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FEDERAL ENERGY
REGULATORY COMMISSION

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

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

**MOTION TO INTERVENE AND COMMENTS OF,
THE ALBERTA DEPARTMENT OF ENERGY,
ESBI ALBERTA, LTD., AND THE POWER POOL OF ALBERTA
ON STAGE TWO PROPOSAL OF FILING UTILITIES**

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214), FERC Order No. 2000, and the Commission's Notice of Filing issued April 9, 2002, and Errata Notice issued April 10, the, the Alberta Department of Energy, ESBI Alberta, Ltd. and the Power Pool of Alberta (collectively the "Alberta Intervenors") each hereby move to intervene in the above-captioned proceeding, and submit jointly their response to the "Stage 2 Filing and Request for Declaratory Order", regarding the proposed formation of a Regional Transmission Organization ("RTO") for the Pacific Northwest and contiguous regions.

The Alberta Intervenors are intervenors in the primary docket of these proceeding. As set forth in more detail in their initial motion to intervene, filed herein on November 20, 2000, each of the three entities is responsible for a different component of the restructured, competitive electric power market in the province of Alberta. Since the original intervention pleading was prepared, the functions of the Alberta Department of Resource Development have been assumed by the Alberta Department of Energy. We have updated information as follows:

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Alberta is located at the periphery of the RTO West, as configured under the proposed “geographic scope” provisions. The province currently has approximately 10,000 MW of generating capacity. At present it is interconnected to British Columbia via one 500kV and two 138 kV transmission lines and to Saskatchewan via a back-to-back High Voltage Direct Current converter. The BC interconnection is rated at 635 MW for normal import transactions, with Saskatchewan at 150 MW. These physical connections facilitate both export/import and demand-management participation in the larger continental market for electric power.

I. The Stage 2 Filing

On March 29, 2002, Avista Corporation, the Bonneville Power Administration, Idaho Power Company, Northwestern Energy, L.L.C. (formerly The Montana Power Company), Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra

Pacific Power Company, joined by British Columbia Hydro and Power Authority (collectively, the “Filing Utilities”) submitted their Stage 2 Filing and Request for Declaratory Order. The filing was tendered pursuant to Commission Order No. 2000 and regulations codified at 18 CFR 35.43(c). The sponsors of the filing propose to form a regional transmission organization, referred to as RTO West.

The Stage 2 Filing is the product of extensive discussions and deliberations among a wide range of parties and stakeholders. The sponsors of the filing are all large utilities with vast transmission holdings. The sponsors seek a declaratory order from the Commission approving the concepts contained in the Stage 2 filing. The Stage 2 filing does not contain a single RTO West transmission tariff for application to the entire region. The Filing Utilities explain that such a tariff would be submitted to FERC within thirty to sixty days after the Declaratory Order is issued.

II. Identity of the Alberta Intervenors And Overview of the Restructured Alberta Electric Market

In accordance with the provisions of Rule 214 of the Commission’s Rules of Practice and Procedure, set forth below is a description of the three moving entities that comprise the Alberta Intervenors and a statement of their respective interests herein. In addition, these descriptive provisions are intended to provide an overview of the revised structure of the Alberta electric market, which affords the potential for increased integration of Alberta into the continental market.

Alberta has progressed, for the past six years, toward competition as the governing paradigm for its provincial electric power industry. The guiding principles underlying this movement are fully in harmony with the objectives and purposes of the FERC’s Order No. 2000, and its related policy initiatives. Alberta Intervenors support the Commission’s efforts to bring about the implementation of more competitive and fluid markets, including the implementation of RTOs. The three entities

that, by this pleading, jointly seek to participate in the RTO formation process before the FERC are each instrumental to the process and functioning of the electric market in Alberta.

The Alberta Department of Energy (“ADOE”). The ADOE is part of the provincial government of Alberta. It represents the interests of the Government of Alberta in energy-related regulatory proceedings outside the province. As relevant here, the ADOE is responsible for administration of the Alberta *Electric Utilities Act*, which provides legislative authority for operations of the Power Pool and the Transmission Administrator and facilitates by legislation, the objectives of an open, competitive market for electric power and energy.

ESBI, the Transmission Administrator. ESBI Alberta, Ltd. (“ESBI”) is a limited liability company organized pursuant to the laws of the province of Alberta, with its principal place of business located in Calgary, Alberta. Pursuant to a provincial designation issued in 1997, ESBI has served as Transmission Administrator (“TA”) since June, 1998. The role of TA, like that of the Power Pool, was created *via the Electric Utilities Act*. The TA functions to provide access to the Alberta Interconnected system in a manner that is fair and equitable. The TA contracts with individual transmission owners to provide system access service; makes prudent financial arrangements for the provision of ancillary services; determines province-wide tariffs for transmission access for approval by the Alberta Energy and Utilities Board; carries out transmission planning, sets policies for the operation of the transmission system and interacts with the Power Pool for the management of ancillary services and the implementation of their operating policies.

The Power Pool of Alberta. The legal identity of the Power Pool of Alberta (“Power Pool”) is the Power Pool Council, a statutory corporation under the *Electric Utilities Act* of Alberta. The Power Pool is an independent, not-for-profit corporation created to operate an open and

competitive electricity market in Alberta. Its principal place of business is located in Calgary, Alberta. The Power Pool has been in operation since January 1996.

Under Alberta's prevailing structure, the Power Pool performs three key functions. It operates the real time electric energy market, manages the operation of the Alberta Interconnected System including the real-time coordination of the provincial power grid and carries out surveillance of the electricity market. The Power Pool matches electricity supply with demand and establishes a visible market price. As the real-time coordinator of the power grid, the Power Pool ensures Alberta's interconnected power system operates safely, reliably and economically.

Accordingly, each of the Alberta Intervenors may be affected by Commission action in this docket and each has a vital interest in this proceeding, interests that are not represented by any other party. In particular, Alberta is evaluating which business relationship option (membership or a seams agreement) with RTO West best fits the needs of the transmission stakeholders in Alberta. Therefore the Stage II Filing and the Commission's response to the Filing are of material value in Alberta's determination of the appropriate business relationship with RTO West.

III. New Positions of the Alberta Intervenors

A. Catalogued Transmission Rights Should Not Extend Past 2011

Alberta Intervenors contend that all RTO West parties should switch to a single system RTO West transmission tariff by December 2011. RTO West is proposing that each transmitting utility in RTO West would continue to honor all current contracts for load obligation customers or provide these customers with converted service. Customers voluntarily converting to RTO West service can choose the Catalogued Transmission Rights ("CTR") election path or the Financial Transmission Options ("FTO") election path. Participating Transmission Owners ("PTOs") with non-converted service contracts will be issued CTRs by RTO West to cover those service obligations. Although

existing customers with contracts can convert to RTO West service and receive FTOs, there is little benefit in converting to FTOs. The one benefit of FTOs is that they are fungible and therefore tradable in the secondary market. CTRs allow customers to avoid any congestion costs even with re-scheduling in the "day-of market" as long as they do so within the limits of their contracts rights. Although RTO West's filing implies an end date for these CTRs, the filing does not propose a specific transition plan to a mandatory RTO West transmission tariff requirement, nor does it describe which pricing principles would change at the end of the existing customers' contract period that would ease transition to a single RTO West transmission tariff. RTO West provides no commitment to discontinue the use of CTRs for these existing customers' contracts.

Alberta Intervenors believe that the majority of the domestic load served by the participating transmission owners will be served through existing contracts at the time of RTO West operational commencement. The goal of creating a liquid competitive wholesale market in electricity is not well served by an abundance of unconverted CTRs. The greater the conversion rate to FTOs, the greater the chance of a successful market.

Alberta Intervenors endorse the concept of a transition period between the commencement of service for RTO West and a fully phased-in RTO West transmission tariff, *i.e.*, all contracts and CTRs are replaced with FTOs and RTO West tariff conditions. Although the cover letter to the Stage 2 Filing mentions that the Company Rate Period is expected to last for eight years from the date of commercial operation of RTO West, the RTO West Pricing Proposal contemplates that Non-Converted Service and CTRs may be in place much longer. Alberta Intervenors recognize that the conversion of existing customer contracts to FTOs does present RTO West with a policy dilemma with regard to respecting existing customer rights. Notice of the end to the Company Rate Period (December 2011) was served some time ago in the Stage I filing. December 2011 should provide a

more than ample transition period. Alberta Intervenors believe that the Company Rate Period and CTRs should not extend beyond December 2011.

B. The Locational Bid Pricing Model is More Appropriate for RTO West Than the LMP Model

Although the Commission has endorsed the Locational Marginal Pricing (“LMP”) model for determining congestion charges in other RTOs and ISOs, the Locational Bid Pricing (“LBP”) model developed by RTO West is preferable for RTO West’s unique circumstances. For the reasons set forth in the Stage 2 Filing at Attachment F, the Alberta Intervenors support the voluntary bid-based system of congestion management presented by RTO West. In the West, transmission networks are sparser and less meshed than for electric systems on the U.S. Eastern seaboard. The system is characterized by stability issues rather than thermal issues, hence the determination of Available Transmission Capacity (“ATC”) is less transparent and in many cases there are no generators physically present downstream of a constraint. In Alberta, due to the geographically dispersed loads and centralized generation resources, the LBP model would provide more re-dispatch options than the LMP model. Therefore, the LBP model would be more effective for managing transmission congestion in Alberta. A voluntary bid-based system provides a measure of the market's value for energy in a specific location. This provides a signal for when economic transmission expansions should occur, which encourages transmission expansions to take place on a timely basis, supporting the continued development of a reliable transmission system. In this scenario, the transmission system will be built both for the reliability load needs and to facilitate commercial transactions such as trade between different RTO areas.

The RTO West participants, and the Alberta Intervenors, recognize the unique nature of transmission issues in the West and therefore, recognize the need for an appropriate pricing structure for congestion management on the transmission system. It is noteworthy that there is little or no

support for the LMP model by RTO West participants for the reasons noted above. The Alberta Intervenors respectfully request that FERC approve RTO West's proposal for the use of Locational Based Bids.

C. Congestion Management Proposal -- Day Ahead and Day Of Scheduling Rights

The Alberta Intervenors are concerned that, while the Congestion Management proposal appears to promote efficient use of the transmission facilities, provisions to accommodate pre-existing contracts may stymie these intentions. From an Alberta perspective, an important feature of a congestion management proposal is that the process will encourage efficient use of the transmission facilities. To achieve this efficient utilization, no party should have the ability to "hoard" transmission capability. As the Alberta Intervenors understand the congestion management proposal, RTO West is proposing an accept-all-schedules approach that will employ a two-settlement process. In the Day Ahead market, all schedules will be treated equally whether supported by CTRs, by FTOs, or without FTOs. Upon acceptance by RTO West, these Day Ahead schedules, and any associated congestion charges, would become financially firm. The costs of any subsequent schedule adjustments (including imbalance) would be the responsibility of the party making those adjustments. This proposal appears to be a pragmatic method of meeting the pre-existing contract commitments without creating a special advantage for those customers that could be used to inhibit others from participating in the market.

The proposal for customers with pre-existing agreements to continue to utilize the day-of scheduling flexibility stated in their contracts creates concern for the Alberta Intervenors. As the Alberta Intervenors understand the proposal, this scheduling flexibility will be provided to the pre-existing contract customers without forcing any changes to the approved Day Ahead Schedules. In clarifying this provision, footnote 5 of the Congestion Management Proposal states that "[t]hese

actions cannot impose costs on RTO West because the PTO's Congestion Management Assets must be sufficient to encompass Contract Customers' full exercise of their contract rights". This implies that RTO West will be required to reserve transmission capability sufficient to honor day-of scheduling contract rights in case they might be utilized. If so, transmission capacity that could have been utilized by other market participants may go un-utilized due to uncertain delivery expectations. This would result in less than full utilization of transmission capability.

RTO West is proposing the Voluntary Pre-schedule "Lock-Down" for CTR Contract Customers as a mechanism to reduce the amount of transmission capacity that must be reserved for customers with day-of scheduling flexibility. *See* Stage 2 Filing, Congestion Management Proposal, Attachment F, §C.3.h (pp. 17-18). This option will be an attractive market enhancement if it is successful in encouraging Contract Customers to release unneeded transmission capacity. However, it is unrealistic to expect that Contract Customers who have market participation opportunities would release the advantages that their contract scheduling flexibility provides to them. Under those circumstances, the Voluntary Pre-schedule "Lock-Down" feature will not provide effective mitigation for "hoarding".

Further details of the congestion management model are required in order to be sure this is a workable model. These details are expected to be developed in the next stage of the filing. The Alberta Intervenors will continue to participate in the development of the congestion management proposal.

D. Liability

The Alberta Intervenors share the previously expressed concerns of the Filing Utilities, which have made the related recommendation that RTO West tariff terms and conditions include provisions to address liability issues. Alberta participation in RTO West will unquestionably be

influenced by the existence of, or lack of, a discernable and consistent legal regime addressing consequential and third party liability. Given the absence of any specific legislative resolution of these issues at the federal level, an efficient and effective approach to ensuring clarity and consistency would be the promulgation of regulations by the Commission generally applicable to and within all RTOs, or the adoption of RTO-specific tariff terms and conditions that afford the same degree of compatibility and consistency. Alberta notes that a number of filing utilities in this proceeding have identified broad or unevenly shared liability risk as an impediment to participation in RTO West. *See* Stage 2 Filing letter page 21.

In its cover letter for the Stage 2 filing, RTO West outlines in detail the procedural history of and its intentions regarding insurance, indemnification and limitation of liability proposals and provisions. Of particular interest to the Alberta Intervenors were the proposals respecting liability for consequential and third party damages. Pursuant to FERC direction all liability provisions that could affect parties other than RTO West and the Participating Transmission Owners were struck, including the proposal for tariff limitations.¹ The Filing Utilities have also indicated that they have no information respecting the availability and cost of insurance to address the risks associated with the changes outlined above. The deletion of consequential and third party liability proposals and the uncertainty associated with appropriate or adequate insurance is of great concern to the Alberta Intervenors.

In Alberta the legal regime that governs liability includes: legislation (the Liability Protection Regulation); Terms and Conditions of Service set by the Alberta Energy and Utilities Board (“EUB”); Power Purchase Arrangements; contracts; and the common law. The extent to which key

¹ *See* Filing Utilities Letter dated March 28, 2002 at pages 20 and 21.

regulated entities, including the Power Pool of Alberta and the TA, should be protected from any liability that they might ordinarily face as potential defendants under the common law of negligence is answered by regulations enacted under a legislative framework.

In 1999, following broad-based industry consultations, Alberta enacted the first limitation of liability regulation under the umbrella of its electrical re-structuring legislation, the *Electric Utilities Act*. The *Liability Protection Regulation* was enacted to identify the appropriate liability exposure for the TA and the Power Pool. The characteristics and functions undertaken by these entities are comparable with the characteristics and functions to be assumed by RTOs. Generally speaking, standards of direct liability are specified for these entities and the individuals employed by them. Full protection against indirect (consequential and third party) liability is also provided.

In 2001 the regulation was re-enacted. Recently Alberta concluded its second broad-based review of liability with particular focus on losses caused by electrical outages. Pending a final round of discussions with industry, it is anticipated that the current regulation will be substantially retained.

Currently, the TA and the Power Pool are liable for losses resulting from negligence, bad faith or willful misconduct limited to direct damages only (no indirect or consequential damages). Directors, officers and employees of the entities are not liable for such losses for negligence. However, they are liable for losses resulting from acts of bad faith or willful misconduct limited to direct damages only (no indirect or consequential damages). Liability for third-party damages is effectively limited by legislating recovery to that of direct damages only.²

² *The Liability Protection Regulation* provides that direct loss or damage does not include loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect, special or consequential loss or damage. For an electronic version of this regulation see http://www.qp.gov.ab.ca/documents/regs/2001_237.cfm.

Public policy considerations underpinning the regulation include the following:

- the disproportionate relationship between the regulated entities revenue and assets and the magnitude of total potential damage claims for losses associated with electrical outages;
- the availability of insurance, its cost and the attended impact on electrical prices for all consumers;
- fairness to consumers - income re-distribution effects among consumers arising from the payment of insurance premiums (in electrical rates) and practical limitations on the ability of a few to benefit from such insurance; and
- certainty of legal liability for industry and consumers.

The Commission now confronts a range of similar concerns regarding liability sharing, and may wish to look to the Alberta system as a successful model. Although legislation may be required to implement a similar structure in RTO West, the Alberta Intervenors encourage FERC to assess the viability of such a liability structure within the ambit of its existing statutory authorities, and to implement through regulation and/or tariff provisions a legal framework that affords sufficient legal clarity and resolution to support a workably competitive market in RTO West.

IV. Conclusion

WHEREFORE, the ALBERTA DEPARTMENT OF ENERGY, ESBI ALBERTA, LTD., and the POWER POOL OF ALBERTA respectfully request 1) that they be permitted to intervene in the above-captioned proceeding with full rights as parties, 2) that the requested declaratory order, if granted, be issued subject to further, ongoing review by the Commission, and 3) that the foregoing comments be given due consideration in the disposition of the proposed RTO provisions.

Respectfully submitted,

ALBERTA DEPARTMENT OF ENERGY
ESBI ALBERTA, LTD.
THE POWER POOL OF ALBERTA



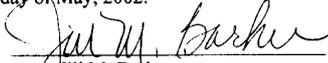
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May 29, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first class mail, postage prepaid, the foregoing document upon all persons entitled to service according to FERC's records in accordance with the requirements of Rule 2010 of FERC's Rules of Practice and Procedure.

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



Jill M. Bakker
Attorney for Movants

The Alberta Department of Energy,
ESBI Alberta, Ltd., and
the Power Pool Council of Alberta