

Flow Based Approach
Inserts re Legal Issues
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C. Legal Issues

1. Jurisdiction- The determination of ATC and selling transmission capacity on jurisdictional facilities would be jurisdictional functions if they were performed by an independent entity. In order for the Flow-Based Analysis to be consistent with the TIG goal of not expanding FERC jurisdiction in the region it is essential that the structure of this function not establish an entity that is required to make decisions that would effect the ATC determination. This can be done through the multilateral contract between the transmission providers and the contract with the independent staff that is employed to operate the calculator. These contracts must describe the ATC methodology and the agreed upon inputs to the methodology. The Transmission Providers will be responsible for providing additional inputs based on their own assumptions regarding transmission usage and pre-existing contracts. The independent staff must only be responsible for taking the information provided by the Transmission Providers and running it through the ATC calculator, i.e. turning the crank. With this structure the Flow-Based Analysis function should not expand FERC jurisdiction.

2. Tariff Filings- Jurisdictional utilities are required to file their ATC methodologies with the Commission, and it is assumed that the multilateral contract and the contract with independent staff will have to be filed by the jurisdictional utilities. There will need to be a provision in the contracts that voids the contracts if the Commission requires modifications that are not acceptable to all parties. If the contracts and the Flow-Based Analysis are presented as a regional practice the Commission is less likely to require significant modifications. If the charter committee develops a regional tariff for new transmission service it could be filed on behalf of the jurisdictional utilities without extending jurisdiction to non-jurisdictionals. This approach has worked for MAPP.

3. Regional Tariff- A regional tariff would need to be administered by independent staff as part of the common OASIS, but this function would need to be limited purely a determination of whether a transmission request can be met based on the output of the ATC calculator. The regional tariff would have to sort out pricing and cost recovery issues.

4. Liability- Several other TIG functions will rely on the output from the ATC calculator and it is important that there is no shift of liability. The Parties will need to agree to a mutual release of liability that may arise as result of using the ATC calculator for these other functions. The Parties will also need to indemnify the independent staff that is operating the calculator.

5. Confidentiality- Many of the inputs provided by the Transmission Providers may contain confidential information or critical infrastructure information. Agreements will

need to be in place with the independent staff to protect this information. If any of the raw data (inputs from the Transmission Providers) is released to other functions or Parties they will need to sign confidentiality agreements. If the raw data is made available for other uses, there may be Standards of Conduct issues that need to be taken into account.

