

1 Transmission Provider and the Transmission User or Canadian
2 Transmission User shall retain Ownership-Like Rights in regard
3 to such Incremental Facilities.

4 10.9.3 In regard to an Interconnection, in respect to
5 which the Transmission Provider or Canadian Transmission
6 Provider will have a right to use a portion of the transfer
7 capability, a Transmission User or Canadian Transmission User
8 shall have the option of participating in the project by
9 advancing the capital costs of, and to have ownership of, that
10 portion of such Interconnection required to provide the
11 Transmission User's or Canadian Transmission User's requested
12 transmission services (if such Interconnection is not already
13 under construction), regardless of whether the Transmission
14 Provider or Canadian Transmission Provider requests such an
15 advance.

16 11. PRICING.

17 11.1 General Provisions. Pricing of interconnection or
18 transmission service by a Transmission Provider in response to
19 any request under this Governing Agreement for such service
20 shall utilize pricing procedures and methodologies that conform
21 to the FPA and then-applicable standards and policies of the
22 FERC.

23 11.2 Mexican Provisions. Transmission Providers in Mexico
24 may rely upon pricing policies of regulatory bodies other than
25 the FERC if such policies are no less favorable to Transmission
26 Users than those of the FERC.

1 11.3 Canadian Provisions. With respect to a request for
2 interconnection or transmission service under this Governing
3 Agreement to a Canadian Transmission Provider: (i) If no rate
4 schedule or tariff for the requested service has been approved
5 or accepted for filing, and no approval by a Canadian
6 Regulatory Authority is required for the Canadian Transmission
7 Provider to provide the requested service, the Canadian
8 Transmission Provider shall utilize pricing procedures and
9 methodologies comparable to those prescribed for Transmission
10 Providers by the FPA and by then-applicable standards and
11 policies of the FERC for similar services; (ii) If a rate
12 schedule or tariff is required to be filed for the requested
13 service, or if approval by a Canadian Regulatory Authority is
14 required for the Canadian Transmission Provider to provide such
15 service, then the Canadian Transmission Provider shall file a
16 proposed rate schedule or tariff for the requested service
17 utilizing pricing procedures and methodologies comparable to
18 those prescribed for Transmission Providers by the FPA and
19 then-applicable standards and policies of the FERC for similar
20 services, and shall diligently seek all necessary approvals
21 from the appropriate Canadian Regulatory Authority; provided,
22 however, that the Canadian Transmission Provider shall not be
23 required to provide the requested service utilizing pricing
24 procedures and methodologies other than those approved by the
25 appropriate Canadian Regulatory Authority.

26

1 11.4 Establishment of Pricing Principles. Notwithstanding
2 any other provision of this Governing Agreement, any Member, or
3 the Board, may, from time to time, request that the FERC find a
4 particular form of transmission pricing by a Transmission
5 Provider to be in accordance with the FPA, or request that the
6 Canadian Regulatory Authority find a particular form of
7 transmission pricing by a Canadian Transmission Provider to be
8 in accordance with Canadian laws. Notice of such filing shall
9 be provided to other Members. Pending the resolution of such
10 request, established applicable policies shall govern. Any
11 Member may challenge in a future Arbitration whether such FERC
12 or Canadian Regulatory Authority finding represents then-
13 applicable FERC or Canadian Regulatory Authority policy
14 regarding a then-pending request for interconnection or
15 transmission service.

16 12. DISPUTE RESOLUTION.

17 12.1 Preconditions to Arbitration.

18 12.1.1 Members shall make best efforts to settle all
19 disputes arising under this Governing Agreement, including but
20 not limited to: disputes concerning amounts and location of
21 Available Transmission Capacity; need for and costs of Incre-
22 mental Facilities and associated studies; costs, prices, terms
23 and conditions of transmission service; or the appropriateness
24 of requests for transmission planning data and responses
25 thereto. In the event any such dispute is not settled, any
26 disputing Member may request in writing that the Manager

1 appoint an impartial facilitator ~~from the Association member-~~
2 ~~ship~~ who shall be knowledgeable in matters regarding the
3 planning and operation of the interconnected electric systems
4 in the Western Interconnection and in regulatory policies and
5 requirements, to aid the disputing Members in reaching a
6 mutually-acceptable resolution to the dispute and such
7 appointment shall be made within five days. The facilitator
8 and representatives of disputing Members, with authority to
9 settle the dispute, shall meet within 14 days after the
10 facilitator has been appointed to attempt to negotiate a
11 resolution of the dispute. Matters discussed during such
12 settlement negotiations shall not be publicly disclosed or
13 referred to in any arbitration proceeding. With the consent of
14 all disputing Members, a resolution may include referring the
15 matter to a technical body (such as a WSCC Technical Advisory
16 Panel) for resolution or an advisory opinion, or referring the
17 dispute directly to the FERC or, in the case of a dispute
18 involving a Canadian Transmission Provider, directly to the
19 appropriate Canadian Regulatory Authority.

20 12.1.2 If the disputing Members have not succeeded in
21 negotiating a resolution of the dispute within 30 days after
22 first meeting with the facilitator pursuant to Part 12.1.1,
23 such Members shall be deemed to be at impasse and any such
24 disputing Member may then commence the arbitration process.

25 12.1.3 Disputes related to: (i) performance under
26 treaties, executed agreements, tariffs or rate schedules that

1 have been approved or accepted for filing by the FERC or by a
2 Canadian Regulatory Authority; (ii) whether a Transmission
3 Provider is obligated to respond to a request for
4 interconnection or transmission service made pursuant to
5 Subsection 10.4; (iii) whether a Canadian Transmission Provider
6 is obligated to respond to a request for interconnection or
7 transmission service made pursuant to procedures established
8 under Subsection 10.5.6; and (iv) the existence of an
9 Impairment as described in Part 10.8.1 shall not be subject to
10 arbitration under this Governing Agreement unless otherwise
11 agreed by the disputing Members. Disputes involving only
12 Members who are also members of the same Subregional Transmis-
13 sion Group whose governing documents provide for a dispute
14 resolution mechanism shall be resolved in accordance with such
15 dispute resolution mechanism.

16 12.2 Arbitration Process.

17 12.2.1 Within 14 days of a disputing Member's request
18 that the arbitration process be commenced, each disputing
19 Member shall submit a statement in writing to the other
20 disputing Members, which statement shall set forth in
21 reasonable detail the nature of the dispute, the issues to be
22 arbitrated, and the proposed Award sought through such
23 arbitration proceedings. To the extent disputing Members do
24 not agree on the terms of a required contract for transmission
25 service, each submittal shall include proposed contract
26 language for those issues in dispute. These statements shall

1 constitute the sole submittal of statements for arbitration. A
2 summary of such statement of issues and a brief description of
3 the services sought, including the information required in 18
4 CFR § 1.36.1 or any successor regulation, shall be published by
5 the Manager in the Association's newsletter or electronic
6 bulletin board.

7 12.2.2 Within ten days following the submission of
8 their statements, the disputing Members shall select an
9 Arbitrator. If the disputing Members cannot agree upon an
10 Arbitrator, the disputing Members, by Membership classifica-
11 tion, shall take turns striking names from a list of ten
12 qualified individuals supplied by the Arbitration Committee
13 from the list maintained by the Board pursuant to Subsection
14 6.9, with a disputing Member chosen by lot first striking a
15 name. The last-remaining name not stricken shall be designated
16 as the Arbitrator. If that individual is unable or unwilling
17 to serve, the individual last stricken from the list shall be
18 designated and the process repeated until an individual is
19 selected who is able and willing to serve. Absent the express
20 written consent of all disputing Members as to any particular
21 individual, no person shall be eligible for selection as an
22 Arbitrator who is a past or present officer, member of the
23 governing body, employee of or consultant to any of the
24 disputing Members, or of an entity related to or affiliated
25 with any of the disputing Members or is otherwise interested in
26 the matter to be arbitrated. Any individual designated as an

1 Arbitrator shall make known to the disputing Members any such
2 disqualifying relationship and a new Arbitrator shall be
3 designated in accordance with the provisions of this
4 subparagraph.

5 12.2.3 The Arbitrator shall determine discovery
6 procedures, intervention rights, how evidence shall be taken,
7 what written submittals may be made, and other such procedural
8 matters, taking into account the complexity of the issues
9 involved, the extent to which factual matters are disputed and
10 the extent to which the credibility of witnesses is relevant to
11 a resolution. Each party to the dispute shall produce all
12 evidence determined by the Arbitrator to be relevant to the
13 issues presented. To the extent such evidence involves
14 proprietary or confidential information, the Arbitrator may
15 issue an appropriate protective order which shall be complied
16 with by all parties to the dispute. The Arbitrator may elect
17 to resolve the arbitration matter solely on the basis of
18 written evidence and arguments.

19 12.2.4 Absent the agreement to the contrary of all
20 disputing Members, no party that is not a Member shall be
21 permitted to intervene unless, as a condition of its inter-
22 vention, it agrees to be bound by the provisions of this
23 Governing Agreement in regard to the arbitration, including the
24 provisions related to deference on appeal to FERC set forth in
25 Part 12.6.1 and to deference on appeal to a Canadian Regulatory
26 Authority set forth in Part 12.10.2. A Member, whose principal

1 place of business is not in the same nation as the transmission
2 facilities concerning which a dispute has arisen, shall be
3 entitled to intervene as a matter of right in any arbitration
4 involving such facilities if electrical energy to be bought or
5 sold by such Member is to be transmitted over such facilities
6 and shall be deemed to have standing as a party to any appeal
7 of any such arbitration.

8 12.2.5 The Arbitrator shall consider all issues
9 underlying a dispute including, if relevant, whether a Trans-
10 mission Provider's or Canadian Transmission Provider's
11 reliability criteria, standards, guidelines and operating
12 procedures are consistent with Subsection 9.4; provided, that
13 individual Members' reliability criteria, standards, guidelines
14 and operating procedures which were in effect and in writing as
15 of July 1, 1993 (but not the applicability, consistent
16 application or interpretation of such criteria, standards,
17 operating procedures and guidelines in regard to a particular
18 request) shall be afforded a rebuttable presumption of
19 reasonableness and consistency with Prudent Utility Practice by
20 the Arbitrator.

21 12.2.6 The Arbitrator shall take evidence submitted
22 by the disputing parties in accordance with procedures estab-
23 lished by the Arbitrator and may request additional information
24 including the opinion of recognized technical bodies. Disput-
25 ing parties shall be afforded a reasonable opportunity to rebut
26 any such additional information. Other affected parties may

1 request in writing that the Arbitrator consider additional
2 information and the Arbitrator may consider such additional
3 information, subject to a right of the disputing parties to
4 have a reasonable opportunity to rebut such additional
5 information.

6 12.3 Award. As soon as practicable, but in no event more
7 than 115 days after his or her selection, the Arbitrator shall
8 select, by written notice to the disputing parties, the pro-
9 posed Award of a disputing Member which best meets the terms
10 and intent of this Governing Agreement, the FPA and FERC's
11 then-applicable standards and policies or, in the case of a
12 dispute involving a Canadian Transmission Provider, this
13 Governing Agreement, Canadian Laws and the then-applicable
14 standards and policies of the appropriate Canadian Regulatory
15 Authority; provided, however, if the Arbitrator concludes that
16 no proposed Award is consistent with this Governing Agreement,
17 the FPA and FERC's then-applicable standards and policies, or
18 in the case of a dispute involving a Canadian Transmission
19 Provider with this Governing Agreement, Canadian Laws and the
20 then-applicable standards and policies of the appropriate
21 Canadian Regulatory Authority, or addresses all issues in
22 dispute, the Arbitrator shall specify how each proposed Award
23 is deficient and request that the disputing parties submit new
24 proposed Awards that cure the deficiency perceived by the
25 Arbitrator; and provided, further, the disputing parties shall
26 be afforded only a single opportunity to resubmit proposed

1 Awards and thereafter the Arbitrator shall select one of the
2 resubmitted proposed Awards. A written decision explaining the
3 basis for the Award shall be provided by the Arbitrator with
4 the written notice to the parties. Both notice and decision
5 shall be published in the Association's newsletter or elec-
6 tronic bulletin board. No Award that is not appealed shall be
7 deemed to be precedential in any other arbitration related to a
8 different dispute.

9 12.4 Compliance and Costs.

10 12.4.1 Immediately upon the decision by the Arbi-
11 trator, except as provided for in Subsections 12.6 or 12.10,
12 the disputing parties shall take whatever action is required to
13 comply with the selected Award to the extent the selected Award
14 does not require regulatory action and shall pursue no avenue
15 of appeal. To the extent the Award requires local, state,
16 federal or provincial approval or regulatory action, or a FERC
17 filing by a Transmission Provider subject to FPA Sections 205
18 or 206, or a Canadian Regulatory Authority filing by a Canadian
19 Transmission Provider, the affected Member shall promptly
20 submit and support that portion of the Award with the
21 appropriate authority, except as provided for in Subsections
22 12.6 or 12.10. Any and all costs associated with the
23 arbitration (not including the disputing parties' costs
24 associated with attorney and expert witness fees) shall be
25 borne by the party or parties whose proposed Award was not
26

1 selected, unless the disputing Members agree to an alternate
2 method of allocating costs.

3 12.4.2 Except for it not being precedential in other
4 arbitrations, and except for an Award involving a Canadian
5 Transmission Provider, an Award that is not appealed shall be
6 deemed to have the same force and effect as an order entered by
7 the FERC pursuant to Sections 210 or 211 of the FPA and, with
8 respect to any request for interconnection or transmission
9 service, the parties to the arbitration shall be deemed to have
10 been proceeding under Section 210 or 211 of the FPA. If a
11 Member asserts that another Member has failed to comply with an
12 Award providing for interconnection and/or transmission service
13 by a Transmission Provider that has not been appealed to FERC,
14 the complaining Member may file with FERC pursuant to Section
15 210 or 211, as the case may be, a request for interconnection
16 or transmission service identical to the service granted in
17 such Award and a request that civil penalties be assessed
18 pursuant to Section 316A of the FPA for violation of any
19 provision of Sections 211, 212, 213 or 214 of the FPA or any
20 provision of any rule or order thereunder in connection with
21 the request for interconnection or transmission service. In
22 the event of such a filing, each party to the arbitration that
23 resulted in such Award:

24 (a) shall be deemed to have stipulated to the FERC
25 summarily entering an order pursuant to Section 210 or 211 of
26 the FPA consistent with the Award;

1 (b) shall only be entitled to contest whether the
2 Award has been complied with and what civil penalties, if any,
3 should be assessed pursuant to Section 316A of the FPA in the
4 event the FERC finds that the Award has not been complied with
5 and Sections 211, 212, 213 or 214 of the FPA or rules or orders
6 promulgated thereunder have been violated;

7 (c) shall not seek to offer evidence or argument on
8 any issue other than whether the Award has been complied with,
9 whether there have been violations of Sections 211, 212, 213 or
10 214 of the FPA or rules or orders promulgated thereunder, and
11 what civil penalties, if any, should be assessed; and

12 (d) shall be deemed to have stipulated after hearing
13 pursuant to Section 316A of the FPA to the FERC entering an
14 order assessing civil penalties, which may be retroactive to
15 the date of such Award or the date of the violation of Sections
16 211, 212, 213 or 214 of the FPA or rules or orders promulgated
17 thereunder, as the case may be, in the event the FERC finds
18 that a party to the arbitration has failed to comply with such
19 an Award.

20 12.5 Bonneville Power Administration Rate Proceedings.
21 This Subsection shall be applicable during such times as the
22 Bonneville Power Administration ("BPA") is a Member. In case
23 of a dispute arising under this Governing Agreement concerning
24 a BPA rate for requested interconnection or transmission
25 service ("BPA Rate Issue Dispute"):
26

1 12.5.1 Except as otherwise provided in this
2 Subsection 12.5, this Subsection 12.5 shall apply to a BPA Rate
3 Issue Dispute in lieu of the arbitration provisions of Subsec-
4 tions 12.2 and 12.3, the compliance and costs provisions of
5 Subsection 12.4, the appeal provisions of Part 12.6.1. and the
6 procedures for appeal provisions of Subsection 12.7 of this
7 Governing Agreement; provided, however, that if BPA has by
8 Federal Register notice initiated a hearing under Section 7(i)
9 of the Pacific Northwest Electric Power Planning and Conserva-
10 tion Act ("Northwest Power Act") to establish, or review and
11 revise, a rate or rates of general applicability for FERC-
12 ordered transmission service or for other transmission service,
13 and the BPA Rate Issue Dispute under this Governing Agreement
14 involves the appropriateness or application of such rate or
15 rates to the Transmission User's request for BPA transmission
16 service, then for purposes only of that Transmission User's
17 request for BPA transmission service a separate Section 7(i)
18 proceeding shall be held in accordance with the procedures of
19 this Subsection 12.5 to determine that particular BPA Rate
20 Issue Dispute unless the Arbitrator determines, or the
21 disputing Members agree, that (1) the separate 7(i) proceeding
22 would frustrate or unnecessarily avoid the ongoing 7(i)
23 proceeding and (2) resolution of the BPA Rate Issue Dispute in
24 the ongoing 7(i) proceeding would not materially frustrate the
25 Transmission User's need for an expeditious decision.

26

1 12.5.2 Where the rate is subject to Section 212(i)(1)
2 of the FPA, pricing of interconnection or transmission service
3 by BPA in response to any request under this Governing
4 Agreement for such service shall conform to Section
5 212(i)(1)(ii) of the FPA and then-applicable standards and
6 policies of the FERC. Notwithstanding the first sentence of
7 Subsection 11.4 of this Agreement, declaratory relief
8 concerning BPA's rates shall only be available as allowed by
9 law.

10 12.5.3 A hearing on a BPA Rate Issue Dispute shall be
11 held which comports in all respects with Section 7(i) of the
12 Northwest Power Act and other applicable requirements of
13 Federal law, including any applicable requirements of the
14 National Environmental Policy Act, with the addition that:

15 (i) following compliance with the preconditions to
16 arbitration set forth in Subsection 12.1 of this
17 Governing Agreement, and within 14 days of a
18 disputing Member's ensuing request that the
19 hearing process be commenced, each disputing
20 Member shall submit a statement in writing to the
21 other disputing Members, which statement shall
22 set forth in reasonable detail the nature of the
23 BPA Rate Issue Dispute, the issues to be raised
24 in the hearing, and the proposed rate(s) sought
25 through such hearing;

26

- 1 (ii) BPA shall within 14 days of its receipt of the
2 disputing Members' written statements prepare and
3 submit for publication a Federal Register notice
4 that in addition to meeting the requirements of
5 Northwest Power Act Section 7(i)(1), also sets
6 forth the statements or notifies the public of
7 their availability;
- 8 (iii) the hearing officer/Arbitrator (hereafter hearing
9 officer) shall be selected as specified in Part
10 12.2.2 of this Agreement, which selection shall
11 be officially recognized by BPA;
- 12 (iv) with the exception of any legally-required process for
13 taking participant comments, the hearing shall be
14 held in Portland, Oregon, and in the BPA Rates
15 Hearing Room if available, unless an alternate
16 location is agreed to by all parties to the
17 hearing;
- 18 (v) the hearing officer shall comport with Parts 12.2.3,
19 12.2.5, and 12.2.6 of this Agreement, unless
20 inconsistent with Section 7(i) of the Northwest
21 Power Act or the National Environmental Policy
22 Act;
- 23 (vi) the hearing officer shall, unless violative of Section
24 7(i) of the Northwest Power Act or the National
25 Environmental Policy Act, conduct the hearing in
26 a manner calculated to ensure that no more than

1 115 days elapses from the date of the publicly-
2 noticed prehearing conference to the date of the
3 Administrator's final decision pursuant to
4 Section 7(i)(5) of the Northwest Power Act;
5 (vii) the hearing officer shall, unless the hearing
6 officer becomes unavailable, make a recommended
7 decision to the Administrator that (a) best meets
8 the terms and intent of this Governing Agreement,
9 Section 212(i)(1) of the FPA and FERC's then-
10 applicable standards and policies, and (b) sets
11 forth the hearing officer's findings and
12 conclusions, and the reasons or basis thereof, on
13 all material issues of fact, law, or discretion
14 presented on the record;
15 (viii) in the case of rates subject to Section 212(i)(1)
16 of the FPA, the Administrator shall afford
17 deference to the hearing officer's factual
18 findings and determination of issues not of first
19 impression (i.e., matters previously decided by
20 the FERC or a court of competent jurisdiction in
21 cases involving comparable facts and
22 circumstances); and
23 (ix) the Administrator's final decision under Section
24 7(i)(5) of the Northwest Power Act shall also set
25 forth the reasons for reaching any findings and
26 conclusions which may differ from those of the

1 hearing officer, based on the hearing record and
2 the law.

3 12.5.4 In those cases where the dispute arising under
4 this Governing Agreement not only involves a BPA Rate Issue
5 Dispute but also involves a dispute over the terms and condi-
6 tions of BPA transmission service, resolution and appeal of the
7 dispute over the terms and conditions shall continue to be
8 governed by sections of this Governing Agreement other than
9 this Subsection 12.5; provided, however, that the Transmission
10 User may, in its sole discretion, timely request consolidation
11 of the dispute over terms and conditions with the 7(i) rates
12 hearing described in Part 12.5.3 for determination of the
13 appropriate Award of terms and conditions by the hearing
14 officer. Where the dispute over terms and conditions has been
15 consolidated in the 7(i) proceeding described in Part 12.5.3,
16 and as to matters involving terms and conditions, as
17 distinguished from rates, the hearing officer (Arbitrator) will
18 exercise his or her authority to determine and make an
19 appropriate Award regarding the terms and conditions in dispute
20 through the use of the procedures for arbitration specified in
21 Parts 12.2.3 through 12.3 of this Agreement, except that the
22 timing provision of this Part 12.5.3(vi) shall apply. Where
23 arbitration of the dispute over terms and conditions has not
24 been consolidated with the 7(i) rate proceeding described in
25 Part 12.5.3, the arbitration shall nevertheless, if
26 practicable, be conducted by the same Arbitrator as selected to

1 serve as the hearing officer, take place in the same city, be
2 timed to conclude at or about the time the hearing officer
3 renders his or her recommended decision in the 7(i) proceeding
4 pursuant to Part 12.5.3(vii) of this Agreement, and be
5 otherwise so conducted and structured to permit both
6 proceedings to proceed in an orderly, fair and efficient
7 manner.

8 12.5.5 Filing of the Administrator's final rate(s)
9 decided under Section 7(i)(5) of the Northwest Power Act, and
10 any appeal or protest thereof, shall be promptly made in accord
11 with existing provisions of law and regulation. Notwith-
12 standing the fact that the Administrator has made a final rates
13 decision under Section 7(i)(5) of the Northwest Power Act, the
14 Members intend that in the case of BPA rates subject to the
15 requirements of Section 212(i)(1)(ii) of the FPA, the FERC
16 shall afford deference to the hearing officer's factual
17 findings and determination of issues not of first impression
18 (i.e., matters previously decided by the FERC or a court of
19 competent jurisdiction in cases involving comparable facts and
20 circumstances).

21 12.5.6 In the event the dispute is over whether
22 either an existing BPA rate or a BPA rate submitted to FERC for
23 approval applies by its terms to the requested transmission
24 service, arbitration shall be held pursuant to sections of this
25 Agreement other than this Subsection 12.5 to determine if the
26 rate applies. In the event such dispute falls within FERC's

1 jurisdiction, appeal of the Arbitrator's Award shall be in
2 accord with Subsection 12.6 of this Agreement. In the event
3 the dispute falls outside FERC's jurisdiction and any disputing
4 party desires to appeal the Award, the disputing parties shall
5 undertake all reasonable steps to obtain judicial review of the
6 Award, or the equivalent thereof, in a manner similar to a
7 final determination of the Administrator under the Northwest
8 Power Act.

9 12.5.7 With regard to matters subject to the FPA, the
10 Members intend that to the extent the BPA Administrator cannot
11 be required under Section 211 of the FPA, as a result of the
12 Administrator's other statutory mandates, either to (A) provide
13 transmission service to an applicant which the FERC would
14 otherwise order, or (B) provide such service under rates,
15 terms, and conditions which the FERC would otherwise require, a
16 Member shall not be required to provide similar transmission
17 services to the Administrator or to provide such services under
18 similar rates, terms and conditions.

19 12.5.8 BPA transmission rates subject to the
20 provisions of Section 212(i)(1) of the FPA will be established,
21 as soon as reasonably practicable, by the BPA Administrator to
22 meet the standards of Section 212(i)(1)(ii) of the FPA,
23 including that such BPA rates shall not be unjust,
24 unreasonable, or unduly discriminatory or preferential.

25 12.5.9 In the event BPA responds to a request made
26 under this Governing Agreement for a transmission rate with the

1 position that the rate is not, or will not be, subject to the
2 standards of Section 212(i)(1)(ii) of the FPA, the Transmission
3 User shall be free to elect to avail itself of any right it has
4 under applicable Federal law with respect to such request and
5 without regard to the provisions of this Governing Agreement.

6 12.6 FERC Appeal.

7 12.6.1 Any party to an arbitration involving a
8 Transmission Provider may apply to the FERC to hear an appeal
9 of any Award only upon the grounds that the Award is contrary
10 to or beyond the scope of this Governing Agreement or is
11 unjust, unreasonable, unduly discriminatory or preferential or
12 otherwise inconsistent with the FPA or the FERC's then-
13 applicable standards or policies. Any appeal to the FERC shall
14 be based solely upon the record assembled by the Arbitrator.
15 Members and non-Members who are parties to arbitrations intend
16 that: (i) the FERC should afford substantial deference to the
17 factual findings of the Arbitrator; (ii) the portion, if any,
18 of the Award relating to issues not of first impression (i.e.,
19 matters previously decided by the FERC or a court of competent
20 jurisdiction in cases involving comparable facts and
21 circumstances) should be afforded appropriate deference by the
22 FERC; and (iii) the portion, if any, of the Award relating to
23 issues of first impression should be afforded no deference by
24 the FERC.

25 12.6.2 No Member, and no non-Member who is a party to
26 an arbitration involving a Transmission Provider, shall seek to

1 expand the factual record before the FERC beyond that assembled
2 by the Arbitrator.

3 12.7 Procedures for Appeals Involving Transmission
4 Providers. If any party to an arbitration involving a
5 Transmission Provider desires to appeal an Award, it shall
6 provide written notice to that effect to all other parties, the
7 Arbitrator and the Manager within 14 days following the date of
8 the Award. If such notice of appeal is timely provided:

9 (a) Within 10 days of the date of the first notice of
10 appeal that is provided, the party requesting interconnection
11 or transmission service shall file an application with the FERC
12 pursuant to Section 210 or 211 of the FPA as the case may be.
13 Such application shall state that the service requested has
14 been the subject of an arbitration pursuant to this Governing
15 Agreement.

16 (b) Within 14 days of the date of such first notice
17 of appeal, the party providing such notice shall file its
18 statement of position regarding the appeal with the FERC,
19 together with the complete evidentiary record of the arbitra-
20 tion and a copy of the Award.

21 (c) Within 30 days of the date of such first notice
22 of appeal, any other party that was a party to the arbitration
23 may file its statement of position regarding the appeal with
24 the FERC.

25 (d) Copies of all materials filed with the FERC by a
26 party during the course of an appeal shall be delivered to all

1 other parties and the Manager.

2 (e) Implementation of the Award shall be deemed
3 stayed pending an appeal unless and until, at the request of a
4 disputing Member, the FERC issues an order shortening or
5 extending such stay; provided, however, if the only issue on
6 appeal is the cost of requested service, the Transmission User
7 may request that the service be provided pending appeal based
8 upon the cost proposed by the Transmission Provider, subject to
9 refund with interest by the Transmission Provider.

10 (f) A summary of each appeal shall be published by
11 the Manager in the Association's newsletter or electronic
12 bulletin board.

13 (g) The Members intend that FERC orders resulting
14 from appeals shall be subject to judicial review pursuant to
15 the FPA.

16 12.8 Civil Penalties on Appeal. A party to an arbitration
17 in which the Award has been appealed to FERC may request that
18 civil penalties be assessed by the FERC pursuant to Section
19 316A of the FPA, which may be retroactive to the date of any
20 violation of Sections 211, 212, 213 or 214 of the FPA, or rules
21 or orders promulgated thereunder and the parties shall be
22 deemed to have proceeded under Section 210 or 211 of the FPA
23 beginning with the date upon which the Transmission User
24 requested interconnection or transmission service from the
25 Transmission Provider.

1 12.9 Mexican Appeal. Notwithstanding Subsection 12.6, a
2 disputing Member may apply to the appropriate Mexican
3 governmental or regulatory authority to hear an appeal of any
4 Award associated with transmission access or services utilizing
5 facilities located in Mexico. The standards and procedures for
6 appeals shall be reasonably comparable to those set out in
7 Subsections 12.6 and 12.7.

8 12.10 Canadian Review of Arbitration Awards.

9 12.10.1 Subject to the limitations of Subsection
10 12.1.3, in a dispute involving transmission facilities within
11 Canada or interconnection or transmission service provided
12 through such facilities, a disputing Member may elect to
13 utilize the procedures of this Section 12.10.

14 12.10.2 Any party to an arbitration involving a
15 Canadian Transmission Provider may apply to the appropriate
16 Canadian Regulatory Authority to hear an appeal of any Award
17 only upon the grounds that the Award is contrary to or beyond
18 the scope of this Governing Agreement or is unjust,
19 unreasonable, unduly discriminatory or preferential or
20 otherwise inconsistent with Canadian Laws or with then-
21 applicable standards or policies of the appropriate Canadian
22 Regulatory Authority.

23 Any appeal to a Canadian Regulatory Authority by a
24 party to an arbitration involving a Canadian Transmission
25 provider shall be based solely upon the record assembled by the
26 Arbitrator. Members and non-Members who are parties to such

1 arbitration intend that: (i) the Canadian Regulatory Authority
2 should afford substantial deference to the factual findings of
3 the Arbitrator; (ii) the portion, if any, of the Award relating
4 to issues not of first impression (i.e., matters previously
5 decided by the Canadian Regulatory Authority or a court of
6 competent jurisdiction in cases involving comparable facts and
7 circumstances) should be afforded appropriate deference by the
8 Canadian Regulatory Authority; and (iii) the portion, if any,
9 of the Award relating to issues of first impression should be
10 afforded no deference by the Canadian Regulatory Authority;
11 provided, however, that nothing in this provision is intended
12 to limit the ability of a Canadian Regulatory Authority on its
13 own initiative to review an Award, should it determine that the
14 Award affects a matter within its jurisdiction.

15 12.10.3 No Member, and no non-Member who is a party
16 to an arbitration involving a Canadian Transmission Provider,
17 shall seek to expand the factual record before the Canadian
18 Regulatory Authority beyond that assembled by the Arbitrator.

19 12.10.4 If any party to an arbitration involving a
20 Canadian Transmission Provider desires to appeal an Award, it
21 shall provide written notice to that effect to all other
22 parties, the Arbitrator and the Manager within 14 days
23 following the date of the Award. If such notice of appeal is
24 timely provided:

25 (a) Within 14 days of the date of such first notice
26 of appeal, the party providing such notice shall file its