFFIDAVIT OF WILLIAM H. DUNN, JR. ON BEHALF  
OF THE MONTANA CONSUMER COUNSEL**

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

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

**AFFIDAVIT OF WILLIAM H. DUNN, JR.  
ON BEHALF OF THE MONTANA CONSUMER COUNSEL**

**STATE OF MAINE** ) **ss:**

PERSONALLY appeared before me the undersigned, who, after being duly sworn, states on his oath as follows:

**BACKGROUND AND QUALIFICATIONS**

1. My name is William H. Dunn, Jr. I am a Vice President/Managing Director with the firm of Barker, Dunn & Rossi, Inc. ("BDR"). My business address is 10 Sunset Point, Yarmouth, ME 04096-5933.
2. I have 31 years experience in the electric utility industry, having worked with organizations of all ownership types (i.e., public, private, local and federal) both nationally and internationally. My areas of specialization are in electricity market design and implementation, ancillary services, utility and power pool operations, inter-utility coordination, contractual power supply arrangements, and transmission access and pricing. A copy of my resume is attached to this Affidavit as Attachment 1.

3. I am knowledgeable in matters relating to market design, congestion management and transmission service in the RTO context. I have participated in the design, implementation and/or review of market designs for:

- England & Wales (operated by National Grid Company – “NGC”);
- the Victorian Power Exchange (“VPX” in Victoria, Australia);
- the National Electricity Market (“NEM” in east and south Australia and operated by the National Electricity Market Management Company – “NEMMCO”);
- the California Independent System Operator (“CAISO”);
- the Mountain West Independent Scheduling Administrator (“MWISA” in Nevada);
- Desert STAR (“DSTAR”)/WestConnect (in the southwest United States);
- the New England Power Pool (“NEPOOL” and operated by ISO New England – “ISO-NE”);
- the Northern Maine Independent System Administrator (“NMISA” in the part of Maine electrically connected to New Brunswick, Canada);
- the SeTrans Regional Transmission Organization (“SeTrans” in the southeast United States);
- the Independent Market Operator (“IMO” in Ontario, Canada); and
- the Power Pool of Alberta (“PPoA” in Alberta, Canada).

4. I have been asked by the Montana Consumer Counsel ( “MCC”) to review the Stage 2 filing of RTO West that was submitted to the Federal Energy Regulatory Commission (“FERC” or the “Commission”) on March 28, 2002 (the “Stage 2 Filing”). The focus of my review of the Stage 2 Filing has been on the market design, operational, economic and transmission aspects of the RTO West proposal. I have not focused on corporate structure, governance, financial assurance, and market power issues. In accordance with my focus, I have reviewed the following documents:

- the Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000 (the “Request”);
- Attachment E1, the RTO West Pricing Proposal;
- Attachment F, the RTO West Congestion Management Proposal;
- Attachment G, the RTO West Ancillary Services Model;
- Attachment I, the RTO West Planning and Expansion Proposal; and
- Portions of Attachment A, the RTO West Transmission Operating Agreement (“TOA”).

Based on my review of these documents, the following comments and observations are offered:

**THE RTO WEST PROPOSAL LACKS ESSENTIAL DETAILS**

5. While RTO West has made some progress in designing a Regional Transmission Organization (“RTO”) for the Pacific Northwest, much work remains to be done. The Stage 2 Filing recognizes this, both in the Request (at 6) and in some of the Attachments. The Commission should take great care and be very precise in its decisions with respect to the Stage 2 Filing and recognize in such decisions the considerable detail that remains to be developed. Due to the still conceptual nature of significant portions of the Stage 2 Filing, it is difficult, if not impossible, for potential market participants and State regulators to evaluate the risks and benefits associated with participation in RTO West. For example:
  - The Ancillary Services Model (Attachment G) is written at a very high conceptual level, with only very brief descriptions of the proposed Ancillary Services. There are no details with respect to: (i) the minimum standards and technical requirements that Ancillary Services providers will have to meet; (ii) how the total Ancillary Services requirements of RTO West will be determined; (iii) how RTO West’s Ancillary Services requirements will be allocated to the market participants (Attachment G (at 2) indicates that the formula by which RTO West will allocate Ancillary Services obligations to Scheduling Coordinators (“SCs”) will be made available to SCs, but the formula itself is not specified); or (iv) how the RTO West Ancillary Services procurement and settlement process will work. This is in stark contrast to the recent WestConnect filing<sup>1/</sup> which, in its Appendix D, included very

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<sup>1/</sup> “Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company, and WestConnect RTO, LLC, Docket No. EL02-9-000” dated October 15, 2001.

detailed Ancillary Services provisions. Note also that Attachment G (at 9) indicates that RTO West is considering development of a mechanism to allow SCs to limit activation of their reserve resources to only contingencies of that SC. In my experience this is unique in the world of Independent System Operators (“ISOs”) and RTOs and would go against the concepts of reserve sharing that have been developed over many, many years. RTO West should be requested to indicate why this is being considered and what, if any, advantages it would bring. Should the Commission elect to accept such a concept, such acceptance should not be allowed to supercede any existing reserve sharing obligations without the agreement of the other party(ies) to such arrangements. Finally, while penalty mechanisms for energy imbalances and load scheduling are noted in Attachment G (at 12), no details of such mechanisms are provided.

- There is no indication of how real power losses will be treated. Will they: (i) be reflected in the locational prices used to determine congestion charges and, if so, on a marginal or average basis; or (ii) will they be charged against each transaction and, if so, based on the location of the load, location of the generation, or some combination of both? In section D.2.f of Attachment E1 (at 23), the RTO West Pricing Proposal, it is indicated that “[b]efore commencement of operations, RTO West will develop a loss recovery mechanism.” This needs to be done now, not later, so that potential market participants can evaluate the proposal and take it into account in making resource decisions and in analyzing decisions on conversion of existing contracts.

- The Transmission Reservation Fee (“TRF”) that was described in earlier drafts of the RTO West Stage 2 Filing<sup>2/</sup> as the mechanism to collect lost short-term and non-firm transmission revenues has been replaced by a Replacement Revenue Pool (“RRP”). The RRP is to be funded by External Interface Access fees and excess revenues from the Congestion Management mechanism (reflecting revenues from Financial Transmission Option (“FTO”) auctions and congestion rents collected but not owed to holders of FTOs). In the event that these sources of revenue are not sufficient to fully fund the RRP, a significant probability in my view, use would be made of a Backstop Recovery Mechanism (see Attachment EI, the RTO West Pricing Proposal, at 12). No detail is provided on the funding or operation of the Backstop Recovery Mechanism, because this element of the proposal has been left for development after the shortfall in the RRP occurs. I am not necessarily opposed to a Backstop Recovery Mechanism, but it does not make sense to wait until after a known potential problem of some non-trivial probability develops (especially likely if a reciprocity deal is negotiated with the WestConnect RTO and the CAISO that eliminates export fees) before working on how the problem would be addressed. As with losses, this Backstop Recovery Mechanism needs to be developed now, not later, so that market participants and State regulators can evaluate its impact.
- The provisions with respect to: (i) the execution of new transmission service contracts prior to the RTO West Operations Date and their treatment as Pre-Existing Transmission Agreements and Obligations; (ii) the approval rights and obligations of the parties over the conversion of such agreements and obligations;

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<sup>2/</sup> There is still a reference to the TRF in the RTO West Congestion Management Proposal (Attachment F at 17). I assume that this is simply an oversight.

(iii) the treatment of roll-over/extension/termination rights in such agreements and obligations; (iv) the treatment of the load growth of both Participating Transmission Owners (“PTOs”) and customers under various contractual arrangements; and (v) any differences in position of customers under existing contracts that are fully converted to transmission service under the RTO West tariff and receive FTOs versus those that “convert their contracts to direct RTO West service (but without receiving FTOs), in which case their Scheduling Coordinators will be able to submit schedules against the CTRs that relate to their underlying contract rights” (Attachment F at 4), are not sufficiently clear to allow detailed evaluation. These provisions need to be clarified now, not later.

As indicated, the current level of detail provided makes it very difficult to determine how an entity would actually participate in the markets administered/scheduled by RTO West and to evaluate the associated risks and benefits.

**THE RTO WEST STAGE 2 FILING IS INCONSISTENT WITH THE COMMISSION’S  
STANDARD MARKET DESIGN WORKING PAPER**<sup>3/</sup>

6. The Commission’s Standard Market Design (“SMD”) Working Paper was issued two weeks prior to the Stage 2 Filing. While this was not far enough in advance for all the details of the Working Paper to be digested and used to guide the Stage 2 Filing, it is a deficiency of the Stage 2 Filing that there is no acknowledgement in the Stage 2 Filing of its obvious deviations from the Commission’s SMD or any attempt to justify or explain such deviations. For example:

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<sup>3/</sup> “Federal Energy Regulatory Commission Working Paper on Standardized Transmission Service and Wholesale Electric Market Design” (“Working Paper”) issued March 15, 2002.

- The Working Paper states quite clearly in item #8 (at 14), in the section on “Scheduling and Bidding Rules,” that “market participants must not be required to submit balanced schedules.” The RTO West market design requires submission of Balanced Schedules.
- The Working Paper states (at 8), in the section on “Transmission rights for transmission price certainty,” that “the transmission rights holder will receive the associated congestion revenue.” There is no indication in the Working Paper that the market participant itself must actually experience congestion costs in order to collect the congestion revenue (rents) related to any transmission rights it might hold. There is also a statement, in the same section of the Working Paper, that “[a]nyone can hold a transmission right.” In contrast to the model set forth in the SMD Working Paper, the RTO West design would only pay the holders of its FTOs the “value” of such FTOs to the extent that the FTO holder itself actually experiences congestion costs, with such payment capped at the level of the congestion costs the FTO holder actually experienced. Since the holding of FTOs has value only to FTO holders that themselves actually experience congestion costs, FTO ownership is effectively restricted, the tradability of such transmission rights is diminished, and the chances of creating a liquid market for FTOs is reduced.
- With respect to the RTO West FTOs, they are structured as “options.” That means that revenues are collected by the FTO holder if locational prices increase in the direction of the FTO (i.e., if the FTO is from Point A to Point B and the locational energy price at Point B is higher than the locational energy price at Point A), but payments are not owed by the FTO holder if locational prices reverse (i.e., if the

FTO is from Point A to Point B but the locational energy price at Point B is lower than the locational energy price at Point A). The Commission's SMD Working Paper, on the other hand, seems to express a preference for transmission rights structured as "obligations." The Working Paper states on page 11, in the section on "Additional features of the standard transmission service," that "[a]t the start of Network Access Service, the transmission provider must offer source-to-sink obligations." In the Working Paper, the use of source-to-sink "options" is left until requested by market participants and until "it is technically feasible." The use of transmission rights "options" may be acceptable as a transition mechanism and to ease the conversion of existing contracts to RTO West tariff service. Over the long-term, however, the structuring of transmission rights as point-to-point (source-to-sink) "obligations" may be preferable to the extent that it would allow more transmission rights to be auctioned.

The fact that the RTO West design deviates from the Commission's SMD Working Paper is not necessarily a reason to reject the Stage 2 Filing, but the Commission should require RTO West to justify the deviations and demonstrate that these RTO West provisions are superior to the related provisions of the SMD.

#### **BENEFITS TO MONTANA CONSUMERS**

7. The Request notes (at 15, n. 12) that both the RTO West commissioned cost-benefit study<sup>4/</sup> and the Commission's cost-benefit study<sup>5/</sup> show that the cost of creating an RTO exceeds the benefits resulting from an RTO for Montana. While both of these studies have been

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<sup>4/</sup> "RTO West Benefit/Cost Study, Final Report Presented to RTO West Filing Utilities" dated March 11, 2002 and prepared by Tabors Caramanis & Associates.

<sup>5/</sup> "Economic Assessment of RTO Policy" dated February 26, 2002 and prepared by ICF Consulting.

criticized, most of the criticisms have been that they overestimate the benefits of RTO creation. Much of the criticism has been along the lines of the studies claiming, as benefits from RTO creation, benefits that are being achieved or can be achieved without an RTO. Therefore, if the studies were adjusted to remove claimed benefits that are achievable with or without the RTO, it may be assumed that the negative impacts on Montana from RTO creation would be even larger.

8. One of the reasons for the negative benefits for Montana seems to be that aspects of the RTO West design that have a negative impact on Montana consumers, such as the increased export of low cost energy from Montana to the rest of RTO West, happen on Day 1 while provisions that might be expected to help Montana consumers, such as the potential move to wider sharing of the high costs of the transmission system in Montana being used to deliver and export the low cost energy, are deferred at least until after the Company Rate Period (eight years after RTO West commences operation), and may never occur.
9. In light of the above, the Commission should direct RTO West to adjust its proposal to, at a minimum, hold the consumers in Montana harmless on Day 1. The benefits that consumers in other portions of the RTO West footprint would theoretically receive from the creation of RTO West should not be funded on the backs of the consumers in Montana. Montana consumers should not be subjected to increases in power costs attributable to the establishment of an RTO.

#### **TRANSMISSION PLANNING & EXPANSION AND GENERATION INTERCONNECTION**

10. The Request (at 9, n. 5) refers to “a *pro forma* planning protocol” filed by TransConnect on November 13, 2001. Later, the Request (at 55, n. 63) recognizes that there are already

inconsistencies between the RTO West planning approach and that proposed by TransConnect. No information is provided, however, on how these inconsistencies are to be resolved and what additional filings will be required by either or both parties. This is a critical issue as the transmission planning and expansion process will have a major impact on the future development of resources in Montana. The Commission should require that all of these inconsistencies be resolved now so that potential market participants and State regulators can evaluate their options.

11. In addition to resolving these inconsistencies, RTO West needs to explain what is meant by the “RTO West least-cost process” mentioned in Attachment I, the RTO West Planning and Expansion Proposal. It is not clear from a reading of the Stage 2 Filing that alternatives to transmission, such as local generation and Dispatchable Demand Resources, will have a timely and equivalent opportunity to compete, or that there will be competition in the development of transmission options. Note that Commission decisions in New England and GridSouth indicate that the Commission does not want existing transmission owners to have a right of first refusal to build new facilities in their service territories. In effect, there should be competition in the construction, operation and ownership of new transmission facilities. Sections G.2.a and b of Attachment I (at 15, 16) both include the statement that “[t]his is not a PTO right of first refusal” when discussing the rights of PTOs to participate in upgrades and expansions proposed by third parties. The PTO rights described, however, give every appearance of being, to at least some degree, a right of first refusal.
12. The Request implies (at 53) that RTO West will use the goals and objectives of the Filing Utilities for planning and expansion. I would suggest that, consistent with Order 2000, RTO West should, as soon as possible, develop its own set of goals and objectives to be

it is likely to require redispatch for 40 hours to create a full one-year strip of 8,760 hours. RTO West could sell the one-year strip despite the gap if it determines doing so is within its risk management policies.”

- According to the Congestion Management Proposal (Attachment F at 18), “RTO West may, subject to its risk management guidelines and Commission approval, sell long-term FTOs supported through purchase of redispatch. This sale would take place only at a price that is sufficient to recover all redispatch costs necessary to support the FTOs.”

This seems to place RTO West at financial risk for the operation of the energy markets, which I view as inconsistent with RTO West’s role as the neutral operator of the electric system and residual markets. If RTO West has taken a position that it can manage congestion between two specific points on the system for less than a particular amount, it now will have a financial incentive to make sure that the cost is less than that amount, even if in doing so it distorts operation in other parts of the system. The Commission should prohibit RTO West from taking financial positions in the markets it operates and/or coordinates. This is not meant to imply that I would be opposed to providing RTO West with financial incentives to improve overall operation of the electric system, as long as the performance standards required to earn such financial incentives can be clearly identified and measured (as well as being market-neutral).

**ANNUAL TRANSMISSION REVENUE REQUIREMENTS ON A PROSPECTIVE BASIS**

15. The Request (at 28, n. 28) indicates that the Filing Utilities are using the fact that the Bonneville Power Administration (“BPA”) currently sets its transmission rates on a prospective basis to say that all PTOs should set the equivalent of their Annual

Transmission Revenue Requirements (“ATRRs”) on a prospective basis. Under the Company Costs portion of Section D.1 of Attachment E1 (at 17), the RTO West Pricing Proposal, the proposal states that the Company Costs used in the Company Rate formula are the revenue requirements for a forward two-year test period for each PTO’s transmission facilities described in the TOA. However, the formula and the descriptions of the other components of the formula (Attachment E1 at 17, 18, 19) do not indicate whether: i) the other components of the formula and billing determinants are also based on two years; and ii) the other components of the formula and billing determinants are based on historical data, forecasts, actual data or some combination thereof.

16. RTO West should be required to clarify the details of its Company Rate formula proposal. In any event, a prospective two-year test period should be rejected, for several reasons. First, forecasting the elements of the cost of service over such an extended period necessarily introduces a significant element of speculation into the rate-setting process, which makes the forecasts and resulting cost of service unreliable. Second, setting ATRR on such an extended prospective basis could create perverse incentives with respect to forecasts of capital expenditures, operation and maintenance expenditures, transmission system use, and so forth. Third, a two-year “test period” violates Commission filing regulations. A better approach might be to set the ATRR on a formula basis, and to require that the rates developed through be formula be updated annually.

#### **BPA PARTICIPATION IN RTO WEST**

17. Everyone agrees that participation by the Bonneville Power Administration (“BPA”) is fundamental to the success of RTO West. However, there is a concern that the Request (at 12-13, n. 8) contains a description of restrictions BPA will assert with respect to certain

RTO West provisions, such as those related to the monitoring of its possible exercise of market power. While participation by BPA may be fundamental to the creation of RTO West, there would be concern if BPA is able to exempt itself from most provisions of RTO West. BPA should be subject to the same market rules and market power mitigation provisions as other RTO West participants to the full extent consistent with its clearly defined statutory requirements. It is not clear that footnote 8 intends the same very limited exemptions from RTO West rules for BPA. Since footnote 8 relies on future negotiations between RTO West and BPA, RTO West should be required to consult with market participants and State regulators during such negotiations, and market participants and State regulators should have the opportunity to comment on (and, if necessary, oppose) the results of such negotiations.

#### **UNIQUENESS OF THE PACIFIC NORTHWEST**

18. The RTO West Congestion Management Proposal (Attachment F at 5-8) contains a detailed description of the physical characteristics of the power system in the Pacific Northwest and why it is unique. As far as I can tell, all of these physical characteristics might be accommodated in the Locational Marginal Pricing (“LMP”)/Financial Transmission Rights (“FTR”) model described in the Commission’s SMD Working Paper. Any Balanced Schedule submitted under the RTO West model that recognizes the Pacific Northwest’s unique characteristics could also be implemented through self-scheduling under the LMP/FTR model. The last major paragraph in section C.1 of Attachment F (at 8) includes a variety of statements about the benefits of: (i) FTO options versus FTR obligations; and (ii) paying FTO holders only when they schedule transactions and incur

actual congestion costs. RTO West should be required to provide the studies or analyses that support those statements.

#### **CONCLUSION**

- 19.** As indicated at the beginning of this Affidavit, RTO West is making progress but it is time for the Commission to tell RTO West to fill in all the missing details. RTO West also should be directed to justify the deviations from the Commission's SMD Working Paper that it is proposing. Until market participants and State regulators have sufficient information to analyze the risks and benefits of RTO West participation, parties cannot commit the support necessary to actually get RTO West up and running.

FURTHER AFFIANT SAYETH NOT.

Dated at Yarmouth, Maine this 29th day of May, 2002.

  
William H. Dunn, Jr.

Subscribed and sworn to before  
me this 29th day of May, 2002

  
Notary Public

LEESA L. ANDERSEN  
My Commission Expires:  
My Commission Expires June 30, 2008  
Notary Public, Maine  
LEESA L. ANDERSEN

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ATTACHMENT 1 TO AFFIDAVIT OF WILLIAM H. DUNN, JR.  
ON BEHALF OF THE MONTANA CONSUMER COUNSEL

Mr. Dunn is one of the co-founders of Barker, Dunn & Rossi, Inc. (BDR). He has over 31 years proven experience working with electric utility organizations of all ownership types (i.e., public, private, local and federal) in all parts of the world. He specializes in electricity market design and implementation, ancillary services, utility and power pool operations, inter-utility coordination, contractual power supply arrangements, and transmission access and pricing.

### **PROJECT EXPERIENCE – DOMESTIC UNITED STATES**

- California** Played a major role in the development of the Protocols and Agreements for the implementation of the **California Independent System Operator (CAISO)**. Focus was on drafting the Protocols with respect to Schedules and Bids submittal, Scheduling, and actual Dispatch.
- Confidential Utilities** Evaluated the treatment of generation within a transmission-restricted region as a security component of the transmission system. Drafted report on retail competition in other countries and its relevance in a particular utility's markets. Investigated the relationship between system dispatch and distribution companies in alternative electricity markets. Developed flexible power purchase contracts between a company's existing generation and retail supply businesses that addressed utility de-integration and restructuring issues. Prepared a report on restructuring, corporatization, unbundling and privatization in the United States and worldwide.
- Confidential Legal Client** Prepared and conducted a workshop for a law firm and some of its clients on congestion management, transmission rights and multi-settlement systems. Included in the workshop was a demonstration of how locational marginal prices are calculated and how congestion on the transmission system impacts such prices.
- Detroit Edison** Provided workshops on electric service unbundling and on International Markets and Ancillary Services.
- East Coast Industrial Concern** Investigated power options for a large industrial customer in the context of a deregulated electricity industry and evolving electricity market structure.
- East Coast Power Pool** Advised on issues associated with integration of Demand-Side Management (DSM) options into the new market structure.
- Electric Power Supply Association (EPSA)** Drafted several Briefing Papers providing concise descriptions of the issues surrounding several aspects of market design and summarizing some of the options being considered for resolving such issues.
- Florida** Provided advice to **Seminole Electric Cooperative, Inc.** and the **Florida Municipal Power Agency (FMPA)** during the discussions of the initial proposals to create GridFlorida. Also provided both organizations with workshops on various methods for managing congestion.
- Nevada Power Company** Played a major role in the design and approval by the Federal Energy Regulatory Commission (FERC) of the creation of a **Mountain West Independent Scheduling Administrator (MWISA)** to provide non-discriminatory access to two wholesale markets in Nevada.
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**New England Region  
(except Northern Maine)**

**Massachusetts Municipal Wholesale Electric Company (MMWEC) and The United Illuminating Company (UI)** – Advised on issues associated with the design of the new New England Power Pool (NEPOOL) markets and the evolution to include a Congestion Management System (CMS) and a Multi-Settlement System (MSS) and, for MMWEC, on the creation of a Regional Transmission Organization (RTO) for New England. Provided testimony on NEPOOL restructuring efforts and a gas line siting case for MMWEC. Continuing to advise MMWEC on a wide range of market and FERC-related activities and represented MMWEC in the Northeast RTO Mediation efforts ordered by FERC with respect to the merging of the electricity markets of NEPOOL, the New York ISO (NYISO) and the Pennsylvania – New Jersey – Maryland (PJM) Interconnection.

**Central Vermont Public Service Corporation (CVPS)** - Provided testimony before FERC with respect to recovery of stranded costs associated with supply to its Connecticut Valley Electric Company affiliate in New Hampshire.

**New England Power Pool** – Conducted two workshops, on International Restructuring and on Pooling in the United States, for a committee of NEPOOL.

**New Hampshire Electric Cooperative (NHEC)** – Advised on a contract dispute with Public Service Company of New Hampshire (PSNH) over changing power suppliers. Drafted testimony on this and testimony associated with NHEC's subsequent bankruptcy filing.

**Vermont Electric Power Company (VELCO)** – Conducted workshops on restructuring for utilities (public and private), government officials and customers. Advised on the implementation of new NEPOOL markets within the Vermont sub-pool.

**Northern Maine**

Played a major role in the design and implementation of an electricity market for the portion of Maine that is electrically connected to New Brunswick, Canada, including creation of the Market Rules, the FERC filing and the creation of the **Northern Maine Independent System Administrator (NMISA)**. This market started operation on March 1, 2000. Continuing to advise the NMISA on post-implementation issues.

**Northwest Region**

On behalf of the **Montana Consumer Counsel**, reviewed and provided comments on drafts of and the final Stage 2 filing of RTO West.

**Southeast Region**

On behalf of **ElectriCities**, reviewed and provided comments on various aspects of the market design being developed for the SeTrans RTO. Also contributed to comments filed by ElectriCities on FERC's Standard Market Design (SMD) Working Paper and Options Paper.

**Southwest Region**

**Desert Star, Inc. (DSTAR) and WestConnect LLC (WestConnect)** – As technical consultant to first the independent Board of Directors of DSTAR and then to the Transmission Owners of WestConnect, leading the BDR team responsible for developing and documenting the market design,

facilitating the development of a transmission pricing design, developing a specification for procurement of the necessary systems and services to operate an RTO in the desert southwest, and working with the legal consultant on drafting and defending the necessary FERC filings. In late September 2001 non-profit DSTAR was superceded by for-profit WestConnect. An RTO filing was made with FERC on October 16, 2001. Since the filing, activities have concentrated on responding to interventions and preparing comments on various FERC initiatives.

**Transmission Access Policy Study Group (TAPS)**

Provided a workshop on various methods for managing congestion.

**West Coast Power Pool**

Reviewed a west pooling agreement and provided recommendation of amendments to such agreement.

**PROJECT EXPERIENCE - INTERNATIONAL**

**Australia**

**Electricity Trust of South Australia (ETSA)** - Participated in evaluating the possible impacts on South Australia's economics and reliability caused by proposals to create a National Electricity Market (NEM) in Australia.

**Electricity Supply Industry Reform Unit (ESIRU), National Grid Management Council (NGMC) and the National Electricity Market Management Company (NEMMCO)** - Advised at several different stages on the design of the NEM. Member of the team auditing NEMMCO and the NEM.

**State Electricity Commission of Victoria (SECV)** - Advised on the restructure of the SECV into business units with a transfer pricing system between the separate generating plants, the wholesale electricity business, the grid business and system control.

**Victorian Power Exchange (VPX)** - Advised on the design of a Victorian Power Pool (VicPool), coordination with other states, and transmission pricing. Member of the team hired as auditors for VPX.

**Baltic Countries**

Developed presentations for and participated in discussions with utility and Energy Ministry staff for Estonia, Latvia and Lithuania, and with staff from the **Baltija Dispatch Centre**. One presentation and follow-up discussions, which also included representatives of Russia and Byelorussia, concentrated on an overview of electricity products, transmission, market structures, pricing and costs. The second presentation and follow-up discussions focused in more detail on technical and commercial issues associated with reactive power and both installed and operating reserves.

**Canada**

**Power Pool of Alberta (PPoA)** - Advised on the design of a Binding Day-Ahead Market (BDAM) to provide the PPoA market participants with and facilitate the development of additional risk mitigation tools.

**City of Calgary Electric System (CCES) - Alberta** - Advised on a variety

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of issues associated with development of the Power Pool of Alberta.

**Independent Market Operator (IMO) – Ontario** – Conducted a review of the Market Rules to identify their robustness, based on experiences in other jurisdictions, and any gaps in the rules. Identified and drafted changes, approved by the IMO Board, to the Market Rules necessary to address Local Market Power and Reliability Must-Run situations.

**New Brunswick Electric Power Commission (NBPower)** – Provided advice to NBPower with respect to the creation of an open access tariff for use of the NBPower transmission system.

**Ontario Hydro (OH)** – Participated in the initial activities associated with restructuring of the electricity supply industry. Conducted several workshops regarding various markets designs (for the **Advisory Committee on Competition in Ontario's Electricity System**), the scope and requirements of market rules, and the actual implementation of functioning markets.

**Colombia**

**Comisión de Regulación de Energía y Gas (CREG)** - Reviewed treatment of ancillary services in the Colombian electricity sector. Also delivered a presentation at a seminar on risk management.

**El Salvador**

Drafted rules for the implementation of new markets, including comments on a draft of Reglamento developed to implement the new Electricity Law.

**England & Wales**

**National Grid Company (NGC)** - Participated as a member of the NGC Task Force that was responsible for the development of the original Grid Code. Assisted NGC's lead negotiator in the original negotiations between NGC, the distribution companies, the generating companies and Her Majesty's Government. After privatization, advised on matters associated with Use-of-System transmission charges and Ancillary Services, including issues such as transmission losses and constraints, and reserves, and on consolidation of control centers.

**Hungary**

Requested, from time to time, to review, on behalf of the **Hungarian Energy Office (HEO)**, various aspects of the market design being developed for Hungary.

**India**

**PowerGrid Corporation** - Participated in a project to recommend new bulk power and transmission tariffs and a new regulatory structure.

**Ireland**

**Electricity Supply Board – National Grid** – Assisted in the drafting of a report on Long-Term Market Implementation of Third Party Access.

**Major International Utilities**

For one foreign utility, advised on the regulatory, marketing, dispatch and transmission aspects of a potential investment in a U.S. Independent Power Producer. For a U.S. utility, advised on a potential investment in a proposed interconnector project between two European countries.

**Mexico**

Advised officials in the Electricity Supply Industry and prepared a report covering issues such as planning, acquisition of new capacity, dispatch,

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	transmission, contracts, and regulation. Participated in a World Bank session on similar issues with officials of the state utility.
<b>New Zealand</b>	<b>Trans Power New Zealand, Ltd.</b> - Advised on general electricity market structure issues, including drafting sample power supply contracts under various market mechanisms, and on issues associated with integration of DSM options into the new market structure. Also provided system security reviews of the design and operation of the New Zealand Electricity Market (NZEM).
<b>Northern Ireland</b>	Provided assistance to <b>Northern Ireland Electricity (NIE)</b> on the drafting of a Grid Code as part of a privatization of the industry in Northern Ireland.
<b>Norway</b>	<b>Norwegian Ministry of Petroleum and Energy</b> – Advised officials with respect to Performance Indicators to be used to monitor and evaluate the performance of a new Grid Company, Statnett.
<b>Portugal</b>	Advised utility officials on various pooling and settlement issues.
<b>Ukraine</b>	Assisted on a project to develop competition in the power industry in the Ukraine. This included drafting an initial version of the High Voltage Service Agreement and the Members (Pooling) Agreement.
<b>Venezuela</b>	<b>CVG Electrificación del Caroní (EDELCA)</b> - Advised on the development of Performance Indicators in areas related to Transmission, Generation and Support Services. Presented a workshop on pooling arrangements, contracts within these arrangements and determination of installed capacity obligations.

#### PREVIOUS FIRMS

<b>1989 - 1997</b>	<b>KEMA-ECC, Inc. – Executive Consultant</b> - Consulting to the electricity supply industry, primarily in the areas of restructuring, market design, implementation and operation, and transmission access and pricing.
<b>1980 - 1989</b>	<b>Massachusetts Municipal Wholesale Electric Company – Division Manager</b> - Management of the Power Management Division in charge of power supply, demand-side activities, regulatory filings and interface with NEPOOL.
<b>1973 - 1980</b>	<b>Vermont Electric Power Company, Inc. – Supervisor</b> - Responsible for operations engineering, billing and settlement of the Vermont sub-pool of NEPOOL and some of the interface activities with NEPOOL.
<b>1971 - 1973</b>	<b>Stone &amp; Webster Engineering Corporation – Engineer</b> - Work on the design and construction of fossil, nuclear and pumped storage power plants.

May 1, 2002

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**CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I hereby certify that I have on this 29th day of May, 2002, caused the foregoing document to be sent by first-class mail to all parties on the list compiled by the Secretary of the Commission in this proceeding.



Gary J. Newell

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2. Staff's exception to the Presiding Judge's combining the average low dividend yield with the lower growth rate, and the average high dividend yield with the higher growth rate to derive the low and high estimated ROE for each company in the MISO proxy group.

### **III. EXCEPTIONS OPPOSED**

The State Commissions and State Advocates oppose the following exception to the Initial Decision filed by the Midwest ISO Transmission Owners:

2. The Initial Decision erred in rejecting substantial evidence that the ROE should be set above the midpoint of the range of reasonableness to compensate for the risks of joining an RTO, to comport with the Commission's precedent for transmission owners under an ISO, to recognize the comparability of interstate natural gas pipeline returns, to encourage RTO participation, and to attract capital to the vital transmission sector. Initial Decision at P76-81, 84-85, 20-21.

The State Commissions and State Advocates submit, for the reasons stated below, that the Presiding Judge correctly rejected the Midwest ISO Transmission Owner arguments that the ROE should be set above the midpoint of the range of reasonableness.

### **IV. RESPONSE TO POLICY CONSIDERATIONS**

The Midwest ISO Transmission Owners claim that approval of their proposed 13.0% ROE is necessary to send an important policy signal to the transmission owners in the Midwest and elsewhere that are currently struggling with difficult RTO formation questions.

The State Commissions and State Advocates submit that approval of a return at the median of the proxy group will send the signal that the Commission intends to balance the concerns of investors and consumers, as both are currently struggling with the restructuring of the electric industry. Moreover, the State Commissions and State Agencies do not believe the Commission's policies have designed a transmission market fraught with elevated levels of risk. In this respect, it is worth noting that since its inception the Midwest ISO has successfully attracted additional Transmission Owners with a cost-of-service formula using a 10.5% ROE.

## V. ARGUMENT OPPOSING EXCEPTIONS

No party takes issue with the Presiding Judge's observation that "[t]he most salient issue in this case" is where to place the ROE within the zone of reasonableness.<sup>1</sup> Regarding this key issue, the State Commissions and State Advocates submit that Presiding Law Judge Cintron conducted a thorough review and analysis of the record and correctly rejected the Midwest ISO Transmission Owners' claim that the risks of owning transmission assets under control of an RTO are greater than the average risks of the proxy group. In support of this result, the Presiding Law made two key findings: (1) that the evidence in the record concerning the purported risks of transferring transmission assets to the MISO is "highly speculative"<sup>2</sup>; and (2) that the relevant proxy group and one-step DCF methodology fully account for the risks resulting from the on-going electric industry restructuring.

On exceptions, Midwest ISO Transmission Owners simply reargue the same points presented to the Judge regarding alleged incremental risks associated with membership in an RTO. According to the Transmission Owners, an incremental RTO risk analysis is necessary because the Midwest ISO has not been operating long enough for the DCF analysis to have factored-in the risks of joining an RTO. As demonstrated below, none of these arguments provides a basis for the Commission to reverse the Initial Decision. To the contrary, the Presiding Judge considered all of the evidence and related arguments advanced by the Midwest ISO Transmission Owners and properly rejected the idea that RTOs face greater risks than the proxy group of electric companies.

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<sup>1</sup> Initial Decision at 60.

<sup>2</sup> Initial Decision, Slip Op. at 24.