

ARTICLE 10: DISPUTE RESOLUTION

10.01 ~~Overview, Purpose~~

The ISO Board shall ~~direct the ISO staff to~~ establish a Dispute Resolution ~~Process~~ Procedure ("DRP") ~~which shall be included as a provision in the ISO Market Administration and Control Area Services Tariff and shall retain a Dispute Resolution Administrator ("DRA") to manage the DRP.~~

~~In administering the DRP, the DRA shall be responsible for the following:~~

- ~~(a) — maintaining lists of qualified arbitrators and mediators, and updating these lists annually;~~
- ~~(b) — scheduling, administering, and facilitating the DRP;~~
- ~~(c) — responding to written disputes in a timely manner consistent with the time limits specified in the ISO OATT and the ISO Services Tariff;~~
- ~~(d) — determining whether written disputes are subject to non-binding mediation or arbitration;~~
- ~~(e) — maintaining records of all dispute resolutions and making these records available for inspection subject to the rules of confidentiality described in the ISO Tariffs and this Agreement; and~~
- ~~(f) — providing supervision of the dispute resolution processes and developing appropriate procedures which will further the fair and equitable resolution of disputes.~~

~~The DRA shall establish and, from time to time, update a list of qualified arbitrators and mediators. Qualified arbitrators and mediators shall be knowledgeable in matters regarding the planning and operation of interconnected electric systems and in relevant regulatory policies and requirements. The list of arbitrators and mediators may be subdivided by the DRA into~~

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~~categories of disputes in which an arbitrator or mediator has expertise. The list of arbitrators and mediators can also include names supplied by the American Arbitration Association. The DRA may, from time to time, arrange for appropriate training for potential arbitrators and mediators. Disputes between or among a Market Participant(s), a Customer, and/or the ISO involving service under the ISO Market Administration and Control Area Services Tariff ("Services Tariff") or the Open Access Transmission Tariff ("OATT"), ISO Procedures, or any Agreement entered into under either Tariff ("Dispute")~~

~~10.02 Submission of a Dispute.~~

~~Any dispute between or among a Market Participant(s), a Customer, and/or the ISO involving transmission or other services under the ISO Tariffs may be resolved by utilizing the provisions of the DRP.~~

~~Nothing herein restricts the rights of any party or the ISO to file a complaint or seek any other remedy from the Commission under the relevant provisions of the Federal Power Act.~~

~~10.02 General Provisions~~

~~The DRP shall include the following provisions and additional provisions which, in the judgment of the ISO staff and ISO stakeholders, are necessary or desired DRP provisions.~~

~~10.02.1. Initiation and Resolution Process~~

~~Initiation of a dispute shall be by written notice to the ISO. The dispute shall be presented directly to a senior representative of each of the parties to the dispute for resolution on an informal basis as promptly as practicable.~~

~~In the event the designated representatives are unable to resolve the dispute by mutual agreement, such dispute may be submitted to the DRA. The party submitting the matter to the~~

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~~DRA shall include a written statement describing the nature of the dispute and the issues to be resolved. Any subsequent mediation or arbitration process shall be limited to the issues presented for resolution.~~

~~Within ten (10) days, the DRA shall decide whether the dispute should be referred to: (1) non-binding mediation; or (2) arbitration, and shall make such a referral.~~

~~10.03 Referral of a Dispute To Mediation or Arbitration.~~

~~The DRA—The Parties, by mutual agreement may submit disputes to non-binding mediation or where the subject matter of the dispute involves the proposed change or modification of an ISO procedure, rate, Service Agreement, or ISO Tariff provision. The DRA may submit disputes to arbitration which involve the interpretation or application of an ISO Procedure, rate, Service Agreement, or ISO Tariff provision. Both the mediator and the arbitrator shall have the authority to dismiss a dispute if:~~

~~1. The dispute did not arise under the ISO Agreement or the ISO OATT or the ISO Services Tariff; or~~

~~2. The claim is de minimis.~~

~~10.04 Non Binding Mediation.~~

~~If the DRA refers the dispute to non-binding mediation, the following procedure will apply:~~

~~1. The DRA shall have ten (10) days from the date of such referral to distribute a list of ten (10) qualified mediators to the disputing parties.~~

~~2. Absent the express written consent of all disputing parties, no person shall be eligible for selection as mediator that is a past or present officer, employee or consultant to any of the disputing parties, or of any entity related to or affiliated with any of the disputing parties~~

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~~or has an interest in the matter to be mediated. Any individual designated as mediator shall make known to the disputing parties any such disqualifying relationship or interest and a new mediator shall be designated.~~

~~3. If the disputing parties cannot agree upon a mediator, the disputing parties shall take turns striking names from a list supplied by the DRA with a disputing party chosen by lot striking the first name. The last remaining name shall be designated as the mediator. If that individual is unable or unwilling to serve, the individual last stricken from the list shall be designated and the process repeated until an individual is selected that is able and willing to serve.~~

~~4. The disputing parties shall attempt in good faith to resolve their dispute in accordance with the schedule established by the mediator. In no event may the schedule extend beyond thirty (30) days from the date of appointment of the mediator.~~

~~5. The mediator may require the disputing parties to:~~

~~a. submit written statements of issues and positions;~~

~~b. meet for discussions;~~

~~c. provide expert testimony and exhibits; and~~

~~d. comply with the mediation procedures designated by the DRA and/or the mediator.~~

~~6. If the disputing parties have not resolved the dispute within thirty (30) days of the date the mediator was appointed, the mediator shall promptly provide the disputing parties and the DRA with a written, confidential, non-binding recommendation to resolve the dispute. The recommendation shall include an assessment by the mediator of the merits of the principal positions being advanced by each of the parties to the dispute.~~

~~7. The parties to the dispute shall then meet in a good faith attempt to resolve the dispute in light of the mediator's recommendation. This recommendation shall be limited to resolving the specific issues presented for mediation.~~

~~8. If the disputing parties are still unable to resolve the dispute:~~

~~a. any dispute not involving the proposed change or modification of a ISO Procedure, rate, Service Agreement, or an ISO Tariff provision may be referred to the arbitration process described below; or~~

~~b. any disputing party may resort to regulatory or judicial proceedings as provided under the ISO OATT or the ISO Services Tariff; and~~

~~c. the recommendation of the mediator and any statement made by any party during the mediation process shall not be admissible for any purpose in any subsequent proceeding.~~

~~9. Each party to the dispute will bear a pro rata share of the costs associated with the time, expenses, and other charges of the mediator. Each party shall bear its own costs, including attorney and expert fees.~~

~~10.05 Arbitration.~~

~~If the DRA or the mediator refers the dispute to binding arbitration, then the following procedure will apply:~~

10.02.2. Costs

If the services of a mediator are used, each Party will bear an equal share of the costs associated with the time, expenses and other charges of the mediator. Each Party shall bear its own costs, including attorney and expert fees.

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If the Parties use the services of an Arbitrator, all costs associated with the time, expenses and other charges of the arbitrators shall be borne by the unsuccessful Party. Each Party shall bear its own costs, including attorney and expert fees.

10.03 Ongoing Duty to Perform

The pendency of a Dispute Resolution Proceeding under this Article 11 shall not relieve the Parties of any duty to perform their respective obligations under the ISO Tariffs, ISO Procedures, or relevant agreement.

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~~1. The DRA shall have ten (10) days from the date of such decision to distribute a list of qualified arbitrators to the disputing parties.~~

~~2. Absent the express written consent of all disputing parties, no person shall be eligible for selection as an arbitrator that is a past or present officer, employee of or consultant to any of the disputing parties, or of an entity related to or affiliated with any of the disputing parties, or has an interest in the matter to be arbitrated. Any individual designated as an arbitrator shall make known to the disputing parties any such disqualifying relationship or interest and a new arbitrator shall be designated.~~

~~3. If the disputing parties cannot agree upon an arbitrator, they shall take turns striking names from a list of ten qualified individuals supplied by the DRA with a party chosen by lot striking the first name. The last remaining name shall be designated as the arbitrator. If that individual is unable or unwilling to serve, the individual last stricken from the list shall be~~

~~designated and the process repeated until an individual is selected that is able and willing to serve.~~

~~4. The arbitrator shall have no power to modify or change any agreement, tariff or rule, or otherwise create any additional rights or obligations for any party. The scope of the arbitrator's decision shall be limited to the issues presented for arbitration.~~

~~5. The arbitrator shall determine discovery procedures, intervention rights, how evidence shall be taken, what written submittals may be made, and other procedural matters, taking into account the complexity of the issues involved, the extent to which factual matters are disputed, and the extent to which the credibility of witnesses is relevant to a resolution. Each disputing party shall produce all evidence determined by the arbitrator to be relevant to the issues presented. To the extent such evidence involves proprietary or Confidential Information, the arbitrator may issue an appropriate protective order which shall be complied with by all disputing parties. The arbitrator may elect to resolve the arbitration matter solely on the basis of written evidence and arguments.~~

~~6. The arbitrator shall consider all issues underlying the dispute, and shall take evidence submitted by the disputing parties in accordance with procedures established by the arbitrator and may request additional information including the opinion of recognized technical bodies or experts. Disputing parties shall be afforded a reasonable opportunity to rebut any such additional information.~~

~~7. Absent an agreement to the contrary by all disputing parties, no person or entity that is not a party to the dispute shall be permitted to intervene.~~

~~8. Within ninety (90) days of the appointment of the arbitrator, and after providing the Parties with an opportunity to be heard, the arbitrator shall render a written decision,~~

~~including findings of fact and the legal basis for the decision. The arbitrator will follow the Commercial Arbitration Rules of the American Arbitration Association.~~

~~9. Under the following circumstances, the decision of the arbitrator shall be final and binding on the parties:~~

~~a. all parties agree that the decision will be binding; or~~

~~b. the dispute involves a claim that a party owes another party a sum of money less than \$500,000.~~

~~10. If the arbitrator concludes that no proposed award is consistent with this ISO Agreement, the FPA and the Commission's then applicable standards and policies, or would address all issues in dispute, the arbitrator shall develop a compromise solution consistent with the terms of this Agreement. A written decision explaining the basis for the award shall be provided by the arbitrator to the parties and the DRA. No award shall be deemed to be precedential in any other arbitration related to a different dispute.~~

~~11. All costs associated with the time, expenses and other charges of the arbitrators shall be borne by the unsuccessful party. Each party shall bear its own costs, including attorney and expert fees.~~

~~12. All arbitration decisions shall be filed with the Commission. Any arbitration decision that affects matters subject to the jurisdiction of the PSC under the New York State Public Service Law may be filed with the PSC.~~

~~13. The judgment of the arbitrator may be entered on the award by any court in New York having jurisdiction. Within one (1) year of the arbitral decision, a party may request that the Commission or any other federal, state, regulatory or judicial authority (in the state of New~~

~~York) having jurisdiction over such matter vacate, modify, or take such other action as may be appropriate with respect to any arbitration decision that is:~~

- ~~a. based upon an error of law;~~
- ~~b. contrary to the statutes, rules, or regulations administered by such authority;~~
- ~~c. violative of the Federal Arbitration Act or Administrative Dispute Resolution Act;~~
- ~~d. based on conduct by an arbitrator that is violative of the Federal Arbitration Act~~

~~or Administrative Dispute Resolution Act; or~~

- ~~e. involves a dispute in excess of \$500,000.~~

~~14. Nothing in this Article shall restrict the rights of any party to file a complaint or a rate, tariff, or other contract change with the Commission under the relevant provisions of the Federal Power Act.~~

~~15. No arbitrator shall render an Award which requires the transmission of electricity under circumstances where the Commission is precluded from ordering Transmission Services pursuant to FPA Section 212(h).~~