

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Avista Corporation,)
)
Bonneville Power Administration)
)
Idaho Power Company)
)
Montana Power Company)
)
Nevada Power Company,)
)
PacifiCorp,)
)
Portland General Electric Company,)
)
Puget Sound Energy, Inc., and)
)
Sierra Pacific Power Company.)

Docket No. RTO1 -35

PROTEST AND COMMENTS
OF THE IDAHO ENERGY AUTHORITY, INC.

COMESNOW, the Idaho Energy Authority, Inc., (“IDEA”) and pursuant to that Notice of Extension of Time dated April 17, 2002, and pursuant to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.211 and hereby lodges the following comments and protest. IDEA was made a party to this proceeding by order of the Commission dated April 26, 2001, 95 FERC ¶ 61,114 at 61,323.

On March 29, 2002, Avista Corporation, the Bonneville Power Administration, Idaho Power Company, North Western Energy L.L.C., Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company (“Filing Utilities”) asked this Commission for a declaratory order that the various aspects of their Stage Two proposal to implement a Regional Transmission Organization (“RTOWest”) in the Pacific Northwest satisfies this Commission’s required operational characteristics for the formation of an RTO.

IDEA represents nineteen consumer and/or municipally owned electric utilities, all of which operate within the geographic scope of the Filing Utilities’ proposed RTO. IDEA’s members all purchase the vast majority of their electric supply from the Bonneville Power Administration (“BPA”) and all utilize one or more of the Filing Utilities’ transmission systems for deliveries of power to their members.

Because IDEA’s members are transmission dependent utilities, they are very concerned that if an RTO is implemented in the Northwest that it is done so in such a manner as to bring

demonstrable benefits to the region and that the unique interests of the largely rural transmission dependent utilities are protected. In this Commission's Order 2000¹, several very specific prerequisites were detailed that must be met before an RTO would be approved. It is the position of IDEA that the Stage 2 filing now before this Commission has not satisfied several of the most critical of those prerequisites. Although the Filing Utilities are to be commended in their efforts to achieve a workable framework for implementing a Northwest RTO, because they have not satisfied the requirements of Order 2000, issuance of the requested declaratory order would be premature.

I.

SCOPE OF COMMENTS

While not purporting to be a comprehensive and all-encompassing critique of the Filing Utilities' Stage 2 filing, our comments and protest highlight some of the issues of special concern to IDEA's member utilities.

IDEA has reviewed the protest and comments of Northwest Requirements Utilities (NRU) and endorses the comments made therein as many of IDEA's members are similarly situated. All of IDEA's members are transmission dependent utilities who purchase their wholesale power from the Bonneville Power Administration. In addition, many of IDEA's member utilities utilize third-party wheeling agreements between Bonneville and other members of the Filing Utilities for the provision of their electric service.

¹ *Regional Transmission Organizations*, Order 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶31,089 (1999), *order on reh'g*, Order No. 2000 -A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶31,092 (2000), *aff'd subnom. Pub. Util. Dist. No. 1 of Snohomish Cnty, Wa. V. FERC*, 272 F.2d 607 (D.C. Cir. 2001).

II.

CRITICAL TRANSMISSION FACILITIES HAVE BEEN OMITTED FROM THE FILING UTILITIES' PROPOSED RTO

This Commission made it clear that a necessary prerequisite to approval of RTOWest is that all transmission facilities, regardless of voltage, must be under the control of the RTO. In its order on the Stage 1 filing the Commission warned:

[W]e emphasize that for an RTO to satisfy your scope and configuration characteristics, **most or all of the transmission facilities in a region should be operated by the RTO** as well as those necessary for operational control and management of constrained paths, **regardless of the voltage**. Some of these facilities may currently operate as higher voltage distribution lines while others may be low voltage radial lines that are considered essential for wholesale transmission service.²

By their own admission, the Filing Utilities have excluded transmission facilities that are necessary for the provision of wholesale transmission service by the proposed RTO. The Stage Two Filing and Request for Declaratory Order Provides:

Under the Transmission Operating Agreements, RTOWest will provide Transmission Services over RTOWest Transmission System. In addition, **RTOWest will provide access to service on facilities that are not included as part of the RTOWest Transmission System** but that are needed to transmit wholesale power (local distribution facilities)³

The Transmission Operating Agreement, in a classic 'newspeak,' refers to the provision of

² *Order Granting, With Modification, RTOWest Petition for Declaratory Order and Granting TransConnect Petition for Declaratory Order*, Docket Nos. RTO15-15-000 and RTO15-35-000, 95 FERC ¶61,114 at 61,345 (April 26, 2001), emphasis provided.

wholesale transmission services over facilities that are not transmission facilities:

6.5 RTOWest’s Provision of Transmission Services over Electric System Facilities that Are Not Transmission Facilities. On and after the Transmission Service Commencement Date, RTOWest shall have the right... to use the Executing Transmission Owner’s Electric System facilities that are not Transmission Facilities to transmit wholesale power that will also be transmitted over the RTOWest Transmission System...⁴

In addition to being completely illogical and placing the transmission customers such as IDEA’s members at great risk, the Filing Utilities proposal to provide “Transmission Services” over “Facilities that are not Transmission Facilities” is directly contrary to this Commission’s rulings on this issue. In Order 888 this Commission was explicit that facilities owned by a jurisdictional utility that are “used to deliver electric energy to a wholesale purchaser, whether labeled ‘transmission,’ ‘distribution,’ or ‘local distribution,’ are subject to the Commission’s exclusive jurisdiction.” Order No. 888 at 88 FERC ¶61,234 at 61,768. The Filing Utilities attempted to avoid application of the Commission’s mandate that all facilities used to transmit wholesale power be included in under the RTO’s control by simply defining the facilities that are necessary to serve IDEA’s members as “Class D” or local distribution facilities.⁵ The Commission must look beyond the veil of the Filing Utilities definition of local distribution facilities to see what the wholesale transaction those facilities actually support.

The, apparently, arbitrary exclusion of necessary transmission facilities is indirect conflict with this Commission’s mandate that “all transmission facilities... regardless of voltage” must be operated by the RTO. For this reason alone, the Petition for a Declaratory

³Stage Two Filing at p.34. Parenthetical in original text. Emphasis provided.

⁴RTOWest Transmission Operating Agreement at p.35, Attachment A to Stage 2 Filing. Bold text in original.

⁵Stage 2 Filing at p.34.

Orders should be remanded to the Filing Utilities until a complete and accurate scope of transmission facilities is identified and included under the operational control of the proposed RTO. Individual transmission owners must not be allowed to arbitrarily decide which wholesale transmission facilities the RTO will control. Indeed, that the Filing Utilities have the apparent ability to do so calls into question whether the RTO can effectively achieve the Commission's goals stated in Order 2000.

Many of IDEA's member states take service from BPA through a set of agreements known as General Transfer Agreements ("GTA") and the South Idaho Exchange ("SIE"). These utilities are not physically connected to the BPA transmission system but, rather, take service from Bonneville through an intervening investor-owned utility's system. These utilities are not burdened with pancake rates at this time because the costs of the General Transfer Agreements are recovered from all of BPA's customers. Through the use of GTAs, Bonneville was induced (persuaded) to NOT construct transmission facilities that it would otherwise have been required to construct to serve its preference customers who are located primarily in remote and rural areas not contiguous to BPA's backbone grid. IDEA's members who are taking service under GTAs and the SIE are located in Southern and Eastern Idaho.

Because IDEA's members are not parties to the GTAs or the SIE, it is critical that the all of the facilities over which power is delivered to them be classified as transmission and placed under the control of the RTO. Failure to do so will impair the ability of these customers to protect their interests at the termination of the Company Rate Period. If these transmission facilities are not placed under the control of the RTO, the current GTA and SIE customers will

haveno have any ability to participate in the decisions relative the planning, maintenance and cost of such facilities.

III.

THE STAGE 2 FILING FAILS TO PROTECT EXISTING TRANSMISSION RIGHTS

The Filing Utilities have devised an apparently fair methodology for compensating the holders of existing contract rights through the use of “Catalogued Transmission Rights.” Although the system for compensation appears to be reasonable, the process by which such rights are identified is not. The Filing Utilities are seeking to freeze the holders of existing contract rights out of the process by which the amount of CTRs they are entitled to is determined.

CTR are proposed whether or not a transmission customer ultimately converts to RTO service. They are held by the Transmission Owners until an existing transmission customer converts to the RTO service. Upon conversion to RTO service the transmission customer’s CTRs are credited to it as either a Financial Transmission Option or receipt of Catalogued Transmission Rights from the RTO. This system preserves the benefit of the existing transmission customer’s rights on the transmission system. It also furthers the goals of the RTO by not penalizing existing transmission customers for converting to the RTO.

Unfortunately, the transmission customer is not included in the process of determining how many CTRs to which it is entitled. The filing utilities are apparently engaged in a closed door effort to identify each transmission customer’s CTRs without participation by the transmission customer themselves. This is unreasonable because the interests of the

Transmission Owners and the transmission customers are not necessarily in concert.

Furthermore, due to the proposed structure of the Transmission Operating Agreement, the transmission customers will have no recourse to cure for any errors in the determination of their CTRs.⁶

While it is contrary to the public interest to have the transmission owners unilaterally passing judgment on the amount of transmission their customers are entitled to in the form of CTRs, the problem is compounded by the fact that the transmission owners propose to memorialize the CTRs in their agreement (TOA) with the RTO. As the existing transmission customers will not be a party to the TOA, they will not have standing to contest the unilateral determination by the Transmission Owner as to the amount of CTRs to which the transmission customer is entitled.

IV.

QUESTIONABLE FINANCIAL BENEFITS TO THE NORTHWEST

Serious questions have been raised by other parties in this docket as to the reliability of the cost benefit analysis conducted by RTOWest. In particular, the Public Generating Pool has conducted a detailed and thorough critique of RTOWest's cost benefit analysis. They conclude that, even under the most generous assumptions favoring RTOWest, the costs **outweigh** the benefits of an RTO by \$80,000,000 per year!

If the costs do, indeed, outweigh the benefits of RTOWest, then it is incumbent upon this Commission to rethink its very viability. At a minimum the Commission should proceed with renewed caution as it evaluates the cost benefit findings set forth in the Public Generating

⁶ See RTOWest Transmission Operating Agreement, Attachment A to Stage 2 Filing at §9.3.1.

Pool's comments. In the end, the Commission must be able to make a finding with great confidence that there will be benefits to the region of implementing an RTO – to do otherwise could result in rates that are not just and reasonable.

V.

Summary and Conclusion

For the reasons stated above the Commission should: (1) Mandate that all wholesale transmission facilities of the Filing Utilities, regardless of voltage level, be included under the control of RTOWest; (2) Mandate that the Filing Utilities include transmission customers in the process of cataloging transmission rights and give the transmission customers a meaningful right of recourse to dispute the Filing Utilities determination of those rights; and, (3) Stay further development of RTOWest until a reliable cost benefit study proves that the region will in fact enjoy lower costs due to the formation of RTOWest.

Respectfully Submitted;

Peter J. Richardson ISB#3195

Richardson & O'Leary
99 East State Street
PO Box 1849
Eagle, Idaho 83616
(208) 938 - 7901
(208) 938 - 7904 (fax)
peter@richardsonandoleary.com

May 28, 2002