

Proposed Final Version of RTO West Arbitration Procedural Rules

Section 1. Application of Arbitration Procedural Rules

These rules and any amendments of them shall apply in the form in effect at the time dispute resolution is initiated by the Parties. Any use of a word in the singular form will also include the plural form and any use of the plural form shall include the singular form.

Section 2. Defined Terms.

Capitalized terms used in these rules that are not otherwise defined shall have the meanings specified in the RTO West Tariff.

Section 3. Fixing of Locale

The Parties may mutually agree on the locale where the arbitration is to be held. If any Party requests that the hearing be held in a specific locale and the other Party files no objection thereto with fifteen (15) days after notice of the request has been received, the locale shall be the one requested. If a Party objects to the locale requested by the other Party, and the Parties cannot come to an agreement on a specific locale, then the default locale shall be Portland, Oregon.

Section 4. Preliminary Hearing

(a) At the request of any Party or at the discretion of the arbitrator, the arbitrator may schedule, as soon as practicable, a preliminary hearing with the Parties and Participants. The preliminary hearing may be conducted by telephone at arbitrator's discretion or upon mutually agreement by the Parties.

(b) During the preliminary hearing, the Parties, any Participants that have requested or been granted rights under Section 12.3.5.6 of the RTO West Dispute Resolution Provisions, and the arbitrator should discuss the future conduct of the case, including clarification of the issues and claims, a schedule for the hearing and any other preliminary matters.

Section 5. Confidentiality of Information

(a) Any and all information disclosed by any Party that is marked as "Confidential" or with a similar legend or, in the event of an intangible disclosure is confirmed in writing as confidential within ten (10) days of disclosure, shall be deemed "Confidential Information," unless the arbitrator rules otherwise or such information falls under one of the exceptions set forth below.

(b) The receiving Party agrees to hold any Confidential Information disclosed to it, or to which it is exposed in connection with the proceeding, in confidence; to cause its employees, agents, and representatives to hold such Confidential Information in confidence; and to use the

same standard of care used to protect its own proprietary and confidential information, but not less than a reasonable degree of care, in protecting the Confidential Information from unauthorized disclosure. The receiving Party shall not disclose Confidential Information to its employees, agents, and representatives except on a need-to-know basis or use it in connection with the arbitration proceeding and have been advised of the obligation of confidentiality and who have agreed to be bound in like fashion.

(c) The receiving Party agrees not to use any Confidential Information disclosed to it, or to which it is exposed in connection with the proceeding for any purpose other than as needed to participate in the proceeding (and any subsequent appeal).

(d) Unless the Parties agree otherwise, the receiving Party's obligation of confidentiality and non-use of Confidential Information shall last for five (5) years from the date of disclosure.

(e) Confidential Information shall not include any information which (i) was publicly available at the time of disclosure; (ii) became publicly available after disclosure without breach of these rules by the receiving Party; (iii) was in the receiving Party's possession prior to disclosure, as evidenced by the receiving Party's written records, and was not the subject of an earlier confidential disclosure; (iv) was lawfully acquired by the receiving Party after disclosure by the disclosing Party from a third party who was lawfully in possession of the information and was under no obligation to the disclosing Party to maintain confidentiality; (v) is independently developed by the receiving Party's employees, agents or representatives who have not had direct or indirect access to the Confidential Information; or (vi) is subject to disclosure under any statute requiring disclosure of the records of a public agency, provided that the party asserting confidentiality may, at its own expense, pursue any available legal remedy to prevent disclosure of the information.

(f) Upon request of the disclosing Party or upon termination of the proceedings, the receiving Party shall return or destroy all documents, samples or other materials containing Confidential Information and shall retain no copies thereof, unless it is required by statute to retain the documents, samples or other materials. The receiving Party or its representative shall certify destruction of the Confidential Information.

(g) Any Party disclosing information in violation of this Section 5 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.

Section 6. Attendance at Hearings

The arbitrator shall have the power to require the exclusion of any person, other than a Party, Participant, or other essential person, during the testimony of any witness. With the consent of all of the Parties the arbitrator may permit persons other than Parties and Participants to attend hearings.

Section 7. Representation

Any Party or Participant may be represented by counsel or other authorized representative. A Party or Participant intending to be so represented shall notify all other Parties and Participants, the arbitrator, and the RTO West Arbitration Committee of the name and address of the representative at least three (3) days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates arbitration or responds for a Party, notice is deemed to have been given.

Section 8. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath or affirmation administered by any duly qualified person and, if it is required by law or requested by any Party, shall do so.

Section 9. Stenographic Record

Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party and the arbitrator of these arrangements at least three (3) days in advance of the hearing. The requesting Party shall pay the cost of the record. The arbitrator may require a stenographic record. If the arbitrator requires or the Parties agree to provide for a stenographic record, it shall be the official record of the proceeding and its costs shall be shared equally by the Parties. The official record must be provided to the arbitrator and may available to the other Party for inspection, at a date, time, and place determined by the arbitrator. Parties shall bear their own expenses of obtaining copies of the official record.

Section 10. Interpreter

Any Party or Participant wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

Section 11. Service

(a) Any papers, notices, or process related to an arbitration under these rules may be served by first class mail (postage prepaid), overnight delivery, or personal service. Any papers, notices, or process served by mail must be sent to the recipient's last known address.

(b) A Party, Participant, or arbitrator may agree to be served by electronic mail (e-mail), facsimile transmission (fax), or other methods of communication.

(c) Service by mail shall be deemed effective five (5) days after postmark. Service by any other means shall be deemed effective upon confirmation of delivery or of successful transmission.

(d) Unless otherwise instructed by the RTO West Arbitration Committee or by the arbitrator, any documents submitted by any Party or Participant to the RTO West Arbitration Committee or to the arbitrator shall simultaneously be provided to the other Parties to the arbitration and to all Participants.

Section 12. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any Party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a Party. The arbitrator may require any Parties present to submit such evidence as the arbitrator may require to make a decision and award.

Section 13. Conduct of Proceedings

(a) The Party filing the statement of claim shall present evidence to support its claim. The Party filing the response shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the arbitrator and the adverse Party or its representative. The arbitrator has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentation on issues the decision of which could dispose of all or part of the case.

Section 14. Evidence

(a) The Parties may offer such evidence as is relevant and material to the dispute. All evidence shall be taken in the presence of arbitrator and the Parties, except where any Party is absent, in default or has waived the right to be present.

(b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.

(c) The arbitrator shall treat as privileged any evidence protected by legal privilege, such as confidentiality of communications between a lawyer and client.

(d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any Party or independently.

Section 15. Discovery Procedures

(a) Each Party shall promptly disclose after selection of the arbitrator all non-privileged documents the Party intends to present as evidence in the proceeding.

- (b) In response to the Parties' discovery requests, the Parties will cooperate in good faith in the voluntary, prompt and informal exchange of all non-privileged documents and other information relevant to the dispute or claim.
- (c) At least twenty-one (21) days before the hearing, the Parties shall produce copies of any expert witness reports on which they intend to rely and a summary of any other evidence expected to be presented by an expert witness. At least ten (10) days before the hearing, the Parties shall identify the positions and names of individuals (other than experts) whom they may call as witnesses at the hearing.
- (d) Except as otherwise permitted by the arbitrator, each Party may take one deposition of each opposing Party or of one individual under the control of each opposing Party. The Parties will attempt to agree on the time, location and duration of the deposition, and if the Parties do not agree these issues will be determined by the arbitrator. For good cause and with the arbitrator's permission, any Party may conduct depositions of its own witnesses which may be introduced as evidence at the hearing if the other Party was given fair opportunity to attend the deposition and cross-examine the witness.
- (e) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties remain under a continuing obligation to provide relevant, non-privileged documents, to supplement their identification of witnesses and experts and to honor any informal agreements or understandings between the Parties regarding documents or information to be exchanged. Documents that have not been previously exchanged, or witnesses and experts not previously identified, will not be considered by the arbitrator at the hearing.
- (f) The Parties will promptly notify the arbitrator when an unresolved dispute exists regarding discovery issues. The arbitrator may attempt to facilitate an informal resolution of the dispute by the Parties themselves. If the dispute is not informally resolved, the arbitrator will decide the dispute.
- (g) An arbitrator may draw an adverse inference from the failure of a Party to provide discovery.

Section 16. Interim Measures

- (a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property.
- (b) A request for interim measures addressed by the Party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

Section 17. Closing of Proceedings

- (a) When the arbitrator is satisfied that the Parties have had a reasonable opportunity to present their cases and all Participants and Parties have had a reasonable opportunity to exercise

their rights under the RTO West Dispute Resolution Provisions, the arbitrator shall declare the proceedings closed.

(b) Subject to Section 12.3.6 of RTO West Dispute Resolution Provisions the arbitrator shall have thirty (30) days from the closing of the proceedings within which to make an award.

Section 18. Waiver of Rules

Any Party who proceeds with the arbitration without objecting to any failure to comply with any provision or requirement of these rules shall be deemed to have waived the objection.

Section 19. Award upon Settlement

If the Parties settle their dispute during the course of the arbitration and if the Parties so request, the arbitrator shall set forth the terms of the settlement in a “consent award.”

Section 20. Correction of Award

Within ten (10) days after the date of an award, any Party, upon notice to the other Parties, may request the arbitrator to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other Party shall have five (5) days following service to respond to the request. The arbitrator shall dispose of the request within five (5) days after service of the request and any responses thereto.

Section 21. Release of Documents for Judicial Proceedings

The RTO West Arbitration Committee shall, upon written request of a Party, furnish to the Party, at the Party’s expense, certified copies of any papers in the RTO West Arbitration Committee’s possession that may be required in judicial proceedings related to the arbitration.

Section 22. Summary Disposition

(a) Any Party may at any time after the selection of the arbitrator, move with or without supporting affidavits for a summary disposition in the Party’s favor upon all or any part of a claim or counterclaim.

(b) The motion shall be served at least 10 days before the time fixing for the hearing. The Party opposing the motion, before the day of the hearing, may serve opposing affidavits. The grant of summary disposition shall be rendered forthwith if the statement of claim, response, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the Party making the motion is entitled to an affirmative ruling as a matter of law.

(c) A summary disposition may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Section 23. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's power and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote.