

100 FERC ¶ 61, 297
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Avista Corporation,
Nevada Power Company,
Portland General Electric Company,
Sierra Pacific Power Company

Docket No. RT01-15-002

TransConnect, LLC

Docket No. ER02-323-000
(Not Consolidated)

ORDER ON INNOVATIVE RATE PROPOSAL

(Issued September 23, 2002)

I. Introduction

1. In this order, we grant in part and deny in part an application by Avista Corporation (Avista), Nevada Power Company (Nevada Power), Portland General Electric Company (PGE) and Sierra Pacific Power Company (Sierra Pacific) (collectively, Applicants) for preliminary approval concerning their proposal to form and become members of TransConnect, LLC (TransConnect).¹ TransConnect is intended to be an independent transmission company (ITC). This order addresses Applicants' Stage 2 filing in which they request preliminary approval of transmission rates, including

¹Montana Power Company (Montana Power, now known as NorthWestern Energy, L.L.C.) and Puget Sound Energy, Inc. (Puget), formerly applicants and prospective members of TransConnect, have withdrawn from the TransConnect proposal.

innovative transmission rate treatments,² a planning and expansion protocol, a compliance filing, and a modified governance proposal.

2. This order benefits customers, as it provides certainty and additional guidance to Applicants and furthers the Commission's goal of successful Regional Transmission Organization (RTO) development.³

II. Background

A. Procedural History

3. Applicants propose to form TransConnect as a for-profit independent transmission company (ITC) that would operate within the RTO West footprint. On October 16, 2000, in Docket Nos. RT01-35-000 and RT01-15-000, Avista, Montana Power, Nevada Power, PGE, Puget and Sierra Pacific jointly filed a petition for a declaratory order (Stage 1 filing) seeking the Commission's preliminary guidance whether certain aspects of their proposal to form RTO West and TransConnect would satisfy the requirements of Order No. 2000.⁴ TransConnect also indicated that it would file the remainder of its proposal in a subsequent filing [Stage 2 filing], which would address its participation in the planning and expansion function of RTO West as well as setting forth its incentive rate proposal. On April 26, 2001 (April 26 Order), the Commission granted, with modification, RTO West's and TransConnect's petitions for a declaratory order.⁵ The

²Avista is not participating in the rate filing section of the TransConnect proposal; thus, only Nevada Power, PGE and Sierra Pacific are participating in the rate filing section.

³In a related order issued on September 18, 2002, the Commission provided further guidance with respect to Avista, et al.'s proposal to form RTO West. Avista Corp., et al., 100 FERC ¶ 61,274 (2002) (RTO West Stage 2 Order).

⁴Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 30,092 (2000), aff'd sub nom. Public Utility District. No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

⁵Avista Corp., et al., 95 FERC ¶ 61,114 (April 26 Order), order on reh'g and clarification, 96 FERC ¶ 61,058 (2001) (July 12 Order), clarified, 96 FERC ¶ 61,265

April 26 Order provided preliminary guidance with respect to TransConnect on issues concerning governance, section 205 filing rights, planning and expansion, and scope and configuration. On November 13, 2001, Applicants submitted their Stage 2 filing, which we address in this order.

B. Overview of TransConnect's Stage 2 Filing

4. Applicants request preliminary approval of transmission rates for TransConnect. They state that the proposed rates contain innovative and incentive features consistent with section 35.34(e) of the Commission's regulations⁶ and Order No. 2000. In addition, they seek: (1) approval to undertake a planning and expansion function; (2) acceptance of their compliance filing in response to the April 26 Order; and (3) approval to revise TransConnect's governance structure to enable it to offer additional membership flexibility.⁷ If the Commission determines that a hearing is necessary, Applicants request that the Commission limit the hearing to specific issues rather than ordering a hearing on the entire application. Alternatively, they suggest a paper hearing or technical conference to narrow and resolve issues before requiring a formal evidentiary hearing. TransConnect will incorporate any modifications required by the Commission, together with approved rate adjustments, in a filing to be made 60 days prior to the effective date of the rates. Applicants state that TransConnect may seek to commence service prior to the commencement of operations by RTO West, if TransConnect receives the necessary regulatory and board approvals.⁸

⁵(...continued)

(2001) (no compliance filing was required in response to July 12 Order). On March 29, 2002, the RTO West Applicants submitted additional details about the RTO West proposal, which we address in the RTO West Stage 2 Order.

⁶18 C.F.R. § 35.34(e) (2002).

⁷Applicants request that the Commission find that the proposed modifications to TransConnect's governance documents, including a Transmission Management Agreement, would not affect the Commission's prior determination that TransConnect satisfies the independence characteristic of Order No. 2000.

⁸Applicants state that, if TransConnect seeks to become operational and makes its rates effective prior to the commencement of operations by RTO West, or other applicable RTOs, TransConnect will separately submit a tariff to bridge the period until
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C. Notice of Filing and Pleadings

5. Notice of Applicants' filing was published in the Federal Register,⁹ with motions to intervene and protests due on or before December 13, 2001. A notice of intervention, timely motions to intervene, protests or comments were filed by the parties listed in Appendix A to this order. Late motions to intervene and comments were filed by the parties listed in Appendix B.
6. On January 11, 2002, Applicants filed a motion for leave to file an answer and an answer to the protests and comments.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁰ the notice of intervention and the timely, unopposed motions to intervene serve to make those who filed them (see Appendix A) parties to this proceeding. Further, in view of the early stage of this proceeding and the absence of any undue prejudice or delay, we will grant the unopposed motions to intervene out-of-time and to file late comments (see Appendix B).
8. Although our Rules of Practice and Procedure generally prohibit answers to protests,¹¹ we will permit Applicants' answer, because it has aided us in understanding the issues.

⁸(...continued)

the applicable RTO becomes operational. They state that permitting TransConnect to become effective prior to the effectiveness of the RTO to which it commits to join is consistent with the Commission's order in Independent Transmission Co., 92 FERC ¶ 61,276 (2000), reh'g pending.

⁹66 Fed. Reg. 59,014 (2001).

¹⁰18 C.F.R. § 385.214 (2002).

¹¹18 C.F.R. § 385.213 (2002).

B. Substantive Matters

1. TransConnect Rate Proposal

9. Because TransConnect would be comprised of non-contiguous transmission systems and because of the RTO West license plate rate design, Applicants propose to establish zonal rates that match the current service territories of each Applicant. They state that the proposed rates for Sierra Pacific, Nevada Power and PGE will be based on traditional cost-of-service ratemaking elements previously approved by the Commission (representative rates).¹² Applicants state that the initial representative rates will be the starting point for their proposed incentive elements, which are described below.

10. Applicants request a 14.5 percent return on equity (ROE) on existing transmission facilities, asserting that this is a reasonable return when combined with a capital structure consisting of 50 percent common equity and 50 percent long-term debt.¹³ Applicants support the 14.5 percent ROE using a DCF analysis of reference groups, including (1) natural gas transmission companies, (2) Moody's electric utilities and (3) Standard & Poor's electric utilities. Applicants assert that their DCF analysis of these groups supports a rate of return on equity in a range between 12.0 and 15.5 percent. They further assert that a 14.5 percent ROE, which is in the upper half of the range, is justified under a risk premium analysis due to additional risks faced by TransConnect as an ITC.¹⁴

a. Rate Ceiling and Sharing Mechanisms

11. Applicants state that their rate proposal is structured as a rate ceiling, that is, Applicants would be able to charge a rate up to the ceiling. Applicants propose to maintain the ceiling rate structure for five years. A portion of the ceiling rate is proposed to be subject to an annual index adjustment. The rate proposal also includes incentive pricing provisions, including a higher return on equity for certain new transmission investments, that is designed to encourage efficient investment in transmission facilities.

¹²For example, rates proposed for the PGE zone will reflect the use of a 12-month coincident peak allocation methodology, while rates for the Nevada Power zone will reflect the use of a 4-month coincident peak allocation methodology.

¹³TransConnect Application, Exh. TC-10.

¹⁴Applicants claim that these risks include political and restructuring risks, business and opportunity risks, environment-related risks and timing risks.

Applicants state that TransConnect intends to develop, during its initial year of operation, a proposal to establish performance benchmarks through a collaborative process with transmission customers and the RTOs within which it operates.

12. Applicants propose that the ceiling rate be subject to an annual adjustment based on indexed changes in transmission operation and maintenance costs (O&M). The ceiling rate also will incorporate a sharing mechanism for administrative and general expenses (A&G). The rate proposal further provides that TransConnect will be able to file to amend the ceiling rate to recover certain types of new investment.

13. The proposed O&M index is modeled after a form of rate ceiling referred to as an "RPI minus X" structure, where "RPI" is a price index and "X" is a productivity adjustment. Applicants propose to use the Consumer Price Index (CPI) as the index¹⁵ and 0.5 percent as the productivity adjustment.¹⁶ The index would be applied annually to the O&M portion of the revenue requirement used to establish the representative rate.

14. The sharing mechanism for A&G costs will use the A&G portion of the revenue requirement used to establish the representative rates. The A&G component of the ceiling rate will be adjusted annually based on the prior year's actual A&G. TransConnect and customers will share equally any reduction in A&G, with TransConnect at risk for increases in A&G above the level initially established (i.e., customers will not be charged for these expenses). According to Applicants, this mechanism gives TransConnect the incentive to reduce A&G since TransConnect would retain one-half of the reductions below the initial A&G level and have to absorb the total cost of increases in A&G above its initial level.

b. New Transmission Investment

15. Applicants propose various recovery mechanisms for new transmission investment, including:

¹⁵According to Applicants, the CPI is a reasonable index to use because it has generally tracked the historical growth of electric utility O&M costs. TransConnect Application, Exh. TC-4 at 29.

¹⁶Applicants state that the productivity factor adjusts the cost index downward to reflect the fact that productivity may induce a smaller quantity of the inputs to which the cost index applies. *Id.* at 19-20.

- (A) Transmission investments made in response to a request for service by a transmission customer would be directly assigned to the customer and recovered through either a lump sum payment or through an incremental charge to the customer. In return, the customer would receive the transmission service or congestion revenue rights¹⁷ made available by the new investment.
- (B) If TransConnect makes investments on its own (i.e., investments that are justified primarily by the economic value of the new capability created by the investment), the investment costs would be directly assigned to TransConnect and TransConnect would receive the congestion revenue rights associated with the new capability.
- (C) Transmission customers and TransConnect will have the right to claim that a directly-assigned transmission investment provides system-wide benefits, which would justify allocating a portion of the costs to all customers in the zone. The RTO will make preliminary determinations of the allocation of such costs.
- (D) To the extent that new transmission investments that provide system-wide benefits or are made pursuant to RTO and TransConnect planning processes, the capital costs would be recovered from all customers in the zone. However, in light of the rate ceiling, TransConnect will be unable to earn a return on any investments that cause net plant to increase. Hence, to avoid investment disincentives while maintaining the rate ceiling, TransConnect will retain the right to file for an incremental rate that allows recovery of this incremental net plant.¹⁸ Applicants propose

¹⁷Although TransConnect refers to these rights as "firm transmission rights," we will refer to them in this order as "congestion revenue rights."

¹⁸According to Applicants:

If costs incurred by a utility are separated from the allowed rates, then incentives can be created to undertake cost-reducing initiatives. The most common type of mechanism that achieves such a result is a rate cap. A rate cap works by placing an upper limit on the rate that a utility can charge for

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that all charges associated with the new investments will be depreciated over 15 years and the return on equity will be adjusted 200 basis points upward to provide an adequate incentive to expand the transmission system.

c. Comments

16. Several intervenors argue that Applicants' request for incentive rates should be rejected, set for hearing and/or substantially modified. Many argue that the proposal does not meet the filing procedures for innovative rate proposals set forth in Order No. 2000. Mirant, Puget and UAMPS argue that Applicants designed the incentive rate proposal without the stakeholder input, which is required by Order No. 2000. Several intervenors¹⁹ argue that the proposal violates the July 12 Order, which required that an innovative rate proposal be filed by TransConnect itself rather than by its individual passive owners. Puget, ATNI-EDC and UAMPS argue that RTO West must have the ultimate authority to establish the overall rate design for its region and to resolve any conflicts between TransConnect's proposals and its own.

17. Mirant argues that the proposal fails to provide a cost-benefit analysis, including an analysis of rate impacts, and fails to identify rewards and penalties. Public Power Council argues that Applicants have not shown that there will be a net benefit to ratepayers from their proposal. Deseret and Truckee argue that Applicants' analysis of the benefits of TransConnect failed to take into account their proposal to change the governance structure, which permits participants to retain ownership of their transmission assets and only place them under the control of TransConnect. Deseret asserts that the ITC could have conflicting interests between the transmission it owns and the transmission it merely operates, which could increase costs associated with an ITC. Truckee argues that, if Applicants and others elect to merely transfer functional control

¹⁸(...continued)

its service. Any cost savings achieved by the utility would not result in a decrease in rates until after a significant period of time. Instead, all or a portion of the cost savings are retained by the utility, thereby creating incentives for increased efficiency.

TransConnect Application, Exh. TC-4, p. 17 (footnote omitted).

¹⁹See, e.g., UAMPS, Mirant, Truckee, ATNI-EDC.

of their facilities to TransConnect, TransConnect would not advance the goals of Order No. 2000 or otherwise contribute anything of value.

18. PNGC, Deseret and Public Power Council request that the Commission reject the proposed 14.5 percent return on equity. Deseret argues that the single purpose nature of an ITC does not necessarily impose greater risk. UAMPS disputes the risks which Applicants identify as justifying a higher rate of return.²⁰

19. PNGC, Deseret and Truckee oppose depreciation of new investment over a 15-year period and application of a 200 basis-point premium to new investment that is rolled into base rates.²¹ Deseret argues that the proposed five-year rate ceiling may be inappropriate as the initial rate design.²² UAMPS claim that no showing has been made that the proposed rate ceiling is necessary or appropriate to reward Applicants, or to provide an incentive for any particular behavior.

20. Applicants respond that the filing and incentive rate proposals are not premature, because they are seeking only preliminary approval in order to effectively plan and implement the transition to an ITC. Applicants state that they are only seeking a degree of certainty and guidance regarding the filing in order to make the most informed business decisions. They assert that the proposed innovative and incentive features reflect the ratemaking innovations contemplated in Order No. 2000. According to Applicants, the rate incentives are necessary to create incentives to ensure that the transmission assets under TransConnect's control are adequately supported and enhanced even in times of volatility of market conditions.

d. Commission Response

21. In Order No. 2000, we encouraged performance-based rates (PBRs) and innovative rate treatments and specifically addressed how they should be formulated and

²⁰UAMPS' Protest at 37-44. UAMPS also assert that the basic DCF analysis already reflects transmission risk, and, therefore, the proposed inclusion of special risks of transmission constitutes "double dipping."

²¹Truckee also seeks clarification regarding how new investment will be rolled into the proposed zonal rates.

²²According to Deseret, a "rate moratorium" as proposed by other for-profit transmission entities may be more favorable to customers.

when they should be filed.²³ We concluded that the process of designing a PBR proposal must ensure adequate stakeholder input. In addition, we concluded that a PBR should not be applied piecemeal; should include both rewards and penalties; and should create incentives to operate efficiently. We further stated that PBR proposals should include a detailed explanation of how the PBR mechanism will work, as well as all of the information necessary for the Commission and all market participants to evaluate the benefits and costs of the PBR mechanism.

22. TransConnect proposes to establish performance benchmarks over its initial year of operation through a collaborative process with stakeholders. We support this endeavor. We believe that performance benchmarks established through a collaborative process, and incentive mechanisms that reward or penalize TransConnect based on the established criteria, are critical to the successful implementation of incentive rate mechanisms. Incentives to meet and exceed established benchmarks should foster increased efficiencies and investment in the transmission grid. We direct TransConnect to establish performance benchmarks for A&G and O&M, in consultation with stakeholders in the region, before submitting its final innovative rate proposal for A&G and O&M.²⁴

23. A revenue sharing mechanism will create an incentive to manage A&G more efficiently while simultaneously sharing those savings with transmission customers. However, establishing the A&G costs for each utility using base and test year measures would immediately reflect inflated A&G costs compared to those that will likely be incurred under consolidated operation as TransConnect. Therefore, we direct TransConnect to exclude from its base A&G levels those savings that are the result of consolidation of the operations of the individual transmission companies into TransConnect.

24. Applicants' proposed indexed adjustment for O&M expense is premature, and we will reject it without prejudice. Applicants have not provided adequate support for either their 2002 estimates of O&M for each transmission company or their proposed benchmark O&M figure from which they would apply the indexed adjustment. Because O&M has varied significantly from utility to utility and from year to year, we believe it is inappropriate to establish an O&M benchmark for the newly formed TransConnect based

²³Order No. 2000 at 31,183-85.

²⁴See Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,064 at 61,165, reh'g denied, 98 FERC ¶ 61,356 (2002) (Midwest ISO).

on a summation of the individual companies' historical O&M costs. Therefore, we direct TransConnect, once it has gained operational experience, to propose and justify an incentive proposal that includes performance benchmarks for O&M based on its operational experience.

25. Applicants propose a 14.5 percent rate of return on equity, asserting that TransConnect will face additional risks in developing new transmission projects. We are not accepting Applicants' proposed rate of return at this time. By order issued on September 19, 2002, we announced a new incentive rate policy regarding return on equity.²⁵ TransConnect is free to propose an equity return when it proposes actual rates, and we will consider their return on equity consistent with our new policy.

26. We will accept Applicants proposed five-year rate ceiling and will allow TransConnect to file under Section 205 of the Federal Power Act for an incremental rate to reflect additions in net plant. However, consistent with Midwest ISO, we also will reject Applicants' proposed 200 basis-point adder and 15-year depreciation for new transmission investment without prejudice. We will consider the appropriate return on equity when Applicants propose new rates for incremental investment. We continue to believe that in order to ensure appropriate incentives for efficient investment in the transmission system, stakeholders must provide input concerning new transmission investment.

2. Transmission Planning and Expansion

a. The Requirements of the April 26 Order

27. The April 26 Order provided guidance on the general principles of planning and expansion described by RTO West and TransConnect.²⁶ The April 26 Order directed RTO West Applicants and TransConnect Applicants to further explain in their Stage 2 filings how TransConnect would share the transmission planning and expansion

²⁵See Midwest Independent Transmission System Operator, Inc., 100 FERC ¶ ___, at P 31 (2002) (Midwest ISO) (the Commission granted an upward adjustment to Midwest ISO's return on equity as an incentive for the participants' turning over of operational control of transmission facilities).

²⁶RTO West Applicants did not seek approval of the planning and expansion function in their Stage 1 filing, stating that they proposed to provide details of that function in their Stage 2 filing.

responsibilities with RTO West, and how non-wires solutions will be considered in the decision-making process.²⁷

b. TranConnect's Proposal

28. Applicants have filed a Pro Forma Planning and Expansion Protocol (Protocol) that describes the processes for planning and expansion of the TransConnect Transmission System. The Protocol is intended to work in tandem with an RTO planning and expansion proposal to ensure well-coordinated sharing of this function.²⁸ Applicants state that, while the RTO will have ultimate authority over projects affecting the reliability of the RTO's transmission system, TransConnect will: (1) have the right to plan and propose transmission projects; (2) assume the local area planning function for load serving entities served by the TransConnect system; (3) perform system impact studies necessary to evaluate requests for transmission service on TransConnect facilities; and (4) have delegated authority to perform interconnection studies. According to the Protocol, TransConnect will coordinate its planning and expansion processes with the RTO, will work with the RTO and other applicable regulatory authorities that have specific least-cost planning requirements, and will comply with any laws or regulation governing such requirements.

29. The Protocol provides that the RTO will receive all generation interconnection and transmission service requests. Requests for service within the TransConnect service territory shall be forwarded to TransConnect to conduct the studies and analyses in accordance with the procedures in the RTO Open Access Transmission Tariff (OATT) and the Protocol.²⁹ If new power supply options require transmission expansion, TransConnect will evaluate upgrades and expansion to accommodate such requests in a non-discriminatory manner in accordance with Commission policy. The results of the studies will then be provided to the RTO for review, to the extent such expansion project requires RTO review. The Protocol also provides that TransConnect may participate in

²⁷95 FERC at 61,341.

²⁸The Protocol is drafted to operate within any RTO. However, this order addresses only TransConnect's request to share the planning and expansion function with RTO West.

²⁹According to the Protocol, TransConnect will perform the study in accordance with the North American Electric Reliability Council's (NERC) and applicable regional standards and the procedures in the RTO OATT.

transmission expansion projects in service territories outside of its RTO footprint to the extent that the transmission owner in that area declines to consider such a request.³⁰

30. The Protocol provides that 60 days following receipt of a project proposed by TransConnect, the RTO must make a determination as to whether the project will adversely affect system reliability and whether there are system-wide benefits to the RTO.³¹ Similarly, if the project involves more than one RTO, an ad hoc committee will be formed within 15 days by the RTOs to make a determination as to whether the project will adversely affect regional or RTO system reliability and whether there are system-wide benefits to the RTOs. The ad hoc committee must also make a determination within 60 days. Section 2.2 of the Protocol provides that:

To the extent that approval is required, approval of requests for system additions, modification and expansions of the TransConnect Transmission System that do not impair reliability or bulk transmission capability of the RTO transmission system shall not be unreasonably delayed or withheld.

Moreover, TransConnect shall have a right to propose, plan, construct and own transmission projects. If a project requires a competitive bidding process, TransConnect will have the right, but not the obligation, to match the lowest bid to construct such project.

31. TransConnect will also assume the local area planning function for the load serving entities (LSEs) served by the TransConnect transmission system.³² Under the Protocol, the results of such local area planning performed by TransConnect are subject

³⁰TransConnect Application, Vol. II, Att. A at 3.

³¹A longer review period can be mutually agreed upon.

³²Local area planning is defined in the Protocol as planning for facilities that are within the TransConnect service territory or related to TransConnect facilities necessary to satisfy the needs of LSEs served by the TransConnect Transmission System. The Protocol provides that TransConnect will coordinate with the LSEs to consider least-cost alternatives, including non-transmission solutions.

to review and approval by the RTO and would be used in the regional planning process performed by the RTO.³³

c. Comments

32. Several parties argue for rejection of the proposed Protocol.³⁴ Others, including Bonneville, PacifiCorp and Puget, request that the Commission consider TransConnect's protocol in conjunction with the RTO West Protocol. They assert that the Protocol reserves for TransConnect primary responsibility for several significant aspects of planning, including local area planning, system impact studies and interconnection studies. They argue that RTO West should have ultimate authority over planning and expansion for the region and assert that the Protocol limits the authority of RTO West. Truckee and UAMPS argue that the Protocol allows the RTO to review, but not override, certain TransConnect planning decisions. Deseret claims that, under the proposal, RTO West will have neither "primary responsibility" nor "final decision making authority" for planning. Rather, the RTO would have a passive role of review and would be required to approve a project unless it could show that the project would impair reliability or bulk transmission capacity.

33. Other Intervenors³⁵ argue that the Protocol limits the RTOs' authority over interconnection and transmission service requests. The TransConnect Protocol provides that TransConnect will evaluate all requests to interconnect with TransConnect transmission facilities. In addition, TransConnect will have primary responsibility for recommending and implementing any necessary facility additions to accommodate connections of new load and generation. According to DENA and UAMPS, RTO West, not TransConnect, should have full authority over all interconnection requests. Mirant argues that the process leaves the ultimate decisions to accommodate new load and generation to the unlimited discretion of TransConnect.

34. Mirant argues that the Protocol does not provide for a least-cost planning process, as the April 26 Order directed. Therefore, TransConnect's commitment to work with

³³The Protocol provides that projects funded in accordance with a participant funding agreement that do not harm the transfer capability or reliability of the RTO are not subject to further RTO review or approval.

³⁴See, e.g., Deseret, Cogeneration Coalition, Truckee, Mirant, UAMPS.

³⁵Bonneville, Duke, UAMPS, Mirant and PNGC.

other entities that may be subject to least-cost planning obligations, including RTO West, is meaningless, given the broad authority TransConnect seeks over RTO West's transmission planning and expansion function. In addition, the Protocol does not restrict TransConnect from engaging in any expansion project that does not comply with any least-cost planning process that RTO West performs. Bonneville claims that the failure of TransConnect to carry out least-cost planning could harm other RTO West participants if the failure to adopt a least-cost alternative results in excess costs being involuntarily shifted to other participants.

35. Bonneville and PNGC contend that it is not necessary to limit the disclosure of confidential data to the RTO as part of the coordinated planning process.³⁶ Bonneville contends that the RTO will not be affiliated with any market participant, and its employees will be governed by Codes of Conduct.

36. Applicants respond that the proposal is not intended to challenge the broad regional planning responsibility of RTO West, or any other RTO. They seek Commission approval for TransConnect, as an ITC, to undertake limited planning and expansion responsibilities, subject to RTO oversight where there are regional concerns. Applicants state that the Protocol is intended to work in tandem with RTO West or another RTO; it allows the RTO to restrain planning and expansion that would harm the reliability of the RTO's control area.

37. Regarding least-cost planning, Applicants state that the TransConnect proposal provides that TransConnect will work with the relevant RTO and other regulatory authorities that have specific least-cost planning requirements and will comply with any applicable laws or regulations. Applicants state that TransConnect will, consistent with its business mission, bring the "wires" option to such least-cost planning processes. However, as a for-profit ITC, TransConnect's governance limits it to implementing transmission-related projects. Applicants add that market forces, including conditions imposed by financial institutions, will prevent efforts to plan and construct transmission facilities where there are economic non-transmission solutions.

³⁶Section 2.2 of the Protocol provides that "TransConnect shall not make [confidential] data available to third parties without the agreement of the providing entity unless required to do so by a court or regulatory agency with jurisdiction over TransConnect."

38. Applicants state that it is necessary for TransConnect to have the planning responsibility for facilities that are within its service territory in order to meet the requirements of LSEs. They commit that TransConnect will coordinate with the LSEs to consider least-cost alternatives, including non-transmission solutions. In addition, Applicants state that TransConnect will: develop expansion plans associated with local area transmission systems; perform studies to determine potential reliability problems; provide study findings and potential solutions to the LSE; and recommend and implement the necessary facility additions, if necessary. Results and recommendations of such local area planning are subject to review and approval by the RTO and would be used in the regional planning process performed by the RTO. If such projects are found not to harm the transfer capability or reliability of the RTO, they would not be subject to further review or approval. Applicants state that TransConnect's role as local area planner will allow it to meet its business objectives, with the RTO ensuring system reliability.

d. Commission Response

39. In Commonwealth Edison Company,³⁷ the Commission stated that responsibility for certain functions required of an RTO by Order No. 2000, including planning and expansion, could be shared by transmission entities in a region as long as the plan is sufficiently detailed and provides clarity about the decisional process.³⁸ In TRANSLink, we allowed an ITC and an RTO to share the planning and expansion function under certain circumstances:³⁹

TRANSLink will be responsible for planning and expansion of its own system and the Midwest ISO will be responsible for coordinating TRANSLink's regional transmission plan in accordance with the regional joint planning protocol. As the RTO, the Midwest ISO has the responsibility to ensure that

³⁷90 FERC ¶ 61,192, reh'g denied, 91 FERC ¶ 61,178 (2000) (Commonwealth Edison).

³⁸The Commission, however, requested additional information on how the ITC would coordinate with the RTO. See Commonwealth Edison, 90 FERC at 61,624.

³⁹TRANSLink Transmission Co., et al., 99 FERC ¶ 61,106 at 61,472 (2002), reh'g pending (TRANSLink). See also Alliance Companies, et al., 99 FERC ¶ 61,105 at 61,439 (2002), reh'g pending.

planning and expansion is coordinated across the entire RTO. Under TRANSLink's proposal, if the Midwest ISO believes that a TRANSLink planned facility will have a material impact on facilities outside of TRANSLink which are located within the Midwest ISO, it will have a reasonable time to review the plan and any disagreement should be resolved through dispute resolution. We believe that the RTO, not an outside arbitrator, must have the ultimate authority regarding planning and expansion for its region. Therefore we will require TRANSLink and the Midwest ISO to modify the joint planning protocol such that the Midwest ISO has the final word on planning and expansion that may materially affect facilities outside of TRANSLink which are located within the Midwest ISO. (Footnote omitted.)

40. In the April 26 Order, we noted that the RTO West Transmission Operating Agreement (TOA) established that RTO West will have primary responsibility and final decisionmaking authority for transmission planning and expansion under RTO West control. However, we did not have a detailed proposal from RTO West. We now have the RTO West Planning and Expansion Proposal (RTO West Proposal), which was submitted with its Stage 2 filing, and TransConnect's Protocol, and we conclude that the TransConnect Protocol, operating in conjunction with the RTO West Proposal, meets the requirements of Order No. 2000.

41. Our April 26 Order concluded that, under the TOA as proposed at that time,⁴⁰ RTO West would have primary responsibility and final decisionmaking authority for transmission planning and expansion of transmission facilities under the operational control of RTO West. As discussed in the RTO West Stage 2 Order, this language,

⁴⁰Section 12.1.2 of the original TOA stated, in part:

RTO West shall retain primary planning responsibility and final decision-making authority with respect to RTO West Controlled Transmission Facilities; provided that if the additions modifications and expansions to such facilities do not impair reliability or [the Total Transfer Capability] of the RTO West [Controlled] Transmission System, the requested approval of RTO West shall not be unreasonably delayed or withheld.

which we relied upon, has been modified.⁴¹ In that order, we conclude that the authority of RTO West has been diminished by the revised TOA language and therefore direct RTO West Applicants to revise the TOA and planning and expansion proposal to grant RTO West "ultimate responsibility for both transmission planning and expansion within its region, consistent with Order No. 2000."⁴² Although we will allow TransConnect a role in the planning and expansions process, its role must be consistent with that order.

42. Under the TOA, RTO West will have a broad, inclusive planning process that provides for meaningful input from interested parties, including PTOs. The TOA provides that, if the Commission has determined that a PTO is independent from control of market participants, RTO West will share its planning responsibilities with the PTO.⁴³ We disagree with intervenors who argue that RTO West will not have primary responsibility for planning. The revised TOA specifically states this, and we have established that transmission planning and expansion may be shared between an RTO and an ITC.

43. We disagree with intervenors' assertion that the Planing and Expansion Protocol limits the RTO's authority over interconnection and transmission service requests. The TransConnect Protocol provides that TransConnect will have delegated authority to perform interconnection studies; this delegation must come from any RTO in which TransConnect operates. According to the TransConnect Protocol, TransConnect will evaluate requests to interconnect to TransConnect transmission facilities. Studies conducted by TransConnect will conform with NERC standards, applicable regional standards, and generation interconnection procedures that have been established by the RTO and approved by the Commission. Completed studies will be reviewed by the requesting party, and the results will be provided to the RTO for review and approval. Similarly, requests for transmission service received by the RTO will be forwarded to

⁴¹Under the revised TOA, RTO West has ultimate authority for long-range planning for the RTO West-Controlled Transmission Facilities and has the right to review all proposals for additions, modifications or expansions to RTO West-Controlled Transmission Facilities.

⁴²RTO West Stage 2 Order, at P 227 (footnote omitted); see also Order No. 2000 at 31,164.

⁴³According to the TOA, consistent with Commission requirements, RTO West may also share its planning responsibility with the PTO as appropriate.

TransConnect to conduct appropriate studies and analyses. The results of such studies will be provided to the RTO, as appropriate for review.

44. However, we share concerns raised by intervenors that the 60-day time frame for the RTO to determine whether a project will adversely affect regional or RTO system reliability is too short. While we believe that the RTO should act expeditiously in reviewing TransConnect proposals, the RTO should establish the time line in accordance with its process for project review.

45. We disagree with Intervenor's argument that Applicants' proposal does not provide for a least-cost planning process. In assuming the local area planning function, TransConnect will coordinate with the LSEs to consider least-cost alternatives, including non-transmission solutions. Results and recommendations of such local area planning performed by TransConnect shall be subject to review and approval by the RTO and will be used in the regional planning process performed by the RTO.⁴⁴ The RTO West Proposal also allows for TransConnect as a Participating Transmission Owner to request RTO West to develop a plan through the RTO West least-cost planning process

46. Under the TransConnect Protocol, entities that provide information to TransConnect may designate such data as confidential. TransConnect may not release such data to third parties, including RTO West, without agreement of the providing entity, unless required to do so by a court or regulatory agency with jurisdiction over TransConnect. We find this provision reasonable given the participation in the planning process by employees of RTO West as well as third parties, such as contractors and other state commission representatives. However, to the extent the RTO requires such data to perform its planning and expansion duties, TransConnect shall make such data available to the RTO. Further, TransConnect must provide such data to the Commission if the Commission requests it.

47. Finally, we reject the proposal to give TransConnect the right to match the lowest bid to construct transmission projects. Applicants' proposal would effectively eliminate competitive bidding since the low bid could always be matched. That, in turn, would limit interest by merchant developers whose participation might limit the costs of such projects.

⁴⁴As we held in TRANSLink, "the [RTO] has the final word on planning and expansion that may materially affect facilities outside of [the ITC] which are located within the [RTO]." 99 FERC at 61,472.

3. Modifications to the TransConnect LLC Operating Agreement

a. TransConnect's Proposal

48. Applicants propose to modify certain provisions of the TransConnect LLC Operating Agreement (Operating Agreement) to allow participation and investment by transmission entities that do not wish to divest their assets to participate and to allow participation by public power entities who are prohibited from owning an equity interest in a for-profit entity. Instead of transferring legal title, these entities would grant functional control over their transmission assets pursuant to a Transmission Management Agreement.⁴⁵ TransConnect would manage these assets and would include them in the applicable RTO operating or control agreement.

49. The modified Operating Agreement also gives such Participants the option to make certain capital investments in TransConnect. In addition, public power entities may invest in TransConnect by making loans in the form of convertible debt in lieu of capital contributions.⁴⁶ Non-divesting transmission owning entities may make capital contributions to TransConnect by becoming Members of TransConnect and would participate in any economic success of TransConnect.

b. Comments

50. Deseret and Truckee argue that there is no benefit to allowing a non-divesting transmission owner to join TransConnect rather than directly participating in the RTO.

51. Deseret argues that the proposed modifications to TransConnect's governance structure endanger its status as an independent transmission company, because TransConnect will have an incentive to favor the transmission facilities it owns (through

⁴⁵The Transmission Management Agreement will detail contractual obligations between the transmission owner and TransConnect.

⁴⁶Applicants state that this debt may be convertible to an equity interest if the public power entity is later authorized to hold such an interest, or if the public power entity transfers the debt instrument to another party eligible to hold an equity interest.

divestiture) over those it merely operates. In addition, Deseret seeks clarification of the circumstances under which owners of transmission facilities operated by TransConnect will be eligible for the proposed rate incentives.

52. Applicants respond that under the modified Operating Agreement, non-divesting entities are permitted to make capital contributions to TransConnect and are able to participate to the extent of these capital contributions in any economic benefits attained by TransConnect. They assert that the ability of additional entities to participate in TransConnect through the transfer of functional control and TransConnect's ability to manage those assets in no way undermines the Commission's prior determination that their proposal meets the independence requirements of Order No. 2000.

c. Commission Response

53. We disagree with Deseret's assertion that modifications to the Operating Agreement jeopardize TransConnect's status as an independent transmission company. To the contrary, accommodating additional participation by allowing entities to turn over functional control of transmission facilities is consistent with the independence requirement of Order No. 2000. Whether participants and members sell their assets or execute a Transmission Management Agreement, the managing member will have full operational control of the transmission facilities and will be independent of market participants. For this reason, the proposal continues to meet the independence requirement of Order No. 2000. In addition, any incentive rate proposal approved for TransConnect will apply to all facilities under its operational control.

4. Applicants' Compliance Filing

a. The Requirements of the April 26 Order

54. The April 26 Order directed Applicants to: (1) clarify statements regarding the prohibition of Class C common stock ownership; (2) provide 30 days' notification to the Commission of conversion for the TransConnect members that elect to convert their ownership interest to Class C Common Stock, thereby ensuring that those members that elect to do so are not market participants; and (3) clarify that the Compliance Auditor will examine the Corporate Manager's decision process and file the audit report with the

Commission in a public document without TransConnect's approval within sixty days after completion of the audit.⁴⁷

b. Applicants' Compliance Filing

55. Applicants have amended: (1) Article VI.B of the Articles of Incorporation to clarify the definition of persons eligible to purchase Class C Common Stock;⁴⁸ (2) Article VI.D of the Articles of Incorporation to include a notification requirement;⁴⁹ and (3) Article IV, Section 12 of the By-Laws to require the independent compliance auditor to file reports with the Commission within 60 days of finalizing those reports.⁵⁰

c. Commission Response

56. No intervenor commented with respect to the compliance filing. We find Applicants' proposed modifications in (1), (2) and (3) above are in compliance with the Commission's directives in the April 26 Order.

5. Motion for Consolidation and Request for Evidentiary Hearing

⁴⁷95 FERC at 61,336.

⁴⁸The definition of ineligible persons in Article VI.B is revised as follows: ". . . no Market Participant (including any Member of TransConnect, LLC, should it be a Market Participant), nor any of its Affiliates (in each such case, a "Restricted Person"). . . ." (Emphasis added.) Applicants state that this change clarifies that Members who are not Restricted Persons may own Class C stock.

⁴⁹Any Member that intends to convert all or part of its interest in TransConnect LLC to Class C Common Stock shall notify the Commission at least 30 days prior to such conversion. This notification shall include satisfactory evidence that such Member is no longer a Market Participant. Unless the Member is otherwise notified by the Commission within the 30-day period, the election may take place following this 30-day period. The notice to the Commission is in addition to any other notices or information required under this Certificate of Incorporation.

⁵⁰TransConnect proposes to file audit reports, subject to the right of the independent compliance auditor to (1) seek an extension of the 60-day period, and (2) request confidential treatment of such reports to the extent that they are based on confidential corporate or personal information or data.

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57. In light of the fact that our approval in part of the Stage 2 filing is preliminary, and because we do not find that the Stage 2 filing presents issues of law or fact that warrant an evidentiary hearing, we will deny the requests for an evidentiary hearing. Further, since we are not setting either this matter or the RTO West Stage 2 filing in Docket No. RT01-35-005 for hearing, we will deny the requests for consolidation of the two proceedings.

The Commission orders:

(A) The motions to intervene and file comments out of time in this proceeding are hereby granted, as discussed in the body of this order.

(B) Applicants' motion for leave to file an answer to comments and protests is hereby granted, as discussed in the body of this order.

(C) The requests for consolidation of this proceeding and for an evidentiary hearing are hereby denied, as discussed in the body of this order.

(D) Applicants' request for preliminary approval of the proposed transmission rates, planning and expansion protocol, compliance filing and modified governance proposal is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

Appendix A
Timely Interventions, Protests and Comments

- Affiliated Tribes of Northwest Indians Economic Development Corporation (ATNI-EDC) - motion to intervene and protest
- Alcoa Inc., et al. - motion to intervene
- Bonneville Power Administration (Bonneville) - motion to intervene and protest
- Calpine Corporation - motion to intervene
- Cogeneration Coalition of Washington and the Nevada Independent Energy Coalition (CCW and NIEC) - protest⁵¹ and motion to consolidate with Docket No. RT01-35.
- Deseret Generation & Transmission Co-operative, Inc. (Deseret) - motion to intervene and protest
- Duke Energy North America, LLC (Duke) - motion to intervene and protest
- Dynegy, Inc. - motion to intervene
- Industrial Customers of Northwest Utilities (ICNU) - motion to intervene and protest
- Mirant Companies (Mirant) - motion to intervene and protest
- Northwest Requirements Utilities (NRU) - motion to intervene and protest
- PacifiCorp - comments
- Pacific Northwest Generating Cooperative and its member cooperatives (collectively, PNGC Group) - motion to intervene and protest
- PPL Montana, LLC and PPL EnergyPlus, LLC (PPL Parties) - motion to intervene and comments
- Public Service Electric and Gas Company - motion to intervene
- Public Utility District No. 1 of Snohomish County, Washington (PUD No. 1) - motion to intervene and protest
- Public Utilities Commission of Nevada - notice of intervention
- Public Power Council (PPC) - motion to intervene and protest
- Truckee Donner Public Utility District (Truckee) - motion to intervene and protest
- Utah Associated Municipal Power Systems (UAMPS) - motion to intervene and protest
- WestConnect Applicants - motion to intervene

⁵¹CCW and NIEC state that they have previously intervened in these proceedings and commented, as part of the Northwest IPP/Marketers Group, on the Stage 1 TransConnect filing.

Appendix B
Late Interventions, Protests and Comments

- Constellation Power Source, Inc. - motion to intervene
- IDACORP Energy L.P. - motion to intervene
- Montana Consumer Counsel - motion to intervene
- Nevada Attorney General's Bureau of Consumer Protection - motion to intervene
- Public Utility Commission of Oregon and the Oregon Office of Energy
(OregonCommission and OOE) - motion to intervene and a motion to delay
consideration of the Application until after RTO West submits its Stage 2 filing in
Docket No. RT01-35.
- Public Generating Pool - motion to intervene
- Puget Sound Energy, Inc. (Puget) - motion to intervene and comments.
- Southern California Edison Company - motion to intervene