

## **11 Dispute Resolution Procedures**

### **11.1        Applicability of Dispute Resolution Provisions**

The dispute resolution provisions in this Article 11 shall apply to any dispute arising under this Tariff with the exception of those disputes subject to Expedited Dispute Resolution Procedures.

## **11.2 Internal Dispute Resolution Procedures**

Any dispute between or among Customers and/or the ISO involving service under the ISO Services Tariff (excluding applications for rate changes or other changes to the Tariff), ISO Procedures or to any Service Agreement entered into under the Tariff shall be presented directly to a senior representative of each party to the dispute for resolution on an informal basis as promptly as practicable.

If the designated representatives are unable to resolve the dispute within thirty (30) days by mutual agreement, the dispute may be submitted to the ISO's Dispute Resolution Administrator ("DRA"). The party submitting the matter to the 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.

The DRA may submit disputes to non-binding, mediation where the subject matter of the dispute involves the proposed change or modification of a rule, rate, Service Agreement or ISO Services Tariff provision. The DRA may submit disputes to binding arbitration which involve interpretation of a rule, rate, Service Agreement or ISO Services Tariff provision. Both the mediator and the arbitrator shall have the authorization to dismiss a dispute if:

1. The dispute did not arise under the ISO Services Tariff; or
2. The claim is de minimis.

### **11.3 Non-Binding Mediation**

If the DRA refers the dispute to non-binding mediation, then the following procedure will be followed:

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. Absent the express written consent of all disputing parties, as to any particular individual, no person shall be eligible for selection as mediator who 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 or is otherwise interested in the matter to be mediated. Any individual designated as mediator shall make known to the disputing parties any such disqualifying relationship and a new mediator shall be designated.

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, first striking a 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.

The disputing parties shall attempt in good faith to resolve their dispute in accordance with the schedule established by the mediator but in no event, may the schedule extend beyond ninety (90) days from the date of appointment of the mediator.

The mediator may require the disputing parties to:

1. submit written statements of issue(s) and position(s);
2. meet for discussions;

3. provide expert testimony and exhibits; and
4. comply with the mediation procedures designated by the DRA and/or the mediator.

If the parties have not resolved the dispute within ninety (90) days after the date the mediator was appointed, then 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. 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.

If the parties are still unable to resolve the dispute, then:

- A. any dispute not involving a proposed change or modification of a rule, rate, Service Agreement or ISO Services 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 for under the ISO Services Tariff; and
- C. the recommendation of the mediator, and any other statements made by any party during the mediation process, shall not be admissible for any purpose, in any subsequent proceeding.

Each party to the dispute will bear a pro rata portion 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.

#### **11.4 Arbitration**

If the DRA refers the dispute to arbitration, then the following procedure will be followed:

The DRA shall have ten (10) days from the date of such decision to distribute a list of qualified arbitrators to the disputing parties. No person shall be eligible for selection as an arbitrator who 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 is otherwise interested in the matter to be arbitrated, except upon the express written consent of the parties. 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, unless express written consent is provided by each party.

If the disputing parties cannot agree upon an arbitrator, the disputing parties shall take turns striking names from a list of ten (10) qualified individuals supplied by the DRA. The party to first strike a name should be chosen by lot. The last-remaining name not stricken 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.

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. The arbitrator shall determine discovery procedures, intervention rights, how evidence shall be taken, what written submittals may be made, and other such 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 party to the dispute 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.

The arbitrator shall consider all issues underlying the dispute, and the arbitrator 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. The parties shall be afforded a reasonable opportunity to rebut any such additional information.

Absent 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. 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.

Under the following circumstances, the decision of the arbitrator shall be final and binding upon the parties:

1. all parties agree that the decision will be binding; or
2. the dispute involves a claim that a party owes another party a sum of money less than \$500,000.

If the arbitrator concludes that no proposed award is consistent with the ISO Services Tariff, the FPA and 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 the ISO Services Tariff. 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.

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.

All arbitration decisions that affect matters subject to the jurisdiction of the Commission shall be filed with the Commission. Any arbitration decision that affects matters subject to the jurisdiction of the PSC under the PSL may be filed with the PSC. 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 arbitration 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:

1. based upon an error of law;
2. contrary to the statutes, rules or regulations administered by such authority;
3. violative of the Federal Arbitration Act or Administrative Dispute Resolution Act;
4. based on conduct by an arbitrator that is violative of the Federal Arbitration Act or Administrative Dispute Resolution Act; or
5. involves a dispute in excess of \$500,000.

Nothing in this section shall restrict the rights of any party to file a complaint, rate or tariff or other contract change with the Commission under the relevant provisions of the FPA. No arbitrator shall select 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).