



900 S.W. Fifth Avenue, Suite 2600  
Portland, Oregon 97204  
phone 503.224.3380  
fax 503.220.2480  
tdd 503.221.1045  
www.stoel.com

October 18, 2002

PAMELA L. JACKLIN  
Direct (503) 294-9406  
pljacklin@stoel.com

**BY ELECTRONIC FILING**

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

**Re: RTO West Applicants' Request for Rehearing or, in the Alternative, for  
Further Clarification of September 18, 2002 Order; Docket No. RT01-35-005  
and -007**

Dear Ms. Salas:

Enclosed please find the electronic filing on behalf of Avista Corporation, the Bonneville Power Administration, Idaho Power Company, Nevada Power Company, NorthWestern Energy, L.L.C. (formerly The Montana 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 "Applicants"), a Request for Rehearing or, in the Alternative, for Further Clarification and accompanying Certificate of Service.

Very truly yours,

/s/

Pamela L. Jacklin  
Of Attorneys for PacifiCorp and, for the purposes  
of this letter only, on behalf of Applicants

Enclosures

Oregon  
Washington  
California  
Utah  
Idaho



Ms. Magalie Roman Salas

October 18, 2002

Page 2

cc (w/ encl.): Parties on Service List  
California Public Utilities Commission  
Colorado Public Utilities Commission  
Idaho Public Utilities Commission  
Montana Public Service Commission  
Nevada Public Utilities Commission  
New Mexico Public Regulation Commission  
Oregon Public Utility Commission  
Public Service Commission of Utah  
Utah Department of Commerce  
Washington Utilities and Transportation Commission  
Wyoming Public Service Commission

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

Avista Corporation	)	
Bonneville Power Administration	)	
British Columbia Hydro and Power Authority	)	
Idaho Power Company	)	Docket Nos. RT01-35-005 RT01-35-007
NorthWestern Energy, L.L.C	)	
Nevada Power Company	)	
PacifiCorp	)	
Portland General Electric Company	)	
Puget Sound Energy, Inc.	)	
Sierra Pacific Power Company	)	

**REQUEST FOR REHEARING OR,  
IN THE ALTERNATIVE, FOR FURTHER CLARIFICATION**

Pursuant to Rule 713, 18 C.F.R. § 385.713, Avista Corporation; the Bonneville Power Administration (“Bonneville”); Idaho Power Company; NorthWestern Energy, L.L.C.; Nevada Power Company; PacifiCorp; Portland General Electric Company; Puget Sound Energy, Inc; and Sierra Pacific Power Company, joined by the British Columbia Hydro and Power Authority, a nonjurisdictional Canadian utility, (collectively “Applicants”) hereby request rehearing or, in the alternative, further clarification of portions of the Commission’s September 18, 2002 Declaratory Order on Regional Transmission Organization Proposal, 100 FERC ¶ 61,274 (2002) (the “Declaratory

Order”).<sup>1</sup> The Declaratory Order was issued in response to Applicants’ March 29, 2002 filing of their RTO West Stage 2 proposal and request for a declaratory order under Order No. 2000.

Applicants request rehearing and reversal of the Commission’s decision to reject Section 25.18 of the proposed RTO West Transmission Operating Agreement (the “TOA”).<sup>2</sup> Section 25.18 allows the TOA to govern when conflicts arise between the TOA and the RTO West Tariff (the “Tariff”). This provision encompasses protections that are legitimate and necessary for Applicants to ensure that the RTO they voluntarily create will operate their assets in a manner that protects their investment and to ensure that they will each be able to meet their respective obligations to the public and comply with applicable federal, state and provincial law. Applicants also request that the Commission determine on rehearing that the proposed TOA provisions for an eight-year Company Rate Period (unless amended by RTO West and the Participating Transmission Owners) will govern in the event of a conflict between the Tariff and the TOA. In the alternative, Applicants urge the Commission to clarify that it made no substantive determination in the Declaratory Order about which TOA provisions may control. These requests are addressed in Section I below.

---

<sup>1</sup> On September 27, 2002, Applicants submitted a Request for Expedited Procedural Clarification contending that it was premature for the Commission to order a compliance filing in this proceeding, because (1) this proceeding concerns their petition for a declaratory order concerning their RTO proposal and (2) they have not yet made any filings pursuant to section 203 or section 205 of the Federal Power Act. On October 10, 2002, the Commission issued an Order Granting Clarification of Prior Order (101 FERC ¶ 61,034 (2002)) in which it clarified that Applicants are not required to submit a compliance filing in response to the Declaratory Order.

<sup>2</sup> Declaratory Order at P 47.

Applicants also suggest that the Commission’s substantive determination of certain other issues may best be accomplished in the context of its response to Applicants’ upcoming filing of portions of the Tariff and additional information about facilities. These issues are addressed in Section II below.<sup>3</sup>

In Section III below, Applicants request clarification of the relationship between the Declaratory Order and the Standard Market Design (“SMD”) rulemaking.

## **I. BACKGROUND**

In the Declaratory Order, the Commission approved significant portions of the Stage 2 proposal. Among the elements approved was the license plate pricing proposal, “including the length of the [eight-year Company Rate] transition period.”<sup>4</sup> The Commission rejected portions of the planning and expansion proposal<sup>5</sup> and the proposal regarding applicability of RTO West interconnection standards to Participating Transmission Owner facilities not under the operational control of RTO West.<sup>6</sup> Most importantly, it also rejected a provision of the TOA between Participating Transmission Owners and RTO West that provides that TOA provisions automatically govern when the

---

<sup>3</sup> The RTO West Stage 2 proposal contains many compromises made by Applicants to enable each to participate in a voluntary RTO. Sections I and II address a consolidated list of issues that are of concern to some or all of Applicants.

<sup>4</sup> Declaratory Order at P 4. Despite approving the Company Rate, the Commission implied that it or RTO West might be entitled to shorten the period after start-up of the RTO. Rehearing or, in the alternative, clarification is sought on this issue.

<sup>5</sup> Declaratory Order at PP 227, 230.

<sup>6</sup> Declaratory Order at P 142.

TOA conflicts with the Tariff.<sup>7</sup> The Commission deferred addressing the remaining provisions of the proposed TOA until the Tariff is filed.<sup>8</sup>

**Need for Rehearing on the Relationship Between the TOA and Tariff**

Although the Declaratory Order approved significant portions of the Stage 2 proposal, thereby significantly clarifying for the region what the Commission agrees satisfies Order No. 2000 and the Commission's SMD rulemaking, the Declaratory Order also engendered some uncertainties. These uncertainties were not addressed in Applicants' September 27, 2002 Request for Expedited Procedural Clarification or in the Commission's October 10 Order Granting Clarification of Prior Order, and, if left unchanged or unclarified, they will continue to be major obstacles to the successful formation of RTO West. Applicants request rehearing or, in the alternative, clarification of the Commission's determinations related generally to Section 25.18 of the TOA and specifically to the Company Rate Period.

**A. Section 25.18 of the TOA.**

In its Declaratory Order, the Commission stated:

“We reject Section 25.18 of the TOA, which allows the TOA to automatically govern when conflict exists between the TOA and the RTO West Tariff. Although owners of transmission facilities have legitimate reasons to protect their capital investment and to define their relationship with RTO West as it relates to its use and operation of those facilities, any agreement reflecting such arrangement must not interfere with an RTO's ability to propose, implement, and change terms and conditions of the services it will provide.”<sup>9</sup>

---

<sup>7</sup> Declaratory Order at P 47.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

If the Commission intended that RTO West's discretion to propose Tariff terms and conditions, and changes thereto, must be completely unfettered by pre-existing contracts, including the TOA, Applicants request rehearing on this issue.<sup>10</sup> Many TOA provisions address the very arrangements determined by Applicants to be needed to "protect [the Participating Transmission Owners'] capital investment and to define their relationship with RTO West as it relates to its use and operation of those facilities."<sup>11</sup> Others, such as the Company Rate Period and the assurance of voluntary conversion of pre-existing contracts, are fundamental components of the regional collaborative process and may limit RTO West's right to change certain terms, conditions and prices of service. Other TOA provisions are performance standards imposed upon RTO West by Bonneville and necessary for Bonneville's participation in RTO West.<sup>12</sup> Still others are provisions that various Applicants believe necessary to win support for the RTO proposal from state or provincial authorities.<sup>13</sup>

The TOA is replete with provisions that reflect fundamental compromises necessary to permit one or more of the Applicants to participate in a voluntary RTO.

---

<sup>10</sup> Applicants believe the Commission's rejection of Section 25.18 and its insistence that the Tariff must control over contract provisions of the TOA may be inconsistent with the recent decision in *Atlantic City Electric Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

<sup>11</sup> Declaratory Order at P 47.

<sup>12</sup> In a February 26, 1998 memorandum entitled "Bonneville Power Administration Authority to Participate in an Independent System Operator [(“ISO”)]," the Department of Energy's Office of General Counsel concluded that, in order for Bonneville to legally participate in an ISO, "the ISO agreement should . . . include performance standards sufficient to enable BPA to assure itself that the ISO is implementing [Bonneville's statutory responsibilities and its contractual and treaty obligations] in a manner consistent with the terms to which BPA has agreed . . . and provide BPA with the ability to terminate participation in the ISO should the ISO fail to satisfy the standards included in the agreement."

<sup>13</sup> Many TOA provisions fulfill more than one of the foregoing purposes. This is to be expected because the TOA is a mechanism by which the interests of the Participating Transmission Owners and, in many cases, the region's ratepayers are protected.

Given RTO West's rights under the Federal Power Act to unilaterally propose Tariff changes to the Commission, and the Commission's authority to order changes, a provision that clearly protects these critical arrangements from being modified by Commission-approved or Commission-ordered changes to the Tariff is necessary and appropriate. Without such protection, state-jurisdictional transmission owners will find stiff resistance on the part of their state regulators to their participation in RTO West as Participating Transmission Owners.<sup>14</sup> For example, the extent to which the Commission asserts jurisdiction over operational authority, pricing, planning and interconnection for distribution facilities is of abiding interest to state regulatory authorities. In addition, Bonneville's approach to addressing issues of delegation of federal authority, by imposing multiple performance standards upon RTO West,<sup>15</sup> would be seriously imperiled if any of those standards could be modified or eliminated by RTO West or the Commission through a Tariff change. Section 25.18 of the TOA is intended to provide Applicants with the certainty they require to fulfill corporate fiduciary and statutory obligations to ratepayers, shareholders (where applicable) and regulators.

In summary, the TOA establishes the framework within which Applicants propose to satisfy their corporate fiduciary and statutory obligations under applicable federal, state and provincial law. Among other things, the TOA is a pivotal document that will inform state and provincial regulators about the essential nature of the proposed RTO upon which those regulators may rely. For these reasons, Applicants urge the Commission to reverse its decision that the TOA may not govern the Tariff.

---

<sup>14</sup> See, for example, the Request for Rehearing by the Washington Utilities and Transportation Commission, a state regulator with authority over three of the RTO West Applicants: Avista Corporation, PacifiCorp and Puget Sound Energy, Inc.

<sup>15</sup> See further description in Attachment A.

If the Declaratory Order holds only that the proposed Section 25.18 goes too far in its inclusion of all provisions of the TOA, and that Applicants should return in a future filing with a proposal for a more limited list of TOA provisions that the Tariff must respect, Applicants request clarification that this is the Commission's intent. If that is the case, Applicants intend to propose in a future filing a modified list of TOA provisions that may not be changed without agreement of RTO West and the Participating Transmission Owners. At that time, the Commission will have the opportunity to judge the appropriateness of various TOA provisions controlling Tariff provisions.<sup>16</sup>

**B. Company Rate Period.**

If on rehearing the Commission reverses the Declaratory Order and agrees that RTO West will honor its pre-existing contractual obligations set forth in the TOA, no further consideration of the Company Rate Period is necessary. If not, Applicants request further clarification as discussed below.

The Commission appears to have accepted Applicants' proposal regarding the length of the Company Rate Period, "acknowledg[ing] the parties' concern for certainty with respect to potential cost shifts and the need for operating experience under RTO West transmission service to ensure that unanticipated costs or service problems are not encountered."<sup>17</sup> The Commission, however, then directed "the RTO West Market

---

<sup>16</sup> However, Applicants reiterate that they believe the TOA establishes the underlying contractual framework for a voluntary RTO and expect that the TOA will be honored by RTO West and the Commission. Thus, Applicants would expect that TOA provisions reflecting the core elements of the "negotiated deal" would trump the Tariff, even if such provisions limit in some circumstances the ability of RTO West to alter the terms and conditions of transmission service.

<sup>17</sup> Declaratory Order at P 133.

Monitor . . . to evaluate and report whether market efficiency improvement could be accomplished by a shorter transition period.”<sup>18</sup>

Although the Declaratory Order went a long way toward accommodating the region’s needs, the Commission’s reference to the possibility of a shorter transition period has unfortunately created regional uncertainty about a fundamental component of the RTO West proposal. Given the Commission’s acceptance of the eight-year Company Rate Period, the meaning and effect of the Declaratory Order’s direction to the RTO West Market Monitor to recommend whether a shorter transition period could produce market efficiency is unclear. At minimum, only a report is required. At most, however, the directive implies that the independent board of RTO West, or the Commission itself, could unilaterally abbreviate the Company Rate Period contrary to the strong wishes of many of the region’s stakeholders. As the Stage 2 proposal makes clear and as the Commission acknowledged in its Declaratory Order, *certainty* of an eight-year Company Rate Period is critical to regional acceptance of RTO West. Instead of “foster[ing] participation in RTO West by market participants, including public power entities,”<sup>19</sup> uncertainty on this issue will undermine such participation.

The Commission may merely be reserving an opportunity for the region to change the Company Rate Period if the region wishes to do so. It is unclear, however, who in the region would make such a determination and how it would be made without resurrecting the very issues intended to be resolved by the certainty of an eight-year transition period. If RTO West has the authority to propose a rate structure change, then there is no

---

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

certainty for the region's customers or the Participating Transmission Owners. Those who disagree with the change would only have the opportunity to intervene before the Commission in the RTO West filing and accept the outcome of the proceeding, leaving them in the same position as if the Commission had not accepted the transition period. There is no assurance that the benefits of new market efficiencies would offset the cost shifts imposed on existing customers by the adoption of a new rate structure. Benefits may accrue to only certain market participants, while some or all existing customers of Participating Transmission Owners could experience the very cost shifts intended to be avoided by the certainty of an eight-year Company Rate Period.

Certainty is currently provided to Participating Transmission Owners and customers through incorporation of the eight-year Company Rate Period into the TOA, the effect of which is to prohibit any changes to the transition period without agreement of the Participating Transmission Owners. The Commission, however, has raised concerns over which TOA provisions would be allowed to govern in the event of a conflict between the TOA and the Tariff.<sup>20</sup> In their next filing, Applicants will propose retention of the eight-year Company Rate Period in the TOA; and, unless the Commission reverses its decision on Section 25.18 on rehearing, the Applicants will propose that the Company Rate Period should be in the category of TOA provisions that cannot be changed without the agreement of the Participating Transmission Owners.<sup>21</sup>

---

<sup>20</sup> Declaratory Order at P 47.

<sup>21</sup> The Commission recently approved, without similar condition, transitional pricing structures for predetermined time periods, in the case of SeTrans, until December 31, 2012 (approximately eight years), and in the case of WestConnect, until January 1, 2009. *Order Granting Petition for Declaratory Order* (SeTrans), 101 FERC ¶ 61,008, at P 106, Docket No. EL02-101 (2002); *Declaratory Order on Regional Transmission Organization* (WestConnect), 101 FERC ¶ 61,033, at P 127, Docket Nos. RT02-1 and EL02-9 (2002).

If the Commission intended that this issue, among others that raise the question of what provisions of the TOA may restrict RTO West's authority, will be considered when the Applicants file the tariff provisions, Applicants request clarification of this intent.<sup>22</sup> In that event, Applicants urge the Commission to provide such clarification and defer any final determination on what provisions of the TOA may govern in the event of a conflict with the Tariff until the Commission responds to Applicants' future filing.

## **II. NEED FOR FURTHER CLARIFICATION OR REHEARING**

### **A. Facilities Inclusion.**

Applicants read the Declaratory Order as requiring that additional information be provided to the Commission on facilities issues in order to help the Commission determine what facilities must be included in RTO West for various purposes, including operational authority, pricing, interconnection and planning.<sup>23</sup> Applicants request clarification that the issue of which facilities must be placed under RTO West's control, and for what purpose(s),<sup>24</sup> remains open and will be decided by the Commission after

---

<sup>22</sup> Applicants believe they have explained the relationship between the TOA and the Tariff and the rationale for TOA provisions governing in the event of a conflict with the Tariff. If the Commission desires further information on these issues, the Applicants will provide that information in their upcoming filing.

<sup>23</sup> *See, e.g.*, Declaratory Order at PP 61, 69, 70, 74. One stakeholder opined at the October 3, 2002 RTO West Regional Representatives Group meeting that the Declaratory Order finally determined that any facility used for wholesale transactions—whether properly categorized as transmission or distribution—must be placed under RTO control for all purposes. Applicants simply disagree that the Declaratory Order so ruled.

<sup>24</sup> These purposes include access to wholesale service, operational authority, pricing, planning, interconnection and dispute resolution.

Applicants file the additional information and explanation regarding facilities issues sought by the Commission.<sup>25</sup>

With respect to the Commission's information request,<sup>26</sup> Applicants seek clarification that the list of facilities need not include low-voltage facilities that are not used to provide wholesale transmission service.<sup>27</sup> Applicants do not believe the Commission intended that each Applicant list all its facilities used for distribution of power to retail customers, including low-level distribution lines, transformers from primary feeders to service drops and service drops to each of the millions of individual customers' homes and businesses. Clarification that Applicants have correctly understood the Commission's expectations with respect to the list of facilities will facilitate timely completion of the list.

In the alternative, if Applicants have misunderstood the Commission's intent with respect to final determination of the facilities issue generally or the content of the requested list, Applicants seek rehearing on these matters. If rehearing is granted with

---

<sup>25</sup> Declaratory Order at P 70.

<sup>26</sup> *Id.*

<sup>27</sup> RTO West Applicants note that in identifying distribution facilities used for wholesale service, they anticipate reporting the total number of distribution feeders and identifying the specific distribution feeders and the points of delivery on the distribution facilities used for wholesale service at 34.5 kV and below, as well as identifying the wholesale customers taking service at each wholesale point of delivery. They do not plan to individually identify other distribution facilities at 34.5 kV and below that are used only for state-regulated retail service. All facilities above 34.5 kV will be listed. The list will also identify wholesale points of delivery and customers on any facilities above 34.5 kV that are not proposed to be placed in RTO West Controlled Transmission Facilities.

As a point of information, some of the RTO West Applicants have previously filed lists of transmission and distribution facilities with the Commission in the context of a request for functionalization of those facilities. See *Portland General Electric Company*, FERC Docket No. ER02-433-000 (Nov. 30, 2001); *Puget Sound Energy, Inc.*, FERC Docket No. ER02-605-000 (Dec. 24, 2001); *Nevada Power Company*, FERC Docket No. ER99-3110-000 (June 1, 1999); *Sierra Pacific Power Company*, FERC Docket No. ER99-2339 (Mar. 30, 1999).

For illustrative purposes, the British Columbia Hydro and Power Authority intends to file with the Commission a list of facilities that it intends to file with its regulator at the appropriate time.

respect to a determination as to which facilities must be included under RTO West control for different purposes, Applicants request that the Commission permit Applicants to file (before rehearing) additional explanation and legal argument regarding the impact of including all distribution facilities used for wholesale service under RTO West's operational control on the efficiency and cost of the proposed RTO, as well as on the ability of the public utilities that participate in RTO West to provide state-regulated retail service.<sup>28</sup>

**B. Authority over Planning, Expansion and Interconnection.**

The Commission approved, with modifications, the Stage 2 planning and expansion proposal.<sup>29</sup> However, in pointing out an inconsistency in the Stage 2 proposal's description of RTO West's planning and expansion authority over Certain Distribution Facilities, the Commission made the sweeping directive that "Applicants [must] clarify that RTO West has planning authority over all facilities necessary to provide wholesale transmission service."<sup>30</sup> This sweeping statement raises difficult jurisdictional issues regarding the respective roles of federal and state regulatory agencies that have not been briefed and have not been argued to the Commission in this docket.<sup>31</sup>

---

<sup>28</sup> Applicants have put an aggressive schedule in place to provide the Commission with a Tariff proposal and additional facilities information. Rather than delay that schedule more to provide full argument for rehearing, the Applicants seek clarification and, in the event rehearing is necessary on the issues identified here, an additional opportunity to provide additional information and legal argument.

<sup>29</sup> Declaratory Order at P 225.

<sup>30</sup> Declaratory Order at P 230.

<sup>31</sup> No declaratory order was sought or given with respect to facilities of the British Columbia Hydro and Power Authority. The British Columbia Hydro and Power Authority joins in this section II(B) only to support Applicants' request for clarification and makes no submission with respect to state or federal jurisdiction over the facilities of U.S. Applicants.

States have and maintain planning authority over distribution facilities used for delivery to retail loads that are, in many instances, the exact same facilities used for wholesale service. The Commission recognized this state authority in Order No. 888 and has not previously attempted to assert jurisdiction over the delivery component of bundled retail service, regardless of voltage.<sup>32</sup> No statement is made in the Declaratory Order that this policy is being abandoned or that federal preemption of state planning authority is a prerequisite for an RTO that meets the minimum requirements of Order No. 2000.

The process for this docket with respect to whether distribution facilities must be under RTO West authority for planning or other purposes should be the same as that stated in the Commission's recent SeTrans order for transmission facilities.<sup>33</sup> Using this approach, Applicants will submit their rationale with their next filing.

In summary, Applicants believe the Commission must still address the extent of RTO West's planning authority over Participating Transmission Owner facilities (transmission and distribution) that are necessary for transmission of wholesale power. The Commission deferred its determination of this critical issue when it ordered Applicants to submit complete lists of their facilities and to identify and fully explain whether each listed facility is under RTO West control for various purposes, including planning.<sup>34</sup> "Upon receipt of the inventory and accompanying explanation, we will

---

<sup>32</sup> *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) at 31,781-82.

<sup>33</sup> "Sponsors will be required to provide a rationale for excluding transmission assets providing wholesale transmission service from the functional control and responsibility of the ISA." 101 FERC ¶ 61,008, at P 60 (citing Declaratory Order at P 70).

<sup>34</sup> Declaratory Order at P 70.

consider whether additional stakeholder discussions or technical conferences are necessary *to resolve whether and how all appropriate facilities are provided to RTO West.*<sup>35</sup> Applicants request the Commission to clarify that the extent to which the planning authority of RTO West encompasses facilities not under RTO West’s operational authority (including state-regulated distribution) is deferred until after Applicants complete their filing on facilities.

The Commission also directed Applicants to revise the TOA and the planning and expansion proposal “to clarify that RTO West has ‘ultimate responsibility for both transmission planning and expansion within its region,’ consistent with Order No. 2000.”<sup>36</sup> This broad statement was made in the context of describing the sharing of the planning and expansion function among RTO West and potential independent transmission companies. However, the directive can also be broadly read as overriding other TOA provisions, some of which were negotiated by Bonneville to protect and preserve Bonneville’s statutory obligations regarding expansion of the federal system. Again, in its directive that RTO West interconnection standards must apply to all new interconnections associated with transmission service, the Commission made a similar broad statement that “standards for interconnection . . . [are] to be administered solely by RTO West for all interconnection requests.”<sup>37</sup> This statement could be read as requiring the elimination of TOA provisions that preserve Bonneville’s statutory obligations regarding interconnections to the federal transmission system or that allow other

---

<sup>35</sup> *Id.* (emphasis added).

<sup>36</sup> Declaratory Order at P 227.

<sup>37</sup> Declaratory Order at P 142.

Participating Transmission Owners' efforts to preserve state regulation of interconnections to state-regulated distribution facilities. But the Commission stated in the Declaratory Order that it was deferring action on the other TOA provisions, other than Section 25.18, "pending the submittal of the RTO West Tariff."<sup>38</sup> Applicants request the Commission to clarify that neither (1) its statement concerning RTO West's ultimate authority over planning and expansion nor (2) its statement that interconnection requests are to be administered solely by RTO West requires the elimination of TOA provisions negotiated in order to preserve Bonneville's statutory obligations with respect to the federal transmission system or to allow other Participating Transmission Owners' efforts to preserve state regulation of interconnections to state-regulated distribution facilities. Applicants would expect issues regarding such provisions and efforts to be determined in response to a future filing. If the Commission did make a determination in the Declaratory Order that RTO West's planning, expansion and interconnection authorities must override applicable state regulation of interconnections and TOA provisions negotiated by Bonneville in order to implement its legal obligations, Applicants request rehearing.

**C. Treatment of Transmission Rights in Retail Choice Regimes.**

The Commission stated, without explanation, that existing transmission rights should follow load if it shifts suppliers in a retail choice regime.<sup>39</sup> The implications of the Commission's ruling are unclear in the context of the Stage 2 proposal. For example,

---

<sup>38</sup> Declaratory Order at P 47. That the Commission was not ruling on specific TOA provisions negotiated by Bonneville is supported by the Declaratory Order's reference to ongoing "negotiations concerning Bonneville's participation in RTO West" and to the Commission's intent to "provide further guidance" when "additional information concerning the proposal for Bonneville's participation is submitted." Declaratory Order at P 60.

<sup>39</sup> Declaratory Order at P 105.

it is not clear whether the Commission's policy would increase costs to native load customers under the RTO West framework. Although Applicants recognize the need to ensure that the RTO West proposal works well for customers in states with retail access, they believe that, until the pricing and market development proposals are fully developed and incorporated into the Tariff, it is premature for the Commission to issue a blanket policy on this issue. Accordingly, Applicants request that the Commission clarify that its statement was intended to serve as guidance for the next stage of RTO West development and that the Commission will defer ruling on this issue until Applicants have submitted a complete Tariff and market design proposal.

### **III. RELATIONSHIP BETWEEN DECLARATORY ORDER AND SMD RULEMAKING**

In the Declaratory Order, the Commission stated that it looked at the RTO West filing "as both informing and being informed by the proposed [SMD] rule."<sup>40</sup> This statement and others in the Declaratory Order led some readers to believe that although RTO West's filings would inform the SMD final rule, which would reflect permissible regional (or intraregional) flexibility, RTO West and the public utilities participating in it would remain subject to the final SMD rule. Applicants seek clarification that the relationship between the RTO orders and the SMD final rule is the same as in the Commission's SeTrans and WestConnect orders. The Commission stated in the SeTrans order:

"[W]e take this opportunity to clarify that it is not this Commission's intent to overturn, in the final SMD rule, decisions that are made in this docket. In other words,

---

<sup>40</sup> Declaratory Order at P 3.

unless the Commission has specifically indicated in this order that an element of the RTO proposal is inconsistent with the SMD proposal or needs further work in light of the SMD proposal, we do not intend, in the final SMD rule, to revisit prior approvals or acceptances of RTO provisions because of possible inconsistencies with the details of the final rule. This Commission intends to take all appropriate steps at the final rule state of the SMD rulemaking to ensure that, to the extent we have already approved or conditionally approved RTO elements, these approvals would remain intact.<sup>41</sup>

In comments made during the Commission's October 9, 2002 meeting, when issuing the SeTrans Order, Chairman Wood indicated that the RTO West Declaratory Order implied the Commission's intent not to revisit next summer issues decided in the RTO West orders. Presumably, next summer is when the Commission anticipates issuing the final SMD rule. Chairman Wood also commented that he thought the Commission should put that in the RTO West Declaratory Order. Such clarification would also be helpful to the continued development of the RTO West.

Respectfully submitted this 18th day of October, 2002.

/s/ Pamela L. Jacklin

Pamela L. Jacklin  
Of Attorneys for PacifiCorp and, for the purposes of this  
filing only, on behalf of Applicants

---

<sup>41</sup> *SeTrans*, 101 FERC ¶ 61,008, at P 2.

## Attachment A

### [NOTE TO READER:

**The following is an excerpt from the RTO West Stage 1 Filing (*Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000*, FERC Docket No. RT01-35 (Oct. 23, 2000)) and references the version of the TOA in that filing. The Stage 2 Filing included a revised version of the TOA. Both versions assure Participating Transmission Owners that they need not take actions that violate applicable laws or regulations.]**

### Excerpt from Stage 1 Filing Letter

#### **D. Bonneville Participation**

Bonneville has multiple statutory, treaty and other responsibilities applicable to the operation of the Federal Columbia River Transmission System (FCRTS). The filing utilities believe they have successfully addressed how these responsibilities will be fully implemented by RTO West and Bonneville after commencement of RTO West service. The various provisions specifically added to the Transmission Operating Agreement to facilitate Bonneville's participation are identified within the agreement by italics.

Provisions in the Transmission Operating Agreement assure that no directive from RTO West or provision of the Transmission Operating Agreement can require Bonneville to violate any of its obligations under applicable statutes or regulations.<sup>5</sup> Bonneville explicitly reserves its obligations under the National Environmental Policy Act (NEPA) with respect to construction and interconnection of FCRTS upgrades, expansions, new

---

<sup>5</sup> E.g., section 5.11. In addition, section 10.1 of the Bonneville Transmission Operating Agreement ensures that any statute or regulation enacted after execution of the Transmission Operating Agreement and applicable to the FCRTS would apply to operation of the FCRTS by RTO West.

loads or resources.<sup>6</sup> RTO West also has no authority to require Bonneville to expend Federal funds.

Bonneville has a statutory obligation to make its excess transmission capacity available to others on a fair and nondiscriminatory basis.<sup>7</sup> This obligation is fully implemented by the Transmission Operating Agreement requirement that RTO West comply with all applicable Commission requirements with regard to access to Federal transmission capacity.<sup>8</sup> The only exceptions in the Bonneville Transmission Operating Agreement to this approach are obligations imposed on RTO West to implement certain statutory priorities among competing transmission requests for Federal transmission capacity: (1) for power serving Northwest regional loads<sup>9</sup>; and (2) for certain resources under construction on the date of enactment of the Northwest Electric Power and Planning Act.<sup>10</sup> In addition, the Bonneville Transmission Operating Agreement ensures the ability of the U.S. Entity to carry out its obligation to deliver the power to which Canada is entitled under the Columbia River Treaty.<sup>110</sup> If any of these priorities must ever be implemented, the beneficiaries must still purchase the necessary Firm Transmission Rights and pay the applicable rate.

The TOA also retains Bonneville's ability to operate its power and transmission system to meet its other environmental and fish and wildlife responsibilities. For example, in directing the implementation of Remedial Action Schemes or the redispatch

---

<sup>6</sup> Section 4.2.1

<sup>7</sup> For example, section 6 of the Federal Columbia River Transmission System Act, 16 U.S.C. §838d.

<sup>8</sup> E.g., paragraph 5.7.1.

<sup>9</sup> Section 5.5 of the Bonneville TOA. This statutory obligation is found in the Energy Policy Act of 1992, 16 U.S.C. §824k(i)(5).

<sup>10</sup> Ibid. This priority is found at 16 U.S.C. §839f(i)(3).

<sup>11</sup> Ibid.

of generation in an emergency, RTO West cannot require Bonneville to operate its hydroelectric generation facilities inconsistently with fish-related and other non-power limitations or requirements.<sup>12</sup>

To avoid any increase in risk to third party bondholders as the result of the establishment of RTO West, the filing utilities have incorporated a “lock box” mechanism. The filing utilities will establish through contract a Paying Agent to which transmission and ancillary service customers will send their payments during the company rate period. The Transmission Operating Agreement states explicitly that RTO West has no contractual or other right to these revenues except for the portion distributed to it by the Paying Agent pursuant to a pre-arranged formula.<sup>13</sup> This arrangement avoids any possibility of the Filing Utilities losing access to any of the transmission revenues to which they are entitled regardless of the financial condition of RTO West. This is particularly important for Bonneville with its payment and net-billing obligations associated with certain nuclear generating projects. This mechanism, in conjunction with the company rate approach for the first 10 years and the overall obligation of RTO West to raise sufficient revenues to cover each Participating Transmission Owner’s transmission revenue requirement, will also avoid jeopardy to Bonneville’s continuing ability to make its scheduled Treasury payments.

One of Bonneville’s statutory requirements is to maintain a reliable transmission system.<sup>14</sup> The establishment of RTO West, in and of itself, will improve the reliability of the entire Northwest transmission grid. But the Transmission Operating Agreement

---

<sup>12</sup> Section 5.11

<sup>13</sup> Section 14.2.3

<sup>14</sup> 16 U.S.C. §838b(d).

imposes specific reliability-related requirements on RTO West that implement Bonneville's statutory responsibility for a reliable system. RTO West is required to operate the RTO West system in accordance with WSCC and NERC reliability criteria.<sup>15</sup> RTO West must also operate each Filing Utility's facilities according to that Filing Utility's operating criteria unless and until RTO West changes them. However, any such changes must comply with applicable NERC, WSCC or successor industry standards.<sup>16</sup>

RTO West must use all reasonable means to contractually require generators connected to the RTO West system to comply to the extent practicable with curtailment and redispatch orders during system emergencies.<sup>17</sup> When system additions, upgrades or new interconnections with generators or loads occur, RTO West must require conformance with the particular Filing Utility's interconnection standards unless and until modified by RTO West.<sup>18</sup> Any such modifications must meet applicable NERC, WSCC or successor industry reliability standards. Bonneville will also assure reliability of its facilities by retaining maintenance responsibilities for those facilities.<sup>19</sup>

Bonneville also has certain statutory obligations related to its transmission rates. Bonneville's transmission system is a cost-based system.<sup>20</sup> Therefore, the Transmission Operating Agreement prohibits RTO West from adding any charges to the Bonneville revenue requirement that would provide RTO West with a profit or return on Federal assets.<sup>21</sup> Bonneville's obligation to recover its transmission costs will be met through the

---

<sup>15</sup> Section 10.1

<sup>16</sup> Section 10.1

<sup>17</sup> Section 5.7.6

<sup>18</sup> Section 11.1.1

<sup>19</sup> Section 8.1

<sup>20</sup> 16 U.S.C. §839e(a)(1)

<sup>21</sup> Section 14.1 of BPA TOA

company rate approach during the first 10 years and thereafter by RTO West under its obligation to establish rates sufficient to meet the filing utilities' revenue requirements.<sup>22</sup> Finally, the obligation for Bonneville to equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing the system<sup>23</sup> will be met through the establishment of comparable and nondiscriminatory transmission rates, terms and conditions.

If RTO West does not comply with any of its obligations to a participating transmission owner under the Transmission Operating Agreement, such participating transmission owner reserves all of its possible remedies. These remedies include the right (subject to any required Commission approval) to immediately terminate its participation in RTO West if RTO West fails to comply with any of its obligations to the participating transmission owner after a request for assurance that RTO West will conform its activities to the requirements of the Transmission Operating Agreement and a reasonable time for compliance passes and RTO West does not cure its failure.<sup>24</sup> A participating transmission owner may also petition a court for equitable relief, and in such event RTO West will not argue against the relief on the basis that monetary damages would be sufficient.<sup>25</sup> With respect to the two explicit statutory priorities and the treaty priority described above, Bonneville may direct RTO West to make deliveries, and RTO West will carry out those directives if necessary to comply with these statutory obligations.<sup>26</sup> Bonneville will be subject to any damages to RTO West or to third parties

---

<sup>22</sup> Ibid.

<sup>23</sup> 16 U.S.C. §839e(a)(2)(C)

<sup>24</sup> Section 2.3.2

<sup>25</sup> Section 23.8

<sup>26</sup> Section 5.5 of Bonneville's TOA

to the extent that RTO West is later found to have been in compliance with its obligations under the Transmission Operating Agreement with Bonneville.

