

RTO West Stage 2 Development Process

First (and Rough) Draft of RTO West Market Monitoring Plan

December 14, 2001

This draft reflects the current status of the MMCG's discussions, and it has not been adopted or endorsed in its entirety by any of the RTO West Filing Utilities or other stakeholders. While the majority of this document's content was part of the Stage 1 consensus filing on market monitoring, there are additional features that have not yet been presented to the RRG.

Because of the need for further information regarding RTO Markets (including congestion management, transmission rights, ancillary services), the MMCG has decided to wait for this information and incorporate it prior to making its final recommendations to the RRG.

This draft is constructed for a stand-alone RTO West MMU. It is probable, however, that what is filed will be influenced by the 3/1/02 status of the SSG-WI Market Monitoring Work Group discussions regarding a single west-wide market monitoring entity.

1. PURPOSE AND OBJECTIVES OF THE PLAN¹

This RTO West Market Monitoring Plan (the "Plan") is intended to provide for the independent, impartial, and effective monitoring of, and reporting on, (1) the competitive performance and efficiency of RTO West Markets and Services, including identification of opportunities for efficiency improvements; (2) the conduct of Market Participants, Executing Transmission Owners, and RTO West including, but not limited to, any exercise or attempt to exercise market power in any RTO Market or inefficiently reduce the quantity or quality of transmission service in the region; (3) the operation, use, and congestion of the transmission system as such system affects competitive conditions in the region; and (4) the adequacy and effectiveness of any market rule, procedure, or action that affects the competitiveness or economic efficiency of RTO West's Markets and Services. *[Consider having intro mirroring Order 2000 language]*

A Market Monitoring Unit ("MMU") will implement the Plan and may report its studies and findings performed under the Plan to the Federal Energy Regulatory Commission, the U.S. Department of Justice (collectively the "Federal Agencies"), state and provincial

¹ RTO West will have a separate Tariff Compliance Office that will be responsible for monitoring and enforcing compliance with the RTO West tariff.

regulatory and enforcement entities (collectively the “Interested Government Agencies”), and RTO West, as appropriate and at its discretion, consistent with the MMU’s responsibilities under the Plan. The MMU will provide annual reports to the RTO West Board, the Federal Agencies and Interested Government Agencies, to provide them with relevant market data and the results of analyses of that data undertaken by the MMU. In addition, when the MMU detects market performance in an RTO Market that is inconsistent with a competitive market, the MMU shall further analyze the situation to determine the cause of such performance. The MMU will coordinate with the Federal and Interested Government Agencies to determine the situations where they would like the MMU to report the results of its analysis regarding market performance. *[Identify thresholds for reporting or leave to MMU and regulatory/enforcement entities?]*

The MMU will also respond to requests from the Federal or Interested Government Agencies for additional analysis or data the MMU has in its possession, subject to its obligation to protect the confidentiality of the data and consistent with the scope of its responsibilities, as determined by this Plan. *[There are considerable sensitivities about confidentiality issues which will need to be addressed in detail after more information is provided about RTO Markets and the nature of the information the RTO is likely to need/have.]* The MMU will also respond to complaints by RTO West customers that allege a failure by RTO West to properly enforce the provisions of the tariff in a manner that affects market efficiency or concerns raised about the conduct of the RTO as a Market Participant.

The Plan is intended to protect and foster competition, while minimizing interference with open and competitive markets. The MMU will recognize that conduct that might under some circumstances suggest an attempt to exercise market power is, under other circumstances, pro-competitive and efficient. In making this distinction, the MMU will generally focus on an analysis of the identified conduct and associated market impacts, rather than seeking to determine the intent of the participant (e.g., the MMU would not conduct profitability analyses that require comprehensive information on all the physical and financial positions of a participant). The MMU will work to ensure that all monitoring and reporting activities are implemented fairly and consistently in accordance with the Plan.

2. INDEPENDENCE OF MARKET MONITORING UNIT

The MMU shall be granted complete independence to perform those activities necessary to provide impartial and effective market monitoring within the scope of the Plan. No person, party or agent, including the RTO West Board or employees, Federal or Interested Government Agency shall be granted authority to screen, alter, delete, or delay MMU analyses or the preparation of findings, conclusions, and recommendations developed by the MMU that fall within the scope of market monitoring responsibilities contained in the Plan.

3. DEFINITIONS

For purposes of this Plan, capitalized terms have the following meanings:

3.1 Federal Agencies

“Federal Agencies” means the Federal Energy Regulatory Commission, Department of Justice, [*Corps of Engineers? Bureau of Reclamation?*] and any other entity within the Federal government with jurisdiction or regulatory authority over energy market matters in the RTO West region. [*May not need to have separate category for Federal Agencies – think we are treating them the same way*]

3.2 Interested Government Agencies

“Interested Government Agencies” means the Federal Energy Regulatory Commission, the State Regulatory Commissions, Canadian Provincial Regulators, the U.S. Department of Justice, State Attorneys General, and other governmental bodies given jurisdictional or regulatory authority over energy market matters in the RTO West region.

3.3 Market Monitoring Unit

“Market Monitoring Unit” means the person or persons, or consulting firm or other entity, retained by the RTO West Board to carry out this Plan.

3.4 Market Participant

“Market Participant” means any entity that, either directly or through an affiliate, sells, brokers, or purchases electric energy, transmission services, or ancillary services in RTO West Markets.

3.5 Monitoring

“Monitoring” means the actions of the MMU taken in the course of fulfilling the responsibilities set forth below in Section 5.1.

3.6 Plan

“Plan” means RTO West’s Market Monitoring Plan set forth in this document.

3.7 RTO West Markets

“RTO West Markets” means only those markets that are created, administered, coordinated or facilitated by RTO West. Such markets may include an imbalance energy market, a congestion management market or system, an ancillary services market, a market for the purchase or sale of transmission rights, and any other market created, administered, coordinated or facilitated by the RTO West.

3.8 RTO West Services

“RTO West Services” means tariff services provided by RTO West.

3.9 State and Provincial Regulatory Commissions

“State and Provincial Regulatory Commissions” means those State and Provincial Regulatory commissions in those states and Canadian Provinces that contain a portion of the RTO West Transmission System or regulate Market Participants.

4. SCOPE OF MONITORING

4.1 Markets to be Monitored

[The MMCG currently has two options under consideration:]

Option A – the Stage 1 approach

The MMU will monitor RTO West Markets, including the imbalance energy market, any congestion management market or system, any ancillary services and control area service markets, any market for the purchase or sale of transmission rights, and any other market created, administered, coordinated, or facilitated by RTO West.

The MMU may monitor such other markets as it determines are appropriate to fulfill its responsibilities; provided, if such market is already monitored by an independent entity, the MMU shall not duplicate such entity’s efforts but shall rely on its reports.

The MMU shall periodically assess the effect of bilateral energy or capacity markets, or private transmission rights not administered, coordinated or facilitated by the RTO, on RTO West’s Markets and Services, or the effects of RTO West’s Markets and Services on such markets.

Option B – Limiting What the MMU Can Monitor

The MMU’s Market Monitoring responsibilities extend only toward monitoring RTO West Markets.

The MMU may gather any publicly available data and information and perform any analysis pertaining to such other markets that it determines appropriate to fulfill its Market Monitoring responsibilities; provided, if such market is already monitored by an

independent entity, the MMU shall not duplicate such entity's efforts but shall rely on its reports. These markets may include without limitation gas and fuel markets, spot markets, fuels transportation markets, and futures markets. *[This paragraph relates to "tracking" as opposed to "monitoring" markets]*

The MMU shall periodically assess the effect of bilateral energy or capacity markets, or private transmission rights not administered, coordinated or facilitated by the RTO, on RTO West's Markets and Services, or the effects of RTO West's Markets and Services on such markets. The scope of such assessments shall be limited to the extent required to fulfill the Commission's Order No. 2000 requirements that such assessments be performed and subsequent orders on this topic.

4.2 Persons and Entities Subject to the Plan

RTO West, the MMU, and any person or entity participating in any of RTO West's Markets or that takes service under or is a party to any RTO West tariff or agreement, shall be subject to the terms, conditions and obligations of this Plan.

5. STRUCTURE

5.1 Responsibilities of Independent Market Monitor

The MMU shall:

- (1) Advise RTO West, and shall prepare and submit to Commission the reports specified herein, on the nature and extent of, and any impediments to, competition in and the economic efficiency of RTO West's Markets and Services;
- (2) Assist in the development of this Plan, including the screens and indices described in Section 7 of the Plan and a process²;

² The process must:

- 1) Achieve market monitoring goals and objectives;
- 2) Afford procedural protections to all participants;
- 3) When data alerts the MMU of market performance inconsistent with a competitive market, as part of the follow-up analysis, if individual conduct is evaluated, the process should, at a minimum, specify when and how a party should be notified, address confidentiality issues, and set a standard for how the RTO decides when to report to regulatory agency;
- 4) Accommodate differing jurisdictional requirements for market participants and transmission owners (in particular with respect to Canadian participants);
- 5) Provide more specifics regarding the information that will be collected and maintained by the MMU (at this time it is assumed that the needed information will already be provided to the RTO in the ordinary course of business);
- 6) Provide more specifics regarding the annual report regarding non-RTO markets;
- 7) Provide specifics regarding maintenance and dissemination of information (provided, sensitive bid data will only be released in conformance with current FERC standards/policy);

- (3) Implement this Plan, including the following responsibilities:
- (a) Collect information on RTO West Markets and Services as part of the regular course of RTO business;
 - (b) Assemble such information;
 - (c) Disseminate non-confidential information on RTO West Markets and Services, provided that sensitive bid data shall be disseminated in compliance with the Protection of Confidential Data, section 6.1 below;
 - (d) Evaluate the information;
 - (e) Where the MMU has detected RTO West market performance that is inconsistent with a competitive market, analyze further to determine the cause of the inconsistent performance;
 - (f) Report data collected pursuant to this Plan to the appropriate entities as described in this Plan; and
 - (g) Consider RTO West and Market Participant operational behavior in response to a submitted complaint;
- (4) Recommend to RTO West modifications to improve its market rules, tariffs, protocols, or other corrective actions to remedy design flaws or otherwise improve the competitiveness or efficiency of RTO West's Markets and Services;
- (5) Recommend to RTO West modifications to improve market rules, tariffs, or protocols to improve the compatibility of RTO West's Markets and Services with markets and services provided by other western RTOs;

-
- 8) Provide guidance on how the MMU professional staff will objectively evaluate market performance to identify performance that is inconsistent with a competitive market and investigate the causes of such performance (industry standards should be described or identified that could be considered by the MMU staff to aid their professional judgment);
 - 9) Provide that the RTO does not have superior access to work product of the MMU to avoid conflict of interest issues;
 - 10) Provide the Board the ability (after it has complied with procedural safeguards) to act quickly (and with FERC approval) to change the RTO's rules and market design as appropriate after consideration of the MMU/staff recommendations regarding design flaws or market inefficiencies, especially in the first few years of the RTO's existence;
 - 11) Establish communication protocols among MMU and other units of the RTO staff;
 - 12) Not distinguish between the RTO and other market participants for purposes of the process (the RTO gets the same treatment as others);
 - 13) Provide for an annual evaluation of the RTO's design's impact on the market; and
 - 14) Be timely and cost effective.

(6) Monitor RTO West Markets and Services and, when it detects market performance that is inconsistent with a competitive market, analyze further to determine the causes of such performance; and

(7) Shall have such other duties and responsibilities as specified in this Plan, as it may be amended from time to time.

The MMU shall not have any authority:

(1) To enforce antitrust or other laws, but instead shall notify law enforcement authorities of suspected violations of law.

(2) To impose penalties of any sort;

(3) To implement price mitigation measures or changes in tariff provisions or market design; provided, in its review of the design of RTO West Markets and Services, the MMU may recommend to the RTO West Board and the Commission that specific mitigation measures or changes to tariff provisions or market design be adopted.

[(4) To pursue or refer to the RTO Board, Federal and Interested Government Agencies the evaluation, study or analysis of market activity that is performed by a Market Participant consistent with system operation obligations or constraints imposed by law, statute, regulation, administrative order, treaty obligations, (Security Coordinator orders?, WECC and similar regional reliability groups' orders?) so long as the market activity is consistent with such law, statute, regulation, administrative order, treaty obligations, (Security Coordinator orders?, WECC and similar regional reliability groups' orders?). – THIS NEEDS FURTHER MMCG DISCUSSION, IN PRINCIPLE AGREEMENT BUT NEED TO COORDINATE ON WORDING]

5.1.1 Retention of the Market Monitoring Unit³

The RTO West Board of Directors shall retain or assist in the creation of a firm that has experience and expertise appropriate to the analysis of competitive conditions in markets for energy, ancillary services, and transmission rights, and to such other responsibilities as are assigned to the MMU under this Plan.

5.1.2 Conflicts of Interest

The RTO West Board of Directors shall adopt a policy on conflicts of interest for the MMU establishing appropriate standards for the professional and financial independence

³ At this point, the MMCG has not yet concluded whether, for a stand-alone RTO West MMU, whether they would recommend that the MMU be internal to the RTO or external. The MMCG is waiting to see the progress of the SSG-WI discussions before developing its final recommendation. As such, the reviewer of this document should keep in mind that it could ultimately be tailored to support either an internal or external MMU.

of the MMU, including ethics policies and standards for MMU employees, subcontractors, [and, if applicable, Board members]. The MMU, including each member, employee, or subcontractor of the MMU's firm, shall comply at all times with the conflicts of interest and ethics policies, and shall certify such compliance to the RTO West Board of Directors upon request.

5.1.3 Legal Advice

The MMU may consult legal counsel for advice on antitrust, regulatory, or other legal issues pertinent to this Plan.

5.1.4 Complaints Regarding Tariff Compliance

The RTO West Tariff Compliance Office will resolve all complaints alleging non-compliance with the RTO West Tariff and such resolutions shall be subject to the RTO West Tariff ADR process. *[More details will be provided about the Tariff Compliance Office in the 3/1 filing.]*

[At its 12/11 Meeting, the MMCG concluded that there should be a role for the MMU in responding to complaints about a failure of the RTO to comply with its tariff or to enforce its tariff, without undermining the Tariff Compliance Office or dispute resolution. In short, in instances where the meaning of the tariff is not in dispute, the MMU will issue an advisory statement as to whether the RTO was in compliance. This statement will be provided to the RTO Board, the Federal and Interested Government Agencies, and to any subsequent dispute resolution forum (leaving to the arbitrator the weight to be given to the statement). A process will be developed that provides procedural safeguards. The following two options reflect language that was proposed by two content group members after the meeting that have not yet been discussed by the content group.]

Option A –

Any entity may present to the MMU allegations that RTO West has failed to comply with the RTO West Tariff. Where the MMU determines, in its sole discretion, that such allegations, if proven, could reasonably be believed to impact the performance of RTO West Markets, then the MMU may investigate such complaints. If the results of such an analysis clearly indicate that RTO West has failed to comply with the RTO West tariff, then the MMU may issue an advisory opinion stating its conclusions the reasons therefore. At the complainant's request, the MMU shall transmit any such advisory opinion to an arbitrator appointed pursuant to the RTO West Tariff ADR provisions, and such arbitrator may give whatever weight to such opinion that the arbitrator deems appropriate. If the results of such an analysis do not clearly indicate that RTO West has failed to comply with the RTO West tariff, the MMU may issue a statement so indicating, but shall refrain from otherwise reporting on the matter.

Option B –

When requested by a Market Participant (or jurisdictional entity?), or when the Market Monitoring Unit finds other cause to question RTO West's compliance with its tariff, the Market Monitoring Unit may (shall?) examine RTO West's compliance with the specific portion of the tariff in question. RTO West will cooperate and make available all information reasonably needed to make a determination of their compliance with that aspect of the tariff within a reasonable timeframe.

To instigate a compliance check, a market participant (or jurisdictional entity) shall send a written request to the Market Monitoring Unit (should possibly include appropriate address in tariff). The request for compliance check must include:

- 1) A reference to the portion of the tariff for which RTO West compliance is in question
- 2) A contact name and number for an staff member or attorney who is familiar with the request and,
- 3) As much specific detail as to why compliance is in question as is available.

The Market Monitoring Unit will acknowledge receipt of the question within five (5) business days and will include a timeframe in which a substantive response can be expected.

A tariff compliance check is not the appropriate mechanism for resolution of policy disputes. The Market Monitoring Unit maintains the right to refuse analysis of frivolous questions.

5.2 Market Monitoring Executive *[Goal of 5.2 and 5.3 is to provide for fiscal and performance accountability of the MMU while assuring it sufficient independence.]*

The RTO West Board of Directors shall employ an executive who shall be responsible for administrative oversight of the contractual agreement with the MMU and shall provide administrative oversight of the budget and performance of the MMU. The executive shall serve as a liaison between the MMU and the RTO West Board of Directors

5.3 Market Monitor Liaison

RTO West's Board of Directors shall appoint a Market Monitoring Liaison from the MMU staff who shall: *[or perhaps it should be the MMU that appoints a liaison with the RTO staff]*

- (1) Work on a planning and policy basis to support the efforts of the MMU to collect necessary data and information from the West staff;

- (2) Coordinate with the RTO West staff when the MMU evaluates the need for corrective measures, including but not limited to rule or tariff changes.

6. DATA COLLECTION AND DISSEMINATION

The MMU's access to information generated by RTO West and RTO West Market participants shall be limited to information collected by RTO West in its regular course of business. The MMU shall not have the ability to compel further production of information.

6.1 Access to RTO West's Data and Information *[The MMCG needs to talk further about specifics of data collection and dissemination, in particular, will any information be confidential and how will it be handled. The group will discuss this after final decisions have been made about congestion management and ancillary services. In the meantime, the language below is just a placeholder. Will have RTO West website where information is made available.]*

For purposes of carrying out its responsibilities under this Plan, the MMU shall have access to data or other information gathered or generated by RTO West in the course of their operations. This data and information shall include, but not be limited to,

- 1) Hourly injection and withdrawal schedules, bids, and actual output for the generating units within the RTO West System (including designated network resources outside the RTO);
- 2) Catalogued transmission rights within, into, out of, or through the RTO West System;
- 3) Transmission limits (including temporary deratings) on each of the monitored *[flowgates or other relevant transmission facilities – will need to true-up to final congestion management decisions]*;
- 4) Hourly flow over each of the *[monitored flowgates or other relevant transmission facilities – will need to true-up to final congestion management decisions]*;
- 5) Dispatch of generation for energy, regulation, and frequency or other operational orders, including RTO or control area operating logs or other information pertaining to such dispatch;
- 6) Redispatch of generation or other actions taken to manage transmission congestion;
- 7) Generation meter data or other actual production data;
- 8) Logs of transmission requests, including the disposition of the request and the explanation for any refused, retracted or annulled requests;

- 9) Logs of generator interconnection requests, including the disposition of the request and the explanation of any refused requests;
- 10) Generation and transmission facility outage data;
- 11) Records of complaints by RTO West Market Participants; and
- 12) Other information required to be provided to RTO West under its tariffs, operating agreements, contracts, reliability organization requirements, or government agency orders.

6.1 Protection of Confidential Data

[Need to discuss in more detail, as described above. In Stage 1, it was agreed that the release of sensitive bid data would be governed by current FERC and RTO standards and policies (currently six (6) month lag time, masked identities.)]

7. PERFORMANCE INDICES AND SCREENS

7.1 Development of Indices and Screens [Objective Standards]

The MMU, with due consideration of the proposals and comments of Market Participants and other interested parties submitted as specified below, and subject to review and comment by the Market Monitor Liaison, shall develop and adopt such indices or other screens for reviewing the data or other information as the MMU deems appropriate.

7.2 Consultation with Market Participants

In connection with the development of indices and screens as specified above, Market Participants, Interested Government Agencies, or other interested parties may submit proposed indices or screens for review of the data or other information collected in connection with the implementation of this Plan, along with any justification for the adoption thereof, to the MMU for consideration and adoption if and to the extent appropriate. The MMU shall provide Market Participants and other interested parties the opportunity to comment on any new indices and screens prior to their adoption.

7.3 Use of Indices and Screens

As much as practicable, the MMU shall review data or other information collected in connection with implementation of this Plan in accordance with the indices or screens adopted as specified above; provided that nothing herein shall be deemed to prevent the MMU from conducting such further or different review or evaluation of such data or information as appropriate for the effective implementation of this Plan.

8. COMPLAINTS AND REQUESTS FOR FURTHER ANALYSIS

8.1 Requests from Interested Government Agencies *[Need to hear from CREPC representatives as to whether they need something different than this -- still need to finalize recommendation regarding treatment of confidential information and whether it can/should be withheld from an Interested Government Agency.]*

Any Federal or Interested Government Agency may at any time submit information to the MMU concerning any matter relevant to the responsibilities of the MMU under the Plan, or may submit a request to the MMU for it to conduct a study needed to support the Federal or Interested Government Agency in carrying out its responsibilities. Such submissions or requests may be made on a confidential basis. To the extent the MMU, in the MMU's sole discretion⁴, deems such a study consistent with and reasonably necessary to fulfill its responsibilities under this Plan, the MMU shall carry out the requested study. The MMU shall report the results of these studies to the RTO West Board of Directors and, *[subject to redaction or other measures necessary for the protection of confidential information?]*, to the agency requesting the analysis and, as appropriate, to the Commission and other Interested Government Agencies.

8.2 Requests from Others

The RTO West Board, any Market Participant, or any other interested person or entity may at any time submit information to the MMU concerning any matter relevant to the responsibilities of the MMU under the Plan, or may submit a request to the MMU for it to conduct an analysis. Such submissions or requests may be made on a confidential basis. The MMU may request further relevant information available from such Market Participant or other person or entity as a condition of undertaking any further analysis. The MMU shall either decline to take further action or shall carry out whatever analysis it deems consistent with and reasonably necessary to fulfill its responsibilities under this Plan.

8.3 Procedural Safeguards

The MMU, in an open stakeholder process, will develop procedures to govern its further analysis, including responding to request or complaints and determining the cause of performance in an RTO West Market that is inconsistent with a competitive market. These procedures will ensure that an accurate and complete record will be developed, including an opportunity for Market Participants that are the subject of an MMU analysis to review data, furnish data, information, interpretations, analysis, and conclusions that will become part of the factual record pertaining to the analysis.

⁴ In exercising this discretion, the MMU's first priority is to make sure that RTO West Markets are designed and operating appropriately, its second priority is to assist Federal and Interested Government Agencies with jurisdiction over market performance and the RTO with further analysis, and its third priority is to provide assistance regarding other parties' requests for further analysis.

8.4 Reporting of Complaints and Requests

The MMU shall include a summary of its actions or decisions not to act in its annual report as well as in any other periodic or other reports on any matters within its purview as may be requested by the RTO West Board of Directors and any of the Interested Government Agencies.

9. REPORTS

9.1 Periodic Reports

The MMU shall prepare and submit to the RTO West Board of Directors at least an annual report on the competitive performance and efficiency of RTO West's Markets and Services. Such report shall include any recommendations of the MMU for the improvement of RTO West Markets or RTO West Services, or of the monitoring, reporting, and other functions undertaken pursuant to this Plan. The report shall also include a description of all requests for analysis and complaints and the resolution or disposition thereof. A copy of the report shall be forwarded by the MMU to each of the Interested Government Agencies. Copies of the report shall be made publicly available by RTO West, subject to redaction or other measures necessary for the protection of confidential information.

9.2 Other Reports or Filings

The MMU shall prepare such other periodic or other reports on any matters within its purview as may be requested by the RTO West Board of Directors. Interested Government Agencies may request that the MMU prepare other reports on any matters needed to support their jurisdictional responsibilities that are within its the MMU's purview. As instructed by the RTO West Board of Directors or, to the extent the MMU, in the MMU's sole discretion, deems such reports consistent with and reasonably necessary to fulfill its responsibilities under this Plan, the MMU shall prepare such reports. The MMU shall also prepare other reports that it deems necessary.

Copies of such reports shall be made publicly available by the MMU, subject to redaction or other measures necessary for the protection of confidential information. *[Once again, pending final recommendation re treatment of confidential information, especially with regard to Interested Government Agencies.]*

10. EMERGENCY RULE CHANGES

At the 12/11 MMCG Meeting, the group developed a preliminary approach on how to handle emergency rule changes. There were a number of qualifications as to when this could be done and how. Those qualifiers include:

Anticipated will be used only rarely, procedure only available during first five years of RTO existence;
Prospective application only;
RTO staff will need to demonstrate that emergency action is warranted (high threshold);
Board must approve by supermajority;
Only in effect for 90 days – at time the RTO implemented rule change would need to make filing with FERC to request permanent rule change or to explain why temporary change is appropriate;
If rule change calls for any penalties or surcharges to be imposed, subject to refund if FERC does not agree with rule change;
Market Participants will be involved in emergency rule changes on expedited basis (have standing committee of representative subset of Market Participants to respond and provide input immediately – what is in rule change is up to RTO, but must consider input of Market Participants);

The following is language that was suggested by one MMCG member after the meeting:

The MMU may identify and develop proposed changes in tariff provisions or market design, and may discuss these proposals with the RTO West Board of Directors, RTO West staff, and Market Participants. The MMU may indicate its preference that such proposals be given expedited treatment. The RTO West Board of Directors will give due consideration to such proposals and preferences and will utilize available fast track Commission procedures to file any such proposals deemed acceptable and necessary, in the sole discretion of the RTO West Board of Directors.

11. LIABILITY *[The MMCG needs input from the lawyers on this section!]*

The liability of RTO West, and its directors, officers, employees and agents, and of the MMU, for any matter arising under or relating to this Plan shall be governed by this section. RTO West, and its directors, officers, employees and agents, and the MMU, shall not be liable to any person or entity for any matter, act or omission described in or contemplated by this Plan, as the same may be amended or supplemented from time to time, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect or consequential damages of any kind resulting from or attributable to any act or omission of RTO West or the MMU under this Plan unless the foregoing persons or organizations are found to have engaged in gross negligence or willful misconduct by a court of competent jurisdiction. RTO West shall indemnify and hold harmless its directors, officers, employees and agents and the MMU of and from any and all actions, claims, demands, costs (including any form of damages or other economic loss and all court costs and reasonable attorneys' fees) and liabilities to third parties, arising from or in any way connected with, the implementation or a failure to implement this Plan, except to the extent that such action, claim, demand, cost or liability results from the gross negligence or willful misconduct of any of the foregoing persons.

12. RIGHTS AND REMEDIES

a) With the exception of the limitation of liability specified in this Plan, nothing herein shall prevent RTO West or any other person or entity from asserting any rights it may have under the Federal Power Act or any other applicable law, statute, or regulation, including the filing of a petition with or otherwise initiating a proceeding before the Commission regarding any matter which is the subject of this Plan.

b) Except as and to the extent otherwise specified in this Plan, disputes as to the implementation of or compliance with this Plan shall be subject to the RTO West dispute resolution procedures.

12. EFFECTIVE DATE

[To be determined in context of entire filing.]