

## Attachment B: RTO WEST (RTO-W): Pre-Existing Contracts and Obligations

### Principles

Rights to use RTO-W transmission facilities are associated with Pre-Existing Contracts (PECs) and Load Service Obligations (LSOs) with service commencement dates prior to the RTO-W Grandfathering Date.<sup>1</sup> Such rights will be honored for the duration of the contract<sup>2</sup> or obligation.<sup>3</sup>

A transmission customer's transmission rights may be associated with PECs or LSOs or some combination thereof.

In converting PECs and LSOs to RTO-W transmission service, the transmission rights associated with PECs and LSOs shall be treated comparably to the transmission rights associated with non-converted PECs and LSOs.

### Pre-Existing Contracts (PECs)

Pre-Existing Contracts are: (i) contracts under which transmission service commenced prior to the RTO-W Grandfathering Date or (ii) transmission arrangements that arise out of negotiations or FERC proceedings initiated by [*some date that precedes the RTO-W Grandfathering Date*], where such contracts and arrangements: (a) impose ongoing obligations regarding the reservation of a portion of the RTO-W transmission facilities' transfer capability for use by the PEC rights-holder; or (b) impose ongoing obligations related to the operation of the RTO-W transmission grid pursuant to a contract for the purchase of energy and/or capacity.

PECs include existing transmission service contracts with wholesale customers, with a Participating Transmission Owner's (PTO's) retail merchant function, with a PTO's wholesale merchant function or with direct access customers, whether under pre-FERC Order 888 contracts or under the FERC Order 888 Open Access Transmission Tariff.

PECs include power purchase agreements executed pursuant to 18 CFR Section 292. [The QF provisions of \_\_\_\_\_]

PECs include other power purchase contracts to the extent that transmission service must be reserved in order to enable the fulfillment of obligations under those contracts.

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1. This Grandfathering Date has not yet been determined. It will be some date prior to the RTO Operations Date. An important objective is to avoid the hoarding of transmission rights.

There is a need to determine the proper status for transmission arrangements that:

- (a) have been requested but have not been executed; and
- (b) have been executed but have not become effective.

2. The following three issues (or combinations thereof) are currently being considered for determining the duration of PECs, for the purpose of honoring the PEC:

- 1. Explicit roll-over rights will be honored;
- 2. PTOs *may* deny roll-over rights if the transmission contract provides the PTO with the option to do so; or PTOs *shall* deny roll-over rights if the transmission contract provides the PTO with the option to do so;
- 3. Pre-Order 888 contracts and Order 888 Open Access contracts associated with firm power service to statutory requirements loads (including third party transmission contracts necessary to meet load service obligations) are deemed to include transmission rollover rights that shall be honored so long as such rollover rights are exercised.

3. The duration of LSOs, for the purpose of honoring the LSO, will be addressed in a later section of this paper.

## **Load Service Obligations (LSOs)**

Load Service Obligations are uses of the RTO-W transmission facilities, other than those uses established pursuant to PECs, by a PTO prior to the RTO-W Operations Date to serve loads connected to the PTO's transmission facilities.

Honoring LSOs will generally be treated equivalent to the conversion process for Network Service.

### **Duration of PEC or LSO obligation**

The duration of PECs, for the purpose of honoring the PEC or LSO:

1. Explicit roll-over rights will be honored;
2. Pre-Order 888 contracts and Order 888 Open Access contracts associated with firm power service to statutory requirements loads (including third party transmission contracts necessary to meet load service obligations) are deemed to include transmission rollover rights that shall be honored so long as such rollover rights are exercised.
3. PTOs *may* deny roll-over rights if the transmission contract provides the PTO with the option to do so.

### **Alternative Position**

1. Explicit roll-over rights will be honored;
2. PTOs *shall* deny roll-over rights if the transmission contract provides the PTO with the option to do so.

## **Non-Converted Rights (NCRs)**

Non-Converted Rights are transmission service rights that need to be taken account by the RTO-W to provide transmission service using the transfer capability of RTO-W transmission facilities pursuant to PECs which have not been converted to RTO-W Transmission Service. NCRs include those non-converted transmission service rights that are associated with power purchase contracts.

If such transmission service is provided by the RTO-W pursuant to an unconverted PEC or LSO, the RTO-W shall reserve sufficient transfer capability or otherwise provide FTRs across the affected flowpaths to enable the RTO-W or such other responsible party<sup>4</sup> to provide the transmission service to the transmission customer.

The party responsible for scheduling the non-converted PEC or LSO must provide clear instructions (called "NCR Instructions," which will be defined using a process that has not yet been discussed by the working group) to the RTO-W to allow the RTO-W to meet NCR instructions required to honor the PEC or LSO. The RTO-W under rules to be determined can:

- 1) Allocate transmission capacity required to meet the NCR instructions with equivalent FTRs. The party responsible for scheduling the NCR will manage the FTRs required to honor the non-converted PEC or LSO; or
- 2) Remove transmission capacity required to schedule the NCR from the available ATC. After the party responsible for scheduling the NCR submits a schedule to the RTO-W, the RTO-W releases the unused transmission capacity as FTRs, RTRs or NTRs. Rules need to be developed to:
  - a) Determine the amount of transmission capacity to be set aside to honor the PEC or LSO.

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4. The party responsible for scheduling the NCR can be: (1) the rights holder or its designated agent; or (2) the PTO or its designated agent.

- b) State the Terms and Conditions of the NCR.
- c) Deal with the RTO-W liability for management of the NCR.
- d) Resolve disagreements in an open process.

Alternative Position

PTO participates in the FTR auction to meet NCR obligations; the NCRs are converted to auction proceed rights assigned to the party responsible for meeting NCR obligations.

**Power Purchase Obligations (PPOs)**

Power Purchase Obligations are those obligations other than transmission service rights (note: because such rights are treated as NCRs) pursuant to a PEC for the purchase of energy and/or capacity. Because PPOs are obligations other than transmission service rights, PPOs do not make use of the transfer capability of the PTO transmission facilities. PPOs include, but are not limited to, obligations related to the interconnection, scheduling, operation, or curtailment of generating resources.<sup>5</sup>

**Entitlements to Firm Transmission Rights (FTRs)**

As currently discussed by the CMWG, the RTO-W’s FTR auction would be a single-round, sealed-bid, market-clearing price auction. Therefore, under all three alternatives, the auction revenue associated with an FTR will equal the clearing price of the FTR auctioned by the RTO-W. This revenue would therefore be sufficient to enable the transmission customer to purchase the FTR at the RTO-W’s auction.

- If the RTO-W’s provision of transmission service pursuant to a PEC or LSO requires the use of flowpath transmission capability, then the RTO-W shall allocate transmission rights for the use of the flowpath.

The transmission customer may elect to receive either FTRs or the auction revenues associated with those FTRs.

Alternative Positions

Alternative 1: The transmission customer shall receive the auction revenues associated with those FTRs.

Alternative 2: The transmission customer may elect to receive either FTRs or the auction revenues associated with those FTRs; provided that if the transmission customer would be entitled to receive more than 10% of the FTRs on a flowpath, the transmission customer must participate in the auction by indicating the price(s) at which the transmission customer would be willing to sell those FTRs in the RTO-W’s auction. However, under this provision, the transmission customer may elect to specify the RTO-W’s “default maximum price” of \$10 million/MWh, which the RTO-W shall interpret to mean that the transmission customer will not release the FTRs in the RTO-W’s auction at any price.

Alternative 2A: The transmission customer may elect to receive either FTRs or the auction revenues associated with those FTRs; provided that if the transmission customer would be entitled to receive more than 10% of the FTRs on a flowpath, the transmission customer must participate in the auction by indicating the price(s) at which the transmission customer would be willing to sell those FTRs in the RTO-W’s auction. and the price at which the customer would be willing to buy additional FTRs. The buy and sell prices may differ by no more than [10 percent].

5. There is a need to clarify which obligations (eg. Residential Exchange or other exchange agreements, Coordination Agreements or QF contracts) fall into this category.

Alternative 3: Each utility's regulator would decide whether the utility's FTRs will be held out of the auction or be put into the auction and sold to the highest bidder. In the investor-owned utilities case, the regulators are the state commissions, for publicly owned utilities the regulators are the locally elected officials. The regulator's initial decision would be required to be made within 6 months of the receipt of the initial allocation of FTRs. If at any time, the regulator decides to withhold the FTRs from the auction, this decision would have to be reviewed at least every three years.

### **Obligations to Convert Transmission Rights**

Other than contracts between PTOs the Tariff imposes no obligations on the parties to a PEC, LSO or PPO to convert, modify or terminate the PEC, LSO or PPO.

Contracts between PTOs shall be converted pursuant to section \_\_\_\_ of this Appendix.

Transmission rights under PECs, LSOs or PPOs may be converted to RTO-W service, as described in Section \_\_\_\_ of this Appendix.

### **Conversion of PECs and LSOs**

#### **1. Duty to Attempt Conversion or Modification of PECs and LSOs**

- a) Prior to the RTO-W Operations Date, each PTO shall make good faith efforts to negotiate with PEC and/or LSO rights-holders to convert the transmission service associated with each PEC and LSO to RTO-W Transmission Service.
- b) Each PTO shall first attempt to convert the transmission service under the PEC to RTO-W Transmission Service, while preserving the balance of benefits and burdens of the parties to the PEC.
- <sup>1)</sup> c) If it is not possible to reach mutual agreement on the conversion of the transmission service under the PEC to RTO-W Transmission Service, the PTO shall attempt to negotiate appropriate modifications to the operating procedures under the PEC to maximize consistency with RTO-W operating procedures, deadlines and other protocols, while preserving the balance of benefits and burdens of the parties to the PEC.

#### **2. Rules for Conversion of PECs and LSOs<sup>7</sup>**

- 1) Customers must submit contracts or other information on PECs and LSOs to RTO-W for review by (date).
- 2) FTRs for Point-to-Point PECs will be determined based on applicable contract terms and conditions, taking into account relative firmness and other restrictions or flexibility's stated in the contract.
- 3) FTRs for conversion of Network Service PECs will be determined based on Non-coincidental peak loads from 1998-2000.
  - a) FTRs for Network Service will be allocated in monthly blocks. The rights holder can sell excess FTRs on the secondary market.

#### **Alternative position**

FTRs for Network Service will automatically revert to the RTO as RTRs or NTRs when unscheduled by the rights holder or their agent.

- 4) PECs and LSOs will be reevaluated each year prior to the annual FTR auction due to:
  - a) Changes in transmission system topology (changes in FDFs used to determine FTRs)
  - b) The development of new commercial flowpaths.
  - c) This analysis will include known changes and measurable changes in explicit contract demands.
- 5) Flow Distribution Factors (FDFs) will be used to translate PEC and LSO rights into FTRs across the designated flowpaths.
- 6) Feasible dispatch<sup>8</sup> options for determining FTRs:  
 The rights holder has the option of:
  - One feasible dispatch for each month (total of twelve) consistent with PECs and LSOs terms and conditions, or
  - Two feasible dispatches (on/off peak) for each month (total of twenty four) consistent with PECs and LSOs terms and conditions.

Alternative Positions:

Alternative Position 1  
 Two feasible dispatches (on/off peak) for each month (total of twenty four) consistent with PECs and LSOs terms and conditions.

Alternative Position 2  
 Multiple feasible dispatches (on/off peak) for each month consistent with PECs and LSOs term and conditions.

**Treatment of load growth for PECs and LSOs**

Unencumbered FTRs required by annual load growth up to the existing TTC will be allocated to the PEC or LSO rights holder prior to the annual auction.

Alternative Position

The rights holder for PECs or LSOs must buy FTRs for load growth in the auction process.

**Rules for Over allocation of flowpaths**

Options for reducing FTR rights:  
 The proposed new language would read:

Prior to the Annual FTR rights auction, the rights would be reduced prorata based on feasible dispatch as described in rules for conversion of PECs and LSOs.

Alternative Positions

Alternative 1: RTO will buy back FTR rights at day-ahead scheduling or real-time.

Alternative 2: FTR rights will be allocated based on PEC terms and conditions

Alternative 3: The RTO should use both alternative 1 and alternative 2 as tools to manage the over subscription of flow paths

**Mandatory Suspension of PECs**

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8. Feasible dispatch within the terms and conditions of the PEC.

PTO contracts will be suspended and required to convert their contracts to RTO-W service through the PEC and LSO rules for conversion process described above.

*NEED to develop follow on rights for PTO leaving the RTO-W*

**Proposed process for appeal, verification and resolution of claims in rights conversions**

Adapted from Appendix E, section E.2.5 of the Mountain West ISA Electric Tariff, filed July 23, 1999.

Note: Appendix E applies specifically to Pre-Existing Contracts. The same issues of a need for a process for objection and verification apply to assignment of existing rights for load service and inter-RTO utility contracts. In each case there will be an assertion of existing rights to be converted either into FTRs or into rights to auction proceeds. In each case there needs to be a procedure for parties to object and for verification and resolution of the rights.

Appendix \_\_\_\_: Conversion of LSO rights, inter-RTO utility contract rights, and PEC contract rights - participation of RTO-W and Other Parties

When a party with load service obligation proposes to convert its LSO rights into FTRs or into a claim on auction revenues, or when parties with an inter-RTO utility contract (PTO to PTO contract) propose to convert it to RTO service and assert a right to FTRs or auction revenues, or when the parties to a PEC reach mutual agreement on a proposal for conversion or modification of a transmission right pursuant to the PEC into FTRs or into a claim on auction revenues, the following process shall be followed:

- a) The relevant TO shall provide notification to RTO-W of the terms and conditions of the proposal.
- b) The RTO-W shall immediately post the terms and conditions of the assertion of LSO rights or proposed conversion or modification on the RTO-W Website. Such posting shall initiate a twenty-one day period through which the RTO-W, or any party whose rights might be materially impacted by the proposed conversion or modification, may submit written protests to the RTO-W, with an explanation of the basis for the protest and a statement regarding the standing of the party in making the protest. Protests shall be limited to questions of fact as specified in Paragraph \_\_\_\_\_. The proposed conversion or modification shall not take effect during this period; rather, a set of NCR Instructions developed pursuant to Section E.4 will be in effect during this period. However, the NCR instructions shall not reduce or otherwise affect the terms of a preexisting contract.

A party not holding rights that would be materially impacted by the proposed conversion or modification may request the RTO-W to carry its objection by filing a timely request stating the basis for its objection and a statement regarding the interest of the party filing the request. The RTO-W shall review such requests and make a determination on the merits of the request to file or not to file an objection on behalf of the requesting party.

**Alternative Position**

**Alternative 1:** The RTO-W shall immediately post the terms and conditions of the assertion of LSO rights or proposed conversion or modification on the RTO-W Website. Such posting shall initiate a twenty-one day period through which the RTO-W, or any other party, may submit written protests to the RTO-W. The proposed conversion or modification shall not take effect during this period; rather, a set of NCR Instructions developed pursuant to Section \_\_\_\_\_ will be in effect during this period. However, the NCR instructions shall not reduce or otherwise affect the terms of a preexisting contract.

- c) If, by the end of the twenty-one day period, no party objects to the proposed terms and conditions of the conversion or modification, the proposed conversion or modification shall be implemented immediately by the RTO-W, subject only to the party or parties to the conversion obtaining any necessary regulatory authorizations prior to the RTO-W's implementation of the conversion or modification.
- d) At the end of the twenty-one day period, if any affected party has protested the proposed conversion or modification, the RTO-W shall initiate an open mediation process with the objective of facilitating agreement among all parties that have established standing in the proceeding. The mediation process shall be conducted using the procedures as set forth in Section \_\_\_ of the RTO-W Tariff.

*Alternative 1 only:* At the end of the twenty-one day period, if a party has protested the proposed conversion or modification by making a written protest as described in Paragraph b) above, such protest shall be submitted for resolution under the RTO-West dispute resolution process. [Note: the RTO-West dispute resolution process is anticipated to require mediation and arbitration].

- e) If the RTO-W's mediation process resolves all protests, the mediation shall be deemed successful and the proposed conversion or modification shall be implemented immediately by the RTO-W, subject only to the party or parties to the conversion obtaining any necessary regulatory authorizations prior to the RTO-W's implementation of the conversion or modification.
- f) If the mediation process does not resolve all disagreements, the disputing parties may, with the consent of all the parties, initiate the RTO-W's arbitration procedures to resolve the disagreement. If all parties do not consent to the use of ADR,
  - i) The party or parties to the proposed conversion or modification may file the proposed agreement with the appropriate regulatory authorities.
  - ii) Any party with standing, including the RTO-W, may challenge the proposed terms or conditions, consistent with the party's rights to do so, in an appropriate regulatory or judicial forum.
  - iii) Pending resolution of the dispute by ADR or a regulatory authority, the proposed conversion or modification shall not take effect, unless a regulatory or judicial authority issues an order to the contrary; rather a set of NCR Instructions developed pursuant to section \_\_\_\_ will be in effect during this period.

**IMPLEMENTATION of Non-Converted Rights**

**NCR Instructions**

*To be developed*

**IMPLEMENTATION of Power Purchase Obligations**

**PPO Instructions**

*To be developed*

**Addendum to RTO Pre-Existing Contracts Document: Power Purchase Obligations**

During the 8/29/00 CM WG Meeting, a discussion arose on the method to handle the PPO Instructions. After the discussion, it was agreed to that Carl Imperato would draft language for inclusion in this document. Since the WG did not have time to review the final text, the text would be placed in a "box" and be considered when drafting the specific language of the Tariff. The

following is provided.

The issue is as follows: For the RTO to implement the Power Purchase Obligations<sup>6</sup> that exist in Pre-Existing Contracts, the RTO must be provided with PPO Instructions. The intent is that the PPO Instructions be jointly developed by the parties to the PEC (in this case, the generator and the transmission provider). However, if the parties cannot come to agreement on the PPO Instructions, then pending resolution of the dispute, the RTO must on an interim basis follow the instructions of one party or other.

The IPP position is that during the interim period, the PPO Instructions submitted to the RTO by the generator that is party to the PEC should be followed, provided that the transmission provider would be cost-indemnified by the generator. (This indemnification would be achieved by holding in escrow the disputed monies paid to the generator as a consequence of following the generator's PPO Instructions.)

This is basically the solution that was agreed upon in both the California ISO and Mountain West ISA tariffs. It was deemed to be a reasonable solution because the potential harm to the transmission provider (due to following the Generator's proposed PPO Instructions in the event that such instructions were subsequently determined to be inappropriate) would be minimized by the escrow provisions; whereas under the alternative - following the transmission provider's PPO Instruction - the IPP could suffer irreparable damage, including loss of QF status or violation of contracts with steam hosts. (Also note that no issues related to system reliability are involved here, because the RTO retains the right to take those actions needed to operate the grid securely.)

The following language, excerpted from the Mountain West ISA Tariff that was accepted by FERC earlier this year, lays out the IPPs' preferred solution to the issue. The IPP group requests that the filing utilities give serious consideration to incorporating this approach in their October 16 filing.

### **Mountain West ISA Tariff - Appendix E (Original Sheets 358-359)-reworded for RTO W**

#### **E.5.2 Development and Implementation of PPO Instructions**

The parties to a PEC shall attempt to jointly develop mutually-agreeable PPO Instructions. If one of the parties to the PEC is a TO, the TO shall be responsible for ensuring that copies of such agreed-upon PPO Instructions are submitted to the RTO W, unless the parties to the PEC agree otherwise.

(b) If the parties to the PEC do not agree on PPO Instructions:

- (i) The parties to the PEC may mutually agree to resolve their dispute using the RTO W's mediation and arbitration processes. Otherwise, the dispute resolution procedures set forth in the PEC or otherwise available to the parties by law shall be

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<sup>6</sup> PPOs are obligations - other than transmission service rights - which the RTO must take into account pursuant to a Pre-Existing Contract. PPOs are typically associated with a QF operating agreement signed under PURPA. PPOs typically include obligations related to the interconnection, scheduling, operation or curtailment of generating resources.

followed.

- (ii) Pending resolution of the dispute, the RTO W shall follow the PPO Instructions submitted by the Generator that is the party to the PEC, provided that the RTO W and any other party to the PEC shall be held harmless against damages resulting from the RTO W's compliance with such PPO Instructions. Any increase in monies paid to the Generator that is directly attributable to ISA compliance with the PPO Instructions submitted by the Generator rather than the PPO Instructions submitted by the other party to the PEC shall be held in escrow pending resolution of the dispute.