

RTO Formation and Funding of RTO Implementation Efforts

The Filing Transmission Owners will be required to advance substantial funds to facilitate the creation of a Regional Transmission Organization (“RTO”) and to facilitate the public involvement process. In order to preserve the ability to recover those funds, the Filing Transmission Owners are (1) creating a shell RTO, (2) arranging for the shell RTO to hire the outside consultants (KEMA Consulting and the Krogh & Leonard law firm) employed to assist in the creation of the RTO and in the facilitation of the public collaborative process. The Filing Transmission Owners intend that the RTO filing will provide for the repayment of such advances, with interest, recoverable through the RTO’s tariff rates.

This explanation by the Filing Transmission Owners is accompanied by a copy of draft organizational documents for the RTO and a draft Funding Agreement. The Filing Transmission Owners intend to file the RTO articles, organize the RTO, and execute the Funding Agreement by April 28, 2000. By such date, the Filing Transmission Owners anticipate that the RTO also will have entered into Services Agreements with KEMA Consulting and with Krogh & Leonard.

The Filing Transmission Owners are taking the above actions now because of the need to promptly execute consulting contracts and commence the substantive work required to develop the RTO filing. As explained below, the actions will have very limited substantive impact.

Substantive Impact of the Intended Actions

The only substantive impacts of the above actions will be:

1. The RTO will be organized as a non-profit corporation. This decision is consistent with the paper on RTO Form and Structure earlier released by the Filing Transmission Owners.
2. The RTO will be incorporated in Washington. The selection of the Washington as the state of incorporation was based on research performed during the IndeGO process, as updated. The principal considerations are that Washington has adopted the most recent version of the Model Non-Profit Corporation Act, and Washington currently has the best-developed case law concerning director’s liability.
3. The Filing Transmission Owners will seek recovery, with interest, of the funds they advance to the RTO. The Filing Transmission Owners note that as specified in the Funding Agreement, none of the advanced funds may be used by the RTO to pay any of the Filing Transmission Owner’s internal costs or any costs of third party consultants hired by one or more of the Filing Transmission Owners. No entity is restricted in later commenting to the Federal Energy Regulatory

Commission (“FERC”) as to whether or not the advanced funds should or should not be recoverable by the RTO or by the Filing Transmission Owners.

What Has Not Been Decided

1. The shell RTO initially would be directed and managed by the representatives of the Filing Transmission Owners who are managing the consulting contracts. However, the articles as filed will provide that the corporation may not carry out any functions other than managing the consulting contracts and matters incidental thereto until the governance has been converted into an independent governance that satisfies the requirements of FERC’s Order 2000. Under Washington law, by amendment to the articles the RTO may at any time be converted into a membership non-profit corporation. All RTO governance issues will be addressed during the public collaborative process.
2. The articles and bylaws as filed are simple generic articles and bylaws for a non-profit corporation. They will be subject to wholesale amendment following the public collaboration process. Other than the provision making clear that the RTO only may act to manage the consulting contracts and matters incidental thereto until after its governance had been conformed with FERC’s Order 2000, the articles and bylaws reflect no determination concerning the appropriate substance of the amended RTO articles and bylaws that will be filed after completion of the public collaborative process.
3. The selection of the initial name “RTO West” was intended to be consistent with the geographic areas of the transmission systems of the Filing Transmission Owners. The name, however, is a placeholder only, and the name to be given the RTO in the amended articles has not been determined.
4. As related above, the selection of the state of incorporation was made for legal considerations. Such selection in no manner will affect later decisions as to where the principal offices, control centers or other operations of the RTO will be located.