

**PRINCIPLES FOR A MULTILATERAL CONTRACT
AMONG THE TRANSMISSION OWNERS
12 JULY 05
NOT AN OFFER OR PROPOSAL OF ANY PARTY**

This Market Monitoring Agreement (Agreement) is made and entered into by and among _____ (utility name), a _____ corporation/entity and _____ (utility name), a _____ corporation/entity (each Party and collectively Parties).

RECITALS

The Transmission Owners who are signatories to the Agreement recognize that well-functioning wholesale power and transmission markets are important for fair and efficient retail power prices.

This Agreement establishes a Northwest Independent Market Monitor to help ensure that wholesale power and transmission markets in the Northwest produce just and reasonable prices for electric power.

This agreement of participating Transmission Owners establishes a governance structure for the Market Monitoring activities that includes a variety of parties with a range of interests, including buyers and sellers and wholesale and retail concerns. Although the Agreement is executed only by Transmission Owners, the governance structure established by the Agreement includes all wholesale market participants.

AGREEMENT

The Parties agree as follows:

1. Definitions.

1.1 FERC shall mean the Federal Energy Regulatory Commission or its regulatory successor.

1.2 Independent Market Monitor (IMM) shall mean the person or persons retained by contract by the Parties to perform services specified in this Agreement.

1.3 Market Monitoring Area shall mean that area in which the Participating Transmission Owners own or control transmission facilities used for delivery of wholesale electricity.

1.4 Market Monitoring Committee shall mean the Market Monitoring Committee established by this multilateral contract among transmission owners.

1.5 Market Participant shall mean a participant in a wholesale market for electric energy or ancillary services in the Market Monitoring Area.

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1.6 Participating Transmission Owners shall mean those transmission owners that execute this Agreement.

1.7 Uncontrollable Force shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, earthquake, explosion, accident to or breakage, failure or malfunction of machinery or equipment, or any other cause beyond a Party's reasonable control and to the extent without that Party's fault or negligence.

2. Effective Date

2.1 Effective Date. Subject to Section 2.2 below, this Agreement shall be effective as of _____.

2.2 FERC Filing. [IF THE PARTICIPATING TRANSMISSION OWNER IS UNDER FERC JURISDICTION]. If, as a public utility subject to the jurisdiction of the FERC, the Participating Transmission Owner files this Agreement with FERC, and if FERC accepts this Agreement for filing, but in connection with its acceptance for filing FERC requires changes to this Agreement that any Party deems unacceptable, the Parties shall promptly meet and attempt to amend this Agreement in a manner acceptable to all Parties and to FERC. If the Parties are unable to agree on amendments to this Agreement that are acceptable to FERC or if FERC does not accept this Agreement for filing upon re-submission without further changes that either Party deems unacceptable, this Agreement shall be void *ab initio*.

3. Initial Term, Renewal, and Termination.

3.1. Term. This Agreement shall be effective on the Effective Date and shall terminate five (5) years from such date.

3.2 Renewal. This Agreement may be renewed upon written agreement of the Parties prior to the termination of this Agreement pursuant to section 9.1, above.

3.3. Termination of Participation by a Party. Subject to section 3.5 below, a Party may terminate its participation as a Party in this Agreement on 90 days written notice to all other Parties.

3.4. Termination of Agreement. Subject to section 3.5 below, this Agreement may be terminated before the date of termination determined pursuant to section 3.1. of this Agreement only by mutual agreement of all the Parties; *provided, however*, that if the Parties unanimously agree to terminate this Agreement pursuant to this section 3.4, then the obligation of each Party to pay its share of the annual budget pursuant to section _____ of this Agreement, shall not survive termination of this Agreement.

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3.5. Survival. No termination or expiration of this Agreement shall relieve Party of any obligations or liability incurred under this Agreement before the date termination becomes effective, nor affect any limitations of liability or indemnification provided under this Agreement. In addition, the rights and obligations set forth in sections _____ (payment of amount due under annual budget for the initial five year term), _____, _____ shall survive any termination of this Agreement.

4. Retention of and Cooperation with the Independent Market Monitor.

4.1. Agreement to Retain Market Monitor. Effective January 1, 2006, Parties shall have under contract an entity or individual to provide market monitoring services conforming to the requirements and standards set forth in this Agreement and the Market Monitoring Plan described in Exhibit A.

4.1.1. Independence of Market Monitor. The Independent Market Monitor must have no financial interest or stake in, or perform work for, a Party or any Market Participant, during the term of this Agreement.

4.2. Scope of Work to be Completed by the Market Monitor. The scope of work for the first year of the Term (i.e., 2006) shall be contained in the contract executed by the Parties and the Market Monitor and shall conform substantially to the initial scope of work set forth in Exhibit _____ to this Agreement. The scope of work for subsequent years of the Term shall be recommended to the Parties by the Market Monitoring Committee pursuant to section _____ of this Agreement and the Parties shall consent to that scope of work, such consent not to be unreasonably withheld.

4.3. Information to be Provided to the Independent Market Monitor. The Parties agree to provide the IMM data and information requested by the IMM that is reasonably necessary or desirable for the IMM to complete the market monitoring work described in this Agreement. Such data and information shall be consistent with the Market Monitoring Plan described in Exhibit A to this Agreement and the terms of Exhibit B.

4.4. Funding.

4.4.1. Agreement to Fund. The Parties agree to pay the costs of the IMM; *provided, however*, that the Parties agree that they will collectively pay a total of no less than \$ X million and no more than \$ Y million over the Term of this Agreement.

4.4.2. Allocation of Costs. Each Party shall pay its share of the annual costs of the IMM and each Party's share shall equal the total costs multiplied by the quotient of such Party's "historical MWh transmitted for others" divided by the total "historical MWh transmitted for others" of the Parties. The "historical MWh transmitted for others" shall be determined from each Party's FERC Form 1, p. 329, Account 456, "MWh received or delivered for others", also called "Transfer of Energy" if such Party is

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FERC-jurisdictional and from analogous information if such Party is not FERC-jurisdictional. For the 2006 annual budget, the allocation formula shall use data from 2004. Subsequent budgets shall use the most recent available data. If a new signatory executes this Agreement after the Effective Date, the IMM's total annual budget shall be adjusted as needed and the allocation of the total annual cost to the Parties' shall be updated using the formula set forth in this section 4.4.2.

4.4.3. Survival. Each Party's obligation to pay its share of total annual costs over the five-year initial term of the contract shall survive the termination of the contract should such Party terminate its participation in this contract prior to the termination of the contract by all Parties.

4.5. Annual Budgets. The Parties shall determine the total amount to be provided to the IMM in each year of the Term. The Market Monitoring Committee established pursuant to section 5 shall direct the expenditures by the IMM within such annual budget. The Market Monitoring Committee or the IMM may request that the Parties adjust the total amount provided to the IMM in each year of the Term.

5. Establishment of the Market Monitoring Committee.

5.1. The Parties agree to undertake all actions necessary to establish a Market Monitoring Committee (MMC) as set forth in Exhibit C to this Agreement.

5.2. Transmission Owners shall consider the decisions of the MMC made pursuant to the procedures and duties set forth in Exhibit C to this Agreement and shall accept and implement each such decision unless a super-majority of the Transmission Owners determine that either (a) such decision would cause the IMM to undertake actions beyond its authority as set forth in this Agreement or the agreement between the Transmission Owners and the IMM, or (b) such decision would impose an unreasonable new burden on the Transmission Owners. If Transmission Owners make such determination, and so reject the MMC decision, then the Transmission Owners shall provide a detailed written explanation of the reasons for such determination and a counterproposal to the MMC.

5.3. Transmission Owners shall consider recommendations of the MMC made pursuant to the procedures set forth in Exhibit C to this Agreement.

5.4. All decisions of the Transmission Owners made pursuant to this Agreement shall be communicated to the MMC in writing.

6. Open-Access Transmission Tariff Provisions. The Parties agree to negotiate in good faith to develop and file with FERC common modifications to their now current OATTs that would (i) oblige Transmission Customers to cooperate with and provide information to the IMM, (ii) establish an overall Market Monitoring Plan, and (iii) set out the provisions of Non-Disclosure Agreement templates. The Parties intend that such

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filings would be made by July 1, 2006, or as soon thereafter as practicable. Provision of service under the modified OATT to a market participant will require the market participant with an OATT to propose to modify its OATT in the same fashion. Transmission owners without OATTs will agree to include the provision requiring cooperation with the IMM in any new transmission service agreements that they offer.

7. Liability (to be developed during further drafting).

7.1 Indemnification.

7.2 Negligence.

7.3 Release.

8. Dispute Resolution.

Parties to this agreement will submit disputes arising out of or pursuant to this agreement, and among or between themselves, to binding alternative dispute resolution procedures to the extent permitted by law. Appropriate regulatory agencies or the courts will provide the opportunity for an appeal mechanism if required by law.

9. Miscellaneous.

10. Exhibits

The following Exhibits are hereby incorporated into and made a part of this Agreement.

[to be listed]

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EXHIBIT A

Market Monitoring Plan

1) Scope of Work.

a) State of the Market (SOM) Reports

The first SOM report will be delivered no later than June 30, 2006. The scope of the initial SOM report will be determined no later than December 31, 2005. The initial SOM report will be based on publicly available information, but will also identify other sources of information that would be useful in future SOM reports. The initial SOM report will focus on market performance and structure during 2005, including such topics as congestion, inefficiencies in generation, effects of outages, and denied requests for transmission service. During the second half of 2006, the monitor will develop recommended changes intended to improve market performance and market metrics suitable to the Northwest, and will include a plan for future market monitoring efforts, which will be developed in cooperation with the MMC. It is expected that SOM reports will be prepared annually.

b) Market watch and resulting reports

In addition to annual SOM reports, the IMM will monitor data on a daily/weekly/monthly basis and investigate anomalous events. Reports on such anomalous events will be submitted to the MMC.

c) Independent investigations by the IMM

The IMM may initiate investigations if, in the IMM's sole determination, sufficient grounds exist for such investigations.

d) Complaints and resulting reports

The IMM will establish a "hotline" for complaints and will ensure that requests for investigations are properly logged and tracked. The IMM will receive and process all complaints filed by market participants and requests for investigations filed by the MMC. The IMM will establish procedures to accept and log complaints and requests, open case files, establish priorities for informal investigations, make recommendations regarding resolution of the complaints, and post results of the investigations. All complaints will yield responses as appropriate. If a complaint is found not to have merit by the IMM, the IMM will file the complaint as a "closed case". If a complaint is found to have merit, as determined by the IMM, the disposition of the complaint will be publicly reported, but with the names of the plaintiff and defendant redacted. If the IMM

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finds evidence of the exercise of market power or other forms of market failure or malfunction, the IMM will submit a report on such evidence to the MMC, state commissions, and FERC.

e) Investigation process

The IMM will establish procedures governing its conduct during investigations. Such procedures will be consistent with the following:

- i) An investigation is initiated at the time that the IMM opens a docket in response to a complaint, in response to a request from the MMC, or on its own initiative;
- ii) The IMM will not comment publicly on the nature or content of an on-going investigation;
- iii) The IMM will contact the party being investigated;
- iv) Confidential data will be protected by the IMM during any investigations.

f) Reports on complaint procedure to the MMC

The IMM will deliver quarterly reports to the MMC that will describe the implementation of the complaint process: e.g., number of complaints received, number found not to have merit, and descriptions of the resolution of complaints found to have merit.

g) General nature of reporting

- i) The IMM will submit reports to regulators and enforcement authorities with jurisdiction over the subject of the report in accordance with protocols agreed to and arrangements made with such regulators and enforcement authorities. If the IMM identifies behavior that is likely to violate tariff provisions or market behavior rules, the IMM will report such behavior to FERC and will identify the market participant involved. The IMM may also submit reports to other state and federal enforcement agencies if it discovers behavior that may violate statutes or regulatory rules.
- ii) The IMM will make available reports that rely only on aggregated or publicly available information to any interested party at the same time they are delivered to the MMC. The IMM will redact from all other reports that data which it is obligated by non-disclosure agreements to protect but no more than such information.

h) IMM has no “enforcement” authority

The IMM will not have the authority to order any market participant to take any specific action or desist from any action, other than providing data. The MMC may not expand the authority of the IMM via its oversight of the IMM’s activities. The IMM will not be authorized to file civil actions, regulatory actions,

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or requests for regulatory agencies to open investigatory dockets. Issuing reports does not constitute enforcement.

i) Markets within the scope of work of the IMM

The primary scope of the IMM's investigations is defined by the transmission systems and control areas of the signatories to the Agreement, but the IMM will also consider geographically adjacent (e.g., Canada or California) and economically related (e.g., natural gas) markets that affect the power and transmission markets defined to be within the primary scope of the IMM. The IMM will monitor all wholesale power and transmission markets in the Northwest; the role of retail loads in wholesale markets may be examined at some point.

j) Budget proposals by IMM

Although the IMM is expected to work with and through the MMC to develop recommended budgets for 2007-11, the IMM may submit proposed budgets and budget amendments directly to the signatories to the Agreement.

k) Required Communications and Notices

a) Web site

The IMM will maintain a web site that provides information relevant to its obligations under this Exhibit A, in redacted and unredacted form as appropriate.

b) Participating Transmission Owners' notification of parties required to cooperate

The Participating Transmission Owners will provide the IMM with a list of parties who are customers of the Participating Transmission Owners and thus required to cooperate with the IMM. **[DEPENDS ON DEVELOPMENT OF OATT AMENDMENTS.]**

3) Confidentiality

Public reports by the IMM will show only aggregated or redacted data. All data provided to the IMM pursuant to this Agreement shall remain confidential unless such data is already in the public domain pursuant to non-disclosure agreements between Participating Transmission Owners and the IMM or between Market Participants and the IMM. Such non-disclosure agreements shall balance the protection of confidential information with the need to inform regulatory agencies with jurisdiction over the markets or market participants of potentially unlawful or injurious behavior. Confidential data will be made available to the auditor retained

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pursuant to section __ and may be subject to subpoena in the event of a private complaint or regulatory or other enforcement action.

EXAMPLE

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EXHIBIT B

**Obligation of Participating Transmission Owners
to Provide Data to the Market Monitor**

a) **Participating Transmission Owners' obligation to provide data to the IMM.**

The Participating Transmission Owners shall each provide to the IMM any data requested by the IMM that is reasonably necessary or desirable for the the IMM to fulfill its scope of work, including but not limited to the data described in (b) below. Questions as to whether the data requested by the IMM is reasonably necessary or desirable are matters of contract interpretation. The contract between the Participating Transmission Owners and the IMM will include this obligation to provide data to the IMM but will also include the right for each Participating Transmission Owner and the IMM to take the issue to alternative dispute resolution (ADR). The IMM may request expedited ADR in exigent circumstances. The parties will be bound by the ADR decision to the extent legally permitted. (See NRTA ADR model.)

b) **Nature of data to be provided: content and format.**

Data shall include but not be limited to the following:

- 1) Transmission logs (operating status of facilities, contingencies, redispatch orders, curtailments, TLRs, . . .)
- 2) Transmission requests received
- 3) Transmission requests denied
- 4) Transmission requests granted
- 5) Schedules and e-tags
- 6) Transmission contracts, including assignments, amendments, firm redirects, etc.
- 7) Volume and pricing of transmission service sales
- 8) Volume and pricing of ancillary service sales.

Data will be provided in electronic format to the greatest extent possible.

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EXHIBIT C

Duties and Authorities of the Market Monitoring Committee

A. Responsibilities of the MMC

1. Decisions
 - a) Develop market monitoring plan
 - b) Develop annual scope of work for IMM
 - c) Develop RFP for monitoring services
 - d) Develop RFP for auditing services
 - e) Evaluate proposals from vendors for monitoring and auditing services
 - f) Authorize expenditures within annual budgets established by Participating Transmission Owners under the Agreement
 - g) Conduct performance review of vendors
 - h) Make requests to IMM to conduct investigations
2. Recommendations to Transmission Owners
 - a) Recommend specific vendors to be hired by Transmission Owners (monitoring and auditing)
 - b) Recommend annual budgets for contract (calendar) years after 2006; recommend within-year budget amendments if necessary
 - c) Recommend action by Participating Transmission Owners based on performance reviews of monitor (e.g., termination)
 - d) Review invoices submitted by IMM (probably by subcommittee) and make recommendations to Participating Transmission Owners regarding payment
 - e) Recommend amendments to this Exhibit of the Agreement

B. Membership on the MMC

1. Notice of membership. Those wishing to join the MMC will give notice to the agent designated by the Participating Transmission Owners. Signatories to the Agreement will automatically become members of the MMC unless they give notice otherwise. Entities who wish to join the MMC will identify the membership class in their notice.
2. Membership structure. In order to support broad-based decision-making, three voting and one non-voting membership classes will be defined for the MMC:
 - a. Transmission owners, including signatories to this Agreement and any additional owners approved by the signatories;

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- b. Load-serving entities, including transmission dependent utilities and end-users;
- c. Suppliers, including Independent Power Producers, marketers and brokers;
- d. State regulatory and enforcement agencies (non-voting).

C. Voting by the MMC. Each member of each class will be eligible to cast one vote. Motions before the MMC involving both decisions and recommendations require a simple majority in two of the three voting classes to pass.

D. Open meetings rule. Meetings of the MMC will be open to any interested party.

E. Executive Committee of the MMC. Each voting class of the MMC will elect a representative of that class to the Executive Committee of the MMC. The Executive Committee will serve largely in a ministerial role: scheduling meetings, passing budget recommendations of the entire MMC to the Participating Transmission Owners who are signatories to the Agreement, and reviewing invoices submitted by the IMM before payment by the agent of the signatories to the Agreement.

F. Market monitoring plan. The MMC will develop an overall market monitoring plan, which will be revised annually if appropriate. This plan will be in place no later than December 31, 2005 and will be developed in coordination with the scope of work for the IMM for 2006. The market monitoring plan will identify the markets to be monitored by the IMM. Generally speaking, after 2006 the IMM will be empowered to monitor any transaction that uses a transmission owner's system. More specifically, the IMM will monitor short term and long term transactions that involve the purchase and sale of transmission services, ancillary services, and energy services. The IMM will also monitor the usefulness and availability of instruments to hedge risks faced in wholesale power and transmission markets.

G. Selection and oversight of the IMM. The MMC will recommend one or more vendors to be hired by the Participating Transmission Owners to perform monitoring services. The MMC will set the scope of work of the IMM and revise the scope as necessary within the annual budget established under the Agreement. The initial term of the contract with the IMM will be two years. The MMC will conduct an annual performance review of the IMM and make recommendations to the signatories to the Agreement; this annual review will include reports from the independent auditor (see below). The MMC may recommend termination of the contract with the IMM. The MMC will set the priorities for work by the IMM, ensuring that research objectives are clearly stated, analytical requirements are defined, and reporting obligations are understood. The MMC will ensure that any firms selected to conduct investigations are independent of influence by any individual market participant or segment of the market.

H. Budget oversight. The MMC will allocate and review expenditures within the total annual budget established by the signatories to the Agreement.

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I. Budget changes. The MMC will propose annual budgets for years two through five (and subsequent years as long as the Agreement is in force) no later than ____ months prior to the start of each calendar year. If the MMC determines that funds are insufficient to perform necessary functions during any calendar year, the MMC will propose a budget amendment to the Agreement signatories. (The IMM can also propose budget amendments directly to the signatories to the Agreement.) The signatories will agree to fund the annual budget and any budget amendments as proposed unless the proposal is not prudent. Disputes over prudence of proposed annual budgets and any budget amendments will be submitted to dispute resolution under section __.

J. Regular SOM reports. The MMC will oversee the development of an annual state-of-the-market (SOM) report (or on a schedule other than annual as determined by the MMC). The MMC will give specific instructions to the IMM regarding the scope of work and level of detail to be provided in the annual SOM report.

K. Special investigations requested by the MMC. The MMC may request the IMM to undertake special investigations of market structure, market conditions, market behavior, and market outcomes. The MMC will establish procedures to govern these requests. The IMM will determine whether to conduct investigations requested by the MMC.

L. Auditing of the IMM. The MMC will recommend to the signatories of the Agreement an independent auditor to review management of complaints submitted to the IMM and other monitoring activities that involve confidential data. The auditor will also review the expenditures of the IMM. The MMC will set the scope of work of the independent auditor. The budget for auditing will be considered to be part of the annual budget for monitoring activities under this Agreement.

M. Limits on the role of the MMC. The MMC may not “filter” data going to the IMM, nor may it review reports by the IMM before such reports are made public. The MMC may not stop any specific investigation by the IMM, but will work with the signatories to the Agreement to ensure that adequate funds are available to support the IMM and will work with the IMM to ensure that the overall priorities established by the MMC are adhered to. The MMC will give broad direction to the IMM (e.g., “investigate and report on the existence of load pockets”) but may not circumscribe the work of the IMM.

N. Amendments to Exhibit C. The MMC may recommend amendments of this Exhibit C to the signatories to the Agreement if necessary to fulfill the purposes of this Agreement.

O. Failure of MMC to form or perform. If the MMC fails to form initially or fails to perform its functions over time, the responsibilities of the MMC will be carried out by the Transmission Owners directly.