

**Preliminary Adaptation of California ISO ADR Provisions
for Use in RTO West Tariff**

13. Dispute Resolution

13.1 Applicability.

13.1.1 **General Applicability.** Except as limited below or otherwise as limited by law (including the rights of any party to file a complaint with FERC under the relevant provisions of the FPA), the provisions of this Section 13 (the “RTO West ADR Procedures”) shall apply to all disputes between parties which arise under the RTO West Tariff, except where the terms of the RTO West Tariff provide that RTO West’s decision is final. The RTO West ADR Procedures shall not apply to:

(a) disputes arising under contracts that pre-date the date of RTO West Commercial Operation, except as the disputing parties may otherwise agree; and

(b) disputes as to whether rates and charges set forth in the RTO West Tariff are just and reasonable under the FPA.

13.1.2 **Disputes Involving Government Agencies.** If a party to a dispute is a government agency the RTO West ADR Procedures are subject to any limitations imposed on the agency by law, including but not limited to the authority of the agency to effect a remedy. If the governmental agency is a federal entity, the RTO West ADR Procedures shall not apply to disputes involving issues arising under the United States Constitution.

13.1.3 **Injunctive and Declaratory Relief.** Where the court having jurisdiction so determines, use of the RTO West ADR Procedures shall not be a condition precedent to a court action for injunctive relief.

13.2 Negotiation and Mediation.

13.2.1 **Negotiation.** RTO West and Tariff Customer (party or parties) shall make good faith efforts to resolve through negotiations any dispute between them arising under the RTO West Tariff before invoking the RTO West ADR Procedures. Each party shall designate an individual with authority to negotiate the matter in dispute to participate in such negotiations.

13.2.2 **Statement of Claim.** If a dispute is not resolved through good-faith negotiations as provided under Section 13.2.1 above, any one of the parties may submit a statement of claim, in writing, to each other disputing party, the RTO West ADR Committee, and the RTO West Board of Directors, which submission shall initiate the provisions of the RTO West ADR Procedures set forth in the remainder of this Section 13.2.2 and in Sections 13.2.3 through 13.5.3.2. The statement of claim shall set forth in reasonable detail (i) each claim, (ii) the relief sought, including the proposed award, if applicable, (iii) a summary of the grounds

for such relief and the basis for each claim, (iv) the parties to the dispute, and (v) the individuals having knowledge of each claim. Each other party to the dispute shall similarly submit its statement of claim within 14 days of the date of the initial statement of claim or such longer period as the chair of the RTO West ADR Committee may permit following an application by the responding party. If any responding party wishes to submit a counterclaim in response to the initial statement of claim, the responding party shall include the counterclaim in its responsive statement of claim. RTO West shall publish a summary of the statements of claim on the RTO West Website and by other method the RTO West ADR Committee specifies. No Tariff Customer shall be deemed to have received notice of a claim decided or relief granted by a decision made under the RTO West ADR Procedures unless the summary of the statements of claim published by RTO West includes such or claim or relief.

13.2.3 Selection of Mediator. After submission of the statements of claim, the parties may request mediation if at least 75% of the disputing parties so agree, except where a dispute involves three parties, at least two of the parties must agree to mediation. If the parties agree to mediate, the chair of the RTO West ADR Committee shall distribute to the parties by facsimile or other electronic means a list containing the names of at least seven prospective mediators with mediation experience, or with technical or business experience in the electric power industry, or both, as he or she deems appropriate to the dispute. The parties shall either agree upon a mediator from the list provided or from any alternative source, or alternative in striking names from the list with the last name on the list becoming the mediator. The first party to strike off a name from the list shall be determined by lot. The parties shall have seven days from the date of receipt of the RTO West ADR Committee chair's list of prospective mediators to complete the mediator selection process and appoint the mediator, unless the time is extended by mutual agreement. The mediator shall comply with the requirements of Section 13.3.2.

13.2.4 Mediation. The mediator and representatives of the disputing parties with authority to settle the dispute shall, within 14 days after the mediator's date of appointment schedule a date to mediate the dispute. Matters discussed during the mediation shall be confidential and shall not be referred to in any subsequent proceeding. With the consent of all disputing parties, a resolution may include referring the dispute directly to a technical body (such as a WSCC technical advisory panel) for resolution or an advisory opinion, or referring the dispute directly to FERC. RTO West shall publish notice of the referral of the dispute on the RTO West Website and by other method the RTO West ADR Committee specifies.

13.2.5 Demand for Arbitration. If the disputing parties have not succeeded in negotiating a resolution to the dispute within 30 days of the initial statement of claim (or, if within that period the parties agreed to mediate, then within 30 days of the parties' first meeting with the mediator) the parties shall be deemed to be at impasse and any disputing party may then commence the arbitration process, unless the parties by mutual agreement extend the time. A party seeking arbitration shall provide notice of its demand for arbitration to the other disputing parties, the RTO West ADR Committee, and the RTO West Board of Directors, which shall

publish notice of the demand on the RTO West Website and by other method the RTO West ADR Committee specifies.

13.3 Arbitration.

13.3.1 **Selection of Arbitrator.**

13.3.1.1 Disputes Under \$1,000,000. Where the total amount of the claims and counterclaims in controversy is less than \$1,000,000 (exclusive of costs and interest), the disputing parties shall select an arbitrator from a list containing the names of at least 10 qualified individuals supplied by the RTO West ADR Committee, or if RTO West is a party to the dispute, the names of at least 10 qualified individuals supplied by the American Arbitration Association within 14 days following submission of the demand for arbitration. If the parties cannot agree upon an arbitrator within the stated time, they shall take turns striking names from the list of proposed arbitrators. The first party to strike off a name shall be determined by lot. This process shall be repeated until one name remains on the list and that individual shall be the designated arbitrator.

13.3.1.2 Disputes of \$1,000,000 or Over. Where the total amount of claims and counterclaims in controversy is \$1,000,000 or more (exclusive of interest and costs), the disputing parties may agree on any person to serve as a single arbitrator or shall endeavor in good faith to agree on a single arbitrator from a list of 10 qualified individuals supplied by the RTO West ADR Committee, or if RTO West is a party to the dispute, the names of at least 10 qualified individuals supplied by the American Arbitration Association within 14 days following submission of the demand for arbitration. If the parties are unable to agree on a single arbitrator within the stated time, the party or parties demanding arbitration, and the party or parties responding to the demand for arbitration, shall each designate an arbitrator. Each designation shall be made from the RTO West ADR Committee list of arbitrators no later than the 10th day thereafter.

13.3.2 **Disclosures Required of Arbitrators.** The designated arbitrator(s) shall be required to disclose to the parties any facts or circumstances that might preclude him or her from rendering an impartial determination. Each designated arbitrator shall disclose:

(a) any direct financial or personal interest in the outcome of the arbitration;

(b) any existing or past financial, business, professional, or personal interest that is likely to affect impartiality or might reasonably create an appearance of bias;

(c) any relationship he or she has with any party or its counsel, or with any individual whom they have been told will be a witness that is likely to affect impartiality or might reasonably create an appearance of bias; and

(d) any relationship he or she has with a member of his or her family or or current employers, partners, or business associates that is likely to affect impartiality or might reasonably create an appearance of bias

All designated arbitrators shall make a reasonable effort to inform themselves of any interests or relationships described above. The obligation to disclose interests, relationships, or circumstances that might interfere with an arbitrator's ability to render an impartial determination is a continuing duty that requires the arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered. If, as a result of the continuing disclosure duty, an arbitrator discloses any interest, relationship, or circumstances likely to affect his or her partiality, or might reasonably create an appearance of bias, or if a party independently discovers the existence of such circumstances, a party wishing to object to the continuing use of the arbitrator must provide written notice of its objection to the other parties within 10 days of receipt of the arbitrator's disclosure or the a party's discovery of the circumstances giving rise to that party's objection. Failure to provide such notice shall be deemed a waiver of such objection. If a party timely provides a notice of objection to the continuing use of the arbitrator, the parties shall attempt to agree whether the arbitrator should be dismissed and replaced in the manner described in Section 13.3.1. If within 10 days of a party's notice of objection the parties have not agreed how to proceed the matter shall be referred to the RTO West ADR Committee for resolution.

13.3.3 Arbitration Procedures. The RTO West ADR Committee shall compile and make available to the arbitrator and the parties standard procedures for the arbitration of disputes, which procedures (i) shall include provision, upon good cause shown, for intervention or other participation in the proceeding by any party whose interests may be affected by its outcome, (ii) shall conform to the requirements specified in the RTO West ADR Procedures, and (iii) may be modified or adopted for use in a particular proceeding as the arbitrator deems appropriate, in accordance with Section 13.3.4. The procedures adopted by the RTO West ADR Committee shall be based on the latest edition of the American Arbitration Association Commercial Arbitration Rules, to the extent such rules are not inconsistent with the RTO West ADR Procedures. Except as otherwise provided in the RTO West ADR Procedures, all parties shall be bound by such procedures.

13.3.4 Modification of Arbitration Procedures. In determining whether to modify the standard procedures for use in the pending matter, the arbitrator shall consider (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, (iv) the amount in controversy, and (v) any representations made by the parties. Alternatively, the parties may, by mutual agreement, modify the standard procedures. In the event of a disagreement between the arbitrator and the agreement of the parties regarding arbitration procedures to be used, the parties' agreement shall prevail.

13.3.5 Remedies.

13.3.5.1 Arbitrator's Discretion. The arbitrator shall have discretion to grant the relief sought by a party, or determine such other remedy as is appropriate, unless the parties agree to conduct the arbitration "baseball" style. Unless otherwise expressly limited by the RTO West ADR Procedures, the arbitrator shall have the authority to award any remedy or relief available from FERC or any court of competent jurisdiction. Where the RTO West Tariff leaves any matter to be agreed between the parties at some future time and provides that in the absence of agreement the matter shall be resolved in accordance with the RTO West ADR Procedures, the arbitrator shall have authority to decide upon the terms of the agreement that, in the arbitrator's opinion, it is reasonable that the parties should reach, having regard to the other terms of the RTO West Tariff and the arbitrator's opinion as to what is fair and reasonable in all the circumstances.

13.3.5.2 "Baseball" Arbitration. If the parties agree to conduct the arbitration "baseball" style, the parties shall submit to the arbitrator and exchange with each other their last best offers in the form of the award they consider the arbitrator should make, not less than seven days in advance of the date fixed for the hearing, or such other date as the arbitrator may decide. If a party fails to submit its last best offer in accordance with this Section, that party shall be deemed to have accepted the offer proposed by the other party. The arbitrator shall be limited to awarding only one of the proposed offers and may not determine an alternative or compromise remedy.

13.3.6 **Summary Disposition.** The procedures for arbitration of a dispute shall provide a means for summary disposition of a demand for arbitration (or a response to a demand for arbitration) that in the reasoned opinion of the arbitrator does not have a good faith basis in either law or fact. If the arbitrator determines that a demand for arbitration or a response to a demand for arbitration does not have a good faith basis in either law or fact, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party. A determination made under this Section is subject to appeal pursuant to Section 13.4

13.3.7 **Discovery Procedures.** The procedures for the arbitration of a dispute shall include adequate provision for the discovery of relevant facts, including the taking of testimony under oath, production of documents and other things, the presentation of evidence, the taking of samples, conducting of tests, and inspection of land and tangible items. The nature and extent of such discovery shall be determined as provided in the RTO West ADR Procedures and shall take into account (i) the complexity of the dispute, (ii) the extent to which facts are disputed, (iii) the extent to which the credibility of witnesses is relevant to a resolution, and (iv) the amount in controversy. The forms and methods for taking such discovery shall be as described in the Federal Rules of Civil Procedure, except as modified pursuant to Section 13.3.4.

13.3.8 **Evidentiary Hearing.** The arbitration procedures shall provide for an evidentiary hearing, with provision for the cross-examination of witnesses, unless all parties consent to the resolution of the matter on the basis of a written record. The forms and methods

for taking evidence shall be as determined by the arbitrator(s) and modified pursuant to Section 13.3.4. The arbitrator may require such written or other submissions from the parties as he or she may deem appropriate, including submission of direct and rebuttal testimony of witnesses in written form. The arbitrator may exclude any evidence that is irrelevant, immaterial, unduly repetitious or prejudicial, or privileged. The arbitrator shall compile a complete evidentiary record of the arbitration, which, upon completion, shall be available to any disputing party at that party's request.

13.3.9 Confidentiality. Subject to the other provisions of the RTO West Tariff, any party may claim that information contained in a document otherwise subject to discovery is confidential if such information would be so characterized under the Federal Rules of Evidence. The party claiming confidentiality shall provide to the arbitrator in writing the basis for its assertion. If the arbitrator confirms the claim of confidentiality, he or she shall establish requirements for the protection of such documents or other information designated as confidential as may be reasonable and necessary to protect the confidentiality and commercial value of such information. Any party disclosing information in violation of these provisions or requirements established by the arbitrator, unless such disclosure is required by federal or state law or by a court order, shall thereby waive any right to introduce or otherwise use such information in any judicial, regulatory, or other legal or dispute resolution proceeding, including the proceeding in which the information was obtained.

13.3.10 Timetable. Promptly after the appointment of the arbitrator, the arbitrator shall set a date for the issuance of the arbitration decision, which shall be no later than six months (or such date as the parties and the arbitrator may agree) from the date of the appointment of the arbitrator, with other dates, including the dates for an evidentiary hearing or other final submissions of evidence, set in light of this date. The date for the evidentiary hearing or other final submissions of evidence shall not be changed absent extraordinary circumstances. The arbitrator shall have the power to impose sanctions, including dismissal of the proceeding, for dilatory tactics or undue delay in completing the arbitration proceedings.

13.3.11 Decision.

13.3.11.1 Except as provided below with respect to "baseball" style arbitration, the arbitrator shall issue a written decision granting the relief requested by one of the parties, or such other remedy as is appropriate, if any, and shall include findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of the RTO West Tariff, (iii) applicable United States federal law, including the FPA and any applicable FERC regulations and decisions and international treaties or agreements as applicable, and (iv) applicable state law. Additionally, the arbitrator may consider relevant decisions in previous arbitration proceedings. A summary of the disputed matter and the arbitrator's decision shall be published on the RTO West Website and by other method the RTO West ADR Committee, and maintained by the RTO West Office of General Counsel.

13.3.11.2 In arbitration conducted "baseball" style, the arbitrator shall issue a written decision adopting one of the awards proposed by the parties, and shall include

findings of fact and law. The arbitration decision shall be based on (i) the evidence in the record, (ii) the terms of the RTO West Tariff, (iii) applicable United States federal law, including the FPA and any applicable FERC regulations and decisions and international treaties or agreements as applicable, and (iv) applicable state law. If the arbitrator concludes proposed award is consistent with the factors enumerated in (i) through (iv) above, or addresses all of the issues in dispute, the arbitrator shall specify how each proposed award is deficient and direct that the parties submit new proposed awards that cure the identified deficiencies. A summary of the disputed matter and the arbitrator's decision shall be published on the RTO West Website and by other method the RTO West ADR Committee. An award shall not be deemed to be precedential.

13.3.11.3 Where a panel of arbitrators is appointed pursuant to Section 13.3.1.2, a majority of the arbitrators must agree on the decision.

13.3.12 **Compliance.** Unless the arbitrator's decision is appealed under Section 13.4, the disputing parties shall, upon receipt of the decision, immediately take whatever action is required to comply with the award to the extent the award does not require regulatory action. An award that is not appealed shall be deemed to have the same force and effect as an order entered by FERC or any court of competent jurisdiction.

13.3.13 **Enforcement.** Following the expiration of the time for appeal of an award pursuant to Section 13.4.3, any party may apply to FERC or any court of competent jurisdiction for entry and enforcement of judgment based on the award.

13.3.14 **Costs.** The costs of the time, expenses, and other charges of the arbitrator shall be borne by the parties to the dispute, with each side on an arbitrated issue bearing its pro-rata share of such costs, and each party to an arbitration proceeding bearing its own costs and fees. If the arbitrator determines that a demand for arbitration or response to a demand for arbitration was made in bad faith, the arbitrator shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator to the prevailing party. Notwithstanding the foregoing, at the discretion of the arbitrator, the prevailing party in any dispute that has resulted in the enforcement of an important right affecting the public interest shall not be required to pay any of the costs of the arbitrator and may recover such of its own reasonable attorney fees, expert witness fees and other reasonable costs from the non-prevailing party to the dispute if (i) a significant benefit, whether pecuniary or non-pecuniary, has been conferred on the general public, (ii) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (iii) such fees should not, the interest of justice, be paid out of the recovery.

13.4 Appeal of Award.

13.4.1 **Basis for Appeal.** A party may apply to FERC or any court of competent jurisdiction to hear an appeal of an arbitration award only upon the grounds that the award is contrary to or beyond the scope of the RTO West Tariff, United States federal law (including without limitation the FPA and any FERC regulations and decisions), or state law. Appeals shall, unless otherwise ordered by FERC or the court of competent jurisdiction, conform to the procedural limitations set forth in this Section 13.4.

13.4.2 **Appellate Record.** The parties intend that FERC or the court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator. No party shall seek to expand the record before FERC or the court of competent jurisdiction beyond that assembled by the arbitrator, except (i) by making reference to legal authority that did not exist at the time of the arbitrator's decision, or (ii) if such party contends the decision was based upon or affected by fraud, collusion, corruption, misconduct or misrepresentation.

13.4.3 **Procedures for Appeals.**

13.4.3.1 If a party to an arbitration desires to appeal an award, it shall provide notice of appeal to the RTO West Board of Directors, all parties, and the arbitrator within 14 days following the date of the award. The appealing party must likewise provide notice to the RTO West ADR Committee, which shall publish notice of the appeal on the RTO West Website and by other method the RTO West ADR Committee specifies. Within 10 days of the filing of the notice of appeal, the appealing party must file an appropriate application, petition or motion with FERC to trigger review under the FPA or with a court of competent jurisdiction. Such filing shall state that the subject matter has been the subject of an arbitration under the RTO West ADR Procedures.

13.4.3.2 Within 30 days of filing the notice of appeal (or such period as FERC or the court of competent jurisdiction may specify) the appellant shall file the complete evidentiary record of the arbitration and a copy of the award with FERC or with the court of competent jurisdiction. The appellant shall serve copies of a description of all materials included in the submitted evidentiary record.

13.4.4 **Award Implementation.** Implementation of the award shall be deemed stayed pending an appeal unless and until, at the request of a party, FERC or the court of competent jurisdiction to which an appeal has been filed issues an order dissolving, shortening, or extending such stay. RTO West shall publish a summary of each appeal on the RTO West Website and by other method the RTO West ADR Committee specifies.

13.4.5 **Judicial Review of FERC Orders.** FERC orders resulting from appeals shall be subject to judicial review pursuant to the FPA.

13.5 Allocation of Awards Payable by or to RTO West.

13.5.1 **Allocation of an Award.** If RTO West must pay an award to a party pursuant to good faith negotiations or the RTO West ADR Procedures, RTO West will recover the amount of the award from Tariff Customers and Scheduling Coordinators in accordance with the provisions of Sections 13.5.2 and 13.5.3 below. **[NOTE – EVERYONE MAY WANT TO LOOK CLOSELY AT THIS PROVISION]** If RTO West receives an award from a party pursuant to good faith negotiations or the RTO West ADR Procedures, RTO West will distributed the amount of the award back to Tariff Customers and Scheduling Coordinators in accordance with the provisions of Sections 13.5.2 and 13.5.3 below.

13.5.2 **Timing of Adjustments.** Upon determination that an award is payable to RTO West pursuant to good faith negotiations or the RTO West ADR Procedures, RTO West shall calculate the amounts payable to and receivable from the party, Tariff Customers, and Scheduling Coordinators, as soon as reasonably practical, and shall show any required adjustments as a debit or a credit in a subsequent Preliminary Settlement Statement.

13.5.3 **Method of Allocation.**

13.5.3.1 Allocation to Tariff Customers. RTO West will use best efforts to determine which Tariff Customer(s) is or are responsible for and/or benefit from payment of an award by or to RTO West and to allocated the receipt of or payment for the award equitably to such Transmission Customer(s). In undertaking the allocation, the ISO shall consider the extent of a Transmission Customer's participation in the affected markets and the RTO West Tariff in effect on the applicable trading day(s), any may consider any other relevant factor, including but not limited to, applicable contracts.

13.5.3.2 Residual Amounts. Any awards for which RTO West is unable to identify Transmission Customers in accordance with Section 13.5.3.1 and any award amounts that RTO West is unable to collect that are not covered by Section 11.16.1 shall be allocated to all Scheduling Coordinators through Neutrality Adjustments. **[NOTE – EVERYONE MAY WANT TO LOOK CLOSELY AT THIS PROVISION]**