

ATTACHMENT A
RTO WEST TRANSMISSION OPERATING AGREEMENT

(Excerpts with dispute resolution provisions only)

18. Dispute Resolution.

18.1 Matters Subject to Dispute Resolution. The Dispute Resolution provisions of this Agreement may be invoked by either Party to resolve (1) any dispute arising under this Agreement or under the RTO West Tariff, except disputes relating to the rates charged by the Executing Transmission Owner; (2) challenges pursuant to Section 3.2 to agreements to be entered into by RTO West to create an Additional Participating Transmission Owner; and (3) any disputes over which provisions of any Transmission Agreement between the Executing Transmission Owner and any other Participating Transmission Owner should be suspended.

18.2 Preconditions to Arbitration.

18.2.1 Informal Settlement. Each Party shall make all reasonable efforts to settle all disputes governed by this Section. In the event any such dispute is not settled, either Party may request in writing that the manager of WRTA (or its successor organization) appoint an impartial facilitator to aid the Parties in reaching a mutually acceptable resolution to the dispute; the Parties shall request that such appointment shall be made within ten (10) calendar days of receipt of the request. The facilitator and representatives of the Parties with authority to settle the dispute shall meet within twenty-one (21) calendar days after the facilitator has been appointed to attempt to negotiate a resolution of the dispute. Settlement offers shall not be admissible in any subsequent Dispute Resolution process. With the consent of all Parties, resolution may include referring the matter to a technical body for resolution or for an advisory opinion.

18.2.2 Impasse. If the Parties have not succeeded in negotiating a resolution of the dispute within thirty (30) calendar days after first meeting with the facilitator or if the facilitator is not appointed within ten (10) calendar days pursuant to Section 18.2.1, unless

otherwise agreed, the Parties shall be deemed to be at an impasse and any such disputing Party may commence the arbitration process provided hereunder by notice to the other Party. RTO West shall post on the RTO West Web Site notice of the commencement of any Dispute Resolution process with respect to any Participating Transmission Owner or Eligible Customer within forty-eight (48) hours after RTO West sends or receives such notice.

18.2.3 Statements of Dispute. Within fourteen (14) calendar days of a Party's request that the arbitration process be commenced, each Party shall submit a statement in writing to the other Party, which statement shall set forth in reasonable detail the nature of the dispute, the issues to be arbitrated, and the proposed arbitrator's award sought through such arbitration proceedings. To the extent the Parties do not agree on the terms of a required contract provision, each submittal shall include proposed contract language for those issues in dispute.

18.2.4 Selection of an Arbitrator. Within ten (10) calendar days following the submission of their statements, the Parties shall select an arbitrator familiar with and knowledgeable about the policies and criteria used in the Control Area, RTO West Transmission Systems and regulatory requirements. If the Parties cannot agree upon an arbitrator, or do not agree on a means of selecting an arbitrator that differs from that set forth herein, the Parties shall take turns striking names from a list of ten (10) qualified individuals supplied by the WRTA Arbitration Committee from the list maintained by the WRTA Board, with a Party chosen by lot first striking a name. The last remaining name not stricken shall be designated as the arbitrator. If that individual is unable or unwilling to serve, the individual last stricken from the list shall be designated and the process repeated until an individual is selected who is able and willing to serve. Absent the express written consent of all Parties as to any particular individual, no person shall be eligible for selection as an arbitrator who is a past or present officer, member of the

governing body, employee of or consultant to any of the Parties, or of an entity related to or affiliated with any of the Parties, or whose interests are otherwise affected by the matter to be arbitrated. Any individual designated as an arbitrator shall make known to the Parties any such disqualifying relationship, and a new arbitrator shall be designated in accordance with the provisions of this Section.

18.2.5 Party Option to Obtain Three Arbitrator Panel. As an alternative to selecting one arbitrator under Section 18.2.4, either Party may elect to constitute a three-member arbitration panel, and the other Party shall cooperate in the selection of such panel.

18.2.5.1 The Party so electing shall be responsible for the costs of two-thirds of the costs of the arbitration (but not including the disputing parties' costs associated with attorney and witness fees and expenses), regardless of the outcome of the arbitration, unless the disputing parties agree to an alternate method of allocating costs. The remaining one-third of the costs shall be allocated pursuant to the method established under Section 18.4.1.

18.2.5.2 Each arbitrator shall meet the independence requirements in Section 18.2.4.

18.2.5.3 Unless otherwise agreed by the Parties, the three arbitrators shall be selected in the following manner: (i) the WRTA arbitration committee shall provide to the Parties a list of fifteen (15) qualified individuals from the list maintained by the WRTA board; (ii) the Parties shall take turns striking names from the list, with a Party chosen by lot first striking a name; and (iii) the three remaining names not stricken shall constitute the arbitration panel.

18.2.5.4 The arbitration panel shall decide all matters by majority vote.

18.2.5.5 All other procedures, rights and obligations set out in this Section 18 shall apply to the arbitration, and all references to the “arbitrator” also shall be deemed a reference to the three-member arbitration panel so chosen.

18.2.6 Procedural Rules. The arbitrator shall determine discovery procedures, compliance with intervention requirements, how evidence shall be taken, what written submittals may be made and other such procedural matters, taking into account the complexity of the issues involved, the extent to which factual matters are disputed and the extent to which the credibility of witnesses is relevant to a resolution of the dispute. Intervenors shall have the same procedural rights as parties to the dispute. Each party to the dispute shall produce all evidence determined by the arbitrator to be relevant to the issues presented. To the extent such evidence involves proprietary or confidential information, the arbitrator shall issue an appropriate protective order which shall be complied with by all parties to the dispute. The arbitrator may elect to resolve the arbitration matter solely on the basis of written evidence and arguments.

18.2.7 Intervention. The arbitrator shall admit as intervenors in the Dispute Resolution process any party that requests intervention and demonstrates to the arbitrator good cause for intervention. Absent the agreement to the contrary of all parties, no party shall be permitted to intervene unless, as a condition of its intervention, it agrees to be bound by the provisions of this Section in regard to the arbitration, including the provisions related to deference on appeal to the FERC set forth in Section 18.5 and to deference on appeal to a Canadian Regulatory Authority set forth in Section 18.6. A Participating Transmission Owner shall not be disallowed from intervening solely on the basis that its principal place of business is not located in the nation in which the other party’s principal place of business is located. Any entity shall be entitled to intervene as a matter of right in any arbitration involving the

Transmission Facilities of such entity or if electrical energy to be bought or sold by such entity is to be transmitted over the facilities at issue in the arbitration, and shall be deemed to have standing as a party to any appeal of any such arbitration.

18.2.8 Evidence. The arbitrator shall take evidence submitted by the disputing parties in accordance with procedures established by the arbitrator and may request additional information, including the opinion of recognized technical bodies. All disputing parties shall be afforded a reasonable opportunity to rebut any such additional information. Other affected entities may request in writing that the arbitrator consider additional information, and the arbitrator may consider such additional information, subject to a right of the disputing parties to have a reasonable opportunity to rebut such additional information.

18.3 Substantive Standards and Decision. As soon as practicable but in no event later than one hundred fifteen (115) calendar days of his or her selection as arbitrator, the arbitrator shall select, by written notice to the disputing parties, the proposed award of a disputing party which best meets the terms and intent of this Agreement, any provisions of the RTO West Tariff not inconsistent with this Agreement; other applicable agreements, laws or regulations; applicable technical standards and criteria not inconsistent with this Agreement; and any other policies or determinations by the arbitrator not inconsistent with this Agreement; provided, however, if the arbitrator concludes that no proposed award is consistent with the above considerations or that no proposed award addresses all issues in dispute, the arbitrator shall specify how each proposed award is deficient and request that the disputing parties submit new proposed awards that cure the deficiency perceived by the arbitrator. A written decision, including specific findings of fact, explaining the basis for the award shall be provided by the arbitrator with the written notice to the disputing parties. Awards shall be based only on the

evidence on the record before the arbitrator. No award that is not appealed shall be deemed to be precedential in any other arbitration related to a different dispute.

18.4 Compliance and Costs.

18.4.1 Compliance with the Arbitrator's Award. Immediately upon the decision by the arbitrator, except during the period of appeal as provided for in Sections 18.5 or 18.6, the disputing parties shall commence to take, and thereafter diligently prosecute to completion, whatever action is required to comply with the selected award to the extent the selected award does not require regulatory action. To the extent the award requires approval or regulatory action by a local, tribal, state, federal or provincial body of competent jurisdiction; FERC review of an award involving a federal power marketing agency; or a FERC filing by a transmission provider subject to Sections 205 or 206 of the Federal Power Act, 16 USC §§824 d. and e.; or a Canadian Regulatory Authority filing by a Canadian Participating Transmission Owner; the affected disputing party shall promptly submit and support that portion of the award with the appropriate authority except as provided in Section 18.5 or Section 18.6. Any and all costs associated with the arbitration (but not including the disputing parties' costs associated with attorney and witness fees) shall be borne by the disputing party or parties whose proposed award was not selected, unless the disputing parties agree to an alternate method of allocating costs, or unless the arbitrator determines it would be appropriate to allocate all or a portion of such costs to one or more intervenors.

18.4.2 Effect of Award. Except for it not being precedential in other arbitrations and except for an award involving transmission facilities in Canada, an award that is not appealed shall be deemed to have the same force and effect as an order entered by the FERC pursuant to the FPA or applicable authority where the FERC has no jurisdiction, and, with

respect to any request for interconnection or Transmission Services, the parties to the arbitration shall be deemed to have been proceeding under the FPA or applicable authority where the FERC has no jurisdiction.

18.5 Appeal in the United States of America.

18.5.1 Grounds for Appeal. Within thirty (30) calendar days of the issuance of any arbitration award, any party to an arbitration may apply to the FERC to hear an appeal of such award with respect to matters to which the FERC has jurisdiction, or to a court of competent jurisdiction when FERC has no jurisdiction, but only upon the grounds that the award is contrary to or beyond the scope of this Agreement or is unjust, unreasonable, unduly discriminatory or preferential or otherwise inconsistent with the FPA or the FERC's then applicable standards or policies or applicable law. Any appeal to the FERC shall be based solely upon the record assembled by the arbitrator; provided however, that any order by an arbitrator excluding material from the arbitration record or any ruling that is alleged to violate due process may be explicitly appealed to the FERC by a party as a part of an appeal under this Section 18.5. Parties to arbitrations agree that (1) the FERC should afford substantial deference to the factual findings of the arbitrator; (2) the portion, if any, of the award relating to issues not of first impression (i.e., matters previously decided by the FERC or a court of competent jurisdiction in cases involving comparable facts and circumstances) should be afforded appropriate deference by the FERC; and (3) the portion, if any, of the award relating to issues of first impression should be afforded no deference by the FERC. Implementation of the award shall be stayed pending an appeal to FERC unless and until, at the request of a disputing party, the FERC issues an order shortening or extending the stay.

18.5.2 No Expansion of Factual Record. No party to an arbitration shall seek to expand the factual record before the FERC beyond that assembled by the arbitrator, except that any party to an arbitration may submit such additional evidence or argument as may be needed to respond to new evidence or arguments raised by intervenors before the FERC who were not parties to the arbitration.

18.6 Canadian Review of Arbitration Awards.

18.6.1 Canadian Facilities. In a dispute involving transmission facilities within Canada or interconnection or transmission service provided through such facilities, a party may elect to utilize the procedures of this Section 18.6.

18.6.2 Canadian Appeal. Any party to an arbitration involving transmission facilities within Canada may apply to the appropriate Canadian Regulatory Authority or, where no Canadian Regulatory Authority has jurisdiction, to the appropriate Canadian court, to hear an appeal of any award with respect to such facilities only upon the grounds that the award is contrary to or beyond the scope of this Agreement or is unjust, unreasonable, unduly discriminatory or preferential or otherwise inconsistent with applicable Canadian laws or with then applicable standards or policies of the appropriate Canadian Regulatory Authority.

18.6.3 Canadian Appeal Record. Any appeal to a Canadian Regulatory Authority (or Canadian court) by a party to an arbitration involving transmission facilities within Canada shall be based solely upon the record assembled by the arbitrator; provided, however, that any order by an arbitrator excluding material from the arbitration record or that is alleged to violate due process may be explicitly appealed to the Canadian Regulatory Authority (or Canadian court) by a party as part of an appeal under this Section 18.6. The Parties agree that (1) the Canadian Regulatory Authority (or Canadian court) should afford substantial deference to

the factual findings of the arbitrator; (2) the portion, if any, of the award relating to issues not of first impression (i.e., matters previously decided by the Canadian Regulatory Authority or a court of competent jurisdiction in cases involving comparable facts and circumstances) should be afforded appropriate deference by the Canadian Regulatory Authority (or Canadian court) and (3) the portion, if any, of the award relating to issues of first impressions should be afforded no deference by the Canadian Regulatory Authority (or Canadian court); provided, however, that nothing in this provision is intended to limit the ability of a Canadian Regulatory Authority (or Canadian court) on its own initiative to review an award, should it determine that the award affects a matter within its jurisdiction.

18.6.4 Canadian Appeal Proceeding. If any party desires to appeal an award, it shall provide written notice to that effect to all other Parties and to the arbitrator within fourteen (14) calendar days following the date of the award. If such notice of appeal is timely provided:

(1) Within fourteen (14) calendar days of the date of such first notice of appeal, the party providing such notice shall file its statement of position regarding the appeal with the Canadian Regulatory Authority (or Canadian court), together with the complete evidentiary record of the arbitration and a copy of the award.

(2) Within thirty (30) calendar days of the date of such first notice of appeal, any other party that was a party to the arbitration may file its statement of position regarding the appeal with the Canadian Regulatory Authority (or Canadian court).

(3) Copies of all materials filed with the Canadian Regulatory Authority (or Canadian court) by a party during the course of an appeal shall be delivered to all other Parties.

(4) Implementation of the award shall be deemed stayed pending an appeal unless and until, at the request of a disputing party, the Canadian Regulatory Authority (or Canadian court) issues an order shortening or extending such stay.

(5) The Parties intend that Canadian Regulatory Authority (or Canadian court) orders resulting from appeals shall be subject to judicial review pursuant to applicable Canadian laws.

18.6.5 Review on Initiative of Canadian Regulatory Authority. An award involving Transmission Facilities within Canada shall be filed with the appropriate Canadian Regulatory Authority within ten (10) calendar days after its issuance. The Canadian Regulatory Authority may thereafter determine whether to review the award on its own initiative, take such other action as it may deem appropriate or take no action with respect to the award. Should the Canadian Regulatory Authority take no action regarding the award within such thirty (30) calendar day period, the parties to the arbitration are entitled to assume that the Canadian Regulatory Authority intends to take no action in its own initiative to review the award. Should the Canadian Regulatory Authority issue an order under this Section 18.6.5 initiating a review of the award within such thirty (30) calendar day period, the effectiveness of the award shall be stayed pending a final order of the Canadian Regulatory Authority regarding the award.

18.7 Judicial Enforcement. Subject to the right of any party to appeal to and exhaust its remedies at FERC (or court of competent jurisdiction) or at a Canadian Regulatory Authority (or Canadian court), as provided in Sections 18.5 and 18.6, any party shall be entitled to seek enforcement of the award in any court of competent jurisdiction.