

UNITED STATES OF AMERICA 96 FERC ¶ 61,058
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, Linda Breathitt,
Pat Wood, III and Nora Mead Brownell.

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

Docket No. RT01-35-001

Avista Corporation,
Montana Power Company,
Nevada Power Company,
Portland General Electric Company,
Puget Sound Energy, Inc.,
Sierra Pacific Power Company

Docket No. RT01-15-001

ORDER GRANTING REHEARING IN PART AND GRANTING CLARIFICATION,
IN PART

(Issued July 12, 2001)

In this order, we grant in part requests for rehearing and grant in part clarification of the Commission's April 26, 2001 order in these proceedings as set forth below.¹ We also deny the motion of Arizona Public Service Company (APS) to intervene out of time in these proceedings and reject a late filed motion for clarification of Portland General Electric Company (PGE), Sierra Pacific Power Company (Sierra Pacific), and Nevada Power Company (Nevada Power).

¹Avista Corp., et al., 95 FERC ¶ 61,114 (2001) (April 26 order).

Background

On October 16, 2000, as supplemented on October 23, 2000, and amended on December 1, 2000, RTO West Applicants filed in Docket No. RT01-35-000 a proposal to form a regional transmission organization, RTO West. Furthermore, on October 16, 2000, TransConnect Applicants filed in Docket No. RT01-15-000 a proposal to establish an independent transmission company, TransConnect, LLC (TransConnect) which would participate in RTO West as a single transmission owner by transferring control over its transmission assets to RTO West.

The April 26 order granted on a preliminary basis and with conditions and modifications the requests for declaratory orders by the RTO West Applicants and by the TransConnect Applicants. In addition, the Commission rejected the proposed form of Agreement Limiting Liability among RTO West Participants and deferred consideration of numerous other issues pending completion and filing of the remainder of the RTO West and TransConnect Applicants' proposals in a Stage 2 filing.

Timely requests for rehearing and/or clarification of the April 26 order were filed by filed by 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 (RTO West Applicants); Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company (TransConnect Applicants); Valley Electric Association (Valley); Idaho Power Company and PacifiCorp (Idaho Power and PacifiCorp); City of Seattle (Seattle); Idaho Consumer-Owned Utilities Association, Idaho Energy Authority, Market Access Coalition, Northwest Requirements Utilities, Public Utility District No. 1 of Snohomish County, Washington, Western Public Agencies Group, and Public Power Council (Consumer-Owned Utilities); Deseret Generation and Transmission Cooperative, Inc. (Deseret) and the Salt River Project Agricultural Improvement and Power District (SRP).

In addition, APS filed a motion to intervene out of time and request for rehearing. On June 1, 2001, PGE, Sierra Pacific and Nevada Power filed a motion for clarification of the April 26 order.

Discussion

I. Motion to Intervene Out of Time and Late-filed Motion for Clarification

APS filed its motion to intervene out of time and request for rehearing in these proceedings on May 29, 2001. APS states that it has proposed to participate in the DesertSTAR RTO. APS states that it did not anticipate the need to intervene in the RTO West and TransConnect proceedings until certain liability issues were raised by the Commission in its April 26 order. According to APS, the outcome of these liability issues could have a major impact on APS as it moves towards full participation in the DesertSTAR RTO. APS contends that no party will be prejudiced by its late intervention given the early stage of the proceeding, and that it agrees to accept the record in this proceeding as it exists. APS also seeks rehearing of the Commission's determination in the April 26 order rejecting the agreement limiting liability.

On June 1, 2001, PGE, Sierra Pacific, and Nevada Power filed a request for a minor clarification regarding their prior request that the Commission require RTO West to provide as part of its Stage 2 proposal, calculations regarding the impact of including export fees in the RTO West rate proposal.

Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,² APS' untimely motion to intervene is denied for failure to demonstrate good cause warranting late intervention.³ The RTO West and TransConnect filings were duly noticed in the Federal Register at 65 Fed. Reg. 64,209 (2000), 65 Fed. Reg. 64,693 (2000), and 65 Fed. Reg. 64,215 (2000). Answers, motions to intervene and protests were due on or before November 20, 2000. APS' motion to intervene was filed fully six months after the due date for such pleadings. Contrary to APS' assertions, limited liability issues were not raised for the first time in the Commission's April 26 order. Rather, these issues were raised in RTO West's October 23 filing and were addressed in many of the comments, and protests.⁴ Under these circumstances, we will deny the

²18 C.F.R. § 385.214(d) (2000).

³See New York State Electric & Gas Corporation and NGE Generation, Inc., et al., 85 FERC ¶ 61,196 (1998); accord, PJM Interconnection, L.L.C., 88 FERC ¶ 61,039 (1999), and cases cited therein.

⁴See RTO West Application, Attachment Y, Liability Agreement, and Attachment Z, Applicants' Summary of the Liability Agreement; Protests and Comments of Dynegy
(continued...)

motion for late intervention. Since APS is not a party to the captioned proceedings, we will reject its request for rehearing in these proceedings.⁵

We also will reject PGE, Sierra Pacific and Nevada Power's late-filed motion for clarification. Although PGE, Sierra Pacific and Nevada Power ask us to "clarify" our April 26 order, we view their "motion for clarification" as in fact a "request for rehearing." Under section 313(a) of the FPA,⁶ a request for rehearing must be filed within 30 days after issuance of a final decision or other final order in a proceeding. PGE, Sierra Pacific and Nevada Power have presented no justification for delay in filing their June 1, 2001 pleading. Accordingly, we will reject PGE, Sierra Pacific and Nevada Power's June 1, 2001 request for clarification as an untimely request for rehearing.⁷

II. Requests for Rehearing

A. **RTO West Governance Proposal**

1. Membership in Transmission Dependent Utility Class

In the April 26 order, the Commission found that the RTO West Applicants' proposed process for determining the RTO West slate of Trustees will ensure a fair and non-discriminatory selection of Trustees, that no single class of owners can exercise control over the selection of the directors so as to threaten independence, and that the Trustees Selection Committee reflects the diversity among stakeholder groups. Therefore, the Commission found that the RTO West Applicants' governance proposal, as set forth in the RTO West Articles of Incorporation and Bylaws, satisfies the independence standard set forth in Order No. 2000.

⁴(...continued)

and Deseret. We also note that the arguments APS raises were also raised on rehearing by parties to the proceeding as discussed below

⁵See *Southern Company Energy Marketing, L.P., et al.*, 84 FERC ¶ 61,199, reh'g denied, 86 FERC ¶ 61,131 (1999), *aff'd sub nom.* *Power Co. of America v. FERC*, 245 F.3d 839 (D.C. Cir. 2001).

⁶16 U.S.C. § 8351(a) (1982).

⁷See *Southwestern Public Service Co. and Black Mesa Power Co.*, 46 FERC § 61,151 (1989) and *Houston Lighting & Power Co., et al.*, 84 FERC § 61,955 (1998).

The Commission also found that transmission owners that transfer their assets to TransConnect should not be considered affiliates of TransConnect for purposes of class definition, since such owners will retain a minimal active ownership in those facilities, for a limited time, and are otherwise limited to passive ownership, consistent with the safe harbor and benchmark limitations in Order No. 2000. Furthermore, the Commission found that these entities should not be precluded from the Transmission Dependent Utility (TDU) member class.

On rehearing, Deseret claims that the Commission erred by failing to rule on Deseret's proposed clarification of the definition of the term "Affiliate" in the April 26 order. Deseret explains that such clarification is necessary to ensure that RTO West will permit separate membership in the RTO by distribution cooperatives that might be members of a larger generation and transmission cooperative, such as Deseret, that itself would be a transmission owning entity and RTO member.

Deseret also contends on rehearing that the Commission failed to rule on its request that smaller transmission owners should be allowed to participate in the Major Transmitting Utility class. Deseret had protested as unjustified and unnecessary the distinction in the RTO West Bylaws between a Major Transmitting Utility⁸ and all other owners of transmission facilities that contribute assets to RTO West. Also, Deseret noted that the proposed Bylaws would limit membership in the Major Transmitting Utility class to the RTO West Applicants, TransConnect, and Bonneville. Deseret requested that the Commission change the definition to allow any entity that submits its transmission assets to the RTO's operational control to join either the Major Transmitting Utility Class or the TDU class.

Commission Response:

With respect to Deseret's request to expand the definition of "Affiliate," we clarify that where a cooperative has transmission assets of its own it should be permitted representation in the ISO portion of RTO West. Since Deseret and its cooperative members have transmission assets in their own rights, they should each have membership rights.

⁸A Major Transmitting Utility is a Transmission Owner which individually or together with one or more of its Affiliates, owns transmission assets having a net book value greater than or equal to two percent of the aggregate net book value of the RTO West transmission system. See October 23, 2000 Filing, Attachment J, RTO West Bylaws, Article I, § 1(u).

However, we deny rehearing of Deseret's request to be allowed to choose whether to join the Major Transmitting Utility class or the TDU class. Deseret has not shown that its rights are harmed by the class division or by its assignment to the TDU class. Contrary to Deseret's assertions, the Major Transmitting Utility Class will not contain all of the RTO West Applicants. In fact, that class will consist of TransConnect, Bonneville, PacifiCorp and Idaho Power. The RTO West Applicants that will transfer their assets to TransConnect would be eligible for participation in the TDU class.

2. Bifurcated Voting Structure for the TDU Class

In the April 26 order, the Commission accepted RTO West Applicants' proposal to structure TDU class voting on a bifurcated basis as a reasonable balance of the interests of larger utilities and smaller utilities. The Commission observed that the bifurcated structure incorporates load weighting while still allowing each utility at least one vote. The Commission declined to require an eighty percent super majority voting requirement.

On rehearing, Consumer-Owned Utilities contend that in many respects the RTO West Applicants failed to abide by the consensus agreements that were reached through the collaborative process in this proceeding. Consumer-Owned Utilities argue that the Commission erred by not rejecting elements of the RTO West Applicants' proposal that depart from these agreements. Consumer-Owned Utilities state that failure to ensure the integrity of the collaborative process undermines any claim that the resulting RTO will fulfill Order No. 2000's goals at the lowest possible cost. With respect to the voting structure, the Consumer-Owned Utilities contend that the Commission improperly approved a unilateral proposal by the RTO West Applicants that deviated from the one-member, one-vote consensus scheme developed by the parties to the RTO West collaborative process.

Commission Response:

In Order No. 2000, the Commission endorsed the collaborative process to enable all stakeholders to participate and to express their views regarding RTO formation. Although consensus on the issues is desirable, any proposal is subject to the Commission's review to determine whether it satisfies the goals of Order No. 2000. Notwithstanding the manner in which the RTO West Applicants put forth their proposal regarding the TDU voting structure, the Commission found that it is reasonable to afford a balanced representation for all members of that class. Since the bifurcated voting structure is consistent with the independence requirements of Order No. 2000, rehearing is denied.

3. Financial Interests in Market Participants and Code of Conduct

The April 26 order rejected Public Power Council's (PPC) argument opposing the provision which allows corporate personnel to hold stock in Market Participants for up to six months, finding that the proposed provisions generally track those accepted by the Commission in GridFlorida. The Commission also declined to require the clarifications of the Code of Conduct requested by Public Generating Pool (PGP) and PPC.

The Commission also disagreed with claims that the definitions of "Market Entity," "Market Participant," and "Member" may allow Trustees to engage in financial dealings with entities that have a financial interest in RTO West, since RTO West's proposed Code of Conduct definition of Market Participant has the same meaning as set forth in Order No. 2000. The Commission also found that RTO West's definition of market entity goes even further in limiting Trustees financial dealings by restricting financial dealings not only with market participants, but also with members of the Corporation, including any affiliate of a market participant or corporate member of the affiliate, and that RTO West's Code of Conduct generally tracks the Commission's decision in Alliance.

On rehearing, Consumer-Owned Utilities claim that the RTO West Trustee Code of Conduct and Bylaws fail to ensure that the RTO will be governed by individuals who are free from a personal financial interest in entities whose financial performance will depend on the actions of RTO West. The Trustee Code of Conduct prohibits Trustees from holding a financial interest in any "Market Entity" (which includes any Market Participant, any member of RTO West and any scheduling coordinator). However, Consumer-Owned Utilities claim that this prohibition fails to include those entities such as wires-only companies which may have a substantial interest in the operation of the RTO. Consumer-Owned Utilities claim that in other cases the Commission has prohibited Trustee financial involvement with all transmission owners and users. Consumer-Owned Utilities also argue that the Trustee Code of Conduct fails to prohibit Trustee financial involvement in entities that have substantial dealings with the RTO, outside the power market, such as interest in vendors providing real estate, technology, or other goods and services to the RTO.

Consumer-Owned Utilities also claim on rehearing that the Commission erred in approving the Employee Code of Conduct because it contains numerous loopholes that undermine the independence of RTO West. Specifically, the Employee Code of Conduct only prohibits financial involvement in market participants, as defined by the Commission. Therefore, Consumer-Owned Utilities claim, employees could hold a financial stake in transmission-only companies, scheduling coordinators or distribution-only companies, which could affect day-to-day decisions made by employees.

Commission Response:

The Trustees Code of Conduct prohibits Trustees' direct or indirect financial interest in any market participant, member or scheduling coordinator, or any affiliate of any market participant, member or scheduling coordinator.⁹ Consumer-Owned Utilities argues that this provision fails to include those entities which may have a substantial interest in the operation of the RTO. We disagree. The Trustees Code of Conduct adopts the Commission's definition of market participant as set forth in Order No. 2000,¹⁰ which states,

- (i) any entity that, either directly or through an affiliate, sells or brokers services to the Regional Transmission Organization, unless the Commission finds that the entity does not have economic or commercial interests that would be significantly affected by the Regional Transmission Organization's actions or decisions; and
- (ii) any other entity that the Commission finds has economic or commercial interests that would be significantly affected by the Regional Transmission Organization's actions or decisions.¹¹

In addition, the RTO West Trustee Code of Conduct states:

a Trustee must remember that the relationships of his or her business associates, family, friends and other persons may give rise to a potential conflict of interest even if the Trustee himself or herself is not involved directly. A potential conflict can exist where the parties in the relationship give or receive, or could reasonably be perceived to give or receive unfair

⁹RTO West Application, Attachment J at B-4.

¹⁰RTO West Application, Attachment J at B-7.

¹¹18 C.F.R. § 35.34(b)(2)(i) and (ii) (2000) (emphasis added).

advantage or preferential treatment because of the relationship. No Trustee should have a direct or indirect interest in or relationship with any outside person or organization that might affect the objectivity or independence of his or her judgment or conduct in carrying out the duties to the Corporation.^[12]

Since the definition of market participant, as set forth in the Commission's regulations and as adopted by RTO West, includes entities whose interests would be significantly affected by the decisions by RTO West, and the Trustee Code of Conduct reinforces the requirement that Trustees must be free from a personal financial interest in entities whose financial performance will depend on the actions of RTO West, the Trustee Code of Conduct does not require revision as requested by Consumer-Owned Utilities. Therefore, rehearing is denied.

We also deny rehearing of our approval of the Employee Code of Conduct. The RTO West Employee Code of Conduct also adopts the Commission's definition of market participant,¹³ thereby ensuring that RTO West employees may not have a financial interest in entities whose interests would be significantly affected by the decisions of RTO West.¹⁴ Furthermore, the Employee Code of Conduct contains language mirroring that of the Trustees Code of Conduct, which reinforces the requirement that employees must be free from a personal financial interest in entities whose financial performance will depend on the actions of RTO West.¹⁵

4. Role of the Board Advisory Committee

In the April 26 order, the Commission approved the Board Advisory Committee structure, finding that it affords stakeholders an opportunity to bring to the attention of the Board of Trustees any issue of importance to stakeholders. Notably, participation in

¹²RTO West Application, Attachment J at B-3.

¹³RTO West Application, Attachment J at A-9.

¹⁴However, the Employee Code of Conduct allows an employee to be a residential retail electric energy consumer and to continue his or her pre-existing participation in a pension plan or health benefits plan of a Market Participant, so long as the benefits do not vary with the economic performance or the value of the securities of that Market Participant. See RTO West Application, Attachment J at A-5.

¹⁵RTO West Application, Attachment J at A-3.

the Board Advisory Committee is not limited, and any RTO West member may join. Furthermore, the proposal allows for dissenting views to be presented to the Board of Trustees. The Commission found that these provisions afford ample opportunity for stakeholders to participate, within an independent governance structure.

On rehearing, Consumer-Owned Utilities contend that the RTO West Applicants unilaterally modified the form and function of the Board Advisory Committee from the consensus proposal developed in the collaborative process. According to Consumer-Owned Utilities, the filed proposal reduced the scope of the Board Advisory Committee's powers and watered down its functions.

Commission Response:

In the April 26 order, the Commission found that the proposed governance structure consisting of an independent non-stakeholder Board of Trustees and a stakeholder Board Advisory Committee will afford stakeholders an ample opportunity to participate within an independent governance structure. Within this framework, stakeholders may bring to the attention of the Board of Trustees any issue of importance or dissenting views. Furthermore, participation on the Board Advisory Committee is not limited. As noted above, regardless of how an RTO proposal is developed, the Commission must independently review the proposal. Based on our review of this aspect of RTO West Applicants' proposal, we found that it meets the independence standards of Order No. 2000. Petitioners have not shown otherwise. Therefore, we deny rehearing.

B. TransConnect Governance Proposal

In the April 26 order, the Commission accepted the proposed board qualifications and the Selection Committee process. Although TransConnect Applicants have two votes on the Selection Committee, they cannot unilaterally veto a candidate, without an additional vote from another committee member. Moreover, since the candidate search is conducted by an independent search firm, and its search is based on specific qualification criteria, we concluded that the process is reasonable.

Seattle contends on rehearing that the Commission should have acted in its April 26 order to forbid the filing utilities to transfer their assets to TransConnect when the many unresolved issues in RTO West have not yet been clarified and decided, RTO West has not yet been authorized, and the RTO West proposals are works in progress. Seattle fears that it may be impossible to reconstitute the original structure, ownership and contractual relationships that could be disrupted by premature ownership changes.

Commission Response:

We will deny Seattle's request for rehearing as premature. As noted in its filing, TransConnect intends to become a part of RTO West. However, the April 26 order provides only preliminary guidance regarding the RTO West and TransConnect governance structures and does not grant authorization for the TransConnect member utilities to transfer their assets to TransConnect. That authorization will not exist until after (1) these utilities file under section 203 of the Federal Power Act to transfer their assets to TransConnect, and (2) the Commission approves the filings. Seattle, of course, would be entitled to present arguments regarding the appropriateness of the asset transfer at that time.

C. Section 205 Filing Rights

The April 26 order found that TransConnect is not prohibited from entering into agreements with RTO West that will enable incentive proposals to be incorporated into the rate design of the transmission tariff that RTO West files with the Commission, and that it also is not prohibited from unilaterally making a section 205 filing with the Commission that incorporates incentives or performance based rates as part of its revenue requirement, after consulting with RTO West. Since TransConnect proposes to operate as an independent transmission company within the RTO West structure, the Commission found it appropriate to allow TransConnect, as an organization that is independent of market participants, the flexibility to propose mechanisms that will provide incentives for the TransConnect members to take actions within their control to improve grid operation.

The Commission indicated that it will evaluate the potential for transmission owners that are independent from market participants to favor wires over non-wires solutions in either planning or operations when it reviews specific proposals presented in the section 205 filings. The Commission stated that case-by-case review also will allow it to ensure that a proposal will operate appropriately in the particular RTO circumstances. The Commission required TransConnect to consult with RTO West whenever possible regarding proposals to implement incentive mechanisms to avoid conflicts with the RTO West Tariff rate design and clarified that where incentive proposals conflict with established RTO West tariff requirements, RTO West, as the exclusive administrator of its tariff, must retain the ability to reconcile differences in those proposals with its tariff design.

Furthermore, the Commission required RTO West Applicants to revise the Transmission Operating Agreement to eliminate the authority of those transmission owners that are not independent of market participants to unilaterally file with the Commission to establish or change rates under the region-wide RTO tariff. While transmission owners may file for their revenue requirements, once a particular revenue requirement is approved by the Commission, it is the responsibility of RTO West, as the sole administrator of the transmission tariff for the region, to incorporate the revenue requirements of each of its members (including any innovative pricing proposal by transmission owners who have elected to become independent of market participants) into a single, cohesive transmission tariff it will administer for the region.

Idaho Power and PacifiCorp seek clarification and rehearing of the April 26 order's requirements limiting the rights of transmission owners that are not independent of market participants to unilaterally file incentive rate proposals. Idaho Power and PacifiCorp state that the RTO West Transmission Operating Agreement simply permits a transmission owner that is affiliated with market participants to retain whatever right the jurisdictional entity might otherwise have as part of a revenue requirement filing to make incentive proposals. Idaho Power and PacifiCorp seek clarification that the Transmission Operating Agreement merely seeks to preserve the status quo ante under which a utility's ability to seek incentive pricing is judged on a case-by-case basis and measured against the Commission's then-applicable standards and policies. Alternatively, they seek rehearing.

Idaho Power and PacifiCorp believe that the RTO West proposal is consistent with Commission policies and already establishes appropriate limits on unilateral filings by utilities that are not independent of market participants. Before they may make unilateral filings for performance-based rates and other incentive mechanisms, transmission owners must first demonstrate to the Commission that they are independent of market participants or otherwise entitled to obtain such recovery under the Commission's standards and policies.¹⁶ Thus, the Commission would retain the tools to address the circumstances under which incentive rate mechanisms are approved.

Idaho Power and PacifiCorp contend that the categorical denial of the right of integrated utilities to improve their efficiency through incentive mechanisms: (1) would deny the Commission the ability to consider proposals for more efficient transmission facility operations, improved reliability, grid expansions, and other proposals, even where they are consistent with Commission standards and policies and more effective

¹⁶See RTO West Transmission Operating Agreement section 13.3.

than a traditional cost-of-service proposal; (2) will discourage participation in RTO West; and (3) has no basis in the record.

Deseret requests clarification regarding the eligibility of transmission owners other than TransConnect for incentive or innovative rates under the RTO West structure. Deseret states that under Order No. 2000, after a transmission owner hands functional control of its transmission facilities over to the RTO, it should be given the right to seek any rate incentive in its own individual revenue requirement filings. According to Deseret, the April 26 order appears to afford the right to file incentive rate proposals only to transmission owners that divest their transmission assets to TransConnect. Deseret claims that transmission owners should not be required to divest their transmission assets to be able to file incentive rate proposals. Rather, they should be afforded such filing rights when they cede functional control of their assets to the RTO. Deseret claims that the April 26 order fundamentally changed the Commission's RTO policy by erecting a new barrier to eligibility for innovative rate treatments.

Deseret also requests clarification that incentive rate mechanisms will be available to TransConnect, rather than to the passive owners of TransConnect.

Commission Response:

We deny the requests for rehearing or clarification regarding the rights of individual transmission owners that are not independent of market participants to file unilateral incentive rate proposals. As discussed in the April 26 order, Order No. 2000 makes clear that the RTO has the exclusive right to administer its tariff and to make incentive rate filings with the Commission. While that order clarified that this right also should be afforded to TransConnect since it is independent of market participants, TransConnect encompasses only part of the region within RTO West, and is required under the Transmission Operating Agreement to consult with RTO West prior to proposing any incentive rate mechanisms. The basic premise of Order No. 2000 is that individual transmission owners must coordinate with the RTO and the RTO must make such filings. For these reasons, we also clarify that the incentive rate mechanisms can be proposed by TransConnect but not by its individual passive owners. Furthermore, transmission owners would not be entitled to rewards or subjected to penalties for actions the RTO controls.¹⁷

¹⁷See Southern Company Services, Inc. 94 FERC ¶ 61,271 at 61,965 (2001) and April 26 Order at 61,338, footnote 57.

D. Planning and Expansion

In the April 26 order, the Commission noted that the detailed description of the proposed RTO West planning and expansion function is to be filed in a Stage 2 filing, but provided guidance regarding RTO West Applicants' and TransConnect Applicants' proposal to share the planning and expansion function. The Commission found that Section 12.2 of the Transmission Operating Agreement, which establishes that RTO West will have primary responsibility and final decisionmaking authority for transmission planning and expansion of transmission facilities under the operational control of RTO West, is consistent with the requirements of Order No. 2000.

However, the Commission found that it is not clear whether, and how, RTO West will reflect least cost planning in its decisionmaking process. Therefore, the Commission directed the RTO West Applicants and TransConnect Applicants to further explain in their Stage 2 filings how they will share the transmission planning and expansion responsibilities and how non-wires solutions will be considered in the decisionmaking process. The Commission stated that it would reserve final judgment on TransConnect's request to share the planning and expansion function with RTO West until a more detailed planning and expansion proposal is filed.

On rehearing, Consumer-Owned Utilities contend that the Commission's failure to assure RTO West independence will undermine the integrity of the RTO West planning function. Consumer-Owned Utilities recognizes the Commission's finding that the RTO West planning function may not treat transmission and non-wires solutions objectively if RTO West does not include least cost solutions in its consideration. However, Consumer-Owned Utilities states that requiring RTO West to consider least cost solutions is not enough. According to Consumer-Owned Utilities, the Commission must also recognize that under the proposed governance structure RTO West will favor transmission solutions regardless of cost, if TransConnect is allowed to perform planning functions independently of RTO West. Consumer-Owned Utilities claim that the problem is exacerbated by the failure of the RTO West Trustee Code of Conduct or the RTO West Employee Code of Conduct to preclude individuals involved in RTO West decision-making from also retaining financial interests in TransConnect.

Commission Response:

The April 26 order provided preliminary guidance that RTO West must include in its Stage 2 filing consideration of least cost options as part of its overall planning and expansion proposal. RTO West has not yet filed a complete planning and expansion proposal and the Commission has made no further determinations or findings. For these reasons, Consumer-Owned Utilities' request for rehearing is premature and is denied.

E. RTO West Scope and Regional Configuration

In the April 26 order, the Commission concluded that the proposed RTO West scope and configuration are consistent with Order No. 2000. Since RTO West encompasses a significant portion of the Western Interconnection, the Commission found that it can serve as an anchor for the ultimate formation of a West-wide RTO. The order further found that the proposed scope and configuration will permit RTO West to perform its functions efficiently and that RTO West's regional boundaries will facilitate and optimize the competitive, reliability, efficiency, and other benefits that RTOs are intended to achieve. In addition, the Commission accepted the inclusion of Nevada Power and Sierra Pacific in RTO West's scope and regional configuration.

The April 26 order directed RTO West Applicants to continue working toward the common goals of minimizing seams issues, improving inter-regional coordination, and ultimately establishing a single West-wide RTO. Accordingly, the Commission ordered RTO West Applicants to file a status report no later than December 1, 2001, detailing, among other things, (1) resolutions of seams issues, (2) plans for participation in RTO West by Canadian entities, (3) a framework for formation of a West-wide RTO, and (4) a timetable for achieving a West-wide RTO end state.

On rehearing, Seattle claims that the Commission erred in directing the parties to work towards the goal of a West-wide RTO. Seattle objects to a West-wide RTO and considers a collaborative process towards that goal to be infeasible in view of the opposition of some utilities. Seattle believes that the benefits of such a large RTO are speculative and that there may be disadvantages to a centrally planned, economic and commercial structure that is distant from consumers. Seattle claims that the RTO West filings fail to show and the April 26 order fails to address, how Pacific Northwest regional distinctions would be protected fairly in a West-wide RTO.

Consumer-Owned Utilities also seek rehearing of the Commission's directive to develop a West-wide RTO. Consumer-Owned Utilities argue that a West-wide RTO is unanimously opposed by the involved states; that the Commission's directive lacks a

coherent rationale, exceeds the Commission's authority, departs without explanation from Order No. 2000's finding that RTO formation should be voluntary, and contradicts the finding in the April 26 order that parties already are actively addressing regional approaches to a wide range of issues; that the mandate for a West-wide RTO filing will divert resources from the effort to develop RTO West and will further delay the establishment of RTOs throughout the West; that the requirement is inconsistent with other Commission orders approving smaller RTOs without requirements to develop interconnection-wide RTOs; that there is no evidence that a West-wide RTO will produce benefits to consumers in excess of its costs; and that the process of forming a West-wide RTO is likely to produce years of additional market uncertainty and delay needed transmission investment.

Valley seeks rehearing of the April 26 order to the extent that it approved the scope and configuration of RTO West including Nevada Power. Valley states that the order fails to recognize that Nevada Power and Sierra Pacific operate in two separate, non-interconnected control areas. Notwithstanding the recent merger of Nevada Power and Sierra Pacific, Valley states that Nevada Power remains physically integrated with DesertSTAR utilities and has only a single interconnection with an RTO West utility, PacifiCorp, in southwestern Utah. Valley asserts that Nevada Power would support the power markets in the desert southwest, rather than those in the RTO West region. In addition, Valley believes that issues unique to the desert southwest should be resolved in the context of all transmission facilities, including those of Nevada Power, that are directly interconnected within that region. Valley also contends that including Nevada Power in RTO West will compound RTO West difficulties in calculating ATC, resolving loop flow issues, managing congestion, and planning and coordinating transmission expansion. Valley fears that including Nevada Power in RTO West will result in pancaked rates for desert southwest customers.

Deseret requests clarification of the Commission's position on multiple RTO seams issues short of a West-wide RTO. Deseret is concerned about considerable seams issues among neighboring RTOs that could detract from the efficacy of Western RTOs and contribute to inefficiencies. Deseret requests clarification as to (1) what policies or practices, such as differing scheduling deadlines, on seams will be tolerated; and (2) what is a reasonable timetable for short-run seams issues prior to the creation of a West-wide RTO.

Commission Response:

In the April 26 order, the Commission recognized that Nevada Power and Sierra Pacific are not directly interconnected, but found that it should not limit the boundaries

for RTO West. The Commission also based its decision on RTO West Applicants' assertion that including both companies in RTO West may reduce the per-unit uplift charge and thereby promote efficiency. The Commission further found that Nevada Power will contribute to RTO West's ability to satisfy its required functions of supporting efficient and non-discriminatory power markets. Finally, since Nevada Power recently merged with Sierra Pacific, the Commission found it appropriate that these entities be included in the same RTO. The concerns Valley raises are more appropriately addressed when RTO West makes its Stage 2 filing, where any unresolved seams issues can be considered. Therefore, we deny rehearing.

We also deny rehearing with respect to our directive to work towards the goal of forming a West-wide RTO. As noted in the April 26 order, historical relationships and the events of this past year leave no doubt of the interstate nature of the electric systems in the Western Interconnection. California has been part of a West-wide market since 1962, when Congress authorized the plan to develop the Pacific Northwest-Southwest Intertie, which consists of transmission facilities connecting the Pacific Northwest states with California.¹⁸ Since the 1970s, the utilities in the West confronted the regional nature of their operations in the form of significant loop flows, and, in the 1990s agreed on a regional solution.¹⁹ Contrary to Consumer-Owned Utilities' assertion, although parties have indicated that combining the West into a single RTO is problematic in the short term, many do believe that a single RTO should be pursued.²⁰ We recognized the numerous Western organizations, including stakeholders in California, the Pacific Northwest, the Desert Southwest, and Canadian entities, that already have undertaken a number of efforts that have resulted in meaningful dialogue regarding seams and inter-regional coordination issues in the West, and that have established the foundation for parties to pursue further consensus on West-wide RTO issues. We support these voluntary efforts that have already begun and continue to believe it best to direct RTO West Applicants to continue working toward the common goals of minimizing seams issues, improving inter-regional coordination, and ultimately establishing a single West-wide RTO.

¹⁸See Pacific Gas and Electric Co., et al., 746 F.2d 1383, 1384 (9th Cir. 1984).

¹⁹ See Southern California Edison Company, et al., 70 FERC ¶ 61,078 and 73 FERC ¶ 61,219 (1995).

²⁰See, e.g., Response of the California Independent System Operator Corporation to Protests and Comments on Submission Describing Progress Toward Formation of Regional Transmission Organization, filed on March 9, 2001 in Docket No. RT01-85-000.

In response to Deseret's request for guidance regarding seams issues, we consider it premature to provide further guidance at this time. Several elements of the RTO West Stage 2 filing, such as the development of rate design, firm transmission rights, and potential export fees, will necessarily involve seams issues. Furthermore, as noted above, the Commission has ordered the RTO West Applicants to file a status report no later than December 1, 2001, detailing, among other things, (1) resolutions of seams issues, (2) plans for participation in RTO West by Canadian entities, (3) a framework for formation of a West-wide RTO, and (4) a timetable for achieving a West-wide RTO end state which could resolve issues internal to the West. The Commission will address seams issues in the context of these filings.

F. Limited Liability Agreement

In the April 26 order, the Commission found that under Order Nos. 888-A and 888-B, the pro forma tariff does not address, and was not intended to address, liability issues. Rather, transmission providers may rely on state laws, when and where applicable, protecting utilities or others from claims founded in ordinary negligence.²¹ The Commission also noted that the Commission has consistently rejected liability limitation provisions in tariffs involving open access transmission service.²² Further, the Commission found that all of the Commission orders cited by RTO West Applicants for the acceptance of liability limitation provisions predate Order No. 888 and do not involve open access transmission service. Accordingly, the Commission rejected the proposal to incorporate the Liability Agreement into the Transmission Operating

²¹See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 61,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,301-02 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 at 62,080-81 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), cert. granted, 69 U.S.L.W. 3574 (Nos. 00-568 (in part) and 00-809), cert. denied, id., (No. 00-800) (U.S. Feb. 26, 2001) (Transmission Access Policy Study Group).

²²See, e.g., Arizona Public Service Co., 94 FERC ¶ 61,027 at 61,082 (2001); New York Independent System Operator, Inc., 90 FERC ¶ 61,015 at 61,034, order on reh'g, 91 FERC ¶ 61,012 at 61,051 & n.23 (2000), aff'd sub nom. New York State Electric & Gas v. FERC, No. 00-1228, et al. (D.C. Cir. May 15, 2001) (unpublished) (New York ISO); Pacific Gas and Electric Co., et al., 81 FERC ¶ 61,122 at 61,520-21 (1997).

Agreement. The Commission also directed RTO West Applicants to address the amount of compensation paid to redispatched generators in the RTO West Tariff.

Requests for Rehearing

RTO West Applicants state that their proposed business risk allocation plan was broadly supported during the collaborative process among transmission owners, state utility commissions, transmission customers and most market participants. They further state that their proposal adopts the currently effective commercial risk allocation of the Agreement Limiting Liability Among Western Interconnected Systems (WIS Agreement) which limits the liability of electric system owners to each other in the Pacific Northwest. They assert that their liability agreement is different from liability provisions proposed by other RTOs. They argue that the April 26 Order's rejection of the Liability Agreement provides no guidance as to how RTO West Applicants should proceed or what kind of risk allocation plan would be acceptable. They contend that, arguably, a workable business allocation plan is the most essential element in ensuring the viability of any RTO. They also argue that, in developing their business risk plan, they followed a collaborative process favored by Order No. 2000, that Order No. 2000 urged prospective RTOs to address liability issues prior to filing their proposals, and that Order No. 2000 determined that liability issues should be addressed on a case-by-case basis.²³

RTO West Applicants argue that the Commission's reliance on Order No. 2000 is misplaced. They argue that: the April 26 Order did not distinguish between the allocation of commercial risk among RTO stakeholders and the allocation of risk between an integrated utility transmission provider and a transmission customer under an OATT; the creation of RTOs is a fundamental industry restructuring far beyond the scope contemplated by Order No. 888; and the actual holding in Order No. 888 is much narrower than recent orders assert and is of limited relevance to RTOs.

RTO West Applicants argue that the structure of an RTO precludes reliance exclusively on state law to protect utilities and others from claims founded in negligence and wrongdoing.²⁴ They state that, in implementing Order No. 888, the Commission has deferred to state jurisdiction over the terms and conditions of retail tariffs, which allocate risk between retail customers and transmission providers. They further state that state-jurisdictional retail tariffs have historically incorporated the protections of state law

²³See also Rehearing of Salt River.

²⁴RTO West Applicants also encourage the Commission to reconsider its Order No. 888 position regarding limitations of liability in an RTO open access tariff.

through continuity of service standards, limitations of liability and other provisions consistent with state contract law. However, they contend that the Commission's reliance on state law to address liability is misplaced in the context of an RTO, because the RTO will not be providing any transmission service under state retail tariffs. According to RTO West Applicants, all of the transmission service provided by the RTO will be subject to exclusive federal jurisdiction, because all of the power will be transmitted across the RTO's system under Commission-approved transmission tariffs. Therefore, RTO West Applicants assert, an RTO will not have the benefit of whatever liability protection may be included in a state-jurisdictional retail tariff. Moreover, if RTO participants are not allowed to negotiate any agreement to allocate business risks, RTO West Applicants assert that the RTO could essentially be subject to unlimited liability even as to consequential damages for service interruptions.

RTO West Applicants argue that, absent Commission approval of liability limitations comparable to those prevalent in state tariffs, there will be an increase of liability that will have to result in a significant increase in rates. They contend that it would be extremely expensive, if not impossible, to obtain adequate insurance for an RTO absent limitations on liability. They urge the Commission to "begin a dialogue" with all stakeholders, including particularly insurance providers, regarding the commercial and rate impacts of the Commission's current policy.

Deseret states that the parties at the May 24 technical conference on liability issues discussed the distinction between the liability issues presented by RTO West and the Order No. 888 policy with respect to liability and indemnification. According to Deseret, there appeared to be a consensus that issues concerning the Liability Agreement may require further Commission consideration and opportunities for all parties to comment on the merits. Deseret is concerned that if it joins RTO West as a participating Transmission Owner, and the Liability Agreement is eliminated, it might be exposed to significant increased risks outside of its control and not mitigated by state law remedies.²⁵ Deseret requests that the Commission reserve judgment on the Liability Agreement until all parties have been able to comment on the record on this issue, either by pleading or by additional conferences.

Salt River states that it is involved in the formation of an RTO to serve parts of the West not covered by the RTO West proposal. Salt River is concerned that the April 26 Order could be viewed as setting a binding precedent that limits the flexibility of other RTOs to develop innovative limited liability provisions. It seeks clarification that the

²⁵See also Rehearing of Salt River.

rulings in RTO West are not intended to pre-judge or otherwise prohibit parties seeking to form RTOs in other parts of the West from developing innovative proposals to limit liability with the aim of encouraging RTO participation. Salt River also requests clarification regarding the alternatives available to RTO participants to limit their liability and how the Commission envisions state laws will continue to apply in an RTO setting after transmission owners turn over functional control of their transmission facilities to an RTO. It is concerned that litigation may result if an RTO's tariff is silent on the ability of states to limit the liability of transmission owners.

Commission Response

The Commission will grant rehearing in part on this issue. We will accept for filing the RTO West Applicants' proposal to allocate risk among the transmission owners and the RTO. The transmission owners entered into a collaborative process that resulted in the allocation of liability risks among themselves and we conclude that this risk sharing is acceptable. However, this is separate from the indemnification issue addressed by the Commission in Order No. 888, which involved not the allocation of risk among transmission owners and operators, but rather the allocation of risk between transmission providers and customers related to third-party claims. Accordingly, as discussed below, we will not accept the RTO West Applicants' proposal to the extent it seeks to limit the rights of transmission customers and other third parties.

In Order No. 888, the Commission explained that it was distinguishing liability from indemnification and that the indemnification provision of the open access transmission tariff "should not be construed as preempting the appropriate tribunal's consideration of whether liability should attach for acts or omissions of the transmission provider that injure third parties."²⁶ The court, in rejecting challenges to the Commission's indemnification provision, expressly found that the provision

does not preclude the states from shielding utilities from liability for ordinary negligence. States did so before, through both their regulatory commission's and their courts; and they remain free to do so under Order 888.^[27]

²⁶Order No. 888-B at 62,081.

²⁷Transmission Access Policy Study Group, 225 F.3d at 729-30. See also New York ISO. We also note that nothing in Order No. 2000 changed this result.

The parties on rehearing have failed to demonstrate that the states no longer have the ability to address liability issues and that there is any need to depart from the findings made in Order No. 888 and upheld by the Court of Appeals for the District of Columbia Circuit. In this regard, we note that no state in this proceeding has indicated otherwise. Thus, with respect to the requirement of Order No. 888 that transmission customers indemnify the transmission provider except in cases of negligence or intentional wrongdoing by the transmission provider, we uphold its application to the RTO West Applicants and reject the RTO West Applicants' proposed tariff revisions to the contrary.

Finally, we note that, in its protest, BC Hydro contended that the Liability Agreement needed to be tailored to reflect the framework for British Columbia participation in the RTO. It requested that we withhold approval of the scope of the Liability Agreement until it accommodates BC Hydro's concerns or that we limit the scope of any order to issues that involve only RTO West and the relationships among it and the Filing Utilities. We clarify that our determination applies only to the RTO West entities in the United States. RTO West Applicants may address comparable Canadian issues in Stage 2 of this proceeding.

We direct RTO West Applicants to submit a compliance filing in accord with these determinations within 30 days of the date of this order.

G. Other Requests for Rehearing or Clarification

1. Firm Transmission Rights

Seattle seeks rehearing of the Commission's failure to require the RTO West Applicants to address at an early stage issues related to long-term transmission contracts and public power access rights. Seattle is concerned that contracts in which one party may never become a member of an RTO should not be forced into the RTO. Otherwise, the power needs of utilities that are parties to such contracts can be trammled by larger throughput bulk sales transactions.

Consumer-Owned Utilities claim on rehearing that the Commission erred by declining to require that the Transmission Operating Agreement be revised to enforce the agreement reached in the RTO West collaborative process that transmission dependent utilities would receive firm transmission rights in return for payment of the applicable Company Rate.

Commission Response:

We will deny these requests for rehearing as premature. It is impossible to address at this stage of the proceeding issues related to long-term transmission contracts absent a proposal. Furthermore, since the RTO West Applicants have not yet filed their firm transmission rights proposal, it is premature to determine whether it appropriately balances the rights of all parties.

2. Native Load Reservations

Seattle also seeks rehearing of the Commission's failure to address early in these proceedings Seattle's concern regarding native load reservations. Seattle states that the RTO West proposal threatens to subsume load control operation of major hydroelectric facilities into its domain, potentially undermining years of investment in environmental, cultural, and fish protection.

Commission Response:

The Commission realizes that issues related to native load reservations are important to many parties. However, the resolution of these issues is necessarily interrelated with the RTO West firm transmission rights proposal and cannot be addressed in isolation. We expect that RTO West Applicants will address these issues in connection with their Stage 2 filing and we will give appropriate consideration to Seattle's concerns at that time.

3. Cost-Benefit Analysis

Seattle and Consumer-Owned Utilities seek rehearing of the Commission's failure to require a showing that the benefits of the RTO outweigh the direct and indirect costs associated with its formation. Consumer-Owned Utilities claim that although the RTO West Applicants had agreed during the collaborative process to perform a cost-benefit analysis, the Commission appears willing to allow them to renege on this commitment. Seattle disagrees with the Commission's finding that the benefits of RTO formation overall outweigh the costs. Seattle believes that RTO formation will not provide a timely resolution of the current problems in the electric industry, and it doubts that the prospective benefits outweigh the drain on capital and human resources to form RTO West. Furthermore, Seattle claims that it is error for the Commission to proceed with review of the RTO West proposal, without assuring that it will not repeat California's experience.

Commission Response:

In the April 26 order, the Commission did not preclude a cost benefit analysis. The Commission noted that RTO West has been actively engaged in a cost benefit study.²⁸ We understand that the RTO West participants are in the process of performing another, more meaningful analysis that includes input from all stakeholders.²⁹ We find it unnecessary to intervene where the participants have been conducting the requested analysis. Accordingly, we deny rehearing.

4. Inclusion in the RTO West Filing Utilities Group

On rehearing, Deseret claims the Commission erred by failing to direct RTO West Applicants to cease excluding other jurisdictional transmission owners from the Filing Utilities Group that has been preparing the RTO West filings. Deseret states that it was denied rights to participate fully in this group, and that it did not have an opportunity to be adequately represented in all RTO West decision making processes affecting transmission owner interests. Deseret complains that the RTO West Applicants continue to exclude it from their Filing Utilities Group and that the collaborative process is an inadequate substitute for inclusion in this group. Therefore, Deseret asks the Commission to remedy this discriminatory practice in time for it to participate in the Stage 2 negotiations. In the alternative, Deseret seeks a Commission ruling that RTO West, once formed, cannot treat Deseret in a discriminatory fashion with respect to entities that did participate in the Filing Utilities Group.

Commission Response:

The Commission declines to intervene in the mechanics of the collaborative process. We encourage all parties to work together cooperatively and in as open a manner as possible, and will review all resulting proposals to ensure that they are fair and consistent with the goals of Order No. 2000. We clarify that RTO West may not treat Deseret or any other party in a discriminatory fashion with respect to entities that did participate as part of the Filing Utilities Group.

The Commission Orders:

²⁸See RTO West web page at http://208.55.67.64/stage2_RRG_PAST_Feb23mtg.htm.

²⁹See RTO West web page at http://208.55.67.64/Stage2_RRG_Past_June12001Mtg.htm

(A) The motion to intervene out of time of APS is hereby denied, as discussed in the body of this order.

(B) The motion for clarification of PGE, Sierra Pacific and Nevada Power is hereby rejected, as discussed in the body of this order.

(C) The requests for rehearing are hereby granted in part and denied in part, as discussed in the body of this order.

(D) The motions for clarification are hereby granted in part and denied in part as discussed in the body of this order.

(E) RTO West Applicants are hereby directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Massey concurred with a separate statement attached.

(S E A L)

David P. Boergers,
Secretary.

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.,
Sierra Pacific Power Company

Docket No. RT01-35-001

Avista Corporation,
Montana Power Company,
Nevada Power Company,
Portland General Electric Company,
Puget Sound Energy, Inc.,
Sierra Pacific Power Company

Docket No. RT01-15-001

(Issued July 12, 2001)

MASSEY, Commissioner, concurring:

In orders issued today addressing the Northeast RTO proposals³⁰ and the Southeast RTO proposals,³¹ the Commission adopts as its firm objective a single RTO for the Northeast, one for the Southeast, one for the Midwest, and one for the West. We state this objective for four RTOs covering the entire nation. With this clear statement, we at long last provide much needed guidance to the industry for getting RTOs in place and delivering their benefits to the nation's electricity consumers. This guidance is long overdue. I have long advocated providing such guidance, and believe we could have

³⁰Docket Nos. RT01-2-000, RT01-98-000, RT01-10-000, RT01-95-000, RT01-86-000, and RT01-94-000.

³¹Docket Nos. RT01-74-002 and -003, RT01-77-000, RT01-34-000 and -002, and RT01-75-000 and -003.

saved valuable time by articulating it eighteen months ago instead of now. But better late than never. I am pleased that we are moving ahead today.

We show a new resolve today also by directing the parties in the Northeast and those in the Southeast to formal mediation in order to establish a plan for forging a single RTO for their regions and a timetable for doing so. I strongly support this approach. A skilled, neutral judge will help resolve the tough issues that will surely arise and will be able to provide trusted advice to the Commission if and when we need to step in. If this job is going to get done in due time, the presence of a mediator is absolutely necessary.

While I am very pleased with the resolve we are showing in the Northeast and the Southeast, I am disappointed that we are not applying that same resolve in all regions, including the West. In the West, I believe that RTO West provides a superb start toward a single RTO for the West. It is a worthy anchor institution for the region. The events of the past year have dramatically shown that the West is truly a single regional market that needs single grid management. I recognize the exceptionally tough challenges to attaining a Western RTO. That's why I believe formal mediation and a timetable for resolution is essential now for the West aimed at a single RTO, and I am disappointed we do not take such a step today. I would have done so and in this order directed RTO West participants to participate along with the participants in Desert Star and the California entities. Although I am pleased with the progress we make today, I am somewhat disappointed that we once again miss a golden opportunity to achieve in the West what we insist upon in the Southeast and the Northeast.

Therefore, I concur with today's order.

William L. Massey
Commissioner