

**M E M O R A N D U M**

August 8, 2000

TO: RTO Legal Workgroup

FROM: Marcus Wood

RE: Report from Re Resolution of "Category B" Issues Related to the Transmission Control Agreement

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The legal subgroup addressing Transmission Control Agreement issues met on three days, to address all issues relating to such agreement by any participant that had not been referred to another workgroup to address. The participants broadly represented the various interests; an attendance list is attached.

Of the 33 issues identified as at issue and not referred for decision by another workgroup, (1) 23 were resolved by consensus, (2) 4 (and part of a fifth) were determined to require referral to another workgroup for resolution, (3) 2 were deferred to the upcoming August 11 meeting of the subgroup, because of the inability of the parties present to be able adequately clarify the issue for decision, (4) 1 was deferred, possibly to be addressed later depending on the outcome of other workgroup reports and (5) 3 issues could not be resolved by consensus and are referred to the RRG for resolution. An issue was deemed settled by consensus only if all participants present concurred in the specified resolution. On separate attached pages, bullet points outline the opposing points of view with respect to the 3 issues referred to the RRG.

The determinations with respect to each issue were as follows:

Issue List

1. The RTO should guarantee collection of the costs of any transmission that the RTO or the FERC requires the transmission owner to construct. (BPA)  
**CONSENSUS: The Transmission Owner should be able to collect the cost of any such transmission. The cost recovery details await inputs from the Pricing Workgroup.**
2. The period for developing a performance plan should be changed from 3 years to 1 year. (BPA)  
**CONSENSUS: The period should be so changed.**

3. The TCA should require the RTO to conform to objective performance standards, in lieu of BPA's exercising control over the RTO performance, to assure that BPA meets through the RTO BPA's statutory requirements to assure proper operation of the federal transmission assets. (BPA) and

The TCA should require the RTO to conform to objective performance standards, in lieu of a publicly-owned transmission owner's exercising control over the RTO performance, to assure that such transmission owner meets its statutory requirements. (PPC)

The BPA exhibit on performance standards referred to in BPA's comments should be made available now for review and comment. The ITC, ITC passive equity holders, and other TOs should have the same protections as BPA to the extent they are applicable – for instance, there is no apparent reason to treat debt obligations of BPA differently from debt obligations of other TOs. (ITC)

**CONSENSUS: The TCA should contain such objective performance standards applicable to the RTO. BPA delivered its specific proposed standards (which are attached to this report) to the subgroup on July 26. These proposed standards will be addressed in detail at the next subgroup meeting (on August 11).**

4. The TCA should (a) allow basic changes in organizational forms of RTO, (b) reflect changes in facility ownership and (c) allow revisions to corporate strategies. (Enron)

**CONSENSUS: This is generally an issue being addressed in the legal subgroup on RTO governance. To the extent the issue relates to the TCA, it has been addressed by the language increasing RTO flexibility, as addressed in connection with other issues discussed herein.**

5. The requirement for owners of 80% of the RTO transmission facilities to agree to withdraw and transfer RTO functions to a Transco is dated and should be deleted. Order 2000 recognizes that transcos can coexist as part of hybrid RTO arrangements. Order 2000 also requires an open architecture standard. The TCA should recognize that the ITC reserves the right to unilaterally seek from FERC authority to perform additional RTO functions, subject to recognition by FERC that it meets FERC's independence criteria. The ITC would also reserve the right to unilaterally seek changes to RTO related tariffs to implement any changes in ITC authority. (ITC)

**CONSENSUS: The section containing the 80% requirement should be removed from the TCA. An ITC should be able to file with FERC to seek authority to perform additional RTO functions and to reflect such changes in functions as are approved by FERC in the TCA. The ITC delivered its proposal for specific language on this subject (which proposal attached to this report) to the subgroup on July 26. This proposed language will be addressed in detail at the next subgroup meeting (on August 11).**

6. The TCA must provide that the ITC will be permitted through unilateral filings at FERC to seek performance based rates or to seek any other rate recovery mechanism in setting the rates to be paid to the ITC. The RTO must ensure that such revenue requirement, performance rates, or other rate recovery mechanism is in fact collected from customers and paid to the ITC if such rates are approved by the regulatory authority. (ITC)

**CONSENSUS: All Participating Transmission Owners should have the right to seek FERC approval of performance based rates or other rate recovery mechanisms in rates to be paid by the RTO. The ITC delivered its proposal for specific language on this subject (which proposal attached to this report) to the subgroup on July 26. This proposed language will be addressed in detail at the next subgroup meeting (on August 11).**

7. To the extent that the RTO has “company rates”, the TCA should provide that customers currently interconnected to particular companies will continue to pay the company rates associated with that company, to avoid gaming of company rates or potential non-collection of revenue requirements. (ITC)

**REFERRAL: This issue should be referred to the Pricing Workgroup, which currently is addressing the matter.**

8. The regional preference provisions applied to RTO transmission service should be removed. (Enron)

**NOT RESOLVED: This issue should be referred to the RRG. A bullet summary of the respective positions on this issue are attached.**

9. A section 211 remedy should be useable for a publicly-owned transmission owner only where the utility qualifies as a "transmitting utility" under the Federal Power Act. (PPC)

**CONSENSUS: This issue was eliminated by an agreed change that deleted the reference to the section 211 remedy referenced in this issue.**

10. Publicly-owned transmission owner needs the same broad right to withdraw as BPA if its statutory obligations are not being met. (PPC)

**CONSENSUS: This issue was eliminated because in the TCA, all Participating Transmission Owners will have rights to withdraw (subject to FERC approval where applicable) on 2-years notice.**

11. If a transmission owner withdraws from the RTO, the customers of the transmission owner should be allowed to return to the transmission agreements that had been suspended in favor of RTO service. (BPA) and

Suspended pre-existing agreements should not be extended beyond their primary terms. (Marketers)

**CONSENSUS: Suspended transmission contracts should be deemed continued until after any withdrawal from the RTO by a transmission owner providing the**

**transmission service in the pre-RTO period. The customers of the withdrawing transmission owner thus would have the right to resume service under such transmission agreements upon the withdrawal by the transmission owner. However, this continuation would not apply to wheeling contracts for which limited-term FTRs were provided, beyond the period (including any allowed rollover period) that the FTRs were so provided. In addition, the withdrawing transmission owner would not have the right to return to its suspended transmission agreements with the remaining transmission owners in the RTO, so long as RTO service was available in lieu of such contracts.**

12. The TCA should provide that the ITC will have primary responsibility for planning and expansion with respect to its local area facilities that do not impact bulk transmission. The RTO must coordinate with the ITC and refer to the ITC for study all load and generation interconnections with ITC facilities. Pursuant to plans accepted by the RTO as not adversely affecting bulk transfer (which acceptance shall not be unreasonably delayed or withheld), the ITC will build and own any expansions to its facilities. The TCA will not otherwise limit the ITC's ability to compete for the right to build and own facilities in non ITC areas of the RTO. Requests for interconnection and expansion may be directed by customers to the ITC, which will coordinate with the RTO to ensure that such requests are handled in accordance with RTO procedures.

**REFERRAL: This issue was referred to be addressed by the Planning Workgroup. In addition, the attached ITC proposal does contain some specific language on this subject. This proposed language will be addressed in detail at the next subgroup meeting (on August 11).**

13. The RTO should operate all transmission facilities covered under the TCA, and not just the Critical Control Facilities. (Enron)

"Critical Control Facilities" do not need to be separately defined. (Marketers)

It is not clear what this section refers to, and it appears to be directed to generator owners and load serving entities, rather than wires companies such as the ITC.

This needs to be clarified and perhaps shifted to other agreements. (ITC)

**CONSENSUS: The TCA provisions relating to Critical Control Facilities should be retained, but the nature of such facilities should be more clearly defined.**

14. Participating transmission owners should not be permitted to withdraw on 6-months notice, and any withdrawal must be conditioned on such withdrawal not creating any detrimental effect on the rights of RTO customers. (Marketers)

**CONSENSUS: With the consensus decision to eliminate section 2.5 of the TCA, which provides for such 6-month withdrawal right, this issue was eliminated.**

15. Performance Plans, should not apply to the ITC. Instead, the ITC should have the right to seek performance based rates at FERC which includes incentives for good maintenance. (ITC)

**CONSENSUS: Each Participating Transmission Owner should be subject to a Performance Plan negotiated between such owner and the RTO, specifying minimum standards applicable to such Participating Transmission Owners. The TCA dispute resolution provisions should be applicable if an agreement as to such Performance Plan was not reached. In addition, any Participating Transmission Owner should have the right to seek performance based ratemaking related to such negotiated or more stringent performance standards. The attached ITC proposal includes specific language on this subject. The proposed language will be addressed in detail at the next subgroup meeting (on August 11).**

16. A transmission customer should continue to be able to demand transmission service from a transmission provider. (Enron)

**CONSENSUS: This concern should be addressed in the RTO tariff, by giving the customer the right to require the RTO to exercise its rights, including its rights to force dispute resolution of an interconnection agreement (with the customer as a permitted party to such dispute resolution) and to exercise its applicable other TCA rights. The RTO would have the right to exercise all available FERC remedies with respect to the Participating Transmission Owner, rather than be restricted to section 211 rights.**

17. The definition of a "State" should include any regulatory body with rate jurisdiction within a geographic area (including tribes). (Tribes)

**CONSENSUS: The references to "State" in sections 4.2.1 and 21.4 of the TCA should be accompanied by a reference to Tribes, with the addition for all such references of the term "of competent jurisdiction."**

18. Revise Section 9.4 to include as RAS compensation for establishing or implementing, as well as for maintaining such systems, and apply such compensation to loads as well as to generation facilities. (DSIs -- Murphy)

**CONSENSUS: The requested language should be added, with an agreed clarification related to the reference to insurance.**

19. The discretion of participating transmission owners over system restoration should be subject to the RTO's non-discrimination standards and dispute resolution process. (Marketers)

**REFERRAL: This issue should be referred to the Operations Workgroup.**

20. The participating transmission owners' obligations to interconnect are far too limited and should be spelled out in the RTO tariff. (Marketers)

**CONSENSUS: The changes referenced with respect to issue 16 also resolve this issue.**

21. The RTO should have the right to reject a potential participating transmission owner if admission of such owner would trigger massive tax-exempt bond replacement costs. (Marketers)

**DEFERRED: This issue was deferred to the August 11 meeting because individuals needed to clarify the issue were not available.**

22. Transmission owners should not have a requirement to revisit RTO-W rates every five years or delay imposing rate increases for 120 days. (PPC)

**NOT RESOLVED: This issue should be referred to the RRG. A bullet summary of the respective positions on this issue are attached.**

23. Section 14.6 should be deleted. Such reporting is not required now, and there is no reason why this should change. (ITC)

**CONSENSUS: This section should be retained, with clarification that (1) a public utility under the Federal Power Act may satisfy the reporting requirements by providing non-confidential data as provided to the FERC pursuant to its requirements, (2) an RUS cooperative may satisfy the reporting requirements by supplying the analogous data as provided to the RUS and (3) a publicly-owned utility may satisfy the reporting requirements by providing data analogous to that specified in (1) and (2).**

24. There should be alternatives to the obligation to exercise eminent domain authority upon the request of the RTO, such as to allow substitute actions and to produce the least adverse impacts on the transmission owner's system and customers. (Seattle)

**DEFERRED: This issue was deferred to the August 11 meeting because individuals needed to clarify the issue were not available.**

25. BPA cannot submit to arbitration which provisions of its existing contracts should be suspended. (BPA)

**CONSENSUS: Objective standards as to which provisions of existing contracts should be suspended should be added to the TCA, and BPA could submit to arbitration based on such standards.**

26. The use of a 3-member arbitration panel (as opposed to a 1-member panel) should be reconsidered. (BPA)

**CONSENSUS: The TCA does use a 1-member panel. However, the TCA also should provide that the parties to the dispute by mutual agreement could modify the arbitrator selection process.**

27. The stranded cost language should be reviewed. (DSIs - Early)

The TCA must unambiguously provide that transfer of control of facilities to the RTO does not limit or alter the right of any transmission owner (or distribution company that formerly owned transmission that has been transferred to the RTO)

to seek stranded costs from any departing customer of the transmission owner or distribution company at FERC or other appropriate jurisdiction. This provision as drafted appears to limit the right to seek stranded costs in certain situations. (ITC)

The stranded cost language is too vague and open-ended. (Duncan Weinberg)

**CONSENSUS: The stranded cost language should neither take away stranded cost recovery rights now available nor add stranded cost recovery rights not now available. Generally, the provisions are drafted to be consistent with this principle. The participants reserved the right to continue to review the language to assure that it carried out the principle of not changing existing rights as set out above.**

28. The TCA should be a generic document and not a set of bilateral agreements. (Marketers)

It is appropriate that all non-independent transmission owners have identical TCA provisions. However, there will be certain additional provisions applicable to independent transmission owners that should not be subject to most-favored nation treatment. For example, certain provisions applying to the ITC (e.g. local planning and expansion) may not apply to other TOs. The clause should be adapted to reflect this difference. (ITC)

**CONSENSUS: The TCA should set out as a group bilateral agreements, with each of the initial TCA's being in the consistent form and substance as set out by the RTO and approved by the FERC.**

29. Appropriate limitations should be imposed to prevent non-independent TOs from favoring merchant functions of TOs or their affiliates. Examples of areas that may need such limitations are monitoring power and reactive flows and voltage levels (7.3.3), maintenance outages (7.3.5), performing backup operational control (7.3.8), and restoration of damaged facilities (8.3). Because the ITC is not a market participant, it can perform such functions without creating a concern that it will act in a manner that influences the market. (ITC)

**REFERRAL: This issue should be referred to the Operations Workgroup.**

30. BPA should be bound by a condition that rates, terms, and conditions of service on BPA facilities that are part of the RTO will be subject to the same FERC standards as jurisdictional utilities. (ITC)

**DEFERRED: This issue may or may not need to be revisited, depending on the pricing approach as determined by the Pricing Workgroup.**

31. The following subjects should be addressed in the RTO tariff and not in the TCA, with the TCA committing the RTO to comply with its tariff
- all provisions related to the RTO's provision of transmission services
  - all interconnection provisions

- all rules for handling of pre-existing contracts
- all provisions for dispute resolution (Marketers)

In the event of a conflict, the RTO tariff should be superior to any of the RTO agreements. (Marketers)

The ITC companies agree with the view that has been expressed that the TCA, LIA, and GIA should reflect only matters of individualized concern for particular signatories, and matters that should not be subject to amendment without the consent of the signatory . Many of the matters discussed in these agreements do not fit within these categories, and should instead appear in the RTO Tariff, or appendices and schedules to the RTO Tariff. If too much remains in the TCA and other documents, it could give too much control to market participants to restrict appropriate modifications to the RTO structure. (ITC)

The various documents also reflect an assumption, at times, that the transmission owners are vertically integrated utilities. In fact, the transmission owners may be separate independent companies from the generator owners who sign the GIA, from the distribution companies who sign the LIA (which should be renamed to reflect the fact that it applies to distribution companies who may or may not serve load), and the entities who will sign the Scheduling Coordinator Agreements that are being discussed. (ITC)

Document Framework: The TCA, GIA and LIA can be greatly simplified if the technical details regarding interconnection, metering, ancillary services, remedial action schemes, etc., are removed from these documents and placed in Appendices to the RTO Tariff (similar to the Mountain West ISA and DSTAR structural frameworks.) Most (but not all) of IPP Groups' issues can be addressed in the Tariff/Appendices development forum(s) rather than in the TCA, GIA and LIA forums. IPP Groups supports this approach because it is efficient and also minimizes the chances of unintended spillover effects on third parties such as QF and IPP generation facilities. This prototype framework has been approved by FERC for the Mountain West ISA. (IPP)

Supremacy of RTO Tariff: Because QF and IPP generation facilities will not be parties to TCAs, (and possibly not parties to GIAs), the TCA (and GIA) should be revised to state that the RTO Tariff language governs in the event of conflicts between the TCA (or GIA) language and the RTO Tariff. (IPP)

Exhibit A - Schedule of Definitions: There are several discrepancies between the GIA, LIA and TCA regarding definitions (e.g. "Remedial Action Schemes"), and some of the definitions appear to overlap with each other (e.g. "Electric Disturbance" and "IndeGO Transmission System Emergency".) IPP Groups recommends that all definitions be included in an appendix to the RTO Tariff. Modifications to the standard definitions, if any, can be incorporated into the TCA, GIA and LIA as appropriate. (IPP)

**CONSENSUS: In the event of a conflict between the TCA and the RTO tariff, the provisions of the TCA should govern. Whether or not parts of the Planning provisions of the TCA should move to the RTO tariff will be determined based on the report of the Planning Workgroup. Otherwise, the subjects addressed in the TCA should remain in the TCA. The Schedule of Definitions will be modified per the various Workgroup reports. TCA definitions should be the same as the initial comparable definitions in the RTO tariff, but the TCA definitions should not change as a result of changes in the RTO tariff. To address specific concerns about whether rights accrued to all appropriate entities and concerning RTO flexibility, (1) section 4.1 should make clear that the attached forms of GIA and LIA are the standard forms of such agreements concurrently offered to entities other than Participating Transmission Owners and should add the RTO tariff as an additional reference, (2) section 5.2 (specifying the RTO's obligation to provide Transmission Services and Ancillary Services) would govern the services to be provided until the FERC otherwise provides, (3) section 7.3 (specifying the Executing Transmission Owners operation of its Transmission Facilities) would govern, except as otherwise ordered or approved by the FERC, and (4) the pricing provisions assured in section 15.2 of the TCA also would be provided in the RTO's initial service agreements with customers other than Participating Transmission Owners.**

32. End user access to the RTO transmission system should be made available only (a) if there is a state retail access program requiring such service, (b) if such end users are DSIs with rights to such service under federal law, or (c) if the former (pre-RTO) retail service provider of such end user voluntarily agrees to allow such service. (Puget)[**Note: The wording of this issue may be amended as it applies to DSIs; the reference to "state retail access program" also would apply to a retail access program provided by Tribes of competent jurisdiction.**]

**NOT RESOLVED: This issue should be referred to the RRG. A bullet summary of the respective positions on this issue are attached.**

33. Nondiscriminatory Transmission Access: Both existing and future QF and IPP generation facilities need assurance that they will be able to obtain nondiscriminatory access to the RTO-controlled transmission grid, especially if they are physically interconnected to PTO-controlled distribution facilities. The Expedited Dispute Resolution (EDR) process (§4.2.2) can be used for new interconnections. However, the RTO should be put under the obligation (not merely given the right) to require a PTO to participate in EDR with the interconnecting party. For existing third party generation facilities connected to a PTO distribution system, adoption of the MWISA Appendix E approach to existing contracts is necessary to ensure that any pre-existing contract rights or operational constraints are captured either in the allocation of transmission rights or in the operating instructions given to the RTO. (IPP)

Existing Contracts: The PTO's should be placed under an affirmative duty to negotiate, ex ante and in good faith, with third party generators to incorporate existing generation, interconnection, and transmission service contracts into the RTO West schema. Neither the TCA nor any of the other RTO documents expressly impose this duty on the PTO's. The Mountain West ISA Appendix E approach does impose such a duty on the PTOs, and IPP Groups recommends that it be adopted as a template for RTO West. The end-state of this approach is that existing generators are given transmission rights in accordance with their existing contract rights, and the RTO is given specific instructions for interacting with these generation facilities if such instructions are necessary to preserve existing contract rights. The objective is to give the RTO advance knowledge regarding interfacing with these generation resources, thereby minimizing the potential for future RTO missteps that could precipitate litigation between the PTO's and the generators. (IPP)

**CONSENSUS:**

- (1) Each Participating Transmission Owner should have an affirmative obligation to negotiate with any third party generation owner ("generation owner") interconnected to the Transmission Owner's transmission facilities to replace any Generation Owner/Transmission Owner interconnection and transmission service agreement with an RTO GIA. However, neither the Generation Owner nor the Transmission Owner would be required in such negotiations to surrender its pre-existing contract rights.**
- (2) If the Participating Transmission Owner and the Generation Owner did not agree to substitute an RTO GIA for the pre-existing contractual arrangements related to interconnection and transmission service, the Transmission Owner would offer to negotiate with the Generation Owner agreed instructions to the RTO, consistent with the pre-existing contractual arrangements between the Generation Owner and the Transmission Owner, to govern access of the Generation Owner to the RTO-controlled Transmission Facilities. The Transmission Owner would offer to resolve any disputes with the Generation Owner concerning such instructions pursuant to dispute resolution provisions as set forth in the TCA.**
- (3) Any dispute as to whether the Participating Transmission Owner had complied with provisions (1) and (2), or with respect to implementation of the operating instructions by the RTO, would be subject to dispute resolution provisions as set forth in the TCA.**

**REFERRAL: How the pricing for Generation Owners interconnected with facilities determined to be distribution facilities of the Participating Transmission Owner should be addressed explicitly by the Pricing Workgroup. The operational rights of a Generation Owner interconnected with facilities determined to be distribution facilities of the Participating Transmission Owner should be addressed explicitly by the Planning Workgroup and the Operations Workgroup.**

Attendance List  
 Legal Workgroup C – Transmission Control Agreement

NAME	REPRESENTING	7/18	7/25	7/26
Marc Wood	PacifiCorp	✓	✓	✓
Margie Schaff	ATNI Tribes	✓	✓	✓
Malcolm McLellan	Idaho Power	✓	✓	✓
Jim Collingwood	Idaho Power	✓	✓	✓
Blair Strong	AVISTA	✓	✓	✓
Stan Berman	ITC, Puget	✓	✓	✓
Doug Nichols	PGE	✓	✓	✓
Shelly Richardson	NRU	✓	✓	✓
Marshall Empey	UAMPs		✓	
Eric Christensen	SnohomishPUD	✓		
Will Patton	Seattle City Light	✓		
Kyle Sciuchetti	Public Power Council	✓		✓
Preston Michie	BPA		✓	✓
Steve Larson	BPA	✓	✓	✓
Ken Johnston	NWEC	✓	✓	✓
Don Brookhyser	IPP deb@aelaw.com	✓		✓
Deborah Lince	USBR			✓
Mark A. Jones	BPA			✓
Randy Hardy	IPPs			✓
Paul Murphy	DSI	✓	✓	✓
Eric Christensen	Snohomish PUD	✓		
Will Patton	Seattle	✓		
Steve Weiss	Conservation Groups		✓	
Mary Hain	Enron	✓	✓	✓
Kathy Carlson	Bureau	✓		
Cindy Wright	Seattle	✓		
Arlena Barnes	BPA			✓
Ron Rodewald	BPA			✓
Tim Stuba	UAMPS	✓		
Peter Feldberg	BC Hydro		✓	
Jim Mosher	IPP	✓		

## ISSUE REFERRED TO THE RRG

Statement of Position: The regional preference provisions applied to RTO transmission service contained in the IndeGO TCA should be removed. (Enron)

Arguments in Favor (by Enron):

The regional preference would render the NW RTO proposal insufficient to comply with the requirements of Order No. 2000 for the following reasons.

- First, it would totally undermine the primary purpose of Order No. 2000, to remedy undue discrimination and anticompetitive effects.
- Second, it would fail to comply with the Order No. 2000 requirement that the RTO have exclusive and independent authority to file changes to its transmission tariff including the rates terms, and conditions for service over facilities it operates. The regional preference requirement would deprive the RTO of the exclusive and independent authority to change tariff rates reflecting different congestion pricing methods and to change tariff terms and conditions to allow service to parties outside the scope of regional preference.
- Third it would not allow the RTO to identify a region of appropriate scope and configuration as required by Order No. 2000.

Arguments in Opposition (by BPA):

The language on priority to Federal transmission capacity for regional loads (whether Federal or nonFederal) should be retained. This provision states that, where capacity over Federal facilities is insufficient to serve all competing requests for new service, regional load shall receive preference. This priority does not apply to curtailments or redispatch of existing service.

1. The Energy Policy Act of 1992 established this priority.
2. If the language is deleted but BPA elects to join the RTO, BPA would still be exposed to a FERC order under section 211 of the Federal Power Act or to a court order to implement this priority, and the RTO would be required to provide service to BPA to implement the order.
3. Congestion management methods to be implemented by the RTO will minimize the likelihood of having to actually implement this priority.

## **ISSUE REFERRED TO THE RRG**

Statement of Position: Transmission owners should not have a requirement to revisit RTO rates every five years or delay imposing rate increases for 120 days. (PPC)

Arguments in Favor (ITC):

Argument presented too extended for this one-page summary. See separate ITC memorandum.

Arguments in Opposition (BPA):

The 5-year limitation on transmission owner rates charged to the RTO should be retained. This requirement to revise rates at least once every five years provides protection to the RTO and its customers that transmission owner charges continue to be reasonable. Without this limitation, the RTO and/or its customers would have to initiate a complaint at FERC to test the reasonableness of an owner's rates and would have to shoulder the burden of proof. BPA currently has a statutory requirement to revise its rates at least once every 5 years.

The requirement that (1) revised transmission owner rates to the RTO become effective no earlier than October 1 of any year and (2) transmission owners file with FERC or have their governing bodies finally determine the new rate at least 120 days prior to October 1 should be retained (although it might be acceptable to allow a change every six months – i.e., on March 1 as well). These limitations (1) reduce RTO workload and increase efficiency by coordinating all transmission owner rate changes into one change; and (2) promote user friendliness and customer orientation by assuring RTO customers of some constancy in rates.

## ISSUE REFERRED TO THE RRG

Statement of Position: End user access to the RTO transmission system should be made available only (a) if there is a state retail access program requiring such service, (b) if such end users are DSIs with rights to such service under federal law, or (c) if the former (pre-RTO) retail service provider of such end user voluntarily agrees to allow such service. (Puget)

[Notes: The reference to "state retail access program" also would apply to a retail access program provided by Tribes of competent jurisdiction. In addition, the Paul Murphy recommends that the issue be clarified with respect to DSI customers, to read:

"End user access to the RTO transmission system should be made available only (a) if there is a state retail access program requiring such service, (b) if such end user is an "existing direct service industrial customer" of BPA as defined in section 5(d)(4)(A) of the Northwest Power Act (16 U.S.C. §839c(d)(4)(A)) or a successor in interest to such DSI customer so as to qualify for service under section 5(d) unless such service is prohibited by federal law, or (c) if the former (pre-RTO) retail service provider of such end user voluntarily agrees to allow such service. (Puget)"]

Arguments in Favor (Puget Sound):

Argument presented too extended for this one-page summary. See separate Puget Sound memorandum.

Arguments in Opposition (PacifiCorp):

- The requested provision would give the Participating Transmission Owners greater protection from retail competition than currently provided without an RTO: The provision would not be limited to the Executing Transmission Owner's ("ETO") specifying the circumstances under which retail customers could take service from its own Transmission Facilities. In addition, the provision also would represent an agreement barring any current ability of retail customers to bypass the ETO's Transmission Facilities and take service from the Transmission Facilities of any other Participating Transmission Owner ("PTO").
- PacifiCorp considers the potential antitrust exposure of executing one of a series of agreements, mutually providing that each PTO's Transmission Facilities may not be used by retail customers to bypass the Transmission Facilities of any other PTO, to be too great for PacifiCorp to execute such a TCA.