

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

Public Service Company of Colorado)	
	)	Docket ER13-75-000
Terra-Gen Dixie Valley, LLC)	
	)	Docket ER13-76-000
Tucson Electric Power Company)	
	)	Docket ER13-77-000
UNS Electric, Inc.)	
	)	Docket ER13-78-000
Public Service Company of New Mexico)	
	)	Docket ER13-79-000
Arizona Public Service Company)	
	)	Docket ER13-82-000
El Paso Electric Company)	
	)	Docket ER13-91-000
Black Hills Power, Inc., et al.)	
	)	Docket ER13-96-000
Black Hills Colorado Electric Utility Company)	
	)	Docket ER13-97-000
NV Energy, Inc.)	
	)	Docket ER13-105-000
Cheyenne Light, Fuel and Power Company)	
	)	Docket ER13-120-000

**MOTION TO INTERVENE AND COMMENTS OF THE
WESTERN INDEPENDENT TRANSMISSION GROUP**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”)¹ and the Commission’s Notice of Extension of Time,² the Western Independent Transmission Group (“WITG”) hereby submits this Motion to Intervene and Comments in response to the October 11, 2012 and October 12, 2012 Order No. 1000 compliance filings of the Public Service Company of Colorado, Terra-Gen Dixie Valley, LLC, Tucson Electric Power Company, UNS Electric, Inc., Public Service Company of

¹ 18 C.F.R. §§ 385.212 & .214 (2012).

² Notice of Extension of Time, *Nw. Corp. (S.D.)*, Docket Nos. ER13-62-000 et al. (Nov. 1, 2012).

New Mexico, Arizona Public Service Company, El Paso Electric Company, Black Hills Power, Inc., Basin Electric Power Cooperative, Powder River Electric Cooperative, Black Hills Colorado Electric Utility Company, NV Energy, Inc., and Cheyenne Light, Fuel and Power Company (collectively, “WestConnect”).³

I. COMMUNICATIONS

All correspondence and communications relating to this proceeding should be directed to:

Gary Ackerman
Executive Director
Western Independent Transmission Group
P.O. Box 7172, PMB 348
Stateline, NV 89449-7172
Email: gary@transmissionusa.org
Tel: (925) 299-0152

II. MOTION TO INTERVENE

WITG is a broad-based, regional trade association dedicated to encouraging competition in electric transmission development, construction, and ownership in the Western states, including within the WestConnect footprint. WITG’s members are primarily independent transmission companies and their financial sponsors. Its mission is to promote open, transparent, and non-discriminatory transmission planning and approval processes to create equal

³ Order No. 1000 OATT Compliance Filing, *Pub. Serv. Co. of Colo.*, Docket No. ER13-75-000 (filed Oct. 11, 2012) (“PSCo Compliance Filing”); Order No. 1000 OATT Compliance Filing and Request for Waiver, *Terra-Gen Dixie Valley, LLC*, Docket No. ER13-76-000 (filed Oct. 11, 2012); Order No. 1000 Compliance Filing, *Tucson Elec. Power Co.*, Docket No. ER13-77-000 (filed Oct. 11, 2012); Order No. 1000 Compliance Filing, *UNS Elec., Inc.*, Docket No. ER13-78-000 (filed Oct. 11, 2012); Order No. 1000 OATT Compliance Filing, *Pub. Serv. Co. of N.M.*, Docket No. ER13-79-000 (filed Oct. 11, 2012); Order No. 1000 OATT Compliance Filing, *Ariz. Pub. Serv. Co.*, Docket No. ER13-82-000 (filed Oct. 11, 2012); Order No. 1000 Compliance Filing, *El Paso Elec. Co.*, Docket No. ER13-91-000 (filed Oct. 11, 2012); Order No. 1000 OATT Compliance Filing, *Black Hills Power*, Docket No. ER13-96-000 (filed Oct. 11, 2012); Order No. 1000 OATT Compliance Filing, *Black Hills Colo. Elec. Util. Co.*, Docket No. ER13-97-000 (filed Oct. 11, 2012); Order No. 1000 OATT Compliance Filing, *Nev. Power Co.*, Docket No. ER13-105-000 (filed Oct. 11, 2012); Order No. 1000 OATT Compliance Filing, *Cheyenne Light, Fuel & Power Co.*, Docket No. ER13-120-000 (filed Oct. 12, 2012). In compliance with Order No. 1000, each utility in WestConnect filed revisions to its individual open access transmission tariff. Because the proposed tariff language that will apply to the regional transmission planning process across all WestConnect utilities is substantially similar (and substantively identical), WITG provides these Comments as applicable to the revisions proposed by all WestConnect member utilities. WITG refers to the regional transmission planning language proposed for all WestConnect utilities as the “WestConnect Compliance Filing.”

opportunities for all transmission owners and operators, including both utilities and non-utility organizations (*i.e.*, both incumbent and non-incumbent developers). WITG's members believe that greater competition will bring enhanced value to customers and result in the most innovative, cost-effective means of developing transmission infrastructure.

WITG advocates for the development of new transmission projects to support renewable energy development, reduce power-delivery costs, and enhance grid reliability, and WITG and its members have been active participants in the Commission's Order No. 1000 rulemaking proceeding and in transmission planning stakeholder processes in the West.⁴

III. COMMENTS

The Commission's mission throughout the Order No. 1000 rulemaking process—to identify transmission facilities that serve important regional and inter-regional needs and construct them in the most cost-effective manner possible—can only be achieved with the inclusion of independent transmission owners and operators, which provide the innovation, capital resources, and efficient project delivery and management expertise vital to the effective expansion of the transmission system. WITG applauds the Commission and WestConnect for their efforts to improve transmission planning and cost allocation rules and remove barriers to the participation of non-incumbent transmission developers. WITG nonetheless submits these

⁴ See, e.g., Comments of the Western Independent Transmission Group, *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Docket No. RM10-23-000 (Sept. 29, 2010); Reply Comments of the Western Independent Transmission Group, *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Docket No. RM10-23-000 (Nov. 12, 2010); Request for Rehearing and Clarification of the Western Independent Transmission Group, *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Docket No. RM10-23-001 (Aug. 22, 2011).

Comments on the WestConnect Compliance Filing because the proposed tariff revisions do not fully comply with the requirements set forth in the Commission's landmark Order No. 1000.⁵

Specifically, the Commission should require each of the WestConnect member utilities to: (1) remove provisions that would allow two utilities to forego the regional planning and cost allocation process by mutual agreement; (2) remove provisions that would render cost allocation voluntary for utilities that are beneficiaries of a project that has been selected in the regional planning process for cost allocation; and (3) set forth, in their respective tariffs, more specific metrics by which a proposed transmission solution will be evaluated to determine whether it is an economic project and how decisions of whether to include such facilities in a regional transmission plan will be made.

a. The Commission Should Reject WestConnect's Proposed Voluntary Participation Provision.

The Commission should reject the concept of voluntary participation embodied in the WestConnect Compliance Filing. In its place, the Commission should affirm that transmission planning and cost allocation procedures that are adopted in compliance with Order No. 1000 are mandatory for all entities electing to construct transmission facilities that fulfill regional needs and that qualify for regional cost allocation.

WestConnect's member utilities have proposed tariffs that include the following provision:

[Transmission provider] may share ownership, and associated costs, of any new transmission project, based upon mutual agreement between the parties. Such a joint ownership arrangement may arise because of existing joint ownership

⁵ *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011) ("Order No. 1000"), *order on reh'g*, 139 FERC ¶ 61,132 (2012) ("Order No. 1000-A"), *order on reh'g*, 141 FERC ¶ 61,044 (2012) ("Order No. 1000-B").

of facilities in the area of the new facilities, overlapping service territories, or other relevant considerations.^[6]

WITG interprets this provision to allow two entities to bypass the Order No. 1000 transmission planning and cost allocation process when they have mutually agreed to construct “any new transmission project” and to allocate costs among their ratepayers accordingly. The Commission should not approve a provision that would allow voluntary participation in regional planning and cost allocation procedures by mutual agreement. To the contrary, Order No. 1000 requires that such procedures be mandatory for entities choosing to construct transmission facilities that fulfill regional needs and that qualify for regional cost allocation.

Allowing parties to agree not to participate in the planning process, yet still allocate costs regionally, would undermine the Commission’s Order No. 1000 reforms. Importantly, voluntary participation in the regional transmission process would deprive stakeholders of an opportunity to ensure that a project is the most efficient, cost-effective, and technically achievable way of meeting an identified transmission need. Moreover, allowing neighboring transmission operators to opt out of the regional planning process by mutual agreement provides a convenient option for excluding independent transmission developers from the process.

Accordingly, the Commission should clarify that, if a project is a regional project intended to satisfy regional needs, it *must* go through the applicable transmission planning and cost allocation processes developed in compliance with Order No. 1000.

b. The Commission Should Reject WestConnect’s Proposed Opt-out Build and Cost Allocation Provisions.

The Commission should similarly reject the proposed opt-out provision that would grant transmission owners a broad right to avoid paying costs for projects that are selected and

⁶ See, e.g., PSCo Compliance Filing Attachment R-PSCo § VI.A (emphasis added).

constructed as part of the regional planning process. Such a broad opt-out provision runs afoul of Order No. 1000.

Each of the WestConnect member utilities has proposed the following provision:

No Obligation to Construct: The Regional Planning Process is intended to determine and recommend more efficient or cost-effective transmission solutions for the WestConnect Planning Region. After the Regional Plan is approved, due to the uncertainty in the planning process and the need to address cost recovery issues, the Regional Planning Process shall not obligate any entity to construct, nor obligate any entity to commit to construct, any facilities, including any transmission facilities, regardless of whether such facilities are included in any plan. Nothing in this Attachment R or the Planning Participation Agreement or any cost allocation under the Business Practice Manual or the Planning Participation Agreement will (1) determine any transmission service to be received by, or any transmission usage by, any entity, (2) obligate any entity to purchase or pay for, or obligate any entity to commit to purchase or pay for, any transmission service or usage, (3) obligate any entity to implement or effectuate, or commit to implement or effectuate, any cost allocation, (4) obligate any entity to pay, or commit to pay, costs of any project or proposed project in accordance with any cost allocation, or (5) entitle any entity to recover for any transmission service or usage or to recover from any entity any cost of any transmission facilities, regardless of whether such transmission facilities are included in any plan. Without limiting the generality of the foregoing, nothing in this Attachment R, the Business Practice Manual or the Planning Participation Agreement with respect to an Order No. 1000 cost allocation shall preclude WestConnect or any other entity from carrying out any of its statutory authorities or complying with any of its statutory obligations.^{7]}

While Order No. 1000 does not require utilities to construct any new facilities that are included in regional transmission plans, WestConnect has gone much further.

Under WestConnect's proposal, any transmission owner could elect not to pay its share of costs for a regional transmission project that is actually built. Such a broad entitlement would effectively gut the Commission's carefully-considered Order No. 1000 reforms and have other significant adverse impacts. For example, WestConnect's proposal would allow a beneficiary of a project selected through the regional planning process to fulfill a critical reliability purpose to

⁷ See, e.g., PSCo Compliance Filing Attachment R-PSCo § VI.B.8 (emphasis added)

elect not to absorb costs associated with that project. The voluntary nature of cost allocation jeopardizes the constructing utility's assurance of cost recovery and introduces a significant risk that needed facilities will not get built. For similar reasons, voluntary cost allocation would act as a significant disincentive to the participation of independent transmission developers, as they would be discouraged from bidding to construct needed projects due to the risk of non-recovery of such projects' costs.

The Commission should therefore require WestConnect member utilities to clarify that, for projects that are selected in the regional transmission planning process for cost allocation that are actually constructed, utilities that are deemed beneficiaries of the project and allocated a share of the project's costs cannot simply elect not to pay them.

c. The Commission Should Modify WestConnect's Proposed Cost-Benefit Test To Add Specific Metrics and Standards for Evaluating Economic Projects.

WestConnect's proposal for determining whether a project is considered "economically-justified" lacks the level of detail that is required under Order No. 1000. Transmission projects that are chosen for regional cost allocation must meet a cost-benefit test set forth in each respective transmission owner's tariff. A project that falls within the specified cost-benefit ratio is deemed to be economically-justified, thus enabling it to receive regional cost allocation. The WestConnect Compliance Filing proposes to establish a benefit-to-cost ratio of 1.25, which is consistent with the guidelines set by the Commission in Order No. 1000.⁸ However, WestConnect does not provide specific guidelines or a formula informing potential applicants of the specific inputs that will go into the cost-benefit analysis.

To ensure comparable and nondiscriminatory treatment, the Commission has consistently required transmission providers "to include in their OATTs language that identifies how they will

⁸ See, e.g., PSCo Compliance Filing Attachment R-PSCo § VI.B.2.

evaluate and select among competing solutions and resources.”⁹ As the Commission noted in Order No. 1000, “[t]his includes the identification of the criteria by which the public utility transmission provider will evaluate the relative economics and effectiveness of performance for each alternative offered for consideration.”¹⁰ With respect to projects that are proposed for inclusion in a regional transmission plan for cost allocation, Order No. 1000 requires that the stated evaluation process “culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan.”¹¹

Although WestConnect proposes to use a cost-benefit ratio that is within the range provided by the Commission in Order No. 1000, there remains significant uncertainty regarding what specific cost and benefit inputs are eligible for inclusion. For example, on the cost side, it appears that WestConnect may consider in its calculation of project costs certain charges that are attributable to local distribution facilities (*e.g.*, stranded costs) and not directly related to development of the regional transmission facilities. If these distribution-system costs are included, independent transmission developers will be unfairly disadvantaged and face difficulties in meeting the required cost-benefit ratio.

In addition, WestConnect’s proposed cost-benefit analysis does not include a detailed description, methodology, or formula of accounting for economic cost savings as a component of project benefits. Although WestConnect has indicated that it will “consider production cost savings and reduction in reserve sharing requirements as economic benefits capable of

⁹ Order No. 1000 at P 315 (emphasis added); *see also, e.g., N.Y. Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044 at P 35 (2009).

¹⁰ Order No. 1000 at P 315.

¹¹ *Id.* at P 328.

contributing to the determination that a project is economically justified,”¹² these generic statements do not specify how WestConnect will evaluate and include these types of benefits. Any cost-benefit analysis that fails to expressly indicate how it will measure and incorporate expected economic cost savings over the life of the project, which are a critical component of any new facility, increases the likelihood that projects which would have provided positive benefits to ratepayers will be rejected.¹³

WestConnect’s proposed tariff does little to give an applicant an understanding of how a proposed transmission solution will be evaluated and why it may or may not be selected for inclusion in a regional transmission plan. A specific description of WestConnect’s evaluation and decision-making process with respect to proposed facilities must be included in the tariff itself.¹⁴ Accordingly, the Commission should require WestConnect to adopt more specific rules for inclusion in each of its member utilities’ tariffs that set forth the metrics by which a proposed transmission solution will be evaluated to determine whether it is an economic project and how decisions of whether to include such facilities in a regional transmission plans will be made. In doing so, the Commission should clarify that stranded costs and other costs that are attributable

¹² See, e.g., PSCo Compliance Filing Attachment R-PSCo § VI.B.2.

¹³ For example, the Midwest Independent Transmission System Operator previously has concluded that transmission planning processes that consider only a narrow range of benefits may result in an under-build of projects that do, in fact, provide regional benefits, increasing the need for subsequent incremental transmission investments. Informational Compliance Filing of the Midwest Independent Transmission System Operator, Inc., *Midwest Indep. Transmission System Operator, Inc.*, Docket No. ER06-18-013, at 14 (Aug. 29, 2008).

¹⁴ The Commission has expressly required other Regional Transmission Organizations and Independent System Operators to adopt specific *tariff* provisions and, in some cases, formulas embodied in the tariff, to ensure transparency in the selection of economic projects for cost allocation. See, e.g., *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,218 (2006) (conditionally accepting proposed revisions to PJM Interconnection L.L.C.’s (“PJM”) regional transmission expansion planning protocols to include economic-based planning); see also, *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,265 (2007) (finding that PJM had not adequately established how it would weigh the metrics to determine the benefits of an economic project and directing PJM to file a formulaic approach to choose an economic project); *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,051 (2008) (accepting PJM’s formulaic approach subject to further compliance); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,152 (2009) (accepting PJM’s compliance filing and rejecting the requests for rehearing).

to distribution facilities may not be included, and that specific economic cost savings must be an element of expected project benefits.

IV. CONCLUSION

For the reasons described herein, the Commission should issue an order requiring WestConnect's member utilities to modify their respective proposed tariff revisions in these proceedings in a manner that is consistent with the foregoing Comments.

Respectfully submitted,

/s/ Gary Ackerman
Gary Ackerman
Executive Director
Western Independent Transmission Group
P.O. Box 7172, PMB 348
Stateline, NV 89449-7172
Email: gary@transmissionusa.org
Tel: (925) 299-0152

Dated: November 26, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon each person listed on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

Dated at Washington, DC this 26th day of November, 2012.

/s/ G. Scott Binnings
G. Scott Binnings
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Ave. NW
Washington, DC 20036

Document Content(s)

WITG Comments_WestConnect_11-26-12.PDF.....1-11