

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Arizona Public Service Company
El Paso Electric Company
Public Service Company of New Mexico
Tucson Electric Power Company

Docket No. RT02-1-004

WestConnect RTO, LLC

Docket No. EL02-9-002

ORDER GRANTING CLARIFICATION IN PART AND
GRANTING REQUEST FOR REHEARING IN PART

(Issued September 15, 2003)

1. In this order, we address Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Tucson Electric Power Company's (collectively, Applicants) request for clarification or, in the alternative, rehearing of our December 23 Order.¹ In that order, we addressed requests for clarification and rehearing of our October 10 Order,² which provided guidance on whether Applicants' proposal to form WestConnect RTO, LLC (WestConnect) could satisfy the Commission's requirements for regional transmission organization (RTO) status under Order No. 2000.³
2. This order benefits customers because a properly formed RTO in the Southwest will promote the reliability of the electric grid in that region and enhance economic efficiency.

¹Arizona Public Service Company, *et al.*, 101 FERC ¶ 61,350 (2002) (December 23 Order).

²Arizona Public Service Company, *et al.*, 101 FERC ¶ 61,033 (2002) (October 10 Order).

³Regional Transmission Organizations, FERC Stats. & Regs. ¶ 31,089 at 30,993 (1999), 65 Fed. Reg. 810 (2000) (Order No. 2000), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 30,092, 65 Fed. Reg. 12,088 (2000), *aff'd*, Public Utility District No. 1 v. FERC, 272 F.3d 607 (D.C. Cir 2001).

Discussion**I. Whether the Commission Approved WestConnect to Perform all RTO Functions****A. December 23 Order**

3. In the December 23 Order, the Commission clarified that the RTO elements of the WestConnect proposal that the Commission approved in the October 10 Order would not be revisited upon issuance of the final Standard Market Design rule,⁴ unless we explicitly specified in the October 10 Order that an aspect of Applicants' proposal was either inconsistent with or needed further work in light of the Standard Market Design NOPR.⁵ Furthermore, the Commission found in the October 10 Order that Applicants' proposal to form a for-profit transco (i.e., their business model), subject to certain modifications, met the independence requirement of Order 2000.⁶ In addition, in the December 23 Order, the Commission (in response to United Associated Municipal Power Systems' request for clarification that the October 10 Order did not prejudice our decision regarding the proper role of an independent transmission company (ITC) in the final SMD rule) stated that our approval of WestConnect's for-profit structure will not predetermine our decision in that rule regarding whether a for-profit ITC can perform all the functions of an independent transmission provider.⁷

B. Applicants' Request for Clarification or Rehearing

⁴See Remedying Undue Discrimination Through Open Access Transmission and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 Fed. Reg. 55, 452 (Aug. 29, 2002), FERC Stats. & Regs. ¶ 32,563 (2002) (Standard Market Design NOPR).

⁵December 23 Order, 101 FERC ¶ 61,350 at P 7.

⁶October 10 Order, 101 FERC ¶ 61,033 at P 28. With respect to governance, we stated in the December 23 Order that we approved in the October 10 Order the following elements of Applicants' proposal: "the ownership structure, the board and advisory committee structures, and the board selection process." 101 FERC ¶ 61,350 at P 12.

⁷101 FERC ¶ 61,350 at P 18 & n.20. An ITC is a for-profit entity that performs specific RTO functions. See generally TRANSLink Transmission Co., LLC, et al., 99 FERC ¶ 61,106 (2002) (authorizing operation of an ITC within the Midwest ISO), reh'g pending.

4. With regard to their business model, Applicants request clarification of two issues. First, Applicants seek clarification whether the Commission in the December 23 Order construed their proposal to create a for-profit RTO as an ITC (not as a transco) and, therefore, found that their proposal may be subject to later Commission rulings on the functions that are appropriate for an ITC to perform. In this regard, Applicants state that they have not proposed a for-profit ITC acting under the umbrella of an RTO. Instead, they have proposed a for-profit transmission company (*i.e.*, transco) that is an RTO and, thus, performs all RTO functions.⁸

5. Second, in a related issue, Applicants maintain that the Commission, in the October 10 Order, approved their RTO proposal in its entirety (subject only to the modifications set forth in that order) and, thus, there should be no limitations on the RTO functions that WestConnect may perform. Accordingly, Applicants seek clarification that the December 23 Order was intended to leave open only the possibility that a subsequent proposal to form an ITC within WestConnect would be subject to further orders regarding those functions that the ITC may perform. On the other hand, if the Commission intended in the December 23 Order to limit the RTO functions that WestConnect can perform, Applicants seek rehearing.

C. Commission's Response

6. We clarify that because we have approved Applicants' for-profit business model (*i.e.*, to be a transco) as satisfying the requirements of Order No. 2000, this aspect of their proposal will not be revisited unless Applicants modify it. With regard to Applicants' request for clarification that the Commission approved their RTO proposal in its entirety, we note that the October 10 Order sets forth the elements that the Commission approved and, therefore, would not be revisited by the Commission.⁹ In that order, we also addressed several areas of Applicants' proposal that we conditionally approved and/or stated were subject to further filings and details. Furthermore, in the December 23 Order, we stated that "further filings [are] required from Applicants before the Commission issues a final determination on whether it approves WestConnect as an RTO."¹⁰ Accordingly, although the Commission has approved or conditionally approved Applicants' proposal as satisfying

⁸In Order No. 2000, we stated that an RTO must perform eight minimum functions. See Order No. 2000 at 31,107.

⁹101 FERC ¶ 61,033 at P 6; see also December 23 Order, 101 FERC ¶ 61,350 at P 12 (clarifying the elements of Applicants' proposal that the Commission approved in the October 10 Order).

¹⁰101 FERC ¶ 61,350 at P 15.

all the characteristics and functions for an RTO under Order No. 2000, we have not yet approved all the details of their proposal for those particular characteristics and functions.¹¹ Therefore, we reiterate that we have not yet approved Applicants' proposal in its entirety.¹²

7. In this regard, we clarify our statement in the December 23 Order that “[t]o the extent . . . Applicants propose particular functions for WestConnect to perform, such elements will be subject to review for consistency with Order No. 2000 and other related decisions regarding functions that may be performed by an ITC.”¹³ That statement was only intended to mean that if Applicants change their transco model by proposing an ITC under the umbrella of WestConnect, such a change will be reviewed by the Commission to determine if it is appropriate to assign an ITC various functions of WestConnect. Accordingly, we clarify that WestConnect, as a transco, can perform all the functions of an RTO.

II. Whether Participating Transmission Owners (PTOs) May Maintain Priority Over Other Bidders in Firm Transmission Rights (FTR) Auctions

A. December 23 Order

8. In the December 23 Order, the Commission stated that Applicants did not offer a sufficient justification for their proposal to allow PTOs to have priority over other bidders for FTRs in WestConnect's auction of these rights.¹⁴ Accordingly, the Commission

¹¹For example, we still have concerns regarding Applicants' proposal for auctioning FTRs under their interim physical congestion approach. *See, e.g.*, 101 FERC ¶ 61,350 at P 50 (“although we stated in the October 10 Order that we will allow Applicants' physical congestion model as a 'Day One' approach, Applicants must further support their firm transmission rights auction proposal to demonstrate that the auction mechanism is transparent and not subject to manipulation”).

¹²*Id.*

¹³*Id.* at P 18 n.20.

¹⁴In WestConnect's auction process, the quantity of FTRs available to be auctioned is based on the operating transfer capability minus any amount of transfer capacity that must be reserved to allow WestConnect to honor existing contracts that have not been converted

(continued...)

directed Applicants to remove language from WestConnect's tariff that would have given such priority rights to PTOs.¹⁵ In addition, that order noted that requirements loads (*i.e.*, native load) and existing contracts will be allocated transmission capacity prior to the FTR auction proposed by Applicants.¹⁶

B. Applicants' Request for Rehearing

9. Applicants continue to assert that PTOs should have a priority over other bidders for the receipt of FTRs during the auction process so that they can provide service to their retail load and wholesale requirements customers that are not served under existing contracts and to ensure that they can secure sufficient FTRs to meet their load growth.¹⁷ Applicants also contend that the Commission is incorrect in its statement in the December 23 Order that all requirements loads will be allocated transmission capacity as non-converted rights prior to the FTR auction. Applicants maintain that only existing contracts will be allocated transmission capacity before the FTR auction in the form of non-converted rights.¹⁸ According to Applicants, FTR Requirements Loads are not allocated FTRs; therefore, FTRs to serve these loads must be obtained in WestConnect's FTR auction. As a result, Applicants assert that the Commission should allow PTOs to have a priority over other bidders for FTRs.

C. Commission's Response

¹⁴(...continued)
to transmission service under WestConnect's tariff.

¹⁵December 23 Order, 101 FERC ¶ 61,350 at P 48.

¹⁶*Id.* at P 47. Applicants define "FTR Requirements Loads" as wholesale and end-use customers of a PTO that are not served under existing contracts and that a PTO has an obligation to serve. WestConnect Tariff, Attachment 1 at 20.

¹⁷Applicants' Request for Further Clarification at 9 (stating that the Commission would be "depriving customers of their existing transmission rights and requir[ing] them to repurchase such rights in the auction process").

¹⁸Applicants define "Non-Converted Rights" as a right from an existing contract that has not been contractually converted into transmission service under WestConnect's tariff. WestConnect Tariff, Attachment 1 at 29.

10. With regard to this issue, based upon our further understanding of Applicants' proposal,¹⁹ we recognize that FTR Requirements Loads and associated load growth will not be served with non-converted rights and, therefore, must obtain FTRs through the auction process. In this regard, if FTRs are unobtainable in that auction (because the amount of transmission requests exceed the FTRs available for a particular FTR interface or scheduling point), then there is a risk that retail and wholesale native load customers, which PTOs have an obligation to serve, will be: (1) deprived of their existing transmission rights; and (2) forced to repurchase them in the auction process. Furthermore, PTOs may not be able to secure sufficient FTRs to meet their future load growth.

11. Accordingly, we find that Applicants' proposal to avoid such occurrences is a reasonable approach to protect its native load.²⁰ As a result, we grant Applicants' request for rehearing and approve the WestConnect tariff language that allows PTOs to have priority bidding for FTRs in their Day One approach.

12. In addition, we note that in the October 10 Order, we approved, consistent with Order No. 2000,²¹ Applicants' physical rights congestion proposal as a Day One mechanism. However, as we noted in that order, although a physical rights model is acceptable at the commencement of an RTO (such as WestConnect), Applicants must ultimately implement a market-driven mechanism to clear congestion (*i.e.*, develop a "Day Two" proposal).²² As Applicants consider their Day Two market-based congestion proposal,²³ we note that such an approach may require a reallocation and/or auction of FTRs. In this regard, the Commission's Wholesale Power Market Platform (White Paper)²⁴ states that we will look to regional state committees (RSCs) to determine how FTRs will

¹⁹Applicants' Request for Further Clarification and Rehearing at 8 (explaining that all requirements loads will not be allocated transmission capacity prior to the FTR auction).

²⁰As Applicants note, only in the circumstances where transmission requests exceed the amount of FTRs available and PTOs are willing to bid the maximum allowable price for FTRs (\$9,999/MW) will PTOs have priority over other bidders for the receipt of FTRs.

²¹Order No. 2000 allows RTOs up to one year after start-up to implement a congestion mechanism using market-driven solutions.

²²101 FERC ¶ 61,033 at P 160.

²³See December 23 Order, 101 FERC ¶ 61,350 at P 49 (clarifying that WestConnect has up to one year after start-up to implement a congestion mechanism using market-driven solutions).

²⁴See Docket No. RM01-12-000 (April 28, 2003).

be allocated to current customers based on the current uses of the grid.²⁵ Thus, consistent with the White Paper, we expect RSCs to participate in the consideration of their Day Two proposal.

The Commission orders:

Applicants' request for clarification is granted in part and their request for rehearing is granted in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁵See White Paper at 5; see also *id.* app. at 17 (stating that RSCs have the primary responsibility for determining regional proposals for, among other things, “whether the region will allocate FTRs directly to customers or whether FTRs will be auctioned”).