

**ATTACHMENT HH**  
**DISPUTE RESOLUTION PROCEDURES**

**I. Applicability.**

**A.** These Dispute Resolution Procedures (“Dispute Resolution Procedures”) shall be applicable, under the conditions hereinafter provided, to all disputes relating to any matter governed by the ISO Agreement, this Tariff or the Business Practices adopted by the Transmission Provider, (except those disputes expressly excluded from the application of this Attachment HH under Section 12 of this Tariff) arising between or among any two (2) or more Parties. Nothing in these Dispute Resolution Procedures is intended to restrict or expand existing state laws or regulatory authority nor shall anything in these Dispute Resolution Procedures restrict the rights of any Party to file a complaint with the Commission under relevant provisions of the Federal Power Act (“FPA”).

**B. Period for Submitting ADR Requests.**

1. No dispute involving Transmission Service settlement statements or Market Activities can be raised under this Attachment HH unless it was first timely submitted to the Transmission Provider as a transmission settlements dispute or market settlements dispute pursuant to section 12A of the Tariff.
2. Any informal dispute raised under this Attachment HH must be submitted to the Transmission Provider no later than ninety (90) Calendar Days from the date on which the Transmission Provider makes a final determination of a transmission settlements dispute, or market settlements dispute. All other

disputes involving subject matters outside the scope of transmission settlement disputes, or market settlement or other market disputes shall be raised pursuant to the processes and timelines stated in the Tariff sections governing such matters. In the absence of specific processes and timelines provided in the Tariff sections governing a subject matter, disputes involving the subject matter may be raised under this Attachment HH, and submitted to the Transmission Provider, as informal disputes no later than ninety (90) Calendar Days from the Operating Day, Transmission Service or other event that forms the basis of any such dispute.

3. Any formal dispute raised under this Attachment HH must be submitted to the Transmission Provider no later than ninety (90) Calendar Days from the date on which the Transmission Provider makes a final determination of a timely submitted informal dispute under this Attachment HH.
4. Where the Transmission Provider has made a final determination of a transmission settlement or market settlement dispute within ninety (90) Calendar Days before the effective date of section I.B of this Attachment HH, an informal dispute may be submitted under this Attachment HH within ninety (90) Calendar Days after the effective date of section I.B. Where the Transmission Provider has made a final determination of an informal dispute within ninety (90) Calendar Days before the effective date of section I.B of this Attachment HH, a formal dispute may be submitted under this

Attachment HH within ninety (90) Calendar Days after the effective date of section I.B.

**II. Informal Dispute Resolution Procedures.**

**A. When Required.**

Any Party seeking to raise a dispute under the Dispute Resolution Procedures shall submit a request for alternative dispute resolution to the Transmission Provider in the form and through the process as provided in the Transmission Provider's Alternative Dispute Resolution Business Practices Manual ("ADR BPM"). The Transmission Provider shall review the Party's request for alternative dispute resolution and provide a written determination as to whether the dispute has been properly raised under Attachment HH. All disputes that have been properly raised under Attachment HH are subject to the informal dispute resolution process defined herein.

**B. Time Frame for Informal Dispute Resolution.**

Parties shall have ninety (90) days to resolve a dispute through the informal dispute resolution process. The ninety (90)-day timeframe for informal dispute resolution shall begin on the day that the Transmission Provider delivers a written response to the Party initiating a dispute recognizing that the dispute has been properly initiated under Attachment HH of the Tariff.

If at any time during the ninety (90)-day informal dispute resolution timeframe the Parties to the dispute reach impasse, the Parties may request that the dispute be considered for mediation or arbitration by the Alternative Dispute Resolution

Committee (“Committee”). To the extent that the Parties to a dispute cannot resolve the dispute within the ninety (90)-day informal dispute resolution process, they may agree to an extended timeframe for informal dispute resolution to facilitate further discussions between the Parties or the discovery of additional information and data to the extent that the Parties believe the extended time period will lead to a resolution of the dispute.

**C. Informal Dispute Resolution Procedures.**

1. The non-executive representatives of the Parties to the dispute shall meet to set a schedule of meetings and fact-finding activities necessary for dispute resolution. In addition, the non-executive representatives of the Parties may escalate the dispute to the executive representative of the Parties if necessary for resolution of the dispute.
2. If the dispute is escalated to the executive representatives of the Parties, the executive representatives shall meet in an effort to resolve the dispute or, in the alternative, establish a schedule of meetings and fact-finding activities necessary for resolution of the dispute.
3. The Parties shall, in good faith, meet and provide information consistent with the schedule established by the Parties in an effort to resolve the dispute.
4. If, during the attempts to resolve the dispute any Party determines they are at an impasse, the Party may declare an impasse. If an impasse is declared, the Party declaring the impasse shall provide a written request

for formal dispute resolution to the Committee and the Transmission Provider. The written request for formal dispute resolution shall be in the form and pursuant to the process for requesting formal dispute resolution as provided in the ADR BPM.

5. All Parties to a dispute in which an impasse has been declared shall have the opportunity to submit to the Committee a written response to the declaration of an impasse and request for formal dispute resolution submitted by a Party to the dispute.
6. If the Parties to a dispute resolve the dispute through the informal dispute resolution process, the Parties shall submit written notice of the resolution of the dispute and related details to the Committee in the form required by the ADR BPM.

**D. Notice to Parties of Informal Dispute Resolution.**

If, during the informal dispute resolution process, it is determined that any Tariff Customer(s) or Member(s) may be directly and uniquely impacted by the outcome of the dispute, the Transmission Provider will provide notice of the non-confidential facts giving rise to the dispute and allow the non-involved entity the opportunity to participate in the informal dispute resolution process. If it is necessary to request information from an entity that is not a Party to the dispute, the Party requesting such information shall disclose that the request for such information is related to a dispute subject to the informal dispute resolution provisions of Attachment HH of the Tariff.

To the extent that an entity believes it should be made a Party to a dispute arising under Attachment HH of the Tariff, it shall provide written notice, including a sworn affidavit of an officer of the entity, to the Transmission Provider and the Committee detailing its desire to be joined to the dispute and the unique interest of the entity. The written notice shall be in the form and shall contain the information as provided in the ADR BPM. The Committee shall review the request to join the entity to a dispute and shall make a determination as to whether the entity is uniquely situated so as to justify the addition of the entity to the dispute. Such determination, or a notification by the Committee that additional time is required to review the entity's request, shall be provided within ten (10) business days of the Party's request.

**E. Notice of Resolution of Dispute.**

The Transmission Provider shall post a notice of the resolution of a dispute under the informal dispute resolution process on its website. Any Tariff Customer or Member that believes the resolution of a dispute results, or may result, in a direct monetary impact on the Tariff Customer or Member shall have five (5) business days from the date of the posting of notice of the resolution of the dispute by the Transmission Provider to provide written notice to the Transmission Provider of the perceived impact of the resolution of a dispute in the form as required in the ADR BPM.

**F. Review of the Committee.**

The Committee shall review any requests for formal dispute resolution under Sections III and IV of this Attachment HH. The Committee shall have the authority to remand any request for formal dispute resolution to the extent that the Parties have failed to complete the informal dispute resolution process.

**III. Mediation.**

**A. When Required.** Any dispute as to a matter governed by these Dispute Resolution Procedures shall be subject to non-binding mediation subsequent to informal dispute resolution under the procedures set forth in Section II above, but prior to the initiation of arbitration, regulatory, judicial, or other dispute resolution proceedings, unless the Committee determines, from the nature of the dispute, the positions of the Parties, and other relevant facts and circumstances, that mediation would be highly unlikely to lead to resolution of the dispute. Nothing in these Dispute Resolution Procedures is intended to restrict or expand existing state laws or regulatory authority nor shall anything in these Dispute Resolution Procedures restrict the rights of any Party to file a complaint with the Commission under relevant provisions of the FPA at any time prior to the conclusion of a mediation under this Section III.

**B. Procedures.**

1. The Parties to a dispute as to a matter governed by these Dispute Resolution Procedures shall notify the Committee in writing of the existence and nature of the dispute prior to commencing mediation for resolution of the dispute. The Committee shall have ten (10) days in

which to determine whether mediation would be highly unlikely to lead to resolution of the dispute. At the earlier of (i) the expiration of such ten-day (10-day) period; (ii) a determination by the Committee that mediation is appropriate; or (iii) agreement of the Parties involved in this dispute, such Parties shall proceed to mediation as provided in these Dispute Resolution Procedures.

2. The Committee shall make available its full list of potential mediators for the disputing Parties. The Committee shall also inform disputing Parties of the Commission's Dispute Resolution Services and Office of Administrative Law Judges for assistance with mediation services and in identifying and selecting mediators or individuals to provide early neutral evaluation of Parties' positions. A neutral mediator shall be agreed upon by the Parties within ten (10) days from the determination or agreement that mediation would be appropriate. In the event that the Parties cannot agree upon the selection of a neutral mediator, the chair of the Committee shall after consultation with the other members of the Committee and the Parties involved in the dispute, select a neutral mediator from a list of qualified mediators maintained by the Committee. The mediator selected shall (i) be knowledgeable in the subject matter of the dispute, and (ii) have no official, financial, or personal conflict of interest with respect to the Parties or the issues involved in the dispute, unless such interest is



fully disclosed in writing to all Parties involved in the dispute and all such Parties waive in writing any objection to the interest.

3. The Committee shall require the Transmission Provider to identify all Parties who may have a direct monetary interest that will be affected by the mediation of the dispute. Upon receipt of the identity of all entities who may have a financial interest in the resolution of the dispute, the Committee shall notify those entities and invite them to participate in the mediation as Parties. The Transmission Provider shall also post information on its website concerning any mediation proceeding being initiated pursuant to this Section III.
4. The Parties involved in the dispute shall attempt in good faith to resolve their dispute in accordance with the procedures and timetable established by the mediator. In furtherance of the mediation efforts, the mediator may, among other actions:
  - i. Require such Parties to meet for face-to-face discussions, with or without the mediator;
  - ii. Act as an intermediary between such Parties;
  - iii. Require such Parties to submit written statements of issues and positions; and
  - iv. If requested by such Parties at any time in the mediation process, provide a written recommendation on resolution of the dispute including, if requested, the mediator's assessment of the merits of

the principal positions being advanced by each such Party. In the event Parties desire a non-binding advisory opinion during the course of the mediation process, they may request an individual, other than the mediator, to provide an early neutral evaluation of the Parties' positions. Parties may seek assistance from the mediator and the Committee in identifying and securing the services of such an individual.

5. If a resolution of the dispute is not reached by the Parties in the dispute by the thirtieth (30<sup>th</sup>) day after the appointment of the mediator, or such later date as may be agreed to by such Parties, and, if not previously requested to do so, the mediator, or neutral individual other than the mediator, shall promptly provide such Parties with a written, confidential, non-binding recommendation on resolution of the dispute, including the mediator's or neutral individual's assessment of the merits of the principal positions being advanced by each of the Parties, or, if such a request has previously been made, shall provide any additional recommendations or assessments the mediator or neutral individual shall deem appropriate. At a time and place specified by the mediator, but no later than fifteen (15) days after delivery of the foregoing recommendation for the Parties involved in the dispute, such Parties shall meet in a good faith attempt to resolve the dispute in light of the mediator's or neutral individual's recommendation. Each Party shall be represented at the meeting by a person with authority

to settle the dispute, along with such other persons as each such Party shall deem appropriate. If the Parties are unable to resolve the dispute at or in connection with this meeting, then, (i) any Party involved in the dispute may commence such arbitration proceedings, or such judicial, regulatory, or other proceedings as may be appropriate as permitted by the provisions of Section IV, Paragraph A of these Dispute Resolution Procedures; (ii) the recommendation of the mediator or neutral individual shall have no further force or effect and shall not be admissible for any purpose in any subsequent arbitration, administrative, judicial, or other proceeding; and (iii) the mediator or neutral individual may not be compelled to testify concerning the mediation in any subsequent arbitration, judicial, or other proceeding.

- C. **Costs.** The costs of the time, expenses, and other charges of the mediator or neutral individual, if applicable, and common costs of the mediation process shall be borne by the Parties involved in the dispute, with each side (treating all Parties as aligned with either the plaintiff side or the defendant side of the dispute) in the mediated matter bearing one-half (1/2) of such costs and each individual Party aligned on a particular side sharing the costs to that side equally, unless the Parties agree, or have agreed, to an alternative fee splitting arrangement. Each Party involved in the dispute shall bear its own costs and attorney fees incurred in connection with any mediation under these Dispute Resolution Procedures.

**IV. Arbitration.**

- A. When Required.** Any dispute governed by these Dispute Resolution Procedures that has not been resolved through the procedures specified herein may be resolved by arbitration in accordance with the procedures specified in this Section IV (herein “Dispute”). However, any Dispute involving the obligation to build or enlarge transmission facilities shall be subject to resolution by the appropriate regulatory authority if (a) the regulatory authority has (i) jurisdiction over the subject matter of the Dispute, (ii) jurisdiction to grant the relief sought by one (1) or more Parties to the Dispute, and (iii) jurisdiction over the Party from which such relief is sought; and (b) at least one (1) of the Parties to the Dispute demands that the matter be submitted to such regulatory authority. Any assertion that any provision of the ISO Agreement, including any principle, standard, requirement, plan, or procedure, or that any act or failure to act of the Transmission Provider, or other Party, is contrary to any federal or state law or regulation, shall only be heard by a court or agency having jurisdiction thereof and over the Parties, unless all Parties consent to arbitration of such assertion. A Party seeking to invoke jurisdiction of the appropriate regulatory authority of a Dispute for which arbitration has been demanded by another Party shall so notify the other Parties involved in the Dispute within fourteen (14) days of receiving the demand for arbitration or such time as the Party receives information that causes it to conclude that the Dispute should be heard by the appropriate regulatory authority. Parties to arbitrations can file, prior to the start of the arbitration proceeding, a complaint or petition for declaratory order pursuant to Sections 385.206 and

385.207 of the Commission's regulations. In any event, a Party who seeks to invoke jurisdiction of the appropriate regulatory authority of a Dispute shall make the necessary filing to commence proceedings before such regulatory authority within one hundred twenty (120) days of receiving the demand for arbitration. If the filing necessary to commence proceedings before such regulatory authority is not made within the foregoing one hundred twenty day (120 day) period, then the Dispute shall revert to arbitration.

- B. Initiation.** Subject to the appeal and reconsideration provisions of these Dispute Resolution Procedures and to the provisions of Paragraphs B and D of this Section IV, a Party to a Dispute wishing to commence arbitration shall send a written demand for arbitration via first class registered mail, return receipt requested, to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of each Party to the Dispute, and to the secretary of the Committee. The demand for arbitration shall state each claim for which arbitration is being demanded, the relief being sought, a brief summary of the grounds for such relief, and the basis for the claim, and shall identify all other Parties to the Dispute.
- C. Notice of Arbitration.** The Transmission Provider shall identify all Parties who may have a direct monetary interest that will be affected by the arbitration of a dispute. Upon receipt of the identity of all entities who may have a monetary interest in the resolution of the dispute, the Committee, in coordination with the Transmission Provider, shall notify those entities having a direct monetary

interest that will be affected by the arbitration of the dispute and invite them to participate in the arbitration as Parties. The Transmission Provider shall also post information on its website advising of any arbitration proceeding being initiated pursuant to this Section IV.

- D. Selection of Arbitrator(s).** The Parties to a Dispute for which arbitration has been demanded may unanimously 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 arbitrators prepared for the Dispute by the Committee and delivered to the Parties by facsimile or other electronic means promptly after receipt by the Committee of a demand for arbitration. If the Parties to a Dispute are unable to agree on a single arbitrator by the fourteenth (14<sup>th</sup>) day following delivery of the foregoing list of arbitrators, or such other date as agreed to by the Parties, then, not later than the end of the seventh (7<sup>th</sup>) Business Day thereafter, the Parties shall each (treating all Parties as aligned with either the plaintiff side or the defendant side of the Dispute) designate an arbitrator from a list for the Dispute prepared by the Committee, pursuant to procedures for such designation established by the Committee. The arbitrators so chosen shall then choose a third arbitrator from the Committee's list and the Dispute shall be heard by the three arbitrators, with the arbitrator selected by the arbitrators designated by the Parties serving as the chair of the arbitration panel.
- E. Procedures.** The Committee may adopt and make available to the arbitrator(s) and the Parties standard procedures for the arbitration of Disputes, which may be

modified or adopted for use in a particular proceeding as the Parties mutually agree or as the arbitrator(s) deem appropriate. To the extent that any procedures adopted by the Committee may conflict with the language of these Dispute Resolution Procedures, the language contained herein shall control. Upon selection of the arbitrator(s), arbitration shall go forward in accordance with applicable procedures.

**F. Intervention.** The arbitrator(s) shall permit any Party to intervene in the proceeding upon the filing of a timely application which demonstrates that the Party has a direct monetary interest that will be materially affected by the decision of the arbitrator(s) and that it will not be represented adequately by an existing Party to the proceeding. Any Party seeking to intervene in a Dispute shall indicate in its intervention papers whether it believes that it should be aligned with either the plaintiff side or the defendant side of the Dispute. Any Party to the Dispute may challenge such proposed alignment. The arbitrator(s) shall determine the actual alignment of the Parties to a Dispute based upon the comparability of the specific positions advanced by each Party concerning the issues involved in the Dispute. The nature and extent to which any intervenors may participate in the proceeding shall be determined by the arbitrator(s) upon consultation with the Parties and the intervenors themselves.

**G. Summary Disposition and Interim Measures.**

1. The procedures for arbitration of a Dispute shall provide a means for summary disposition of a demand for arbitration, or response to a demand

for arbitration, that in the reasoned opinion of the arbitrator(s) is frivolous or in bad faith. If the arbitrator(s) determine that a demand for arbitration, or response to a demand for arbitration, does not have a good faith basis either in law or fact, the arbitrator(s) shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator(s) to the prevailing Party. Any request for an award of costs of the time, expense and other charges of the arbitrator(s) shall be made contemporaneously with the request for summary disposition or at such other time as determined by the arbitrator(s). The failure to do so constitutes a waiver of the right to seek recovery of such costs, expenses or other charges. A decision under this Section IV, Paragraph G is subject to review by the FERC in accordance with Section IV, Paragraph O below.

2. The procedures for the arbitration of a Dispute shall provide a means for expedited disposition without discovery if there is no dispute as to any material fact, or with such limited discovery as the arbitrator(s) shall determine is reasonably likely to lead to the prompt resolution of any disputed issue of material fact.
3. In the discretion of the arbitrator(s) or upon the request of any Party, the arbitrator(s) may refer the Dispute to mediation, to be conducted in accordance with the provisions of Section III above. The reference of the Dispute to mediation shall not extend the deadline for the rendering of a decision by the arbitrator(s), as provided for in Paragraph K below.



4. If, upon request of the Transmission Provider and good cause shown, it is the opinion of the arbitrator(s) that the Transmission Provider does not have a direct monetary interest that will be affected by the arbitration of the Dispute, the arbitrator(s) may relieve the Transmission Provider from further participation in the arbitration as a Party and substitute any such other Party or intervenor where appropriate so that the real Parties in interest are properly aligned. The Transmission Provider will be permitted to continue to participate as an intervenor and be bound by any determination by the arbitrator(s).
5. The procedures for arbitration of a Dispute shall permit any Party to a Dispute to request the arbitrator(s) to render a written interim decision requiring that any action or decision that is the subject of a Dispute not be put into effect, or imposing such other interim measures as the arbitrator(s) deem necessary or appropriate, to preserve the rights and obligations secured by the ISO Agreement or this Tariff during the pendency of the arbitration proceeding so long as such interim decision or measure does not violate the filed rate doctrine. The arbitrator(s) may grant or deny, in whole or in part, a request for such a written interim decision. Parties shall be bound by any such written decision pending the outcome of the arbitration proceeding.

**H. Discovery of Facts.**

1. The arbitration procedures for the resolution of a Dispute shall include adequate provision for the discovery of relevant facts, including the taking of testimony under oath, production of documents and things, and inspection of land and tangible items. The nature and extent of such discovery shall be determined as provided herein and shall take into account (i) the complexity of the Dispute, (ii) the extent to which facts are disputed, and (iii) the amount in controversy. However, a presumption shall exist that in lieu of depositions that the Parties shall submit direct testimony of all proposed witnesses in written form, including any exhibits to be introduced through the witness, in accordance with a schedule established by the arbitrator(s). Further, a presumption shall exist that the Parties shall be limited to no more than thirty (30) requests for data or documents (not including related subparts). Finally, a presumption shall exist that any intervenors will not be entitled to present witnesses or submit requests for data or documents but instead must coordinate such efforts with the Parties to which they are aligned. Any of these presumptions may be rebutted with good cause shown to the arbitrator(s) or upon the arbitrator(s) discretion.
2. The sole arbitrator, or the arbitrator selected by the arbitrators chosen by the Parties (hereinafter the “Procedures Arbitrator”), as the case may be, shall be responsible for establishing the timing, amount, and means of discovery, and for resolving discovery and other pre-hearing disputes.

Promptly after the selection of the arbitrator(s), the Procedures Arbitrator shall convene an initial hearing, via telephone, for the purpose of establishing a schedule and plan of discovery and other pre-hearing actions.

**I. Evidentiary Hearing.**

1. The procedures established by the arbitrator(s) 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 described in the then current version of the Federal Rules of Evidence, except as modified by the arbitrator(s) or agreement of the Parties. The arbitrator(s) may require such written or other submissions from the Parties as shall be deemed appropriate, including submission of the direct testimony of witnesses in written form. The arbitrator(s) may exclude any evidence that is irrelevant, immaterial, or unduly repetitious, and, except to the extent hereinafter otherwise provided, shall exclude any material which is covered by the attorney-client privilege, the accountant-client privilege, other evidentiary privileges, the attorney-work product doctrine, or any other privilege recognized by the FERC. Any Party or Parties may arrange for the preparation of a record of the hearing, and, except to the extent otherwise provided, shall pay the costs thereof. Such Party or Parties shall have no obligations to provide, or agree to the provision of, a

copy of the record of the hearing to any Party that does not pay a proportionate share of the cost of the record. At the request of any Party, the arbitrator(s) shall determine a fair and equitable allocation of the costs of the preparation of a record between or among the Parties to the proceeding who are willing to share such costs.

2. All hearings or other proceedings that require the Parties to participate in person shall take place in Hamilton County, Indiana unless another location is agreed to by the Parties.

**J. Confidentiality.**

1. A Party who receives a request for a document or other information that is not otherwise available in the public domain, including any such information contained in documents or other means of recording information created during the course of the proceeding, may designate the document or information as “Confidential.” Documents or other information designated as “Confidential” shall not be used by the arbitrator(s), or anyone working for or on behalf of any of the foregoing, for any purpose other than the arbitration proceeding, and such confidential documents shall not be disclosed in any form to any person or entity not involved in the arbitration proceeding without the prior written consent of the Party producing the information or as permitted by the Procedures Arbitrator. Notwithstanding, confidential information that is made part of the record of the arbitration may be submitted under seal in

any appeal to the Commission pursuant to the Administrative Dispute Resolution Act and 18 C.F.R. §§ 388.107, 385.606 and 388.112 of the Commission's regulations. Should the Party designating documents or other information as "Confidential" desire further protection and limitation on the use of the documents or other information, that Party shall have twenty (20) days from the request for such material to submit a request to the Procedures Arbitrator to establish such requirements for the protection of such documents or other information designated as "Confidential" as may be reasonable and necessary to protect further the confidentiality and commercial value of such information and the rights of the Parties. Prior to the decision of the Procedures Arbitrator on a request for confidential treatment, documents or other information designated as "Confidential" and in need of further protection need not be produced.

2. Any person or entity receiving a request or demand for disclosure, whether by compulsory process, discovery request, or otherwise, of documents or information obtained in the course of an arbitration proceeding that have been designated "Confidential" and that are subject to a non-disclosure requirement under these Dispute Resolution Procedures, or a decision of the Procedures Arbitrator, shall immediately inform the person or entity from which the information was obtained, and shall take all reasonable steps to afford the person or entity from which the information was obtained an opportunity to protect the information from disclosure. Any

person disclosing information in violation of these Dispute Resolution Procedures or requirements established by the Procedures Arbitrator shall be deemed to 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.

3. Nothing in these Dispute Resolution Procedures shall preclude any person or entity from using documents or information properly and previously obtained outside of an arbitration proceeding, or otherwise public, for any legitimate purpose, notwithstanding that the information was also obtained in the course of the arbitration proceeding.

**K. Timetable.** Promptly after the selection of the arbitrator(s), the arbitrator(s) shall set a date for the issuance of the arbitration decision, which shall be not later than eight (8) months from the date of the selection of the arbitrator(s), with other dates, including the dates for an evidentiary hearing, or other final submissions of evidence, set in light of this date. The Parties to the arbitration may agree to shorten the date for the issuance of the arbitration decision with the prior consent of the arbitrator. The Parties may also agree to extend the date for the issuance of the arbitration decision by no more than sixty (60) days if necessary. However, any decision to shorten or extend the date for the issuance of the arbitration decision shall be made within forty-five (45) days from the date of the selection of

the arbitrator(s). The date for the evidentiary hearing, or other final submission of evidence, shall not be changed absent extraordinary circumstances or the agreement of all Parties. The arbitrator(s) shall have the power to impose sanctions for dilatory tactics or undue delay in completing the arbitration proceedings.

- L. Decisions.** The arbitrator(s) shall issue a written decision, which may, at the arbitrator(s) discretion, include findings of fact. The arbitration decision shall be based on (i) the evidence in the record; (ii) the terms of the ISO Agreement or this Tariff, including any principle, standard, requirement, procedure, plan, or other right or obligation established by or pursuant to the ISO Agreement or this Tariff; (iii) applicable federal and state legal standards, including the FPA and any applicable state and FERC regulations and decisions; and (iv) relevant decisions in previous arbitration proceedings under the ISO Agreement which shall be available subject to applicable confidentiality provisions. All decisions of the arbitrator(s) shall be maintained by the Committee and shall, subject to any applicable confidentiality provisions, be made available to all Parties upon request. The arbitrator(s) shall have no authority to revise or alter any provision of the ISO Agreement or this Tariff. Any arbitration decision, which, in the opinion of the Committee, affects matters subject to the jurisdiction of the FERC under section 205 or section 206 of the FPA shall be filed with the FERC by the Committee and any arbitration decision that affects matters subject to the jurisdiction of a state authority shall be filed by the Committee with that authority.

A Party who desires to seek review by FERC of the decision in accordance with Paragraph O below may file the decision with FERC if the Committee has chosen not to do so.

- M. Costs.** Unless the arbitrator(s) shall decide otherwise, the costs of the time, expenses, and other charges of the arbitrator(s) shall be borne by the Parties to the Dispute, with each side on an arbitrated issue bearing one-half (1/2) of such costs, unless the Parties agree, or have agreed, to an alternative fee splitting arrangement. Each Party to an arbitration proceeding shall bear its own costs and fees. The arbitrator(s), at the request of a Party, may require all of the costs of the time, expenses, and other charges of the arbitrator(s), plus all or a portion of the costs of arbitration, attorney's fees, and the costs of mediation, if any, to be paid by any Party that substantially loses on an issue determined by the arbitrator(s) to have been frivolous or in bad faith. Any such request must be made prior to the rendering of the arbitrator(s) written decision by a date to be established by the arbitrator(s).
- N. Enforcement.** The decision of the arbitrator(s) shall be binding, subject to applicable state and federal laws and approvals. At the request of the Committee, the arbitrator(s) may retain jurisdiction of the Dispute to assist with its enforcement as appropriate.
- O. FERC Jurisdiction.** If a Party fails to invoke FERC jurisdiction of a Dispute involving matters subject to FERC jurisdiction within one hundred twenty (120) days in accordance with Section IV, Paragraph A of these Dispute Resolution



Procedures, the Party shall be deemed to have waived its right to invoke such jurisdiction. However, this waiver does not prevent a Party or intervenor from seeking review of the arbitrator's decision by FERC. Any such review must be initiated within forty-five (45) days from the date of the arbitrator's decision and would be limited to the facts contained in the record and be limited only to the issue of whether the arbitrator(s) decision revised or altered the FERC-filed Tariffs or the ISO Agreement or violates the FPA or FERC's policies and procedures. Additionally, the Commission may review an arbitrator's decision at the conclusion of the arbitration process if the rights of Parties are alleged to have been prejudiced (*e.g.*, the conduct of the arbitrator, or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act). If review by FERC is not sought within forty-five (45) days of the date of the arbitrator's decision, the decision is deemed final and no further review by an administrative or judicial body may be sought. This waiver and limitation only applies to the Party and does not affect any right that the FERC may have to act on its own.

**V. Alternate Dispute Resolution Committee.**

**A. Membership.**

1. The Committee shall be composed of six (6) representatives selected by the Board, which shall use its best efforts to select a Committee that reflects the diversity, in terms of size, type of entity, and geographic

location, of Owners and Members. No more than one (1) representative on the Committee may be a representative of the same Owner or Member.

2. From time to time, the ADR Committee may also be composed of one or more standing alternate members.
3. Representatives on the Committee shall serve for terms of three (3) years, beginning on the first day of the month following the annual meeting of the Board, and may serve additional terms, except that, of the representatives first elected to the Committee, two (2) representatives shall serve terms of one (1) year, and two (2) representatives shall serve terms of two (2) years.

**B. Voting Requirements.** Approval or adoption of measures by the Committee shall require two-thirds (2/3) of the votes of the representatives present and voting, but in no event less than three (3) votes. Two-thirds (2/3) of the representatives on the Committee shall constitute a quorum for the conduct of the business of the Committee.

**C. Officers.** At the first meeting of the Committee following the annual meeting of the Board, the representatives on the Committee shall choose a Chair and Vice Chair from among the representatives on the Committee. The Chair and the Vice Chair shall each serve a term of three (3) years, unless earlier terminated by a two-thirds (2/3) vote of the representatives on the Committee. The Chair of the Committee shall preside at meetings of the Committee, and shall have the power to call meetings of the Committee and to exercise such other powers as are

specified in these Dispute Resolution Procedures or authorized by the Committee.

The Committee shall also select a secretary.

**D. Meetings.** The Committee shall meet at such times and places as determined by the Committee, or at the call of the Chair. The Chair shall call a meeting of the Committee upon the request of two (2) or more members of the Committee.

**E. Responsibilities.** The duties of the Committee are detailed in the ADR BPM and include, but are not limited to, the following:

1. Maintain a pool of persons qualified by temperament and experience, and with technical or legal expertise in matters likely to be the subject of disputes, to serve as mediators and arbitrators under these Dispute Resolution Procedures;
2. Determine the rates and other costs and charges that shall be paid to mediators and arbitrators for, or in connection with, their services;
3. In the event the disputing Parties cannot agree, select mediators for disputes;
4. Determine whether mediation is highly unlikely to lead to resolution of a particular dispute;
5. Provide to the Parties involved in a dispute lists of arbitrators qualified by temperament and experience, and with appropriate technical or legal expertise, to resolve particular disputes, such lists to include only neutral persons who have no official, financial, or personal conflict of interest with respect to the Parties or the issues involved in the dispute;

6. Compile and make available to Owners, Members, Users, arbitrators, and other interested Parties suggested procedures for the arbitration of disputes in accordance with Section IV, Paragraph E of these Dispute Resolution Procedures;
7. File with FERC, when the Committee deems it appropriate, and maintain and make available to Owners, Members, Users, mediators, arbitrators, and other interested Parties the written decisions required by Section IV, Paragraph L of these Dispute Resolution Procedures;
8. Establish such procedures and schedules, in addition to those specified herein, as it shall deem appropriate to further the prompt, efficient, fair, and equitable resolution of disputes;
9. May maintain a pool of alternates available to serve on the ADR Committee; and
10. Provide such oversight and supervision of the dispute resolution processes and procedures instituted pursuant to these Dispute Resolution Procedures as may be appropriate to facilitate the prompt, efficient, fair, and equitable resolution of disputes.

**VI. Expedited Dispute Resolution Procedures.**

In addition to the general process above, the Transmission Provider will employ expedited Dispute Resolution Procedures in other pre-defined situations as more fully set out in this Section. As set out in Paragraph B of this Section VI, the Transmission Provider will follow shortened Dispute Resolution Procedures for disputes involving Available Transmission

Capacity determinations and facilities ratings.

- A. **[RESERVED]**.
- B. **Dispute Resolution Procedures for Available Transmission Capacity Determinations and Facilities Ratings.**

A request for expedited treatment of disputes involving Available Transmission Capacity determinations and facilities ratings will only be accepted following the submission of a request for alternative dispute resolution as provided in the ADR BPM. Initially, the request for alternative dispute resolution will be addressed through the informal dispute resolution process specified in Section II of Attachment HH. If after five (5) Business Days, it is apparent that a resolution is not forthcoming, a Party desiring expedited treatment shall formally notify the Transmission Provider of the need to invoke the process under this Section VI.B pursuant to the ADR BPM. The request shall outline the issues and suggested outcomes.

The Transmission Provider will forward the request, along with a summary of other relevant issues, to the Committee. The Committee shall have five (5) Business Days to determine, by majority vote, if the dispute merits expedited treatment.

If the dispute merits expedited treatment, the Committee shall have five (5) Business Days in which to determine whether mediation would be highly unlikely to lead to resolution of the dispute. At the earlier of (i) the expiration of such five (5) Business Day period, (ii) a determination by the Committee that mediation is appropriate, or (iii) an agreement of the Parties involved in this dispute, such Parties shall proceed to mediation as provided in these Dispute Resolution Procedures.

If a resolution of the dispute is not reached by the Parties in the dispute by the fourteenth (14th) day after the appointment of the mediator, or such later date as may be agreed to by such Parties, and, if not previously requested to do so, the mediator, or neutral individual other than the mediator, shall promptly provide such Parties with a written, confidential, non-binding recommendation on resolution of the dispute, including the mediator's or neutral individual's assessment of the merits of the principal positions being advanced by each of the Parties, or, if such a request has previously been made, shall provide any additional recommendations or assessments the mediator or neutral individual shall deem appropriate.

At a time and place specified by the mediator after delivery of the foregoing recommendation for the Parties involved in the dispute, such Parties shall meet in a good faith attempt to resolve the dispute in light of the mediator's or neutral individual's recommendation. Each Party shall be represented at the meeting by a person with authority to settle the dispute, along with such other persons as each such Party shall deem appropriate. If the Parties are unable to resolve the dispute at or in connection with this meeting, then (i) any Party involved in the dispute may commence such arbitration proceedings or such judicial, regulatory, or other proceedings as may be appropriate as permitted by the provisions of Section IV, Paragraph A of these Dispute Resolution Procedures; (ii) the recommendation of the mediator or neutral individual shall have no further force or effect and shall not be admissible for any purpose in any subsequent arbitration, administrative, judicial or other proceeding; and (iii) the mediator or neutral

individual may not be compelled to testify concerning the mediation in any subsequent arbitration, judicial or other proceeding.

A Party seeking to invoke jurisdiction of the appropriate regulatory authority of a dispute for which arbitration has been demanded by another Party shall so notify the other Parties involved in the dispute within fourteen (14) days of receiving the demand for arbitration, and shall thereafter have a further sixty (60)-day period in which to make the necessary filing to commence proceedings before such regulatory authority. If the filing necessary to commence proceedings before such regulatory authority is not made within the foregoing sixty (60)-day period, then the dispute shall revert to arbitration.

If the Parties to a dispute are unable to agree on a single arbitrator by the fifth (5<sup>th</sup>) Business Day following delivery of the foregoing list of arbitrators, or such other date as agreed to by the Parties, then, not later than the end of the fifth (5<sup>th</sup>) Business Day thereafter, the Party or Parties demanding arbitration on the one hand, and the Party or Parties responding to the demand for arbitration on the other, shall each (treating all Parties as aligned with either the plaintiff side or the defendant side of the dispute) designate an arbitrator from a list for the dispute prepared by the Committee, pursuant to procedures for such designation established by the Committee. The arbitrators so chosen shall then choose a third arbitrator.

Promptly after the selection of the arbitrator(s), the arbitrator(s) shall set a date for the issuance of the arbitration decision, which shall be not later than four (4) months (or such earlier date as may be agreed to by the Parties) from the date of the selection of the arbitrator(s), 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 submission of evidence, shall not be changed absent extraordinary circumstances. The arbitrator(s) shall have the power to impose sanctions for dilatory tactics or undue delay in completing the arbitration proceedings.

Nothing in these Dispute Resolution Procedures is intended to restrict or expand existing state laws or regulatory authority nor shall anything in these Dispute Resolution Procedures restrict the rights of any Party to file a complaint with the Commission under relevant provisions of the FPA.