

ADR Provision – Drafting and Discussion Issues
 Prepared for Tariff Integration Group Meeting
 March 7, 2001

Issue	Options	Reference
<p>1. What type of dispute resolution should be used?</p>	<p>1. Baseball arbitration as default. One time election at time of joining RTO to opt out of baseball arbitration. If a Party opts out, then baseball arbitration would apply to disputes involving that party only by mutual agreement.</p> <p>2. Baseball arbitration as default. Party could request determination from arbitrator that it is not appropriate for a particular dispute.</p> <p>3. Baseball arbitration would be default, but any party with a material interest in a multi-party dispute could require traditional arbitration for all parties.</p> <p>4. Traditional arbitration as default, but parties could agree to baseball arbitration.</p>	<p>Options, with revised tariff language, p. 3.</p>
<p>2. Should RTO West use WRTA or some other source as a resource for neutrals?</p>	<p>1. Use WRTA as currently provided in By-laws and TOA.</p> <p>2. Set up RTO West “ADR Subcommittee” to develop list of neutrals.</p>	<p>Options addressing source for neutrals, p. 6.</p>
<p>3. Should there be mandatory senior executive negotiations and/or mandatory mediation prior to commencing arbitration?</p>	<p>1. No mandatory senior executive negotiations or mediation. This is the approach currently in the TOA and By-laws. (Though arguably facilitation requires someone senior enough to have authority to settle.)</p> <p>2. Mandatory senior representative level negotiations.</p> <p>3. Mandatory mediation.</p>	<p>Options and tariff language, p. 8.</p>

Issue	Options	Reference
4. Should RTO West adopt fast track procedures? If so, to what should they apply?	<ol style="list-style-type: none"> 1. No fast track procedures. 2. Limit fast track procedures to interconnection issues as currently provided in TOA. 3. Adopt fast track procedures, similar to those proposed in DStar or WSCC that could be used on specified types of disputes. 	<p>TOA language, p. 10.</p> <p>Outline of Dstar proposal, p. 12.</p> <p>WSCC language, p. 13.</p>
5. Should parties be able to bypass mediation/arbitration and take disputes, or portions of disputes, by mutual agreement, directly to FERC?	General agreement to include this provision.	Draft language, p. 18
6. What right does a Party have to require RTO West to file an unexecuted service or integration agreement pending dispute resolution?	Memorandum proposes that Parties should have the right to direct RTO West to file unexecuted agreement and commence service.	Memorandum, p. 20

OPTIONS FOR ALTERNATIVE DISPUTE RESOLUTION

Option No. 1: Any Party subject to ADR under RTO West Agreements may make a one time election [rescindable?] at the inception of joining RTO West or signing its first RTO West Agreement to elect not to have baseball arbitration apply to any of its disputes, but instead to apply traditional arbitration. This election would then bind RTO West and all other Parties, absent their mutual agreement to use baseball arbitration.

1.1 Renumber Section 18.1 of the TOA to 18.1.1.

1.2 Add a new Section 18.1.2 which reads as follows:

“Any Party may, concurrently with execution of this Agreement, submit to RTO West a one time election to have any dispute under this Agreement to which it may become a Party decided by alternate Section 18.3(a), in lieu of Section 18.3, in which case Parties to such dispute shall not be required to submit a proposed arbitrator’s award as a precondition to arbitration as provided in Section 18.2.3. The election provided in this subsection shall not be rescindable without the consent of each other Party to a dispute.”

1.3 Add an alternate Section 18.3, numbered 18.3(a) which reads:

“This Section is an alternate to Section 18.3 and is applicable only to disputes involving a Party that has made an election pursuant to Section 18.1.2. 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 render a written decision and the reasons therefor. In reaching his or her decision, the arbitrator shall consider the intent of this Agreement, of any provisions of the RTO West Tariff not inconsistent with this Agreement; other applicable agreements, laws or regulations; or applicable technical standards and criteria not inconsistent with this Agreement and any other policies or determinations by the arbitrator not inconsistent with this Agreement. 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.”

Option No. 2: Any Party may request the Arbitrator to determine that baseball arbitration would not be suitable for a particular dispute, and upon a showing of good cause, the Arbitrator may order that the arbitration would proceed under traditional arbitration.

2.1 Add the following language to Section 18.2.3 after the last sentence:

“Either Party, or any intervenor permitted to intervene, may elect not to submit a proposed arbitrator’s award, but in lieu thereof, such Party may submit, within five days of the request for arbitration or at the time of intervention, a statement showing good cause why the arbitration should proceed under alternate Section 18.3(a) in lieu of Section 18.3, in which case the arbitrator selected by the Parties pursuant to Section 18.2.4 shall first decide whether good cause has been shown to proceed under Section 18.3(a). In the event that the arbitrator decides that good cause has not been shown to proceed under Section 18.3(a), the Parties proposed arbitration awards shall be due within 14 days of the decision of the arbitrator not to proceed under Section 18.3(a). Pending the arbitrators decision on whether or not to proceed under Section 18.3(a), no Party shall be required to submit a proposed award.”

2.2 Add an alternate Section 18.3 (a) which reads the same as Section 18.3(a) set forth in 1.3 above.

Option No. 3: Any Party to a multiparty dispute whose interests are material in respect to other Parties may require for purposes of that dispute only that traditional arbitration will be used in place of baseball arbitration.

3.1 Add the following to Section 18.2.3 after the last sentence:

“Any party to a dispute to which involves three or more parties, either by being named in the dispute by the request for arbitration or as the result of intervention, may require

that the arbitration proceed under Section 18.3(a) rather than Section 18.3, provided that the party making the request shall have interests, as determined by the arbitrator, which are material in respect to the interests of the other parties. In such event, any proposed arbitration awards submitted by any party shall be withdrawn, and such proposed awards shall be disregarded by the arbitrator and shall be stricken from the record of the proceeding.”

- 3.2 Add an alternate Section 18.3(a) which reads the same as Section 18.3(a) set forth in 1.3 above.

Option No. 4: Traditional arbitration as the default with baseball arbitration only upon agreement of the disputing parties.

- 4.1 Strike “*and the proposed arbitrator’s award sought through such arbitration proceedings*” from Section 18.2.3.
- 4.2 Replace Section 18.3 with the language that is set forth in 1.3 above.
- 4.3 Add the following to Section 18.2.3:

“The parties to a dispute may unanimously agree to proceed by submission of proposed arbitration awards, in which event, in rendering an award, 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 and the substantive standards set forth in Section 18.3, provided however, that if the arbitrator concludes that no proposed award addresses all of the 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. Proposed arbitration awards shall be submitted to within 14 days of the agreement of the parties to proceed by submission of proposed arbitration awards.”

OPTIONS FOR SELECTING MEDIATORS AND ARBITRATORS

Option No. 1: Use the WRTA (or successor agency) process as currently provided in the TOA and the By-laws.

Option No. 2: Create an “ADR Subcommittee” within RTO West to maintain a list of qualified neutrals for alternative dispute resolution.

Concept:

Mediators and arbitrators would be selected from a list of potential neutrals maintained by an RTO West “ADR Subcommittee.” This subcommittee would be comprised of at least one representative from each stakeholder group represented on the RTO West Advisory Board.

Potential mediators and arbitrators would be vetted by this subcommittee and would have qualifications suitable for mediation or arbitration of disputes under the RTO West Tariff. Sources for candidates would include, but not be limited to, the American Arbitration Association, CPR Institute for Dispute Resolution, JAMS, WRTA, and lists of neutrals maintained by DOE or other federal or state government agencies.

In addition to reflecting high professional and ethical standards, candidates would need to meet the RTO West Code of Conduct, including independence from any market participant. The ADR Subcommittee would be tasked with ensuring the listing of candidates stayed up to date, and that candidates received information regarding developments in RTO West on an ongoing basis.

Rationale:

Many of the existing lists for energy neutrals appear to be either too exclusive or too inclusive and could not ensure that a proposed neutral is, in fact, neutral. The WRTA list, for example, appears to be too inclusive, with a listing of over 60 individuals, including some who appear to have self-selected themselves (with only the limited training required by WRTA) and a number from entities active in RTO West. In contrast, JAMS lists only two individuals in their energy group.

¹ Although the concept in Option No. 2 was discussed, Shelly has not reviewed this draft.

While the list could be developed in other ways, a stakeholder subcommittee would permit a level of comfort to all RTO West parties that the list of potential neutrals was not “stacked” to benefit any particular group.

An ADR Subcommittee could also be used for other purposes, for example, to stay up-to-date on developments in ADR and propose amendments to the tariff should they appear necessary or appropriate, or to maintain a compilation of all disputes and their resolution.

Implementing Tariff Language:

In Section 18.2.1, strike “*the manager of WRTA (or successor organization)*” and insert “*the RTO West ADR Subcommittee.*”

In Section 18.2.4, strike “*WRTA Arbitration Committee from the list maintained by the WRTA Board*” and insert “*RTO West ADR Subcommittee.*”

In Section 18.2.5.3, strike “*the WRTA Arbitration committee shall provide to the Parties a list of fifteen (15) qualified individual from the list maintained by the WRTA board*” and insert “*the RTO West ADR Subcommittee shall provide to the parties a list of fifteen (15) qualified individuals.*”

The RTO West by-laws may also need to be amended to reflect the establishment of an ADR Subcommittee.

OPTIONS FOR MANDATORY EXECUTIVE NEGOTIATION
AND/OR MANDATORY MEDIATION

Option No. 1: No change to provision currently in TOA. This provision requires each Party to make reasonable efforts to settle the dispute, and provides that any party may request appoint of an impartial facilitator. See TOA section 18.2.1.

Option No. 2: Mandatory Executive Negotiation.

Replace the current 18.2.1 with the following:

“18.2.1 Informal Dispute Resolution. Each Party shall make all reasonable efforts to informally settle all disputes governed by this Section.

18.2.1.1 Referral to Senior Representatives. Any dispute arising under the RTO West Tariff, and which is subject to resolution under this provision, shall be referred to a designated senior representative of each party, with the authority to settle the dispute, for resolution on an informal basis as promptly as practicable. In the even the designated representatives are unable to resolve the dispute by mutual agreement within thirty (30) calendar days, such dispute shall be submitted to mediation.

18.2.1.2 Use of Facilitator. Either party may request that the [WRTA or ADR Subcommittee] appoint an impartial facilitator to aid the Parties in reaching a mutually acceptable resolution to the dispute. [continue with the language from the current 18.2.1]”

Option No. 3: Mandatory Mediation.

Revise the current 18.2.2 to read as follows.

“18.2.2 Mediation. In the event the dispute is not resolved through informal dispute resolution in accordance with Section 18.2.1, and is not set for fast track ADR, the dispute shall be submitted to mediation.

18.2.2.1 Selection of Mediator. *Within seven (7) calendar days of the end of senior representative and/or facilitated negotiations, the Parties to the dispute shall agree upon a mediator suitable for the issues presented in the dispute. If the Parties are unable to agree upon a mediator, a mediator shall be selected by lot from a list of available mediators provided by [WRTA or the ADR Subcommittee].*

18.2.2.2 Process for Mediation. *The mediator and representatives of the disputing parties with authority to settle the dispute shall, within fourteen (14) Calendar 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. The mediator shall aid the parties in reaching a mutually acceptable resolution of the dispute. The mediator shall have no authority to impose a resolution upon the parties. The cost of the mediation, including the mediator's reasonable fees and expenses, shall be borne equally by the parties."*

“18.2.2.3 Impasse. *If the parties have not succeeded in resolving the dispute within thirty (30) Calendar Days of the first meeting with the mediator, such parties shall be deemed to be at impasse and the dispute shall be submitted to arbitration [unless parties agree otherwise to take part or all of a dispute directly to FERC for resolution].*

FROM TOA, as filed 12/1/00.

4.2.2 RTO West's Right To Compel Expedited Dispute Resolution in Cases of Delay or Impasse.

If, within sixty (60) calendar days following an Electric Utility's or Generation Owner's request for any new physical interconnection with the Electric System of the Executing Transmission Owner (or such extended period as agreed by the Executing Transmission Owner and such other party or as necessary to comply with applicable environmental requirements or to obtain necessary approvals from federal, state, tribal and local authorities having jurisdiction in the matter), the Executing Transmission Owner and the requesting party have not reached a mutually acceptable agreement with respect to such physical interconnection, RTO West shall have the right to require the Executing Transmission Owner to participate in an expedited Dispute Resolution process with the requesting party to resolve any disputes concerning appropriate terms and conditions governing such physical interconnection. The expedited Dispute Resolution process shall be the same as the Dispute Resolution process set forth in Section 18 of this Agreement with the following modifications: (1) Section 18.2.1 shall not apply; (2) Section 18.2.2 shall not apply except as to RTO West's obligation to post the commencement of the Dispute Resolution process on the RTO West Web Site; (3) each of the Executing Transmission Owner and the requesting party shall, within ten (10) calendar days of the selection of the arbitrator, submit to the arbitrator its proposed contract language concerning the issues in dispute; and (4) the arbitrator shall specify the applicable interconnection agreement terms within thirty (30) calendar days of receiving both parties' submissions. The arbitrator shall be instructed to accept the Executing Transmission Owner's proposed terms for interconnection with RTO West Controlled Transmission Facilities if such terms either (1)(i) are reasonable, (ii) are not contrary to requirements of the FERC, (iii) do not conflict with the terms of any Generation Integration Agreement or Load Integration Agreement the requesting third party will be expected to execute, (iv) are not in conflict with interconnection standards adopted by the RTO West board of directors and (v) are not unreasonably discriminatory or preferential with respect to the Executing Transmission Owner's other comparable interconnection agreements or (2) are required pursuant to the interconnection standards adopted by RTO West. The arbitrator shall be instructed to accept the Executing Transmission Owner's proposed terms for interconnection with Electric System facilities other than RTO West Controlled Transmission Facilities if such terms (1) are reasonable, (2) are not contrary to requirements of the FERC, (3) do not conflict with the terms of any Generation Integration Agreement or Load Integration Agreement the requesting third party will be expected to execute and (4) are not unreasonably discriminatory or preferential with respect to the Executing Transmission Owner's other comparable interconnection agreements. The arbitrator shall be further instructed that there is no requirement for the interconnection agreement terms of the various Participating Transmission Owners to be uniform among the various Participating

Transmission Owners, as long as the proposed interconnection agreement terms meet the above standards.

4.3 Pre-Existing Generation Interconnections

4.3.1 Replacement of Integration Provisions with a Generation Integration Agreement. Upon request by any Generation Owner interconnected with the Electric System of the Executing Transmission Owner, the Executing Transmission Owner will negotiate in good faith so as to allow replacement of the integration provisions of any agreement between the Executing Transmission Owner and the Generation Owner with a Generation Integration Agreement between the Generation Owner and RTO West. Neither the Executing Transmission Owner nor the Generation Owner shall be required to surrender any pre-existing contract rights.

4.3.2 Negotiation of Instructions for Access to RTO West Transmission System. As an alternative to negotiation under Section 4.3.1 or upon failure of such negotiations to reach agreement, any Generation Owner may request the Executing Transmission Owner to negotiate instructions to RTO West, consistent with any agreement for generation facility interconnection and integration between the Executing Transmission Owner and the Generation Owner, that will govern the terms and conditions of integration with the RTO West Transmission System. The Executing Transmission Owner shall negotiate such instructions in good faith.

4.3.3 RTO West's Right To Compel Expedited Dispute Resolution in Cases of Delay or Impasse. If, within sixty (60) calendar days after a Generation Owner's request pursuant to Section 4.3.2 to negotiate with the Executing Transmission Owner instructions to govern access to the RTO West Transmission System (or such extended period as agreed by the Executing Transmission Owner and the Generation Owner), the Executing Transmission Owner and the requesting Generation Owner have not presented mutually acceptable instructions to RTO West, RTO West shall have the right to require the Executing Transmission Owner to participate in an expedited Dispute Resolution process with the requesting Generation Owner to resolve any disputes concerning such instructions. The expedited Dispute Resolution process shall be the same as the Dispute Resolution process set forth in Section 18 of this Agreement with the following modifications: (1) Section 18.2.1 shall not apply; (2) Section 18.2.2 shall not apply except as to RTO West's obligation to post on the RTO West Web Site the commencement of the Dispute Resolution process; (3) both the Executing Transmission Owner and the Generation Owner shall, and also RTO West if it so elects, within ten (10) calendar days of the selection of the arbitrator, submit to the arbitrator their proposed instructions; and (4) the arbitrator shall determine the appropriate instructions, consistent with the provisions of the generation facility interconnection and integration agreement.

Outline of RTO “Fast Track Arbitration” Proposal

[Draft #1 - 022801]

The essential elements of DSTAR’s proposed “fast track arbitration” process are as follows. (Note: the proposal is still fluid. A new version of the Tariff language should be released in the next week or two.)

1. Any market participant can request that the fast-track arbitration process be undertaken. (I.e., the participation in the process is mandatory if any of the affected parties wants the process to be undertaken.)
2. The nature of the disputes to which the process is applicable has not been clearly defined yet. But the intention is that it apply to disputes arising under the RTO Tariff and other RTO documents, where such disputes require immediate resolution. This would at a minimum mean disputes between the RTO and market participants over any party’s (including the RTO’s) compliance with the Tariff, or between market participants (for example, a PTO and a Eligible Customer) over compliance with the Tariff, where time was of the essence (for example, disputes related to scheduling obligations, RTO dispatch instructions, PTO compliance with deadlines for responding to interconnection studies, PTO compliance with the RTO code of conduct...) and where allowing the dispute to go unresolved for weeks or months could result in grid security problems and/or serious economic harm.
3. When the process is invoked, a single arbitrator would be selected by lot from a pre-established standing panel of independent experts, all of whom shall meet the requirements of the DSTAR Code of Conduct. (This needs to happen on an automatic basis so that the RTO - if it is a defendant - could not delay the process or bias the selection of the arbitrator.) Yet to be decided: (1) The list of arbitrators could be broken into several sub-lists of arbitrators with expertise in different types of disputes. (2) The list might be maintained by the WIO rather than the RTO.
4. The arbitrators on the list shall be available to provide hearings and decisions on the next Business Day. If an arbitrator is not available, the next arbitrator on the list would be called.
5. The arbitrator will hear the disputing parties’ arguments and provide a decision on the same day. This decision will be submitted, along with a statement for the arbitrator’s fee (with costs to be paid by the losing party), to the parties to the dispute and to the RTO Chief Executive Officer by facsimile or electronic mail. The decision will also be posted on the RTO Website.
6. The arbitrator’s decision shall stand pending an appeal, which must be taken, if at all, within thirty calendar days after the date of the decision, either to the courts or the Commission, whichever is appropriate. Any party that may be affected by the decision may appeal the decision (because after thirty days an unappealed decision will establish precedent).
7. A final decision of the panel, the court or the Commission shall establish a precedent to guide future decisions of the RTO and future fast-track arbitrations; provided, however, that all appeals to the Commission or the courts shall be *de novo*.

Proposed Expedited Dispute Resolution Provisions for Specified WSCC-Related Matters

Section 2. Expedited Dispute Resolution.

- a. Any dispute concerning a Designated Matter (as that term is defined in Article XII, Section 2.b. below) may, at the request of any party to the dispute, be submitted to expedited dispute resolution in accordance with Article XII, Section 2.c. of this Agreement. Every party to the dispute shall abide by the interim resolution established through the expedited dispute resolution procedures until the parties reach permanent resolution through the regular dispute resolution procedures set forth in Article XII, Section 3 [*or Article XII, Sections 3 through 8*].
- b. For purposes of Article XII, Section 2 of this Agreement, the term “Designated Matter” means:
 - (1) any decision made or action taken by a Member or the Council (including any committee, subcommittee, task force, work group, policy group, or other body operating under the auspices of the Council) within the 14 calendar days preceding initiation of the dispute, if the decision or action will become effective within less than 90 days and relates to:
 - (i) any transmission path rating;
 - (ii) any operating transfer capability limit;
 - (iii) the calculation or posting of Available Transmission Capacity (“ATC”), including without limitation any provisions relating to Capacity Benefit Margin or Transmission Reliability Margin used to calculate ATC;
 - (iv) the approval, adoption, or modification of operating procedures;

- (v) the posting of reliability procedures or reliability-based market interface practices on a Member's OASIS; or
 - [(vi) a proposed resolution to a situation in which Members operating a transmission path subject to a nomogram have failed to agree on how to allocate the transfer capability within the nomogram].
 - (2) any matter designated by resolution of the Board of Trustees as eligible for expedited dispute resolution under Article XII, Section 2.c. of this Agreement; or
 - (3) any matter that all the parties to the dispute agree to submit to expedited dispute resolution in accordance with Article XII, Section 2.c. of this Agreement.
- c. A Designated Matter submitted to expedited dispute resolution under Article XII, Section 2 of this Agreement shall be resolved as follows:
- (1) The Member (or authorized representative of the Council) initiating the dispute shall deliver, to the Executive Director and all other Members to be made party to the dispute, a request for expedited dispute resolution under Article XII, Section 2 of this Agreement. The party requesting expedited dispute resolution shall deliver the request by reputable overnight courier service, and shall include in the request a statement describing in reasonable detail the matter(s) in dispute and all intended parties to the dispute. Any party requesting expedited dispute resolution that intends the dispute to be kept confidential shall declare confidentiality in its request and promptly solicit the agreement of all other parties to the dispute to proceed confidentially.
 - (2) The Executive Director shall post or cause to be posted on the Council's electronic bulletin board a notice summarizing the issues in dispute and identifying the parties to the dispute (unless the party requesting expedited dispute resolution has requested confidentiality). If the party requesting expedited dispute resolution has requested confidentiality, the Executive Director shall delay posting notice of the dispute for seven calendar days. If during the seven calendar days all parties to the dispute notify the Executive Director in writing that they

have agreed to keep the dispute confidential, the Executive Director shall not publish notice of the dispute by posting on the Council's electronic bulletin board or by any other means. If, by the end of the seventh day following the initial request of the party requesting expedited dispute resolution the Executive Director has not received written notice of agreement of all disputing parties to proceed confidentially, the Executive Director shall post (or cause to be posted) on the Council's electronic bulletin board the notice described in the first sentence of this Section 2.c.(2).

- (3) Within seven calendar days after receiving a request for expedited dispute resolution under Article XII, Section 2 of this Agreement, the Council's Executive Director shall identify a special arbitrator by random selection from a standing list of special arbitrators for expedited dispute resolution that has been compiled and approved by the Board of Trustees. The Executive Director shall promptly, by reputable overnight courier service, inform all parties to the dispute of the name, business address, telephone number, and facsimile number of the designated special arbitrator. The Trustees' standing list of special arbitrators shall be composed of individuals who are knowledgeable in the matters addressed by the Council and who have agreed to serve as special arbitrators for expedited dispute resolution under Article XII, Section 2 of this Agreement. A special arbitrator shall be disqualified from serving in connection with a particular dispute if the special arbitrator is or has been an employee, officer, member of the governing body, consultant, agent, or other representative of any of the disputing parties, but for no other reason.
- (4) Within five calendar days after the special arbitrator's selection, each party to the dispute shall submit to the special arbitrator and every other disputing party a written dispute statement. The dispute statement shall set forth in reasonable detail the matters in dispute and how the party submitting the statement proposes to resolve the dispute. Within seven calendar days after receiving the other disputing parties' dispute statements, each disputing party may, if it so chooses, submit to the special arbitrator and every other disputing party a written response to any other parties' dispute statements. Also during the seven calendar days following

submission of the disputing parties' initial dispute statements, the special arbitrator may request additional information bearing on the dispute from any of the disputing parties. Disputing parties shall respond to information requests from the special arbitrator within three business days. The special arbitrator shall select from among the resolutions proposed by the disputing parties within seven calendar days following the end of the seven-day period allowed for responding statements and special arbitrator's information requests. The special arbitrator shall promptly deliver written notice of his or her decision to all disputing parties. The special arbitrator's decision shall be based on the special arbitrator's determination of which proposed resolution will best meet the terms and intent of this Agreement, furthers the purposes of the Council as set forth in its Articles of Incorporation, and fosters the reliable operation of the transmission facilities operated within the Western Interconnection. The special arbitrator's notice of his or her decisions shall include a brief statement explaining the basis for his or her decision. Unless all parties to the dispute have agreed in writing to keep the dispute confidential (and the Council is not a party to the dispute), the special arbitrator shall also send a copy of his or her decision to the Executive Director.

- (5) Each party to an expedited dispute resolution process carried out under Article XII, Section 2 of this Agreement shall bear its own costs in connection with the dispute, except that the special arbitrator's fees shall be borne solely by the party that initiated the expedited dispute resolution process.
- (6) Neither any information provided by a disputing party to other any other disputing parties or to the special arbitrator in connection with expedited dispute resolution nor any settlement position taken by any disputing party in connection with an expedited dispute resolution process shall be publicly disclosed or referred to in any subsequent arbitration or legal proceeding.
- (7) Unless, following the special arbitrator's notice of his or her decision, all parties to the dispute agree in writing to accept the special arbitrator's decision as permanently binding, all parties to any expedited dispute resolution process under Article XII, Section 2 of this Agreement shall: (i) abide by

the decision of the special arbitrator until the completion of the regular dispute resolution process specified in Article XII, Section 3 [*or Article XII, Sections 3 through 8*] of this Agreement; (ii) immediately proceed with the dispute resolution process specified in Article XII, Section 3 [*or Article XII, Sections 3 through 8*] of this Agreement.

- (8) Unless all parties to the dispute have notified the Executive Director in writing that they have agreed to keep the dispute confidential, the Executive Director shall, promptly after receiving notice of the special arbitrator's decision, post (or cause to be posted) on the Council's electronic bulletin board, a copy of the special arbitrators' decision.

TOA's Sec. 18 revised to 1) provide that parties can bypass mediation by mutual consent and go to arbitration, and 2) parties can by consent bypass arbitration and send a portion or all of the dispute to FERC. Also provides that the parties have to agree on how the two pieces from the arbitrator and FERC get combined to produce a final result.

18. Dispute Resolution.

18.2 Preconditions to Arbitration.

18.2.1 Informal Settlement and Mediation. 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 RTO West appoint an impartial mediator 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 mediator and representatives of the Parties with authority to settle the dispute shall meet within twenty-one (21) calendar days after the mediator has been appointed to attempt to reach a settlement 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 part or all of the matter to a technical body for resolution or for an advisory opinion.

18.2.2 Impasse. If the Parties have not succeeded in reaching a mutually acceptable resolution within thirty days after first meeting with the mediator, unless the Parties otherwise agree the Parties shall be deemed to be at an impasse. Upon such an impasse, any party may commence the arbitration process provided hereunder by notice to the other Party. RTO West shall post on the RTO West Website notice of the commencement of any Dispute Resolution process with respect to any Participating Transmission Owner or Eligible Customer within 48 hours after RTO West sends or receives such notice. The disputing Parties may also by mutual consent (by consent of at least 75% of the disputing Parties) deem themselves to be at an impasse and commence the arbitration process without first participating in a mediation process under Section 18.2.1 above. The Parties may also by mutual consent (by consent of 75% of the disputing Parties) decline to initiate the arbitration process provided herein and submit the dispute directly to FERC for resolution to the extent and in the manner allowed by law, or may by mutual consent submit portions of the dispute directly to FERC

while the remainder of the dispute is determined through the arbitration process.

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, and the issues to be arbitrated. In listing the issues to be arbitrated, the Parties shall list those issues that are being referred directly to FERC for resolution pursuant to Section 18.2.2 above, and how the Parties intend the efforts of the arbitrator and of FERC to be combined to produce a final resolution of the dispute. The Parties shall also in this statement set forth 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.

MEMORANDUM

To: RTO Tariff Integration Group

From: Mary Hain

Re: ADR Provision About FERC Filings to Initiate Interconnection and Integration Service in the Absence of an Executed Agreement

Date: March 2, 2001

ADR Provision

Any dispute between a Transmission Customer and RTO West involving Transmission Services under the Tariff (excluding applications for rate changes or other changes to the Tariff, or to any Service Agreement entered into under the Tariff)

Drafter's Note: As long as we follow the ADR language in the pro forma tariff, I don't think the ADR provision needs to specifically exclude initiating service without an executed service agreement so long as the tariff also includes a provision similar to that in the pro forma tariff allowing the customer to demand that RTO West file with FERC an unexecuted service agreement.

Initiating Service in the Absence of an Executed Service Agreement

If RTO West and the Transmission Customer [Drafter's note: see definition – it includes someone who requests a generation integration agreement; I think it should also include someone who requests an interconnection agreement] requesting Transmission Service cannot agree on all the terms and conditions of the Service Agreement, RTO West shall file with the Commission, within thirty (30) days after the date the Transmission Customer provides written notification directing RTO West to file, an unexecuted Service Agreement containing terms and conditions deemed appropriate by RTO West for such requested Transmission Service. RTO West shall commence providing Transmission Service subject to the Transmission Customer agreeing to (i) compensate RTO West at whatever rate the Commission ultimately determines to be just and reasonable, and (ii) comply with the terms and conditions of the Tariff including posting appropriate security deposits in accordance with the terms of Section ____.