

## **Outline of Proposed RTO West Tariff ADR Process (Based on October 5, 2001 Draft)**

- Dispute resolution process applies to disputes arising under the RTO West Tariff.
  - Does not apply to disputes over whether rates and terms are “just and reasonable” or to process for changing rates and terms.
  - Does not apply to pre-existing agreements.
- The RTO West Tariff dispute resolution provisions are similar in many respects to those of the California ISO.
- Disputes are initiated by serving a statement of claim.
- Parties may agree to delay arbitration while negotiating or using mediation to resolve the dispute informally.
- Generally, the parties select a single arbitrator if a dispute proceeds to arbitration. There can be a panel of three arbitrators if some parties wish, but the parties electing a three-arbitrator panel pay the additional costs.
- RTO West will have an arbitration committee (which will be balanced and consist of representatives of the various stakeholder groups and of RTO West) that will maintain a list of qualified arbitrators for instances in which disputing parties don’t agree on an arbitrator
- There will be a set of procedural rules for arbitration (based on the AAA commercial rules) that supplement the specific provisions of the RTO West Tariff relating to dispute resolution. Disputing parties will have the ability to modify the procedural rules by agreement.
- Intervention is subject to the arbitrator finding that the party requesting intervention has shown sufficient grounds. Only eligible customers and RTO West members will be able to petition to intervene in RTO West Tariff disputes.
- There are two types of intervenor status under the dispute resolution procedures – full party status (upon an adequate showing), or, if the basis for intervening is not adequate to support full party status, then status as a participant is the alternative.

- Participants' rights in RTO West Tariff disputes are limited. Participants have the right to:
  - Be timely served by the parties with copies of all pleadings;
  - File written post-hearing comments; and
  - Attend hearings conducted by the arbitrator.
- For good cause shown, the arbitrator may grant participants certain additional rights:
  - To file expert testimony on one or more specifically-identified discrete issues;
  - To cross examine one or more witnesses on those issues;
  - To submit briefs on those issues; and
  - To participate in oral argument on those issues.
- Unless the parties agree to use "baseball" arbitration, the arbitrator's award is to be a reasoned decision accompanied by findings of fact and conclusions of law, based on specific guidelines in the arbitration provisions (the terms of the RTO West Tariff, consistency with law and FERC policy, etc.).
- The arbitrator has to power to shift arbitration costs (but not attorney's fees) for bad faith.
- Awards may be appealed to FERC (or, in limited circumstances, to a court of competent jurisdiction) on specified groups (such as inconsistency with law or regulator, arbitrator misconduct, etc.).