

## **Transmission Improvements Group Developmental Memorandum of Intent**

This Memorandum of Intent ("MOI"), dated as of \_\_\_\_\_, 2005, is entered into by and among the signatories to this MOI (each, a "Party" and in the plural, the "Parties"). However, it shall not become effective as to any signatory unless and until such time as it is signed by such signatory and Bonneville Power Administration ("BPA").

WHEREAS, the Transmission Improvements Group ("TIG") has developed a proposal containing high level concepts, specific solutions, and a structural framework for implementing improvements to several aspects of the Northwest transmission system;

WHEREAS, one of the conditions of TIG participation during the development of the TIG proposal has been that no Party endorsed in advance or committed to support the proposals; and

WHEREAS, the Parties to this MOI believe the TIG proposal is an appropriate course for the region and they intend to express their support for implementation of the TIG proposal by funding and actively participating in the development of the TIG Coordinating Agreement and Implementation Agreements.

The Parties agree to the following:

### **1. Term**

This MOI shall be of no force or effect as to any signatory unless and until it is signed by BPA and another signatory. The MOI shall become effective as of the date it is signed by BPA and shall remain in effect for 365 days from such date *provided* that a signatory may withdraw after May 1, 2006 by providing formal notice to all other Parties that it rescinds its intent to participate in the implementation of the TIG proposal and, *provided further*, the MOI shall remain in effect for the non-withdrawing parties notwithstanding such withdrawal.

### **2. Scope of Intent**

2.1 By executing this MOI the signatory endorses the development of the TIG Coordinating Agreement and Implementation Agreements. The signatory (has signed) (intends to sign by October 28, 2005) (will recommend to its board or council to sign by October 28, 2005) a participation and funding agreement substantially in the form of the attached Phase Two Participation and Funding Agreement: *provided* that nothing in this MOI shall preclude any Party from participating in Grid West or other transmission developmental efforts.

2.2 The Participation and Funding Agreement describes the funding, cost allocation, and process for the next twelve months of TIG development and implementation. The funding will cover both the development of the Coordinating and Implementation Agreements and early implementation of some TIG functions.

2.3 In drafting and negotiating the Coordinating and Implementation Agreements the Parties intend to use the TIG proposal as a basis. The Parties recognize that some Parties have not participated in the drafting of the TIG proposal and reasonable accommodations shall be considered in the interest of developing mutually agreeable Coordinating and Implementation Agreements.

3. Participation and Implementation

- 3.1 The Signatory intends to actively participate in the development of a mutually agreeable TIG Coordinating Agreement, with the intent to complete such agreement no later than March 1, 2006.
- 3.2 The Signatory intends to actively participate in the development of mutually agreeable TIG Implementation Agreements. This shall include the formation of Implementation Committees and where applicable Advisory Committees. The Parties intend to make every reasonable effort to complete mutually agreeable Implementation Agreements by May 1, 2006. The Parties intend that the Agreements shall include an implementation plan with a timeline for incremental steps and full implementation and detailed cost estimates and allocations, and the Agreements will commit the signatories to completing the functions described, with appropriate provisions for termination.
- 3.3 Once the Coordinating and Implementation Agreements are drafted, each party shall decide whether or not to sign the Agreements. Signing this MOI does not commit the signatory to sign the Coordinating or Implementation Agreements. Once the Agreements are completed the Parties will make every reasonable effort to complete any process steps that are needed as quickly as is reasonably possible. These steps may include seeking board approval, state regulatory approval, FERC approvals, and, in the case of BPA, holding the necessary public process.
- 3.4 The Parties recognize that some TIG functions can be implemented more quickly than others and they intend that implementation of some of these functions in whole or in part should proceed while the Agreements are being negotiated and finalized. The Parties intend to achieve full implementation of the TIG functions as soon as possible.

4. Participation in RABA

Parties that sign this MOI are indicating their intent to pursue the TIG proposal, which includes a voluntary control area consolidation under the RABA proposal. Parties that operate control areas shall indicate below whether they intend to participate in the development of the RABA Implementation Agreement and intend to make every reasonable effort to execute a mutually agreeable RABA Implementation Agreement.

Participate in Development:      Yes       No

Intend to Execute:              Yes       No       Uncertain

5. Counterparts

This MOI may be executed in multiple counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same instrument.

6. Miscellaneous

6.1 Interpretation and No Joint Venture. This MOI shall not be interpreted or construed to create an association, affiliation, joint venture, or partnership or to impose any partnership obligation or liability upon any of the Parties. None of the Parties shall have any right, power, or authority under this MOI to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of any of the other Parties. It is expressly understood that this MOI is limited in scope and does not constitute an agreement to consummate any transaction involving transmission facilities or to enter into a definitive agreement with respect thereto.

6.2 No Third Party Beneficiaries. This MOI is made and entered into for the sole protection and legal benefit of the Parties. No other person or entity shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this MOI. No other person or entity shall be a third party beneficiary under this MOI.

6.3 Amendments. No amendment, waiver, modification, or other change to this MOI shall be of any force or effect unless hereafter set forth in writing and signed by an authorized representative of each of the Parties.

_____	_____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**DRAFT**  
**TRANSMISSION ISSUES GROUP**  
**PHASE TWO**  
**PARTICIPATION AND FUNDING AGREEMENT**

This PARTICIPATION AND FUNDING AGREEMENT (“Agreement”), dated as of October \_\_, 2005, is entered into by and among the signatories to this Agreement (each a “Party” and in the plural, the “Parties”). Each of the Parties is an Implementing Utility, which is a utility that (i) intends to make every reasonable effort to complete the development of, and anticipates that it will ultimately sign, the TIG Coordinating Agreement and Implementation Agreements (provided that the terms of such agreement are acceptable to such utility), and (ii) operates a control area, or has close to or more than \$ 50 million in net transmission plant. The purpose of this Agreement is to provide for the funding of specified amounts for the implementation phase of the TIG proposal.

1. Term

This Agreement shall be effective when signed by the Bonneville Power Administration ("Effective Date") and shall remain in effect until the earlier to occur of (i) the expiration of 365 days after the Effective Date or (ii) until it is replaced by a Coordinating Agreement and Implementation Agreements mutually acceptable to the Parties.

2. Purpose and Scope

2.1 The Parties intend to use every reasonable effort to negotiate in good faith and develop final mutually agreeable forms of TIG Coordinating Agreement and Implementation Agreements, by May 1, 2006. To the extent reasonably and economically practicable, the Parties will use every reasonable effort to plan or begin the necessary preparations for implementation prior to completion of the forms of agreements. Each Implementation Agreement will contain terms regarding the obligations of the Parties to develop improvements to the Northwest transmission system. Each such agreement will establish and provide for the funding of an advisory committee to provide technical and policy input or recommendations regarding the development of improvements. The Implementation Agreements would relate to each of the five Implementation Areas, although the contracting Parties could decide to consolidate or expand some of the agreements.

2.2 The Parties recognize that the TIG proposal and functions will benefit from broad regional participation. The Parties intend that the Coordinating and Implementation Agreements will provide workable transmission approaches for the region as a whole, and they will encourage other regional utilities within the footprint of the Northwest Power Pool that qualify as Implementing Utilities to sign this agreement and participate in the development of the forms of TIG Coordinating Agreement and Implementation Agreements.

- 2.3 The Parties shall use every reasonable effort to negotiate in good faith and develop, through drafting committees, mutually agreeable forms of TIG Coordinating Agreement and Implementation Agreements regarding Common OASIS, Flow Based Approach, Planning/Expansion, Market Monitoring, and Reliability/Security.
- 2.4 By entering into this Agreement and participating in and funding this effort the Parties are committing to the development of the TIG approach and committing to make every reasonable effort to complete acceptable forms of the TIG Coordinating and Implementing Agreements; *provided*, however, no Party is committing to sign the TIG Coordinating and Implementation Agreements. Each Party reserves the right to make independent decisions as to signing the resulting Coordinating and Implementation Agreements.
- 2.5 This Agreement also establishes a Phase Two Steering Committee to provide direction to the various committees that are drafting the forms of Coordinating and Implementation Agreements, and to make policy level decisions regarding such forms and the expenditure of funds provided pursuant to this Agreement. The establishment of the Phase Two Steering Committee will remain in effect until this Agreement terminates or expires or is replaced by the Executive Committee established under the terms of the TIG Coordinating Agreement.

3. Coordinating and Implementation Agreements

In drafting and negotiating the TIG Coordinating and Implementation Agreements the Parties intend to use the TIG proposal as a basis. The Parties recognize that some Parties have not participated in the drafting of the TIG proposal and that reasonable accommodations shall be considered in the interest of developing mutually agreeable Coordination and Implementation Agreements. Among the goals of the Parties in entering into this Agreement are that, to the extent practicable and mutually agreeable,

- (i) each Agreement shall include an implementation plan with a timeline for incremental steps and full implementation and detailed cost estimates and allocations,
- (ii) each Agreement will commit the signatories to completing the functions described, with appropriate provisions for termination,
- (iii) the committees in developing the forms of the Implementation Agreement will first determine whether existing organizations might be changed or modified, or new organizations formed to perform the proposed functions,
- (iv) to the extent possible the forms of Implementation Agreements shall utilize existing organizations and contracts and shall avoid creating a new entity over which the Federal Energy Regulatory Commission has jurisdiction, and
- (v) the Coordinating and Implementing Agreements shall provide for decision-making that cannot be unduly influenced by market participants.

3.1. The Coordinating Agreement shall address voting rights for TIG members and the structure, responsibilities, and rules for the Executive Committee. The Coordinating Agreement will also address the relationship between the Executive Committee and staff retained to effectuate the Implementation Agreements.

3.2. Among the goals of the Parties in entering into this Agreement are that, at a minimum, the Implementing Agreements shall address the following:

- 3.2.1 The Planning/Expansion Implementation Agreement will provide for one-utility transmission system planning for the Northwest to meet transmission system reliability and adequacy standards and will include a backstop that allocates the costs of construction of new transmission facilities when those facilities are required to meet system reliability standards. It will commit parties to build and/or fund necessary projects subject to the parties' ability under applicable law. The Implementation Agreement will establish the structure of the Transmission Expansion Review Council, all applicable rules for developing the regional plan and the process leading from the plan to facilities agreements;
- 3.2.2 The Market Monitoring Implementation Agreement will provide for a regional market monitor that functions independently of market participants and establish the structure and rules for the Market Monitoring Committee;
- 3.2.3 The Security/Reliability Implementation Agreement will provide for improvements in the efficient and reliable operation of the Northwest transmission system and voluntary participation in a new consolidated control area responsible for balancing and reliability authority functions as defined by NERC. This will include making real-time scheduling part of real-time operations to ensure schedule curtailments can be implemented;
- 3.2.4 The Common OASIS Implementation Agreement will establish a Northwest committee and customers committee to interact with Westtrans or some other vendor to operate the common Northwest OASIS. It will establish a framework for the Parties to work on common tariff provisions and business practices, and other improvements to the management of transmission access.
- 3.2.5 The Flow based Approach Implementation Agreement will establish a mutually agreeable methodology for improving reliability, allowing for injection/withdrawal scheduling, and determining flow based ATC, including several of the base assumptions that will be needed to operate the methodology.

4. Implementation Activities

The Parties intend to use every reasonable effort to negotiate and develop the TIG Coordination and Implementation Agreements and to thereby achieve full implementation of the TIG functions as soon as possible. The Parties recognize that each TIG function may have a different timeline and many of the functions will be implemented through an incremental process. This Agreement will provide specified amounts of funds to fund these initial implementation steps. The amount of needed funding may be adjusted in each Implementation Agreement. The Parties recognize that some implementation steps, can be taken while the forms of TIG Coordinating and Implementation Agreements are being negotiated. Expending funds provided pursuant to this Agreement on these implementation steps prior to completion of the Agreements shall be at the discretion of the Phase Two Steering Committee.

## 5. Funding

- 5.1 Each Party shall provide funds at the time this Agreement is signed or no later than fifteen (15) business days (this could be extended) after the date of execution by such Party. Each Party that is a signatory shall submit its executed signature page of this Agreement to the Public Power Council (“PPC”) and PPC shall date stamp such signature page upon its receipt by PPC. The PPC shall continue in its role as the custodian of TIG funds until an Executive Committee is seated and control of the funds is formally passed to the Executive Committee, or until the Phase Two Steering Committee decides to make other arrangements.
- 5.2 The total amount of funding to be provided pursuant to this Agreement is \$5,000,000. This total amount shall be allocated among Parties that have signed this Agreement by October 31, 2005, with 40% of this total amount allocated equally among the Parties, 30% of this total amount allocated in proportion to regional load, and 30% of this total amount allocated in proportion to net transmission plant investment.<sup>1</sup> Any Party that signs this Agreement after October 31, 2005, shall contribute its share based on a recalculation of the foregoing allocation formula, and any amount previously provided by a Party in excess of its reallocated amount shall be promptly refunded to such Party by the PPC.
- 5.3 If the TIG functions are terminated pursuant to Section 14 of this Agreement, any remaining funds shall be distributed to each of the Parties in an amount equal to the total remaining funds multiplied by the percentage of the total funds that such Party contributed pursuant to this Agreement.
- 5.4 The Parties agree that funds collected pursuant to this Agreement shall be expended as directed by the Steering Committee or Executive Committee on services necessary or desirable to fulfill the purposes described in this Agreement. Such expenditures may include but are not limited to expenditures for the following: a facilitator or facilitating organization; meeting rooms and associated costs; consultants, legal counsel and technical support; a website and other communication media; and implementation of functions.

## 6. Steering Committee

- 6.1 A Steering Committee shall be formed consisting of a representative of each Party that has signed this Agreement and contributed its share of funds pursuant to section 5.2 of this Agreement. The Parties will appoint senior managers from their utilities as their Steering Committee representatives. Each Party entitled to appoint a representative to the Steering Committee shall provide notice to all other Parties setting out the names and contact information of its representative and an alternate.
- 6.2 Each Steering Committee representative shall be entitled to a voting share equal to its funding contribution described in section 5.2 of this Agreement. The members of the Steering Committee intend to work in good faith to avoid tie votes and all decisions of the Steering Committee require a majority vote of the voting shares cast.

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<sup>1</sup> This cost allocation formula is only applicable to the term of this Agreement and shall not serve as a precedent for cost allocations under the TIG Coordinating Agreement or Implementation Agreements. The parties recognize that cost allocation issues may be different for each of the implementation functions.

- 6.3 The Steering Committee shall make decisions by a majority vote of the voting share cast. Representatives or their alternates may vote by proxy if they are not available in person. Representatives or their alternates will notify other representatives or the facilitator of the appointment of any proxies prior to any meetings of the Steering Committee.
- 6.4 The Steering Committee shall direct PPC in writing to expend funds and execute contracts for services on behalf of the Parties as the Steering Committee determines desirable in achieving the purpose of this Agreement. The Steering Committee shall oversee the efforts described in this Agreement. The Steering Committee shall: appoint staff to develop the form of TIG Coordinating Agreement; ensure that Implementation Committees are formed to develop the forms of Implementation Agreements; and oversee and provide guidance to Implementation Committees as it deems appropriate.
- 6.5 The Steering Committee shall meet when and where it deems appropriate, including by conference call. Representatives shall receive reasonable written or electronic notice of meetings. All of these meetings will be open public meetings.
- 6.6 While the forms of TIG Coordinating and Implementation Agreements are being developed, the Steering Committee shall hold open public meetings on a monthly basis. The purpose of these meetings shall be to inform regional stakeholders regarding the progress of developing the forms of TIG Coordinating and Implementation Agreements and to provide a forum for regional stakeholders to provide input or recommendations into the development process.
- 6.7 The Steering Committee shall decide when the forms of the Coordinating and Implementation Agreements are ready to offer to Parties for signing and necessary approval processes.
7. Payment and Contracting by, and Indemnification of, PPC
- 7.1 PPC shall hold the funds collected pursuant to section 5 of this Agreement until the Executive Committee is established. PPC shall pay out such funds at the written direction of the Steering Committee. In accordance with written direction from the Steering Committee, PPC shall execute, and perform its obligations pursuant to, contracts with third parties as agent on behalf of the Parties; *provided*, that such contracts are reasonably necessary to carry out the purposes of this Agreement and are authorized by vote of the Steering Committee.
- 7.2 The Parties recognize that PPC is not an Implementing Utility and all Parties agree to sign an agreement with PPC containing the following provisions and in the form set forth in \_\_\_\_ attached hereto:
- 7.2.1 Conditioned upon PPC's agreement to undertake the obligations of this section 7.1, the Parties, hereby release and forever discharge PPC from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorneys' fees and liabilities of any nature whatsoever, whether based on contract, tort, statutory or other legal or equitable theory of recovery, whether known or unknown, which may relate to, arise from, or are in any manner connected to PPC's performance of its obligations under the last sentence of section 5.1, section 5.3 and section 7.1 of this Agreement. The Parties, shall indemnify PPC for any and all claims,

demands, obligations, losses, causes of action, costs, expenses, attorneys' fees and liabilities of any nature whatsoever, whether based on contract, tort, statutory or other legal or equitable theory of recovery which are made by third parties retained pursuant to section 6.4 of this Agreement and relate to, arise from, or are in any manner connected to the last sentence of section 5.1, section 5.3 or section 7.1 of this Agreement; *provided, however*, that the liability of each such indemnifying Party is pro-rata based upon the percentage such indemnifying Party's percentage of funds contributed bears to the total such funds contributed by all Parties other than PPC. The release and indemnification set forth in this section 7.2 shall not extend to claims, demands, obligations, losses, causes of action, costs, expenses, attorneys' fees and liabilities of any nature whatsoever, whether based on contract, tort, statutory or other legal or equitable theory of recovery (i) resulting from PPC's gross negligence or willful misconduct, or (ii) brought against PPC based on a challenge to PPC's authority, authorization or ability to enter into (or perform its obligations under) this Agreement or under any contract executed by PPC pursuant to this Agreement (or based on any allegation that any such execution or performance constitutes a breach of duty by PPC).

7.2.2 PPC shall provide a monthly accounting to the Parties of the funds held or expended by it pursuant to this Agreement.

8. Implementation Committees

8.1 Meetings of Implementation Committees shall be open to all interested persons subject to their compliance with Attachment A to this Agreement.

8.2 Implementation Committees will provide for broad regional stakeholder review of the ongoing work product at the regional stakeholder process described in Section 6.6. Work groups shall consider suggestions and reactions from regional stakeholder review in developing the Implementation Agreements and options.

9. Any notice or request made to or by any Party required or permitted by this Agreement shall be made to the representative of the other Parties in writing or electronically. If the person designated to receive notice is different from the person that signs the Agreement, the Party shall notify all other Parties of the name(s) of persons to receive notice.

10. This Agreement shall be interpreted, construed, and enforced in accordance with Washington law, except that insofar as required for Bonneville Power Administration's participation federal law shall apply.

11. This Agreement constitutes the whole agreement between the Parties. No amendment, waiver, modification, or other change to this Agreement shall be of any force or effect unless hereafter set forth in writing and signed by an authorized representative of each of the Parties. This Agreement may be executed by Parties in

multiple counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same instrument.

12. Parties agree that all statements made orally or circulated in writing at Steering Committee and Implementation Committee meetings or for purposes of developing the Coordinating and Implementation Agreements described in this Agreement cannot be used as an admission against interest, submitted as evidence, or used for purposes of cross-examination in any ongoing or future litigation in a state or federal court, except (i) that a Party is not in breach of this Agreement if the Party is required to submit such written or oral material to a state or federal regulatory agency or local commission with jurisdiction over such Party, or is ordered to produce such oral or written material by a court of competent jurisdiction and (ii) that a Party may consent to the use of its own statements.
13. A Party may withdraw from this Agreement at any time without liability except with respect to indemnity of PPC in accordance with section 7.2; *provided, however*, that such Party shall have no right to a refund of the funds, or fraction thereof, contributed by such Party pursuant to this Agreement; *provided, further*, that if unexpended funds are distributed pursuant to section 5.3 of this Agreement, then such Party shall have a surviving right to participate in such distribution. If a Party withdraws from this Agreement pursuant to this section 13, such Party shall have no other obligation or liability (pursuant to section 7.2 of this Agreement or otherwise) for actions taken pursuant to this Agreement after the date of such withdrawal.
14. If mutually acceptable TIG Coordinating and Implementation Agreements are not completed and approved for signature by the Steering Committee by May 1, 2006 this Agreement continues for 60 days, and if mutually acceptable TIG Coordinating and Implementation Agreements are not completed and approved for signature by the Steering Committee by June 30, 2006 this Agreement shall be deemed terminated, unless two-thirds of the Steering Committee's total voting shares vote to extend this Agreement. At any time during the term of this Agreement the Parties may terminate the Agreement with a two-thirds vote of the Steering Committee's total voting shares.
15. Miscellaneous
  - 15.1 Interpretation and No Joint Venture. This Agreement shall not be interpreted or construed to create an association, affiliation, joint venture, or partnership or to impose any partnership obligation or liability upon any of the Parties. None of the Parties shall have any right, power, or authority under this Agreement to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of any of the other Parties.
  - 15.2 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and legal benefit of the Parties. No other person or entity shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of

action or claim in connection with, this Agreement. No other person or entity shall be a third party beneficiary under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials.

_____	_____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

_____	_____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

## Attachment A

### **Meeting Protocol for Steering Committee and Implementation Committee Participants**

The following are conditions for participation in TIG Steering Committee and Implementation Committee sessions:

1. Parties, participants and attendees to Steering Committee and Implementation Committee sessions are expected to work diligently toward solutions and provide the support and staff to facilitate the objectives of this Transmission Issues Group (TIG) Phase Two Participation and Funding Agreement (“Agreement”).
2. The purposes of this Agreement are (a) to identify a limited set of significant, existing opportunities for improvement of the Northwest transmission systems and (b) to develop cost-effective, incremental changes to existing institutions that will address these opportunities in an expeditious manner.
3. All Parties, participants and attendees in Steering Committee and work group sessions and discussions are expected to work within these protocols. The Steering Committee and Implementation Committees will ensure that these protocols are complied with during meetings and conference calls, in the development of written materials communicating the Proposals and in the course of external communications.