

SEPTEMBER 6, 2000 DISCUSSION DRAFT

RTO West Generation Integration Agreement
between
RTO West and _____

CLEAN REVISED DRAFT
September 6, 2000

RTO WEST GENERATION INTEGRATION AGREEMENT

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[To be added later]

RTO WEST GENERATION INTEGRATION AGREEMENT

This Agreement, dated as of _____, is by and between RTO West, a Washington non-profit corporation, and _____, _____ (“the Generating Party”). RTO West and the Generating Party each shall be referred to as a “Party” and collectively shall be referred to as the “Parties.”

RECITALS

WHEREAS:

A. RTO West is a Regional Transmission Organization that has been approved by FERC and that provides Transmission Services throughout a multi-state region; and

B. RTO West is responsible for providing such services in a reliable manner consistent with Good Utility Practice, applicable NERC and WSCC operating criteria and applicable requirements of regulatory agencies with authority over such operations; and

C. The Generating Party currently has Generation Facilities operating within RTO West’s metered Control Area boundaries, or desires to operate Generation Facilities within the RTO West’s metered Control Area boundaries; and

D. Control over the operation of Generation Facilities operating within RTO West’s metered Control Area boundaries as provided herein is necessary for RTO West to meet its responsibilities to provide safe and reliable Transmission Services; and

E. This Agreement establishes various requirements for the capabilities and operation of the Generating Party’s Generation Facilities operating within RTO West’s metered Control Area boundaries, as well as RTO West’s obligations with respect to them; and

F. Such requirements are established to provide for reliable operation of the RTO West Transmission System and the Generating Party’s Electric System.

NOW, THEREFORE, in consideration of the mutual benefits to the Parties and the benefits set forth in the recitals above, the Parties agree as follows:

AGREEMENT

1. Definitions. For purposes of this Agreement, capitalized terms not defined elsewhere in this Agreement shall have the definitions specified on Exhibit A to this Agreement.

2. Effective Date; Term and Termination.

2.1 **Effective Date.** This Agreement shall become effective upon its acceptance for filing or approval by FERC, without change unacceptable to either Party. If FERC's acceptance for filing or approval of this Agreement is, as a result of rehearing or judicial review thereof, subsequently revised or modified in a manner unacceptable to either Party, this Agreement shall be deemed void ab initio. Any such revision or modification of this Agreement shall be deemed unacceptable to a Party only if that Party provides notice to the other Party within thirty (30) days of issuance of the applicable FERC action or judicial order that such action or order is unacceptable.

2.2 **Termination.** This Agreement shall terminate: (1) upon termination of all agreements between RTO West and the Generating Party for the provision of Transmission Services; or (2) upon mutual agreement. In addition, this Agreement shall cease to be applicable to any Covered Generation Facility as of the date and time that the Covered Generation Facility ceases to operate within RTO West's metered Control Area boundaries, whether resulting from (a) the termination of the RTO West Transmission Operating Agreement between RTO West and the owner of the transmission facilities with which the applicable Covered Generation Facility is directly or indirectly physically interconnected with the RTO West Transmission System (whether or not such owner is the Generating Party), (b) transfer of the Covered Generation Facility to a Control Area other than the RTO West's Control Area, (c) the permanent shut-down of Covered Generation Facility, or (d) otherwise. The Generating Party shall provide RTO West with at least (a) _____ months' notice before the effective date of any transfer of the Covered Generation Facility to another Control Area and (b) ____ days' notice prior to permanent shut-down, except where the shut-down is the result of an Uncontrollable Force in which case notice shall be provided to RTO West as soon as practicable.

3. **Applicable RTO West Tariff Provisions.** The provisions of RTO West's Transmission Tariff listed below shall apply to the operation of the Generating Party's Covered Generation Facilities. Each Party agrees to comply with all applicable provisions of the RTO West Transmission Tariff.

3.1 Operating and Interconnection Standards.

3.1.1 **General Compliance Obligation.** Except to the extent that an exemption applies under Section 3.1.2 below and subject to the provisions of Section 4.3 below, each Covered Generation Facility shall comply at all times with the ["technical" requirements specified in applicable sections of the RTO West tariff (*to be developed by the technical requirements team*)];

3.1.2 **Exemption Procedures.** With respect to any Covered Generation Facility that was in operation before the Transmission Service Commencement Date, the Generating Party may, within 60 days of the effective date of this Agreement, notify RTO

West that, because of the configuration, location, or operational characteristics of the Covered Generating Facility, the Generating Party is unable to comply with one or more of the applicable provisions of this Agreement and the RTO West Transmission Tariff. Upon RTO West's receipt of notice from the Generating Party under this Section 3.1.2, the Covered Generating Facility shall be excused from compliance with this Agreement, *subject to* the following limitations and obligations:

- (a) each Covered Generation Facility identified in the Generating Party's notice shall be excused only with respect to the particular operating and interconnection standards with which the Covered Generating Facility is unable to comply because of limitations caused by its configuration, location, or operational characteristics, and only to the extent of those limitations;
- (b) the Generating Party shall make commercially reasonable efforts to modify any non-complying Covered Generation Facility as soon as feasible within the course of performing routine maintenance and upgrades so that it fully complies with all provisions of this Agreement and applicable provisions of the RTO West Transmission Tariff, but in any case the Generating Party shall cause all Covered Generation Facilities to fully comply with all provisions of this Agreement and all applicable provisions of the RTO West Transmission Tariff no later than three years after the effective date of this Agreement; and
- (c) if RTO West disputes the validity of any claim of inability to comply contained in the Generating Party's notice to RTO West under this Section 3.1.2, any disputed issues shall be resolved as specified in Section 3.7 below and the application of any affected provisions of this Agreement and the RTO West Transmission Tariff shall be suspended until the dispute is resolved.

[Note – It is possible that some members of the GIA Subgroup may want to incorporate a provisions allowing a party to petition RTO West to declare a particular Generating Facility permanently exempt from any provisions of the GIA because of the facility's inability to have an adverse impact on the operation of the RTO West Transmission System.]

3.3 Transmission Scheduling. Transmission scheduling with respect any requested transmission of capacity and energy from any Covered Generation Facility (or the Scheduling Coordinator for any Interconnected Plant) shall be as specified in *[include specific section or appendix reference?]* the RTO West Transmission Tariff.

3.4 **Maintenance Scheduling.** Maintenance scheduling with respect all Covered Generation Facilities shall be as specified in [*include specific section or appendix reference?*] the RTO West Transmission Tariff.

3.5 **Emergency Redispatch.** The Parties' rights and obligations with respect to redispatch of output from any Covered Generation Facility when there is a Transmission System Emergency (as that term is defined in the RTO West Transmission Tariff) shall be as specified in [*include specific section or appendix reference?*] the RTO West Transmission Tariff.

3.6 **Billing and Payment.** Billing and payment under this Agreement shall be as specified in [*include specific section or appendix reference?*] the RTO West Transmission Tariff.

3.7 **Disputes.** Any dispute between the Parties arising under this Agreement shall be resolved in accordance with the dispute resolution provisions specified in [*include specific section or appendix reference?*] the RTO West Transmission Tariff.

3.8 **Notice Procedures.** The delivery of notices under this Agreement shall be in accordance with the provisions of [*include specific section or appendix reference?*] the RTO West Transmission Tariff, subject to Section 10.2 of this Agreement.

3.9 **Uncontrollable Force.** The Parties' rights and obligations with respect to the occurrence of an Uncontrollable Force, as well as the definition of "Uncontrollable Force" shall be in accordance with the provisions of [*include specific section or appendix reference?*] the RTO West Transmission Tariff.

4. Agreement's Application.

4.1 **Identification of Covered Generation Facilities and Pre-existing Generation Agreements.** The Covered Generation Facilities to which this Agreement applies are listed Exhibit B to this Agreement. All Pre-Existing Generation Agreements are also listed on Exhibit B. The Generating Party shall, by written notice to RTO West, update Exhibit B throughout the term of this Agreement to reflect: (1) the addition or removal of any Covered Generation Facility; and (2) the termination, extension, renewal, or modification of any Pre-existing Generation Agreement, each in accordance with the provisions of this Agreement and the RTO West Transmission Tariff.

4.2 Pre-existing Generation Agreements.

4.2.1 **General Provisions.** Nothing in this Agreement shall require the Generating Party to violate any of its obligations under any Pre-existing Generation Agreement as listed on Exhibit B; *provided, however*, that with respect to any Generating Facility subject a Pre-existing Generation Agreement, the Generating Party shall comply

with this Agreement to the maximum extent permitted under the terms of the applicable Pre-existing Generation Agreement. If the Generating Party voluntarily extends, renews, or modifies any Pre-existing Generation Agreements after the effective date of this Agreement, the Generating Party shall make commercially reasonable efforts to cause the extended, renewed, or modified Pre-existing Generation Agreement to contain terms that require full compliance with all provisions of this Agreement. The Generating Party shall not modify any Pre-existing Generation Agreement in a manner inconsistent with any obligation created by this Agreement.

4.2.2 Cooperation with Third-Party Generation Owner's Election to Enter into a Generation Integration Agreement with RTO West. *[We need to incorporate into the GIA the same provisions that are developed for the TCA concerning a Generating Party's obligations to allow counter-parties to Pre-existing Generation Agreements to directly enter into GIAs with RTO West if they so choose, subject to both parties' entitlement to preserve rights (not in conflict with the GIA) under their Pre-existing Generation Agreements.]*

4.2.3 Development and Delivery of Instructions to RTO West Concerning Pre-Existing Generation Agreements. Within the sooner of: (1) 60 days following the effective date of this Agreement; or (2) 30 days before the scheduling with RTO West of any energy, Interconnected Operations Services, or Ancillary Services (as the latter two terms are defined in the RTO West Transmission Tariff) from the affected Generating Facility, the Generating Party shall meet with any counter-parties to Pre-existing Generation Agreements (in each case where the counter-party has elected not to enter directly into a Generation Integration Agreement with RTO West) and develop and deliver to RTO West [*in accordance with the provisions of Appendix ___ to the RTO West Transmission Service,*] a set of instructions as to how RTO West may operate with respect the affected Generating Facility or Facilities in a manner that is consistent with the terms of the applicable Pre-existing Generation Agreement.

4.2.4 Specific Provisions Concerning Existing Remedial Action Schemes. Without limiting the generality of Section 4.2.1 above, the Parties acknowledge and agree nothing in this Agreement is intended to modify the Generating Party's existing obligations, if any, regarding generator tripping associated with existing Remedial Action Schemes, or other generator tripping agreements. All Remedial Actions Schemes and generator tripping agreements to which any Covered Generation Facility is subject (to the extent the Remedial Action Scheme or the generator tripping agreement is not created by or administered under an agreement with RTO West or any applicable provision of the RTO West Transmission Tariff) are listed on Exhibit D.

4.3 Limits on Parties' Obligations Under Agreement and Applicable Tariff Provisions. In carrying out the requirements of this Agreement and applicable provisions of the RTO West Transmission Tariff, except as provided otherwise in Section

8.2.3 of Appendix ___ of the RTO West Transmission Tariff, neither Party shall be required to take any action:

- (a) that is not within the physical capabilities of the Party's Electric System (or any part of another party's Electric System that the applicable Party has the legal right to cause to comply with this Agreement);
- (b) that it believes in good faith will create serious and immediate risks to human health or safety; *provided, however,* that interruption of Transmission Service shall not in itself necessarily be deemed to create serious and immediate risks to human health or safety;
- (c) that it believes in good faith will create an immediate risk of serious damage to facilities or equipment within its Electric System or will cause it to operate any part of its Electric System in an unsafe manner;
- (d) that would violate any provision of the reliability criteria, standards, guidelines and operating procedures of NERC or the WSCC, any FERC licenses with which it is obligated to comply, any applicable Nuclear Regulatory Commission licenses or requirements, the terms of any applicable permits issued by a governmental authority, or any applicable governmental laws or regulations; or
- (e) that conflict with any non-power requirements with which the Party is obligated to comply (including without limitation any obligations under environmental laws, regulations, court and administrative orders, or biological opinions);

provided, however, that neither Party may not refuse to comply with any provision of this Agreement or the RTO West Transmission Tariff on the basis that to do so would cause that Party to violate contractual obligations to supply, transmit, or deliver firm power.

5. Interconnection and Metering Information.

5.1 **Points of Interconnection.** The Points of Interconnection between the Covered Generation Facilities and the RTO West Control Area (including their location and any related equipment) are as listed in Exhibit B to this Agreement. The Generating Party shall, upon RTO West's request, make available to RTO West corresponding maps and single-line diagrams of all Points of Interconnection and related equipment listed on Exhibit B. The Parties shall amend Exhibit B as necessary to reflect additions or modifications to any Points of Interconnection.

5.2 **Metering System Locations.** Exhibit C to this Agreement specifies the locations of all metering systems, and any necessary adjustment factors if the location of a

metering system is not at the Point of Interconnection. The Parties agree to keep this information current and to advise each other of any additions or modification made to a metering system at the time any such modification or addition is made. The Parties further agree to amend Exhibit C as necessary and appropriate to reflect such additions or modifications.

6. RTO West's Obligations Concerning Operation of RTO West Controlled Transmission. In operating the RTO West Controlled Transmission, RTO West shall, at a minimum, comply with the criteria applicable to control area operators as specified in Annex A, Section III, Subsections A through E of the WSCC Reliability Criteria Agreement as in effect and filed with FERC as of July 1, 1999 (as subsequently modified by FERC order issued _____, 2000). Nothing in this Section 6 shall require RTO West to become a signatory to, or to comply with any other provisions of, the WSCC Reliability Criteria Agreement or any other provisions of the WSCC Reliability Management System, and specifically (without limitation), RTO West shall have no obligation under this Agreement to submit compliance data to the WSCC or to be subject to sanctions issued by the WSCC in connection with the WSCC Reliability Management System.

[RTO West Facilitation of Displacement Energy Bidding Process in Cases of Certain Hydroelectric Must-Run Generation Emergencies. *(formerly numbered as Section 9)]*

[Note: These provisions are not being addressed by the GIA Subgroup for now, pending input from federal parties and other interested participants who are currently addressing this issue internally. Depending on whether these or analogous provisions are carried forward, we might need to resolve whether they belong in the GIA or the RTO West tariff.]

7. Most Favored Nation Obligation. If a new Generation Integration Agreement or an amendment to an existing Generation Integration Agreement contains terms that differ from the provisions contained in this Agreement, other than as necessary to accommodate technical differences or legal requirements that apply to the other party executing the new or amended Generation Integration Agreement but not to the Generating Party, RTO West agrees to amend this Agreement at the Generating Party's request to incorporate terms that are comparably favorable to such different terms.

8. Insurance and Limitation of Liability. *[Current suggested language as provide by Gary Dahlke.]* To promote cooperation between the Parties, to avoid duplication of costs, and to carry out the purposes of this Agreement, the Parties agree to the following provisions for limited liability, insurance, and indemnification:

8.1 **Limitations of Liability.** Except as otherwise provided under the RTO West Transmission Tariff, the Generating Party shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to RTO West or any other party for any damages whatsoever, including without limitation, special, indirect, incidental, consequential, punitive, exemplary or direct damages resulting from any act or omission in any way associated with this Agreement, except to the extent the Generating Party is found liable for gross negligence or intentional misconduct, in which case the Generating Party shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages.

8.2 **Additional Limitations of Liability.** Except as otherwise provided under the RTO West Transmission Tariff, the Generating Party shall not be liable for any indirect, consequential, exemplary, special, incidental or punitive damages including, without limitation, lost revenues or profits, the cost of replacement power or the cost of capital, even if such damages are foreseeable or the damaged party has been advised of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy.

8.3 **Insurance; Waiver of Subrogation Rights.**

8.3.1 **RTO West Insurance Coverage Requirements.** Throughout the term of this Agreement, RTO West shall maintain insurance coverage consistent with prudent industry practice and that at a minimum:

- (a) provides general liability and errors and omissions insurance with respect to RTO West's performance under this Agreement;
- (b) provides for maximum per-occurrence self-insured retention of not more than \$2 million;
- (c) provides general liability coverage limits of not less than \$150 million and separate errors and omissions coverage limits of not less than \$100 million;
- (d) provides an agreement or endorsement under which the insurance cannot be terminated, canceled, allowed to expire, non-renewed, or materially altered without 90 days' prior written notice to RTO West and provides that such policy is primary over any other insurance;
- (e) provides that RTO West's insurer shall be bound by any waivers of the insurer's rights of subrogation granted by RTO West; and

- (f) names the Parties to this Agreement as an Additional Insured(s) under such insurance.

8.3.2 Annual Review. Insurance requirements shall be reviewed by RTO West's Board of Directors [Trustees] on an annual basis for consistency with prudent industry practice, but shall be no less than the above referenced specific coverage and limits. Alternative risk financing arrangements sufficient to cover these responsibilities will require written approval of the majority of Generating Parties executing Generation Integration Agreements with RTO West.

8.4 RTO West's Obligation to Notify Parties with Respect to Insurance. RTO West shall not consent to or allow the insurance required under Section 8.3.1 above to be terminated, canceled, allowed to expire, or materially altered without the Generating Party's written consent. Non-renewal of insurance shall also not occur without providing at least 60 days' advanced notice to Parties to this Agreement.

8.5 Claims by Employees and Insurance. A Party shall be solely responsible for and shall bear all of the costs of claims by its own employees, contractors, or agents arising under and covered by, any workers' compensation law. A Party shall furnish, at its sole expense, such insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Agreement. Each Party hereby agrees to indemnify, defend and hold the other Party harmless from any such claims, and hereby expressly waives protections afforded by worker's compensation law as necessary to effect the terms of this agreement.

8.6 Third-Party Claims. In the event third-party claims are made against another Party to this Agreement arising out of this Agreement or its performance, or with the occurrence of an event from which it is reasonably anticipated that claims may be made, the Parties agree that:

8.6.1 In the event of any such claim, or even from which third party claim(s) are anticipated, a Party shall provide immediate notice to the other Party pursuant to Section 10.1 of this Agreement; shall make such immediate efforts as necessary to preserve evidence and/or protect against default judgment; and shall provide notice to RTO West's General Counsel at the address designated for such purpose with a copy to the broker of record with respect to the insurance policy described in Section 8.3.1 above. RTO West's General Counsel shall provide notice to all other parties to Generation Integration Agreements, and assure that notice as necessary is given to insurance carrier(s). Failure to provide such notice shall not prejudice the right of a party to bring a subsequent claim against RTO West, and shall not subject such party to any damages for failure to notify RTO West.

8.7 **Survival.** The provisions of this Section 8 (“Insurance and Limitation of Liability”) shall survive the termination or expiration of this Agreement or the RTO West Transmission Tariff.

[The following provisions would either be incorporated here, or in a separate multilateral agreement concerning various liability issues including, for example, property damage.]

8.8 In the event RTO West issues an operating instruction to any party, and such operating instruction is found not valid for any reason, including for the reason that such operating instruction is not within the authority of RTO West under the RTO West Transmission Tariff then in such event:

8.8.1 No provision of this Agreement shall be construed as requiring any party including the Generating Party to follow such operating instruction; and

8.8.2 If the Generating Party complies, or attempts to comply, with such operating instruction and the Generating Party incurs loss or damage as a result, then in such a case the Generating Party shall be entitled to recover from RTO West its [Direct Actual Damages if the IPP Group does not prevail on SubGroup A Issue 2] or [Demonstrable Costs, if the IPP Group does prevail].

8.9 **Liquidated Damages.** The Parties agree that the amounts recoverable under Section 8.8 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy for the non-defaulting party. Such amounts are payable for the loss of the bargain and the loss of protection against future risks.

9. Assignments and Conveyances.

9.1 **Assignment of RTO West’s Rights and Obligations.** Except as otherwise provided in Section 9.4, RTO West shall not, without the prior written consent of the Generating Party, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law.

9.2 **Assignment of the Generating Party’s Rights and Obligations.** Except as otherwise provided in Section 9.4, the Generating Party shall not, without the prior written consent of RTO West, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law; *provided, however,* that the Generating Party may, without the consent of RTO West, assign its rights and obligations under this Agreement to any person or entity (1) with which the Generating Party is merged or consolidated, or (2) to which the Generating Party sells, transfers, or assigns all or substantially all of the Covered Generating Facilities, so long as the survivor in any such merger or consolidation, or the purchaser, transferee or assignee of such Covered Generating Facilities provides to RTO West a valid and binding written

agreement expressly assuming and agreeing to be bound by all obligations of the Generating Party under this Agreement.

9.3 Transfer of Rights Affecting Covered Generation Facilities. Unless otherwise approved by RTO West in writing, the Generating Party shall not sell, transfer or assign any rights that affect the Generating Party's ability to perform its obligations under this Agreement with respect to any Covered Generating Facility unless (1) the purchaser, transferee or assignee of such rights provides to RTO West a valid and binding written agreement expressly assuming and agreeing to be bound by all obligations of the Generating Party under this Agreement with respect to the Covered Generation Facility, or (2) RTO West and the transferee have entered an agreement comparable to this Agreement with respect to the Covered Generation Facility. Notwithstanding the foregoing, the provisions of this Section 9.3 shall not apply to any Covered Generation Facility that, upon completion of a proposed sale, transfer, or assignment of rights, would no longer be operated within RTO West metered Control Area boundaries, *provided* that the Generating Party has given RTO West at least _____ months' notice of the date on which the Covered Generation Facility will cease to operate within RTO West's metered Control Area boundaries.

9.4 Assignment for Security Purposes. Notwithstanding any other provision of this Agreement, (1) the Generating Party may, without RTO West's consent, pledge or assign all or any portion of its Electric System for financing purposes, and (2) RTO West may, without the Generating Party's consent, pledge or assign, for financing purposes, all or any portion of its rights or interests with respect to the RTO West Transmission System.

9.5 Effect of Permitted Assignment. In the event of any permitted sale, transfer or assignment hereunder, the transferor or assignor shall to the extent of the transferred or assigned obligations, and only to such extent, be relieved of obligations accruing from and after the effective date of such transfer or assignment; *provided, however*, that under no circumstances shall any sale, transfer or assignment relieve the transferor or assignor of any liability for any breach of this Agreement occurring before the effective date of such transfer or assignment.

9.6 Successors and Assigns. This Agreement is binding on and shall inure to the benefit of the Parties and their respective successors, permitted assigns and legal representatives.

9.7 Consent Not Unreasonably Denied or Delayed. Neither Party shall unreasonably deny or delay consents to assignment, pledge or transfer requested pursuant to this Section 9.

10. Notices.

10.1 **Address for Notices to the Generating Party.** The address of the Generating Party for notices under this Agreement and all applicable provisions of the RTO West Transmission Tariff shall be:

Attn:
Telecopy:

10.2 Specific Provision Controls. Notwithstanding the requirements of [*insert reference to applicable section of RTO tariff?*] the RTO West Transmission Tariff, where any provision of this Agreement or applicable provisions of the RTO West Transmission Tariff require a Party to furnish any particular data, information, or notice in a specific manner or within a specific time period, such provision shall control.

[**NOTE:** *All provisions below will be coordinated with the TCA and the LIA so that parallel provisions in each of the TOA, LIA, and GIA will be consistent.*]

11. Amendments. This Agreement may not be modified by either Party except by subsequent mutual written agreement duly executed by the Parties.

12. Construction of Agreement. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against any Party, but shall be construed in a manner that most accurately reflects the purpose of this Agreement and the nature of the rights and obligations of the Parties with respect to the matter being construed.

13. Integration. This Agreement, including the exhibits hereto, constitute the complete agreement of the Parties with respect to the subject matter hereof, and all prior or contemporaneous representations, statements, negotiations, understandings and inducements are fully merged and incorporated in this Agreement.

14. Preservation of Obligations. Upon termination of this Agreement, all unsatisfied obligations of each Party shall be preserved until satisfied.

15. Existing Agreements Preserved. Nothing in this Agreement shall be interpreted to supersede the rights or obligations of any party under any existing agreement unless otherwise expressly stated herein.

16. Governing Law. Except as provided in Section 16.4 below, this Agreement shall in all respects be interpreted, construed and enforced according to location of the

principal office of the Party whose alleged obligations are to be enforced (without reference to rules governing conflicts of laws).

16.1 Application of State Law. If the principal office of the Party whose alleged obligations are to be enforced is located in a state within the United States (and Section 16.3 does not apply), the laws of that state shall govern except to the extent that such laws may be preempted by the laws of the United States of America.

16.2 Application of Provincial Law. If the principal office of the Party whose alleged obligations are to be enforced is located in a province of Canada (and Section 16.3 does not apply), the laws of that province shall govern except to the extent that such laws may be preempted by the laws of Canada.

16.3 Application of Tribal Law. If the principal office of the Party whose alleged obligations are to be enforced is located on tribal lands belonging to a sovereign tribe that exercises regulatory jurisdiction over any facilities or Party subject to this Agreement, the applicable tribal laws shall govern except to the extent that such laws may be preempted by the laws of the United States of America.

16.4 Law Applicable to Federal Generating Parties. Notwithstanding the provisions of Sections 16.1 through 16.3 above, if the Generating Party is a United States government entity (including but not limited to a federal power marketing administration), this Agreement shall in all respects be interpreted, construed, and enforced in accordance with the laws of the United States.

17. Severability. The rights of each Party shall be as set forth in Section 2.1 if this Agreement is (1) not accepted for filing or approved by FERC, (2) accepted for filing or approved by FERC with changes unacceptable to either Party, or (3) accepted for filing or approved by FERC, but such acceptance or approval is, as a result of judicial review, subsequently reversed or modified in a manner unacceptable to either Party. If this Agreement is not rendered void in accordance with the provisions of Section 2.1, and thereafter any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent not prohibited by law, and all other terms, covenants, and conditions of this Agreement, and the application thereof, shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.

18. Singular and Plural; Use of “Or”. Whenever in this Agreement the context so suggests, references to the singular shall be deemed to include the plural, and references to “or” shall be deemed to be disjunctive but not necessarily exclusive.

19. Headings for Convenience Only. The section headings in this Agreement are intended for convenience and reference only, and are not intended to define, limit, or describe the scope or intent of any provisions of this Agreement.

20. Relationship of the Parties.

20.1 **No Partnership, Etc.** Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or to impose a trust or partnership covenant, obligation, or liability on or with regard to either or both of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

20.2 **Rights Several.** All rights of the Parties are several, not joint. Except as expressly provided in this Agreement, no Party shall have a right or power to bind another Party without such Party’s express written consent.

21. No Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established herein.

22. No Dedication of Facilities. No undertaking by either Party to the other Party under or pursuant to any provision of this Agreement shall constitute or be deemed to constitute a dedication of all or any portion of the RTO West Transmission System to the public or to the Generating Party or a dedication of all or any portion of the Generating Party’s Electric System to the public or to RTO West.

23. Waiver Provisions.

23.1 **No Implied Waivers.** Any waiver at any time by any Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any other default or other matter arising in connection with this Agreement. Any waiver must be delivered in writing, executed by an authorized representative of the Party granting such waiver. Any delay short of the statutory period of limitations in asserting or enforcing any right shall not constitute or be deemed a waiver.

23.2 **RTO West Waiver Through Tariff Provision.** RTO West, may, at any time, waive any obligation of the Generating Party under this Agreement (together with identical obligations under all other Generation Integration Agreements) through

language incorporated into the RTO West Transmission Tariff (and accepted by FERC) that explicitly provides for waiver of one or more Generating Party obligations under this Agreement and all other Generation Integration Agreements.

24. Exhibits Incorporated. The exhibits to this Agreement, as they may be amended or revised from time to time, are attached to this Agreement and are incorporated by reference as if herein fully set forth.

25. Further Actions and Documents. Each Party agrees to do all things, including but not limited to the preparation, execution, delivery, filing and recording of any instruments or agreements, reasonably requested by the other Party to carry out the provisions of this Agreement.

26. Counterparts. This Agreement may be executed in one or more counterparts, which may be executed at different times. Each counterpart shall constitute an original but all counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names.

RTO West

[The Generating Party]

By:
Name:
Title:

By:
Name:
Title:

Exhibit A

Definitions

“Agreement” means this RTO West Generation Integration Agreement.

“Control Area” means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s) with the load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice. [*Note: this definition has been flagged for possible further work*]

“Covered Generation Facility” means any Generation Facility subject to the provisions of this Agreement in accordance with the following provisions:

- (a) with respect to any Generating Party that is also a Participating Transmission Owner (as that term is defined under the RTO West Transmission Operating Agreement), a “Covered Generation Facility” is any Generation Facility that the Generating Party controls (as defined below) and that is located within RTO West’s metered Control Area boundaries;
- (b) with respect to any Generating Party that is not a Participating Transmission Owner, a “Covered Generation Facility” is any Generation Facility that the Generating Party controls that is located within RTO West’s metered Control Area boundaries and that:
 - (i) is required under Appendix [J] of the RTO West Transmission Tariff to be subject to a Generation Integration Agreement because (x) energy or Interconnected Operations Services or Ancillary Services (as the latter two terms are defined [*refer to applicable section or appendices*] of the RTO West Transmission Tariff) are scheduled from the Generation Facility onto the RTO West Transmission System and (y) the party that controls or operates the Generating Facility does not have a valid, Pre-existing Generation Agreement with a Participating Transmission Owner or has failed to deliver (or cause to be delivered) instructions to RTO West concerning operation of the Generation Facility in accordance with the Pre-existing Generation Agreement; or

- (ii) the Generating Party has voluntarily agreed to make subject to a Generation Integration Agreement at the request of a Participating Transmission Owner, or at the Generating Party's election because of the Generating Party's recognition of the potential for the Generating Facility to adversely affect the RTO West Transmission System; or
 - (iii) is required pursuant to law, regulation, or other applicable authority having jurisdiction in the matter to be made subject to a Generation Integration Agreement.
- (c) For the purposes of this Agreement, a Generating Party is deemed to control a Generating Facility if: (1) the Generating Party has the right (whether by ownership, contract, statute, judicial or administrative order, regulatory authority, or otherwise) to direct the operation of a Generating Facility (with respect to all or any part of the Generating Facility's generation capacity); or (2) the Generating Facility is responsive to the Generating Party's automatic generation control scheme; *provided, however*, that in each case where the Generating Party controls less than all of a Generating Facility's generation capacity, the applicable Generating Facility shall be deemed a "Covered Generation Facility" within the scope of this Agreement only with respect to the generation capacity over which the Generating Party has control.

"Electric System" means a single integrated electric power grid usually characterized by ownership, rental, lease, control, or operation by a single person or entity. An "Electric System" consists of electric distribution facilities or generating facilities or transmission facilities, or any combination of the three, and includes transmission lines, distribution lines, substations, switching stations, generating plants and all associated equipment for generating, transmitting, distributing or controlling flow of power. The term "Electric System" shall include any devices or equipment by which information is originated on an electric system or by the person operating such system, by which such information is transmitted, and by which such information is received either for information or for operation of the system, whether by the originating system or by another system.

"FERC" means the Federal Energy Regulatory Commission or any successor thereto.

"Generation Facility" means any facility used for the generation of electricity for sale at wholesale or retail.

"Generation Integration Agreement" means any agreement substantially in the form of this Agreement between RTO West and a party other than the Generating Party.

“Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the WSCC Interconnection. *[Note: This definition is currently used only in Recital B and the definition of “Control Area.” We may want to revisit whether it is useful if we re-visit the definition of Control Area.]*

“NERC” means the North American Electric Reliability Council or its successor organization.

“Point of Interconnection” means the point of change in operational control between an Covered Generation Facility and the RTO West Transmission System.

“Pre-existing Generation Agreement” means any agreement to which the Generating Party is a party that is in effect as of the effective date of this Agreement and that relates to the ownership or operation of a Generating Facility within RTO West’s metered Control Area boundaries and that provides for the transfer of power produced by the Generating Facility across some part of the facilities that, as of the Transmission Service Commencement Date, constitute the RTO West Transmission System.

“Remedial Action Scheme” means protective systems that typically utilize a combination of conventional protective relays, computer-based processors, and telecommunications to accomplish rapid, automated response to any electric disturbance.

“RTO West Controlled Transmission” means the collective facilities and equipment specified on Exhibit D all RTO West Transmission Operating Agreements, taken together.

“RTO West Transmission Operating Agreement” means the form of RTO West agreement by which owners of portions of RTO West Controlled Transmission have transferred operational control of such transmission facilities to RTO West.

“RTO West Transmission System” means the collective “Transmission Facilities” as defined under all the RTO West Transmission Operating Agreements, taken together.

“RTO West Transmission Tariff” means the tariff of RTO West for the provision of Transmission Services (including all appendices and schedules) as accepted for filing or approved by FERC.

“Transmission Services” has the meaning specified in the RTO West Transmission Tariff.

“Transmission Service Commencement Date” means the date that RTO West commences its provision of Transmission Service and Operational Control over the RTO West Transmission System, pursuant to the provisions of the RTO West Transmission Operating Agreement

“WSCC” means the Western Systems Coordinating Council or its successor organization.

“WSCC Interconnection” means the WSCC geographic region as defined by NERC. *[Note: This definition is currently used only in the definition of “Good Utility Practice.” If we don’t use the term “Good Utility Practice” we won’t need this definition either.]*

Exhibit B

**Covered Generation Facilities and Points of Interconnection and
Pre-existing Generation Agreements**

Exhibit C

Metering System Locations

Exhibit D

I. RTO West Remedial Action Schemes in Which the Generating Party Shall Participate

II. Other Remedial Action Schemes and Generator Tripping Agreements to Which Any Covered Generation Facility is Subject

Exhibit E

Protective Devices and Terminal Voltage Regulators

[Note – The GIA currently has no references to this exhibit. It is left here as a placeholder in case the provisions of Section 7.1 when they are developed need to identify protective devices and terminal voltage regulators]

Exhibit F

Special Arrangements

Exhibit G

Operating Representatives

[Note – The GIA currently has no references to this exhibit.]

PROVISIONS OF RTO WEST GENERATION INTEGRATION AGREEMENT TO BE INCLUDED IN RTO WEST TARIFF PROVISIONS

[General Note: I have left the numbering for all provisions shifted over from the GIA into this section as it was in the original GIA to help everyone keep track of the provisions' origin. I have also refrained from modifying the language to make it read as if it were part of the tariff, because to the extent we change the provisions at all, the effort might be superfluous -SDL]

3.6 The Generating Party's Responsibility To Protect Its Electric System. Under no circumstances shall the Generating Party's execution of this Agreement be interpreted as relieving the Generating Party from any responsibilities to protect its Electric System or as imposing any responsibility or liability on RTO West for damage to the Generating Party's Electric System or to any person or property.

4.3 Limits on Parties' Obligations Under Agreement and Applicable Tariff Provisions. In carrying out the requirements of this Agreement and applicable provisions of the RTO West Transmission Tariff, except as provided otherwise in Section 8.2.3 below, neither Party shall be required to take any action:

- (f) that is not within the physical capabilities of the Party's Electric System (or any part of another party's Electric System that the applicable Party has the legal right to cause to comply with this Agreement);
- (g) that it believes in good faith will create serious and immediate risks to human health or safety; *provided, however*, that interruption of Transmission Service shall not in itself necessarily be deemed to create serious and immediate risks to human health or safety;
- (h) that it believes in good faith will create an immediate risk of serious damage to facilities or equipment within its Electric System or will cause it to operate any part of its Electric System in an unsafe manner;
- (i) that would violate any provision of the reliability criteria, standards, guidelines and operating procedures of NERC or the WSCC, any FERC licenses with which it is obligated to comply, any applicable Nuclear Regulatory Commission licenses or requirements, the terms of any applicable permits issued by a governmental authority, or any applicable governmental laws or regulations; or

- (j) that conflict with any non-power requirements with which the Party is obligated to comply (including without limitation any obligations under environmental laws, regulations, court and administrative orders, or biological opinions);

provided, however, that neither Party may not refuse to comply with any provision of this Agreement or the RTO West Transmission Tariff on the basis that to do so would cause that Party to violate contractual obligations to supply, transmit, or deliver firm power.

6. RTO West's Obligations Concerning Operation of RTO West Controlled Transmission. In operating the RTO West-Controlled Transmission, RTO West shall, at a minimum, comply with the criteria applicable to control area operators as specified in Annex A, Section III, Subsections A through E of the WSCC Reliability Criteria Agreement as in effect and filed with FERC as of July 1, 1999 (as modified by FERC Order issued _____, 2000). Nothing in this Section 6 shall require RTO West to become a signatory to, or to comply with, any other provisions of, the WSCC Reliability Criteria Agreement or any other provisions of the WSCC Reliability Management System, and specifically (without limitation), RTO West shall have no obligation under this Agreement to submit compliance data to the WSCC or to be subject to sanctions issued by the WSCC in connection with the WSCC Reliability Management System.

7. RTO West Confidentiality Obligations.

7.1 Protection of Confidential Information. RTO West shall maintain the confidentiality of all Confidential Information of the Generating Party provided to RTO West pursuant to this Agreement; *provided, however,* that RTO West shall be entitled to disclose such Confidential Information if: (1) RTO West determines that such Confidential Information must be disclosed to avert unplanned Transmission Service interruptions or to more speedily restore Transmission Service; or (2) RTO West is required to make such disclosure by administrative or judicial order.

7.2 Disclosure Pursuant to Administrative or Judicial Order. RTO West shall promptly, and in any event at the earliest practicable opportunity before any disclosure pursuant to administrative or judicial order, notify the Generating Party of any petition for or requirement by administrative or judicial order for RTO West to disclose Confidential Information of the Generating Party to any third party. The Generating Party may, in its sole discretion and at its sole cost and expense, undertake any challenge to such disclosure. RTO West shall reasonably cooperate with the Generating Party to minimize or eliminate any such disclosure requirement consistent with applicable law, and to obtain proprietary or confidential treatment of Confidential Information by any person to whom such information is disclosed pursuant to Section 7.1.

8. Emergency Redispatch.

8.1 RTO West's Right to Direct Operation of Covered Generation Facilities. Whenever there is a threatened or actual Transmission System Emergency, RTO West shall have

the right, subject to the limitations set forth in Section 8.2 below, to direct the Generating Party to operate any Covered Generation Facility in whatever manner is required to prevent a threatened Transmission System Emergency or to mitigate the extent, duration, or severity of an actual Transmission System Emergency.

8.2 Limitations on RTO West Rights and Generating Party Obligations Relating to Transmission System Emergencies.

8.2.1 RTO West may exercise its rights under Section 8.1 above to direct operation of any Covered Generation Facility only to the extent that: (1) the action is required to prevent a threatened Transmission System Emergency or to mitigate the extent, duration, or severity of an actual Transmission System Emergency; and (2) there is insufficient time to prevent or mitigate the threatened or actual Transmission System Emergency through cooperative measures.

8.2.2 Except as specifically provided otherwise in Section 8.2.3 below, any obligation of the Generating Party to operate any Covered Generation Facility in accordance with RTO West's instructions in connection with a Transmission System Emergency shall be subject to: (1) Section 4.3 of this Agreement; and (2) RTO West's obligation to compensate the Generating Party in accordance with the provisions of [*refer to tariff section about re-dispatch compensation*].

8.2.3 Notwithstanding any other provision of this Agreement, the Generating Party's obligation to comply with any instruction issued by RTO West to take a Covered Generation Facility off-line because of a threatened or actual Transmission System Emergency shall not be subject to the limitations specified in Section 4.3 of this Agreement. [*Note – there is an open question about whether RTO West should have to reimburse a Generating Party for any fines it might incur for deviating from biological opinion provisions or other non-power requirements if the Generating Party does not have the protection of Section 4.3 with respect to “take off-line” instructions.*]

13. No Guarantee of Uninterrupted Transmission Service. Nothing in this Agreement shall be construed to imply a guarantee by RTO West, to the Generating Party or any other person, of uninterrupted Transmission Service.

15. Uncontrollable Force. A Party shall not be in breach of this Agreement as a result of such Party's failure to perform its obligations under this Agreement when such failure is caused by an Uncontrollable Force which such Party, despite the exercise of due diligence, is unable to remove with reasonable dispatch; *provided, however*, that such Party shall have the right to suspend performance of such obligations only to the extent and for the duration that the Uncontrollable Force actually and reasonably prevents the performance of such obligations by such Party. In the event of the occurrence of an Uncontrollable Force that prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Party of such Uncontrollable Force with such notice to be confirmed in writing as soon

as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligations hereunder; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance hereunder. Notwithstanding any of the foregoing, the settlement of any strike, lockout, or labor dispute constituting an Uncontrollable Force shall be within the sole discretion of the Party to this Agreement involved in such strike, lockout, or labor dispute and the requirement that a Party must use its best efforts to remedy the cause of the Uncontrollable Force or mitigate its effects and resume full performance hereunder shall not apply to strikes, lockouts, or labor disputes

17. Notices.

17.1 **Permitted Methods of Notice.** Any notice, demand, or request required or permitted under this Agreement shall be in writing and shall be deemed properly served, given, or made to the address of the receiving Party set forth below: (1) upon delivery if delivered in person; (2) five days after deposit in the mail, if sent by first class United States or Canadian mail, postage prepaid; (3) upon receipt of confirmation by return electronic facsimile if sent by facsimile; or (4) upon delivery if delivered by prepaid commercial courier service.

The address of RTO West for notices shall be:

Attn:
Telecopy:

The address of the Generating Party for notices shall be as set forth in Section 10.1 of the Generation Integration Agreement between RTO West and the Generating Party.

17.2 **Change of Notices Address.** Either Party may at any time, by notice to the other Party in the manner set forth above, change the designation, address, or telecopy number of the person specified to receive notice on its behalf.

17.3 **Specific Provision Controls.** Notwithstanding the requirements of Section 17.1, where any provision of this Agreement requires a Party to furnish any particular data, information, or notice in a specific manner or within a specific time period, such provision shall control.

***** **Definitions for RTO West Transmission Tariff Provisions*******

“Confidential Information” means any documents, data or other information received by RTO West, whether in written, oral or machine readable form, which the provider has identified in writing to be confidential, *provided* that Confidential Information shall not include (1) any information required to be disclosed pursuant to any provision of the RTO West Transmission Tariff, whether by way of RTO West’s Open-Access Same-Time Information System or otherwise; (2) information that becomes available to the public on a non-confidential basis, other than as a result of RTO West’s breach of its confidentiality obligations; (3) information received by RTO West from a third party without claim of confidentiality; or (4) information independently developed by RTO West.

“Transmission System Emergency” means an urgent event or condition affecting the RTO West Transmission System that, in the determination of RTO West, has resulted in or creates an impending threat of one or more of the following:

- (a) serious injury to human health or safety (*provided, however*, that interruption of transmission service to any load that RTO West or any other party has a firm obligation to serve shall not in itself necessarily be deemed to create a serious and impending threat of injury to human health or safety); or
- (b) serious physical damage to elements of the RTO West Transmission System or any Electric System interconnected with the RTO West Transmission System; or
- (c) unintended interruption(s) of transmission service across one or more major transfer paths: (i) within the RTO West Transmission System or (ii) within any other transmission system that is directly or indirectly interconnected with the RTO West Transmission System; or
- (d) deviation(s) in frequency or voltage that, if uncorrected, will lead to the loss (by operation of protective relay equipment) of critical elements of the RTO West Transmission System or of any other transmission system that is directly or indirectly interconnected with the RTO West Transmission System.

“Uncontrollable Force” means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, earthquake, explosion, accident to or breakage, failure or malfunction of machinery or equipment, any curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities (other than the Generating Party, if the Generating Party is a federal power marketing administration, municipal corporation, or other federal or state governmental entity or subdivision thereof), or any other cause beyond a Party’s reasonable control and to the extent without such Party’s fault or negligence.