

February 1, 2001

~~MAPP Alternate Dispute Resolution Process~~ Midwest Reliability Organization
Dispute Resolution Procedures

~~—In its list of guidelines for a regional transmission group, the Federal Energy Regulatory Commission (FERC) recommends that a dispute resolution procedure be established to settle disputes between Members.~~

~~—Article 11 of the MAPP Restated Agreement establishes provisions for non-binding mediation and binding arbitration. It also establishes an Alternate Dispute Resolution Committee whose responsibility is to manage the process, not settle disputes.~~

~~—This handbook provides an overview of the duties of the Alternate Dispute Resolution Committee, and outlines the steps a member of MAPP must take to exercise its right to utilize the MAPP Alternative Dispute Resolution process. This Document is not a substitute for the Restated Agreement. If any of the provisions of this Handbook conflict with the MAPP Restated Agreement, the Restated Agreement shall govern.~~

~~Alternative Resolution Committee~~

~~—The Alternate Dispute Resolution Committee (the ADR Committee or the Committee) is composed of six (6) representatives appointed by the Executive Committee. The Executive Committee shall strive to choose ADR Committee members who reflect the diversity among the MAPP membership in terms of size, type of entity, geographic location, and whether they are a Transmission Owning Member or Transmission Using Member. No two representatives on the ADR Committee may be representatives of the same Member or Affiliated Member.~~

~~—Members of the ADR Committee serve for a term of three years and are not restricted in how many terms they may serve. Each member of the ADR Committee has one vote. A one-half (1/2) majority of committee members present and voting is required for approval or adoption of measures. As long as one-half (1/2) of the members of the ADR Committee are present, there is a quorum.~~

~~—There is a Chair and Vice Chair of the Committee, and it is the Chair who has authority~~

~~to call its meetings. The ADR Secretary is a MAPP COR staff person or designee. The ADR Administrator is appointed by the Committee, and may be the ADR Secretary.~~

~~The ADR Committee responsibilities are:~~

- ~~1. Maintain a pool of qualified people to serve as mediators, arbitrators and technical advisors;~~
- ~~2. Establish the procedures and schedules for dispute resolution to further the prompt, efficient, fair and equitable resolution of disputes;~~
- ~~3. Determine the rates and other costs and charges that will be paid to mediators or arbitrators for their services;~~
- ~~4. Select mediators for disputes;~~
- ~~5. Determine whether mediation is warranted in a dispute;~~
- ~~6. Provide the disputing Parties with lists of arbitrators who are qualified to resolve particular disputes;~~
- ~~7. Compile and make ADR procedures available to Members, arbitrators and other interested parties;~~
- ~~8. Maintain and make available a database of written arbitration decisions; and,~~
- ~~9. Provide oversight and supervision of dispute resolution procedures to facilitate prompt, efficient, fair and equitable resolution of disputes.~~

~~MAPP Process for Mediation~~

~~When two or more MAPP Members have a dispute relating to the Restated Agreement, or non-members using the MAPP Electric Service Tariff filed with the FERC have a dispute relating to the Tariff, certain procedures must be followed to initiate the Alternate Dispute Resolution process provided in the Restated Agreement. This process is described below. Overview of Dispute Resolution Procedures (Note: To be added later)~~

~~A. Disputes Not Involving Compliance with Organizational Standards~~

The dispute resolution procedures in this Part A shall apply only to disputes between Members

or between a Member and the Corporation (“Parties”) that do not involve an allegation that a Member is non-compliant with an Organizational Standard. A dispute is considered to arise when a Member or the Corporation asserts that an action, decision or failure to act by the other Party is: (1) based on an error of fact; and/or (2) inconsistent with the Corporation Bylaws, or any policy or requirement approved by the board of the Corporation; and/or (3) is inconsistent with applicable regulatory requirements or legal standards.

1. Informal Resolution by Parties

Prior to the submission of a dispute to mediation or arbitration pursuant to these procedures or the submission of a dispute to a court of competent jurisdiction, the Parties shall (Comment - Do we want informal resolution mandatory?) each appoint a senior representative, with authority to settle the dispute, who shall attempt to resolve the dispute on an informal basis through the exchange of letters and, if agreed, meeting by teleconference or in person.

The party alleging the dispute (“Initiating Party”) shall initiate the informal resolution by notifying the other Party in writing of the nature of the dispute and the Party’s basis for its position. Within ??? Business Days of receiving notification of the dispute, the other Party shall respond in writing to the Initiating Party with its position regarding the dispute and the basis for its position. If within ??? Business Days after receiving the other Party’s letter the Initiating Party does not accept the other Party’s position, the Initiating Party shall request a meeting (by teleconference or in person) between the designated senior representatives of the parties at a mutually agreed time and location to attempt to resolve the dispute. If a meeting cannot be arranged within ??? Business Days or a meeting does not result in a resolution of the dispute, then the Initiating Party may: (a) proceed to mediation or (b) request that the Dispute Resolution Committee waive the requirement to mediate the dispute.

2. Mediation

Unless waived by the

1. How use of the ADR Process is Determined

~~—The Alternate Dispute Resolution Committee, Process of mediation or arbitration is required used when a dispute has not been resolved by the Parties.~~

~~reconsideration or review, or by failure to act or decide, by the applicable Committee named in~~

~~the Restated Agreement. Non-resolution is determined when a Member or Regulatory Participant asserts that the action, decision or failure to act or decide of the applicable Committee of the Whole (1) is based on an error of fact; (2) is inconsistent with the Restated Agreement or; (3) is inconsistent with applicable regulatory requirements or legal standards. If a Party believes this is so, it must notify the ADR Committee in writing.~~

A2.- Notification to Dispute Resolution of ADR Committee

~~The Initiating Party (a party may consist of more than one organization or individual that are appearing jointly) must notify the Dispute Resolution ADR Committee in writing of a request for mediation the existence and nature of the dispute or a request for waiver of the mediation process. This notification shall be sent to the attention of the Chairman of the Dispute Resolution Committee directly to the ADR Secretary at the Corporation's head office MAPP Center. All other known affected and interested Parties should simultaneously be notified of the dispute by the Party. When one of the Parties is MAPP or a MAPP Committee, the Chair of the Committee within which the dispute lies will be considered a Party. If MAPP is named as a party, the Chair of the Management Committee will be considered a Party. MAPP requires that the n(Comment: The MRO is the legal entity that is responsible for the actions of its Committees, et al, not the chairpersons.) Notification shall be sent by registered mail or some other type of mail system that provides a proof of receipt. The notice letter shall include, at a minimum, the following information:~~

- ~~!——1. A request for mediation or a waiver of the mediation process Alternate Dispute Resolution pursuant to these procedures Article 11 of the MAPP Restated Agreement;~~
- ~~2. !——A brief description of the type of dispute (ex. breach of Corporation Bylaws, incorrect fee assessment), i.e., contract, access, rate, etc.;~~
~~!——The Parties to the dispute;~~
- ~~3. !——A list of names and full addresses of 1) all of the attorney(s) for the Initiating Parties. and, 2) unrepresented Parties who must be notified of Alternate Dispute Resolution by MAPP.~~

~~(Comment: Initiating Party may not know if other Party is represented and by whom.)~~

~~In addition, the Party must send to the ADR Secretary a completed Confidential Information Statement (see Attachment A). (Comment: Sending the Dispute Resolution Committee a~~

completed Confidential Information Statement is not part of Notification, addressed below.)~~The completed Confidential Information Statement will not be shared with other Parties.~~

As soon as practicable after ~~—Immediately upon receipt of the letter invoking the mediation ADR process or a request for waiver of mediation, the Chairperson of the Dispute Resolution Committee shall ADR Administrator (the ADR Administrator may be the ADR Secretary) will~~ send the disputing Parties the following information:

1. A copy of the ~~Handbook on MAPP Alternate Dispute Resolution Procedures~~Process.
(Should this be necessary or just advise as to location on website?)
2. ~~A scheduling calendar for the next three months.~~
23. A list of mediators kept on file with the Committee from which Parties may identify any possible conflict of interest.
34. A list of technical advisors from which Parties may identify any conflict of interest.
45. A Confidential Information Statement Form setting forth the dispute in more detail (Should we rename this?) (see Attachment A) to be completed by ~~the~~will also be sent to the responding Parties.

~~—The disputing Parties have five (5) Business Days~~days from the date that the Dispute Resolution Committee ~~MAPP ADR Administrator~~sends the required information forms to them to return the requested information, (Comment: This is not a lot of time given the content of the Confidential Information Statement) including Confidential Information Statement Forms. Information received after this period expires will not be considered by the ~~ADR~~Committee. (Comment: How can the Committee act without the information?) ~~The completed Confidential Information Statement shall not be shared with other Parties.~~

(Comment: Is it reasonable not to provide this to the Mediator? See p.6)

~~—The ADR Committee shall decide will decide whether mediation should proceed under these procedures the MAPP Restated Agreement within five (5) Business Days after the Committee~~MAPP ADR Administrator receives the Confidential Information Statement Forms, (Comment: This time period seems very short of the Committee needs to meet or discuss.)~~scheduling calendars, list of mediators and list of technical advisors from all disputing~~

parties.

~~— A dispute is subject to mediation unless the ADR Committee determines that mediation would be highly unlikely to lead to the resolution of the dispute. The ADR Committee does not engage in legal analysis or evaluate the merits of the issues in dispute when evaluating whether mediation should occur. The ADR Committee shall~~^{will} consider the following criteria when deciding the appropriateness of disputes for resolution in mediation:

~~!— Whether the parties have submitted their dispute to the appropriate MAPP Committee or have obtained that Committee's consent to submit it directly to mediation;~~

~~!— Whether the dispute invokes an exception within the MAPP Restated Agreement that requires an appeal process other than to the ADR Committee (such as automatic submission to FERC);~~

~~!—~~1. The nature of the dispute;

2. The nature of the relationship between the parties;

3. ~~!—~~Past history of the dispute and previous dispute resolution attempts;

4. ~~!—~~The nature of the resolution desired by the parties;

5. ~~!—~~Whether the dispute presents some exigency (such as time or finances) for one or more parties that cannot be addressed in, or would be seriously exacerbated by, mediation;

6. ~~!—~~Other factors that the Committee considers relevant.~~may arise in a dispute.~~

Within 10 days (Short period. Also, previous page says decision made five days after receiving

CISFs.) from the date on which the Committee was notified of the dispute, the Dispute Resolution Committee chairperson shall inform the Parties of the Committee’s decision about whether mediation should take place.

~~—If the ADR Committee concludes that mediation is likely to resolve an issue(s), the ADR Committee Chair will select the mediator and technical advisor from the lists, excluding any conflicts of interest identified by the Parties, unless the Parties have already agreed upon a selection. The Chair of the ADR Committee may consult with the disputing Parties regarding the choice of a mediator. The Chair shall also consult with other members of the Committee.~~

~~—If the ADR Committee concludes that mediation is not likely to resolve an issue(s), the Parties may by mutual agreement proceed directly to arbitration on that issue(s), or may initiate proceedings with a regulator or court having jurisdiction over the matter in dispute. except that issues under the jurisdiction of the Federal Energy Regulation Commission (“FERC”) may proceed directly to FERC for resolution.~~

3.- The Mediation Process

~~—Within 10 days from the date on which the ADR Committee was notified of the dispute, the ADR Administrator shall inform the Parties of the ADR Committee’s decision about whether mediation should take place.~~ If the Committee concludes that mediation is likely to resolve an issue(s), the Committee Chair shall advise the Parties in writing that they must mutually agree to the selection of a mediator and technical advisor from the lists provided or of their own choosing, within ??? days. The Chair of the Committee may consult with the disputing Parties regarding the choice of a mediator. The Chair shall also consult with other members of the Committee. Within ??? Business Days of being selected, the mediator ~~If the ADR Committee sends the dispute to mediation, the ADR Administrator shall~~ send the disputing Parties an Appointment Letter/Scheduling Notice. This letter/notice shall ~~will~~ advise the Parties of:

1. ~~! —~~ The names of the mediator and technical advisor;

~~! —~~ Available dates for ~~t~~The scheduling of ~~for~~ a pre-mediation conference call between Parties, their attorneys and the mediator to determine content of and set

~~deadlines expectations~~ for the submission of ~~pre-conference provision~~ of materials to be sent directly to the mediator, and to schedule the mediation conference's date, time and place;

2.

~~! —————~~ Fee expectations for the mediator's and the technical advisor's time;

3.

~~! —————~~ An invoice for the administrative fee (US \$625) for arranging the mediation (At this stage?);

~~—The mediator shall~~ will inform the Disputing Parties ~~ADR Administrator~~ of the date, time and location of the mediation conference. The Mediator shall ~~ADR Administrator will~~ confirm all arrangements with the Parties by phone, and the mediation conference shall will proceed as scheduled. An additional administrative fee will be charged for any changes in the conference logistics or scheduling.

The technical advisor shall be available to the mediator for pre-mediation consultation. Once the mediation has begun, the technical advisor may be consulted only at the request of all Parties. (Comment: I question the reasonableness of this latter restriction.)

The disputing Parties shall comply with the procedures and timetable established by the mediator.

~~—If the ADR Committee finds that mediation is highly unlikely to lead to resolution of the dispute, then the parties shall pursue their options pursuant to the Restated Agreement.~~

3.1- Request for Immediate and Subsequent Arbitration

~~—If a Party believes that mediation is highly unlikely to lead to the resolution of a dispute, and the Party wants to immediately proceed to the MROMAPP arbitration process, the Party may submit a Notice for Mediation and a Demand for Arbitration simultaneously. If the MAPP-ADR Committee determines that mediation is highly unlikely to resolve the dispute, the ADR~~

Secretary will immediately commence the Arbitration process as outlined in this Handbook. The ADR Secretary will consider the date of the MAPP ADR Committee's determination that mediation is highly unlikely to resolve the dispute to be the "Start the Clock" date for the Arbitration process. (Comment: Do we really need this?)

4. Post-Conference Procedures~~The Mediator~~

~~—All mediators shall be trained in mediation procedures. The disputing Parties will attempt to resolve their dispute in accordance with the procedures and timetable established by the mediator.~~

~~—4.1 Subsequent to the mediation conference and prior to making a recommendation, tThe mediator may:~~

~~!—1. Ask the Parties to meet for face-to-face discussions, with or without the mediator present;~~
2.

~~!—Act as an intermediary between the disputing Parties;~~

3.

~~!—Require the disputing Parties to submit additional written statements providing further details of the dispute.issues and positions (if the Parties agree, this can be the Confidential Information Statement submitted previously to the ADR Committee), and;~~

~~!—If requested by the disputing Parties at any time during the mediation process, provide a written recommendation on resolution of the dispute. This includes, if requested, the mediator's assessment of the merits of the principal positions being advanced by each of the disputing Parties.~~

5. The Technical Advisor

~~—A technical advisor will be assigned to the dispute by the ADR Committee Chair from lists received from the disputing Parties noting potential conflicts of interest. The technical advisor will be available to the mediator for pre mediation consultation. Once the mediation has begun, the technical advisor may be consulted only at the request of all Parties.~~

6. No Resolution of Dispute

~~—4.2~~ If thirty (30) (calendar or Business?) days after the mediation conference~~appointment of the mediator~~ (or such later date if agreed to by the Parties) there is no resolution of the dispute, the mediator ~~shall~~^{will} promptly provide the disputing Parties with a written, confidential, non-binding recommendation on resolution of the dispute. The mediator may ask for assistance from the Technical Advisor in the writing of the recommendation. The mediator ~~shall~~^{will} also assess the merits of the principal positions of the disputing Parties.

~~—4.3~~ After the Parties have received this assessment, they ~~shall~~^{will} meet in good faith with the mediator (in person or by teleconference), within 5 Business ~~calendar~~ Days ~~and with the mediator~~ to discuss resolution. Each disputing Party shall be represented at the meeting by a person with authority to settle the dispute and any other people deemed appropriate by that Party.

~~—4.4~~ If the dispute is still not resolved within ??? Business Day after a meeting of the Parties, then a disputing Party may commence such arbitral, judicial, regulatory or other proceedings as may be appropriate as provided in these Procedures.~~Restated Agreement (see Article 11 and “Arbitration,” below).~~

~~—4.5~~ The recommendation of the mediator shall have no further force or effect and shall not be admissible for any purpose in any subsequent proceeding.

57. The Costs of Mediation

~~—~~The costs of the time, expenses and other charges of the mediator, the Technical advisor and of the mediation process shall be borne by all Parties to the dispute. Each Party shall bear an equal proportion of the costs. Each Party shall bear its own costs and attorney’s fees incurred in connection with any mediation under these Procedures~~Restated Agreement~~. When mediation is complete, the Mediator shall ~~ADR Administrator~~ ^{will} issue final invoices to the Parties within 30 days.~~(See Fee Schedule in Attachment C.)~~

MAPP Rules for Arbitration of Disputes

1.– Introduction

1.1.– Any dispute that has been referred to mediation and has not been resolved through the mediation process shall be resolved by binding arbitration if mutually agreed by the Parties. (See Section 19.11+2 of the MRO BylawsMAPP Restated Agreement). ~~Such disputes include (with the exceptions listed in Section 3 below) disputes arising under any tariff, Service Schedule, principle, standard, requirement, procedure, plan or other right or protection established by or pursuant to the Restated Agreement. Arbitration of disputes shall be conducted in accordance with these MAPP Rules for Arbitration of Disputes established by the MAPP Alternate MRO Dispute Resolution Committee and published in (Question: Will these procedures be published somewhere?)the *MAPP Handbook on Alternate Dispute Resolution (ADR) Process*.~~

2.– DefinitionsInterim Arbitration Process

2.1 ~~– Until such time as the MAPP Alternative Dispute Resolution Committee determines that there is a need for a standing panel of arbitrators and has completed the selection and training of such Arbitrators, the MAPP Alternative Dispute Resolution Committee has approved the use of an interim panel of arbitrators. However, the Parties may mutually agree upon any arbitrator. All arbitrators must agree to abide by the MAPP Rules for Arbitration.~~

3. Exceptions to the Requirement of Dispute Resolution by Binding Arbitration

3.1.— Any dispute involving matters under FERC jurisdiction as defined in Article 11.2.1 of the Restated Agreement may proceed directly to FERC for resolution at the request of at least one disputing party.

3.2.— Court or Regulatory Agency Jurisdiction.— Any assertion that any provision of the MAPP Restated Agreement, including any tariff, Service Schedule, principle, standard, requirement, plan or procedure or that any act or failure to act of any Member or Member Participant, or other person or entity is contrary to any United States federal or state law or regulation, or any Canadian federal or provincial law or regulation shall be heard by any court or agency having jurisdiction thereof and over the Parties, unless all Parties consent to arbitration of such an

~~assertion.~~

~~3.2.1. Such an assertion may be made at any time during the arbitration process.~~

4. Definitions

4.1. Day:

Unless otherwise indicated, “day” shall mean a calendar day as defined in 24.1.2 below. The day of receipt of a document that requires a response or action such as a Request ~~Demand~~ for Arbitration is not included in any specified time period for that action or response, but the last day of that time period is included.

2

4.1.1. Business Day:

Monday through Friday, excluding Canadian federal (where the dispute includes a Canadian Party) and U.S. federal holidays.

2

4.1.2. Calendar Day:

Actual calendar days, including weekends and holidays.

24.2. Dispute:

For purposes of arbitration, a “dispute” is any dispute as to a matter governed by the MRO Bylaws, policies, procedures, or other requirement(s). ~~MAPP Restated Agreement that has not been resolved through the dispute resolution procedures specified in the MAPP Restated Agreement including, but not limited to, disputes arising under any tariff, Service Schedule, principle, standard, requirement, procedure, plan or other right or protection established by or pursuant to the Restated Agreement.~~

~~24.3. Intervenor:~~

An Intervenor is a ~~MAPP~~ Member who, upon acceptance by the Arbitrator(s), and payment of fees, becomes a full Party to an arbitration according to the procedures outlined in Section 8 below. Once an Intervenor has been accepted by the Arbitrator(s)

~~and paid the Administrative Fee that was determined by the Arbitrator(s) to the MAPP ADR Administrator, the Intervenor will have input to arbitration schedules and full Party involvement in the arbitration proceedings. An Intervenor shall not have input to the selection of the Arbitrator(s). (I'm not certain if we want to permit Intervenors.)~~

2—

4.4.— ADR Participant:

An ADR Participant is a ~~MAPP~~ Member who, according to the procedures in Section 9 below, may be present at non-confidential portions of substantive arbitration hearings. “ADR Participants” shall receive non-confidential information as determined by the Arbitrator. “ADR Participants” have no input as to scheduling, site, or content of arbitration hearings and shall be charged a pro-rata share of the cost of participation including conference facilities and other logistical costs, but not including the cost of the Arbitrator(s)’ services.

24.5.— Procedure Arbitrator:

The Procedure Arbitrator is either the Sole Arbitrator of a dispute or, in the case where a panel of Arbitrators is hearing the dispute, the Procedure Arbitrator is the neutral Arbitrator selected by the Arbitrators named by the Parties. See Section 13.1 below.

24.6.— Respondent:

~~The Party responding to a Demand for Arbitration under Section 11.2 of the MAPP Restated Agreement. When one of the Parties is a MAPP Committee, Council or Subcommittee, the Chair of the Committee, Council or Subcommittee within which the dispute lies shall be considered the Respondent. If MAPP is named as a Party, the Chair of the Management Committee shall be considered the Respondent.~~

24.7.— Start-the-Clock Date:

This is a date when the ~~MAPP Alternate~~ Dispute Resolution Committee has completed its review of the Demand for Arbitration (see Section 6.6). The date appears on the Acknowledgment of Demand for Arbitration. All deadlines contained in these Rules for Arbitration of Disputes commence on the Start-the-Clock date. (Do we need this? It will probably depend on whether the Demand is sent to the Committee.)

24.8— Party

A Party may consist of more than one organization or individual that are appearing jointly.

35. Panel of Arbitrators

~~3.15.1.~~ The MRO ~~MAPP Alternate~~ Dispute Resolution Committee has approved a panel of Arbitrators for service in ~~MROMAPP~~ arbitrations. The brief biographies of those Arbitrators are on file with the ~~??????MAPP ADR Administrator~~. ~~Under Section 11.2.3 of the MAPP Restated Agreement,~~†The Parties to a dispute may agree on any person to serve as a single Arbitrator. Procedures for Arbitrator selection appear in Section 13 below ~~and Section 11.2.3 of the Restated Agreement.~~

3.2 Governing Law and Procedures

Disputes between U.S. Members of the MRO or between a U.S. Member(s) and the MRO shall be governed by ~~???????????~~ law and arbitration procedures for such disputes shall be governed by ~~???????????~~, except as specified otherwise in these Procedures. Disputes between Canadian Members of the MRO or between a Canadian Member and the MRO shall be governed by the law (including the Arbitration Act) of the provincial jurisdiction of the Canadian Member involved or where more than one Canadian Member is involved, the law of the Canadian jurisdiction agreed to by the Parties except and only to the extent that these procedures are inconsistent with the applicable governing law.

46.— Initiation of Arbitration ~~under the Dispute Resolution provision of the MAPP Restated Agreement~~

~~46.1.~~ If any Party to a dispute wishes to commence arbitration, it must send three (3) copies of a written RequestDemand for Arbitration (substantially in the form of Attachment B) to the attention of the chairperson of the Dispute Resolution Committee, ~~MAPP ADR Secretary at the MAPP Center,~~ and simultaneously to the intended Respondent(s). ~~Tand all other known affected or interested Parties. MAPP requires that the RequestDemand~~ for Arbitration shall be sent by registered mail or some other type of mail system that provides a proof of receipt.

~~46.1.1.~~ The RequestDemand for Arbitration, which is sent to the chairperson of the Dispute Resolution Committee~~MAPP ADR Secretary,~~ will not be accepted unless it is accompanied by a four thousand U.S. dollar (US \$4,000) administrative fee, payable to the Corporation~~MAPP.~~ (We do not need this clause, do we? The Committee will have minimal involvement in the arbitration except reviewing the Demand.)

4.1.2

~~6.1.2.~~ The Demand for Arbitration must be addressed to the ~~MAPP ADR Secretary,~~ the intended Respondent(s), and all other known affected or interested Parties (include full names and addresses).~~At a minimum, the Request Demand for Arbitration must contain:~~

1.

!——A brief summary of the dispute;

2. !——A brief summary of pertinent ~~MROMAPP Committee~~ decisions and the dispute resolution ~~appeals~~ processes that have been completed;

3. !——A statement regarding the status of the dispute in other ~~MAPP~~ Dispute Resolution processes; (?)

!4. ——A statement setting forth each claim to be considered in the arbitration;

5. !——A statement setting forth the basis for arbitration of the claim

~~under the Bylaws, policies or procedures of the MRO terms of the MAPP Restated Agreement. Parties must cite the pertinent MAPP Restated Agreement article and section of the relevant document, precedential decision, or other relevant authority;~~

- ~~6. !——The type and amount of relief requested for each claim; and,~~
- ~~7. !——A statement setting forth the basis for relief for each claim. (Parties must cite the MAPP Restated Agreement Article and Section, precedential decision, or other relevant authority).~~

~~6.1.2.1. If, in the reasoned opinion of the Arbitrator(s), the Demand for Arbitration does not have a good faith basis in either law or fact, the Arbitrator(s) has the discretion to award the costs, expenses and other charges, including attorney's fees and wages of persons involved, and the Arbitrator(s)' fees to the prevailing Party.~~

~~4.2. –Response to the Request Demand for Arbitration and Counterclaims. The Respondent(s) named in the Request Demand for Arbitration, shall have fourteen (14) calendar days following the Start-the-Clock Date to respond to the Request Demand for Arbitration. The Respondent(s) must send three copies of a written “Response to Request Demand for Arbitration” to the attention of the chairperson of the Dispute Resolution Committee ADR Secretary at the MAPP Center and simultaneously copy all other Parties named in the Demand for Arbitration. TMAPP requires that the Response to the Request Demand for Arbitration shall be sent by registered mail or some other type of mail system that provides a proof of receipt. The response must address each claim in the Demand for Arbitration and must include the Respondent's counterclaim if any counterclaim is to be considered in the arbitration process.~~

~~4.2.1 –Each Respondent must include a four thousand U.S. dollar (US \$4,000) administrative fee payable to MAPP.~~

~~6.2.1.—The Response to the Request Demand for Arbitration must respond to each of the claims in the Request Demand for Arbitration. The Response to the Request Demand for Arbitration must include a statement indicating whether the Respondent agrees to~~

arbitration and if so:

- ~~!~~——A brief summary of the dispute;
- ——A
- ~~!~~——A brief Respondent’s summary of ~~MROMAPP~~ Committee decision and dispute resolution ~~appeals~~—processes that have been completed, if different from the summary contained in the ~~Request~~~~Demand~~ for Arbitration;
- ~~!~~——A statement regarding the status of this dispute in other MAPP Dispute Resolution processes, if different from the statement contained in the Demand for Arbitration (Needed? May depend on simultaneous mediation);
- ~~!~~——A statement responding to each claim to be considered in the arbitration;
- ~~!~~——A statement responding to any claimed basis for arbitration of any claim under the MRO Bylaws, policies or procedure~~terms of the MAPP Restated Agreement~~. The Respondent must cite the ~~MAPP Restated Agreement~~ Article and Section of the relevant document, precedential decision or other relevant authority;
- A statement responding to the type and amount of relief requested for each claim;
- ——
- ~~!~~——A statement responding to the basis for relief for each claim. The Respondent must cite the ~~MAPP Restated Agreement~~ Article and Section of the relevant document, precedential decision, or other relevant authority;

The Respondent’s counterclaim (in accordance with Section 4.2.2) if any counterclaim is to be considered in the arbitration process.-

~~6.2.1.1. If, in the reasoned opinion of the Arbitrator(s), the Response to the Demand for Arbitration does not have a good faith basis in either law or fact, the Arbitrator(s) has the discretion to award the costs, expenses and other charges, including attorney's fees, wages of persons involved, and the Arbitrator(s) to the prevailing Party. (A similar section is already in 6.1.2.1, which I moved to the costs section.)~~

~~46.2.2. Counterclaims. (Note: Is this whole section needed given the nature of potential disputes?) If the Respondent wishes to assert a counterclaim, it must be included with the Response to the Request Demand for Arbitration. Failure to assert a counterclaim shall will constitute a waiver of the right to assert a counterclaim. The Counterclaim must contain:~~

- ~~• !——A brief summary of the dispute giving rise to counterclaim;~~
- ~~• !——A brief summary of the MRO MAPP Committee decision and dispute resolution appeals processes related specifically to the counterclaim;~~
- ~~• !——A statement regarding the status of other MRO MAPP Dispute Resolution processes related specifically to the counterclaim;~~
- ~~• !——A statement setting forth each counterclaim to be considered in the arbitration;~~
- ~~• !——A statement setting forth the basis for arbitration of the counterclaim under the terms of the MRO Bylaws, policies and proceduresMAPP Restated Agreement. The Respondent must cite the MAPP Restated Agreement Article and Section of the relevant document, precedential decision, or other relevant authority;~~
- ~~• !——The type and amount of relief requested for each counterclaim; and,~~

- ~~!—~~ A statement setting forth the basis for relief for each counterclaim. The Respondent must cite the ~~MAPP Restated Agreement Article~~ and Section of the relevant document, precedential decision, or other relevant authority.

~~46.2.2.1. If, in the reasoned opinion of the Arbitrator(s), the counterclaim does not have a good faith basis in either law or fact, the Arbitrator(s) has the discretion to award the costs, expenses and other charges, including attorney's fees, wages of persons involved, and the Arbitrator(s) fee to the prevailing Party.~~

~~6.3. Upon receipt of the Request~~~~Demand~~ for Arbitration, the ADR Secretary shall distribute copies of the ~~Request~~~~Demand~~ for Arbitration to all MAPP Members (Management Committee representatives) and to the Alternate Dispute Resolution Committee members. (presume that this is to allow others to intervene or participate, but don't the Parties have a right to keep the dispute private?)

4.3 If the Response to Request for Arbitration indicates that the Parties agree to arbitrate the dispute, w

~~6.4. Within ten (10) Business Ddays of receipt of the Request Demand for Arbitration, the MAPP Alternate Dispute Resolution Committee shall will review the Request demand to enassure that the Request for Arbitration is complete. (Note: Does the Committee want to play this role? What happens if the Request is not complete?)~~

~~the claims are entitled to arbitration. The considerations in this review will include, among other things:~~

~~!—Whether the dispute has completed the required MAPP Committee review and/or —appeal process;~~

~~!—Whether the type of dispute described in the Demand for Arbitration is one that may be arbitrated under the terms and conditions of the MAPP Restated Agreement;~~

~~! Whether the form of the Demand for Arbitration is correct; and,~~

~~! Whether the appropriate administrative fee has been included with the Demand for Arbitration.~~

~~6.5. If the MAPP Alternate Dispute Resolution Committee determines that the claims do not appear to be entitled to arbitration, the ADR Administrator shall immediately notify the Parties in writing that the Demand for Arbitration has been denied and the reasons for that denial and return the administrative fee less \$500 for processing costs.~~

4.4 ~~6.6. When the MAPP Alternate Dispute Resolution Committee determines that the Request Demand for Arbitration is complete, the ??????? shall and that the claims contained in the Demand for Arbitration appear to be entitled to arbitration under the MAPP Restated Agreement, the MAPP ADR Administrator (who may be the ADR Secretary) will send the Parties an Acknowledgment of Request Demand for Arbitration. This Acknowledgment of Request Demand for Arbitration will contain the Start-the-Clock date, which is the date that the MAPP Alternate Dispute Resolution Committee has completed its review of the Request Demand for Arbitration. (Do we retain this? Also: Does the Committee want to send list of arbitrators at this point?)~~

7.- Invocation of FERC Jurisdiction (Comment: This Section does not seem necessary if arbitration is by agreement only.)

—Within fourteen (14) calendar days of the Start-the-Clock date referenced in the Acknowledgment of Demand for Arbitration, any Party to the arbitration may invoke FERC jurisdiction over the dispute.

7.1. To invoke FERC jurisdiction over the dispute, any Party may simultaneously notify (in writing) the MAPP ADR Administrator and all of the other Parties to the arbitration that the Party is invoking FERC jurisdiction.

—————7.1.1. If FERC jurisdiction is properly invoked, the MAPP ADR Administrator will “stop the clock” for sixty (60) calendar days.

—————7.1.2. The Party that notifies the ADR Administrator that it is invoking FERC jurisdiction in the dispute must, within the sixty-day (60-day) period of Section 7.1.1, provide the MAPP ADR Administrator with evidence that it has made the requisite filing to commence proceedings at FERC.

—————7.1.3. If the MAPP ADR Administrator does not receive evidence that the Party has made the requisite filing to commence proceedings at FERC within that sixty-day (60-day) period, the dispute shall revert to arbitration.

~~The MAPP Restated Agreement requires that the~~ notice of invocation of FERC jurisdiction shall be sent by registered mail or some other type of mail system that provides a proof of receipt.

8.– Intervention in the Arbitration (Note: there is nothing in Canadian arbitration legislation that allows intervenors or participants)

—Within fourteen (14) calendar days of the Start-the-Clock date, and upon a showing of good cause, any Member whose interests may be affected by the resolution of the dispute (Comment: This is a very broad category given the common obligations of the members) may request the Right to Intervene in the Arbitration. The Arbitrator(s) will determine whether the Member will be permitted to intervene, based upon good cause shown. The intervention procedure may be modified or adapted by the Arbitrator(s) for use in a particular proceeding. The Arbitrator(s) will set the Administrative Fee, to be paid to MAPP and delivered to the ADR Administrator, for Intervenors. (Note: this means that Arbitrator must be appointed first.)

8.1. In order for a Request for the Right to Intervene to be considered, each Member wishing to intervene in arbitration of the dispute must simultaneously notify in writing the MAPP ADR Administrator and all original Parties to the dispute of its intent to intervene. MAPP requires that such notice be sent by registered mail or some other type of mail system that provides proof of receipt.

—————8.1.1. To be considered, the Request for the Right to Intervene must be sent to the MAPP ADR Administrator and all original Parties. (Include full names and addresses.)

8.1.2. At a minimum, the Request for the Right to Intervene must contain:

- ! A brief summary of the prospective Intervenor’s interests in the dispute which may be affected by the outcome of the arbitration;
- ! A brief summary evidencing good cause for intervention;
- ! A brief summary of MAPP Committee decision and appeals processes that have been completed;
- ! Whether the prospective Intervenor has a separate but related dispute with any of the original Parties under consideration, or with MAPP committees or subcommittees;
- ! A statement regarding the status of other MAPP Dispute Resolution processes, and if the prospective Intervenor has a separate but related dispute with any of the original Parties in process, under the MAPP Dispute Resolution process;
- ! A statement setting forth each claim or counterclaim that the prospective Intervenor wishes to have resolved in the arbitration;
- ! A statement setting forth the basis for arbitration of the prospective Intervenor’s claim(s) and/or counterclaim(s) under the terms of the MAPP Restated Agreement. The prospective Intervenor must cite the MAPP Restated Agreement Article and Section, precedential decision or other relevant authority;
- ! The type and amount of relief requested for each claim/counterclaim; and,
- ! A statement setting forth the basis for relief for each claim/counterclaim. The prospective Intervenor must cite the MAPP Restated Agreement Article and Section, precedential decision, or other relevant authority.
- ! An acknowledgment that the Intervenor will bear a pro-rata share of the cost of the arbitration assessed to all Parties to the dispute.

- ! Considerations that the Arbitrator(s) should understand in determining the appropriate Administrative Fee.
- ! An acknowledgment that the Intervenor will bear a pro-rated share of the cost of the arbitration assessed to all Parties to the dispute.

—Within ten (10) days of the selection of the Sole Arbitrator or Procedure Arbitrator, that Arbitrator shall notify Intervenors and Parties of acceptance or denial of the Intervention request(s).

9.– Participation in the Arbitration (Note that this impacts privacy, not consistent with Canadian arbitrations)

—Within fourteen (14) calendar days from the Acknowledgment of Request~~Demand~~ for Arbitration, and upon a showing of good cause, any Member whose interests may be affected by the resolution of the dispute may request the right to participate in the Arbitration. This participation procedure may be modified or adopted by the Arbitrator(s) for use in a particular proceeding.

9.1 In order for a Request for the Right to Participate to be considered, each Member wishing to participate in arbitration of the dispute must simultaneously notify in writing the ~~MAPP ADR Administrator~~(If this Section stays, should DR Committee play a role?), the Arbitrator and all original Parties to the dispute of its intent to participate. The Request for the Right to Participate must include full names and addresses. ~~TMAPP requires that the Request shall be sent by registered mail or some other type of mail system that provides a proof of receipt.~~ NOTE: The number of persons attending as ADR Participants will be determined by the Arbitrator.

9.1.1— At a minimum, the Request for the Right to Participate in Arbitration must contain:

- ! A brief summary of the prospective ADR Participant’s interests in the dispute which may be reviewed by the Parties and the Arbitrator as a

showing of good cause to participate;

- ! The number of people that the prospective ADR Participant anticipates would attend the hearings and their names and titles if known at this time;
- ! An acknowledgment that the ADR Participant will bear a pro-rata share of the cost of participation, including conference facilities and other logistical costs but not the cost of the Arbitrator's services.
- ! An acknowledgment that once a Member has been granted the right to participate, those costs will be charged whether or not the ADR Participant actually chooses to attend the arbitration hearing(s).
- ! An acknowledgment that the ADR Participant is responsible for its own accommodations, meals and travel.

9.2.— ADR Participants may formally withdraw from the arbitration at any time by sending written notice to the (Arbitrator or Dispute Resolution Committee)~~MAPP—ADR Administrator~~. However, ADR Participants shall be responsible for their pro-rata share of charges committed to or accrued before their withdrawal.

10.— Changes/Amendments to Claim or Counterclaim

10.1. Parties to the arbitration shall have the right to add, delete, change or amend claims or counterclaims at will until the Arbitrator has been selected. Once the Arbitrator(s) is selected, additions, deletions, changes or amendments to claims and counterclaims will be accepted or denied at the discretion of the Arbitrator(s).

10.2. Notice (in writing) of additions, deletions, changes or amendments to claims and counterclaims must be made to the MAPP ADR Administrator (Comment – Do we want to delete this service of committee?) and simultaneously to the Arbitrator(s), if selected, and all Parties, including Intervenors and ADR Participants.

11.— Administrative Conference and Preliminary Hearing

~~11.1.1.~~ Within ten (10) days of the selection of the Sole Arbitrator or Procedure Arbitrator, that Sole Arbitrator or Procedure Arbitrator shall contact the Parties, including Intervenors (?), to schedule a pre-hearing administrative conference. (Note possible timing conflict with Section 8.) ADR Participants do not have a right to attend any administrative conferences or preliminary hearings.

~~11.1.2.~~ At the pre-hearing administrative conference, the Arbitrator shall set the date for the issuance of the arbitral decision. Under the terms of the MAPP Restated Agreement, the arbitral decision shall be issued not later than eight (8) months from the date of the selection of the Arbitrator(s).

~~While the Parties may agree to an arbitration schedule that allows the Arbitrator(s) to prepare a decision earlier than eight (8) months after selection of the Arbitrator(s), the Arbitrator(s) will manage the arbitration calendar to allow a maximum of forty five (45) calendar days, following the close of the evidentiary hearing for the preparation of the decision.~~

_____ The pre-hearing administrative conference shall address will:

!_____ (1) ~~Address the applicable Arbitrator(s)' rules for discovery and evidence in accordance with Section 26;~~

(2)

!_____ The schedules for discovery;

(3)

!_____ The date for submission of documents; and,

(4) Additional meetings such as a preliminary hearing on the admissibility of witnesses and/or evidence;

(5) The date for the arbitration's evidentiary hearing unless waived by the Parties pursuant to Section 33;

(6) The date for the issuance of the arbitral decision. The arbitral decision shall be issued not later than eight (8) months from the date of the selection of the Arbitrator(s), unless agreed otherwise by the Parties.

While the Parties may agree to an arbitration schedule that allows the Arbitrator(s) to prepare a decision earlier than eight (8) months after selection of the

Arbitrator(s), the Arbitrator(s) shall manage the arbitration calendar to allow a maximum of forty-five (45) calendar days, following the close of the evidentiary hearing for the preparation of the decision.

~~! — The date for the arbitration's evidentiary hearing.~~

~~Additional meetings such as a preliminary hearing on the admissibility of witnesses and/or evidence shall be arranged at this time. The pre-hearing administrative conference may be conducted by conference call at the discretion of the Arbitrator(s).~~

~~11.32-~~ The Arbitrator(s) shall have the power to impose sanctions for dilatory tactics or undue delays in completing the arbitral proceedings.

12.— Site of Arbitration Hearing(s) (Location of Section should be moved)

12.1. The site for all hearings and other meetings may be agreed upon by the Parties (including Intervenors) and the Arbitrator(s). In the absence of agreement by the Parties and the Arbitrator(s), all meetings and hearings shall be held at a site determined by the Arbitrator(s).

(Note: The Appointment Section should be moved to earlier in the document)

13.— Appointment of Arbitrator

13.1 ~~—~~Direct Appointment by the Parties. Within fourteen (14) calendar days of the Start-the-Clock date contained in the Acknowledgment Request ~~of Demand~~ for Arbitration. If the Parties mutually agree to a single Arbitrator, the Initiating Party shall provide notice of the arbitration to the ~~original Parties to the dispute may notify the MAPP ADR Administrator (in writing) that all original Parties have agreed on a single Arbitrator so chosen of their own choosing.~~

~~13.2—~~ (Note: I don't understand why this list would not be provided at the outset, not just failing agreement.) Appointment of a Sole Arbitrator from a MAPP-provided list of qualified Arbitrators.

13.2.1—If, within fourteen (14) calendar days after the Start-the-Clock date:

- ! No Party has given notice of an intent to invoke FERC jurisdiction over the dispute; or, (Is this necessary?)
- ! If within sixty (60) calendar days after notice on intent to invoke FERC jurisdiction was given, evidence that the Party has made the requisite filing to commence proceedings at FERC has not been provided to the MAPP ADR Administrator; or, (Is this necessary?)
- ! The Parties have not selected an Arbitrator of their own choosing; then,

the ~~MAPP ADR Administrator~~ chairperson of the Dispute Resolution Committee shall promptly provide a list of qualified Arbitrators, by facsimile or other means, to the Parties named in the Request ~~Demand~~ for Arbitration and the Response(s) to the Request ~~Demand~~ for Arbitration (the “Original Parties”).

The Parties shall have seven (7) days from receipt of the ~~MROMAPP~~-provided list of qualified Arbitrators to agree on a single Arbitrator for the dispute.

(Comment: I suggest that the Parties get the list right away and not have an extra seven (7) day delay.)

13.3 —Appointment of the Procedure Arbitrator by Party-Appointed Arbitrator

13.3.1— If, within fourteen (14)~~seven (7)~~ —days of receiving the ~~MROMAPP~~-provided list of qualified Arbitrators, the Parties have not agreed on a Sole Arbitrator, each side shall within seven (7) days select one Arbitrator from the ~~MROMAPP~~-provided list of qualified Arbitrators. The Arbitrators so chosen shall select a third Arbitrator either from the ~~MROMAPP~~ list of qualified Arbitrators or other Arbitrators known to those Arbitrators within fourteen (14) days. This third Arbitrator shall be the “Procedure Arbitrator.” A panel of three Arbitrators shall hear the dispute unless the Parties mutually agree that the Procedure Arbitrator will

act as the Sole Arbitrator.

13.3.2.— Upon the selection of the Procedure Arbitrator, the Parties shall have two (2) days to notify the Arbitrators chosen by the Parties ~~MAPP ADR Administrator~~ that they agree that the Procedure Arbitrator shall serve as a Sole Arbitrator. In the absence of such agreement, a three-Arbitrator panel consisting of the Arbitrators selected by each side and the Procedure Arbitrator shall hear the dispute.

14.— Qualifications of an Arbitrator

14.1.— Any Arbitrator shall be qualified to serve in the arbitration of a ~~MAPP~~ dispute if all Parties to the arbitration (not including Intervenors) agree to the Arbitrator and he or she is available and willing to serve in that capacity. (Note: This may conflict if we have specific qualifications for arbitrators, as suggested by R. Larson.)

14.2 —Any Arbitrator shall be qualified to serve in the arbitration of a ~~MAPP~~ dispute if that Arbitrator is selected from a list of Arbitrators approved by the ~~MRO MAPP Alternate~~ Dispute Resolution Committee. The biographies of the Arbitrators approved by the ~~MRO MAPP Alternate~~ Dispute Resolution Committee are available from the ~~(?) MAPP ADR Administrator~~. (Note: This seems to mean that if parties don't agree on a single Arbitrator, all Arbitrators must come from the MRO list. We should discuss and clarify this.)

15. —Notice to Arbitrator of Appointment

—The Arbitrator(s) shall be officially notified of their appointment to hear the case and provided with the MRO Dispute Resolution Procedures by the Initiating Party ~~MAPP ADR Administrator~~. The Arbitrator shall ~~send return~~ a signed acceptance of appointment and acknowledgment of the receipt of these rules to all Parties within five (5) days.

16.— Date, Time and Place of Hearing (Note: Section 12.1 should go here)

—After consultation with the Parties (including Intervenors), the Arbitrator(s) shall set the date,

time and place for each hearing and notify the Parties in writing. ~~However, the first hearing shall be held in Minneapolis, Minnesota.~~

~~—The Arbitrator or Procedure Arbitrator shall notify the MAPP ADR Administrator of the date, time and place of hearings and meetings. The MAPP ADR Administrator will notify the Parties and ADR Participants of the date, time and place of hearings and meetings.~~

17. —Representation

—Any Party may be represented by counsel or other representative. A Party intending to be represented shall notify the Arbitrator(s) ~~MAPP ADR Administrator~~ and all other Parties (including Intervenors) of the name and address of the representative at least three (3) days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates arbitration or responds for a Party, notice is deemed to have been given.

18.— Stenographic Record

—Any Party desiring a stenographic record shall make arrangements for the preparation thereof and shall notify the other Parties of these arrangements in advance of the hearing. The requesting Party or Parties shall pay the cost of the record. Such Party or Parties shall have no obligation to provide a copy of the record of the hearing to any Party that does not pay a proportionate share of the cost of the record. At the request of any Party, the Arbitrator(s) shall determine a fair and equitable allocation of the cost of the preparation of a record between or among Parties to the proceeding willing to share such costs. If the transcript is agreed by the Parties to be, or determined by the Arbitrator(s) to be, the official record of the proceeding, it must be made available to the Arbitrator(s) for inspection at a date, time, and place determined by the Arbitrator(s).

19. —Interpreters (Should we not require that all hearings be conducted in English?)

—Any Party wishing an interpreter shall make arrangements directly with the interpreter and shall be responsible for the costs thereof.

20.— Attendance at Hearings

—The Arbitrator(s) shall maintain the privacy of the proceedings. The original Parties and Intervenors are entitled to attend hearings. ADR Participants may be allowed to attend hearings according to the procedures outlined in Section 9, above. The Arbitrator(s) shall otherwise have the power to require the exclusion of any witness, other than a Party or other essential person, during the testimony of any witness. It shall be discretionary with the Arbitrator(s) to determine the propriety of the attendance of any person.

21.— Postponements

—The Arbitrator(s), for good cause shown, may postpone any hearing upon the request of a Party (including Intervenors) or upon the Arbitrator(s)' own initiative and shall also grant such postponement when all Parties agree thereto.

22.— Oaths

—Before proceeding with any hearing, each Arbitrator shall take an oath of office. The Arbitrator(s) shall require witnesses to testify under oath or solemn affirmation administered by any qualified person.

23.— Majority Decision (Section Should be Moved)

—All decisions of the Arbitrators must be by a majority.

24.— Order of Proceedings and Communication with Arbitrator

24.1: A hearing shall be opened by:

- ! The filing of the oath of the Arbitrator(s);
- ! The recording of the date, time and place of the hearing;
- ! The presence of the Parties and their representatives, if any; and,
- ! The receipt by the Arbitrator(s) of the Request ~~Demand~~ for Arbitration and the Response(s) to the Request~~Demand~~ for Arbitration, Counterclaim, Request(s) for Right to Intervene in Arbitration (if any) and Request(s) for Right to Participate (if any).

24.2.— The Arbitrator(s) may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been

accomplished at the ~~pre-preliminary~~ hearing administrative conference conducted by the Arbitrator(s) pursuant to Section 11, above.

24.3 ~~—~~The Initiating Party(ies) ~~that originally filed the Demand for Arbitration~~ shall then present evidence to support its claim. The Respondent(s) shall then present evidence supporting its defense and counterclaims. Each Intervenor shall present evidence to support its claims and counterclaims. Witnesses for each Party shall submit to questions or other examination under oath. The Arbitrator(s) ~~has the discretion to vary this procedure but~~ shall afford a full and equal opportunity to all Parties for the presentation of material and relevant evidence.

24.4- Exhibits, when offered by Parties (including Intervenors), may be received in evidence by the Arbitrator(s).

24.5- The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

24.6- There shall be no direct communication between the Parties and an Arbitrator(s) other than at oral hearing, ~~unless the Parties and the Arbitrator(s) agree otherwise. Any other oral or written communication from the Parties to the Arbitrator(s) shall be directed to the MAPP ADR Administrator for transmittal to the Arbitrator(s).~~

25. –Arbitration in the Absence of a Party or Representative

—Unless the law provides to the contrary, the arbitration may proceed in the absence of any Party (including Intervenors) or representative who, after due notice, fails to be present or fails to obtain a postponement. ~~A decision shall not be made solely on the default of a Party.~~ The Arbitrator(s) shall require the Party who is present to submit such evidence as the Arbitrator(s) may require for the making of a decision.

26.– Evidence

—The Parties (including Intervenors) may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the Arbitrator(s) may deem necessary to an

understanding and determination of the dispute. An Arbitrator or other person authorized by law to subpoena witnesses or documents may do so independently or upon the request of any Party. The requesting Party is responsible for subpoena service and any charges related thereto.

26.1. Subject to Section 26.2, ~~t~~—The forms and methods for taking evidence shall be as described in the United States Federal Rules of Evidence, ~~except as modified by the Arbitrator(s) or agreement of the Parties.~~ The Arbitrator(s) shall be the judge of the relevance and materiality of the evidence offered ~~and conformity to the legal rules of evidence shall not be necessary.~~

26.2 ~~26.2.~~—The rules of evidence for the arbitration of disputes involving Members that are Canadian Utilities shall be governed by the provincial Evidence Act of the Canadian Utility's jurisdiction.

26.3 The Arbitrator(s) may require submissions from the Parties as shall be deemed appropriate, including submission of the direct testimony of witnesses in written form. ~~The Arbitrator(s) may exclude any evidence that is irrelevant, immaterial, unduly repetitious or privileged.~~

26.4

~~26.3.—Confidentiality. Section 11.2.8 of the MAPP Restated Agreement outlines certain specific confidentiality rules for MAPP Arbitration Hearings. Those rules are listed below. NOTE:—Any document or other information that has been designated “Confidential” in the course of a MAPP—an Arbitration shall not be available to anyone designated an ADR Participant under the procedures described in Section 9, above. ADR Participants may be excluded from certain confidential portions of the arbitration hearing if a Party so requests and/or the Arbitrator(s) so directs.~~

26.43.1.— Any document or other information obtained from another Party in the course of an arbitral proceeding and not otherwise available to the receiving Party,

including any such information contained in documents or other means of recording information created during the course of the proceeding, may be designated “Confidential” by the producing Party.

26.43.1.1 —The Party producing documents or other information marked “Confidential” shall have twenty (20) days from the production of such material to submit a request to the Procedure Arbitrator to establish such requirements for the protection of such documents or other information designated as “CONFIDENTIAL” as may be reasonable and necessary to protect the confidentiality and commercial value of such information and the rights of the Parties.

Prior to the decision of the Procedure Arbitrator on a request for confidential treatment, documents or other information designated as “Confidential:”

— Shall not be used by the receiving Party or Parties, the Arbitrator(s) or anyone working for or on behalf of any of the foregoing, for any purpose other than the arbitration proceeding; and,

— Shall not be disclosed in any form to any person (including ADR Participants) not involved in the arbitration proceeding without the prior written consent of the Party producing the information or as permitted by the Procedure Arbitrator.

26.43.2 —Any person or entity receiving a request or demand for disclosure, whether by compulsory process, discovery request, or otherwise, of documents or information obtained in the course of an arbitration proceeding that have been designated “Confidential” and that are subject to a non-disclosure requirement under ~~the MAPP Restated Agreement or~~ a decision of the Procedure Arbitrator,

shall immediately inform the person or entity from whom the information was obtained, and shall take all reasonable steps to afford the person or entity from whom the information was obtained an opportunity to protect the information from disclosure.

26.3.2.1. Any person disclosing information in violation of the ~~MAPP Restated Agreement~~ or requirements established by the Procedures Arbitrator shall thereby waive any right to introduce or otherwise use such information in any judicial, regulatory or other legal dispute resolution proceeding, including the proceeding in which the information was obtained.

26.3.2.2. Nothing in these procedures ~~the MAPP Restated Agreement~~ shall preclude any person or entity from using documents or information properly obtained outside of an arbitral proceeding, or otherwise public, for any legitimate purpose, notwithstanding that the information was also obtained in the course of the arbitral proceeding.

27.- Inspection or Investigation

—An Arbitrator, finding it necessary to make an inspection or investigation in connection with the arbitration, shall ~~direct the MAPP ADR Administrator to~~ so advise the Parties. The Arbitrator shall set the date and time, and ~~the MAPP ADR Administrator~~ shall advise the Parties. Any Party who so desires may be present at such an inspection or investigation. In the event that one or all Parties are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the Parties and afford them an opportunity to comment.

28. ~~Advisory Interpretations~~

~~28.1.—Under the MAPP Restated Agreement Section 11.2.10, the Arbitrator may request advisory interpretations from the MAPP Executive Committee or any other MAPP~~

~~council, committee or subcommittee.~~

~~28.1.1. The MAPP Executive Committee, MAPP Regional Reliability Council or any other MAPP Committee or MAPP Subcommittee must return its written advisory interpretation within five (5) days of receipt of the Arbitrator(s)' request.~~

~~28.2. Such requests may not include the matter ultimately to be decided by the Arbitrator(s) but may include an interpretation of:~~

~~!—The MAPP Restated Agreement;~~

~~!—Any standard;~~

~~!—Any requirement;~~

~~!—Any procedure;~~

~~!—Any tariff;~~

~~!—Any Service Schedule;~~

~~!—Any principle;~~

~~!—An interpretation of any plan; or,~~

~~!—other criterion or policy established by any MAPP council, committee or subcommittee.~~

~~—An advisory interpretation shall not relieve the Arbitrator(s) of responsibility for resolving the dispute or deciding the arbitration proceeding in accordance with the MAPP Restated Agreement, the standards specified in the Restated Agreement, or these arbitration rules.~~

289.— Summary Disposition

~~289.1. ———If it appears at any time there are no disputed issues as to any material fact, any Party may request the Arbitrator's summary decision, and the Arbitrator(s) shall proceed to determine the same under the provision of Rule 56, Fed R.C.P. or other applicable law.~~

~~289.1.1.— The Parties may agree to either brief their arguments or orally argue their positions. In the event that the Parties do not agree as to whether briefs or oral arguments will be presented, the Procedure Arbitrator shallwill decide how the~~

arguments will be presented. (Note: Does this only apply to summary disposition?)

~~289.2.~~ The forum for such argument, allowable discovery, and the timing for the summary decision will be determined by the Procedure Arbitrator at the pre-hearing administrative conference.

30.– Interim Measures

~~30.1.~~ At any time during the arbitration process, any Party may request (in writing, with copies to all Parties) that the Arbitrator(s) render a written interim decision requiring that any action or decision that is the subject of a dispute not be put into effect, or imposing such other interim measures as the Arbitrator(s) may deem necessary or appropriate, to preserve the rights and obligations of the Parties ~~secured by the MAPP Restated Agreement~~ during the arbitration process.

The request for an interim decision or interim measures must accurately identify the ~~MAPP Regional Reliability Council, MAPP Committee or MAPP Subcommittee~~ whose action or decision that is the subject of the dispute.

~~30.1.1.~~ The Arbitrator(s) shall not impose an interim decision affecting the reliability of the MAPP system without a supporting advisory opinion of the ~~MAPP Regional Reliability Council or the appropriate MAPP Committee or MAPP Subcommittee.~~

~~The Arbitrator(s) shall not issue an interim decision or impose interim measures that exceed the scope of decision described in Section 38, below.~~

~~30.1.2.~~ Immediately upon receipt of the request for an interim decision or interim measures, the Arbitrator(s) shall request an advisory opinion from the ~~MAPP Regional Reliability Council, or the MAPP Committee or MAPP Subcommittee~~ named in

~~the request.~~

30.2- The Arbitrator(s) may issue such orders for interim relief as may be deemed necessary or appropriate to preserve the rights and obligations ~~secured by the MAPP Restated Agreement~~ of the Parties during the arbitration process.

The Arbitrator(s) shall not issue an interim decision or impose interim measures that exceed the scope of decision described in Section 38, below.

30.3- ———The Arbitrator(s) shall determine the urgency of a request for interim measures based upon the content of the request.

30.4- Not later than two (2) days from the Arbitrator(s)' receipt of a request for interim measures, the Arbitrator(s) shall set an appropriate hearing time.

30.5- The delivery of the interim decision shall be as soon as possible, but not more than five (5) calendar days after the hearing.

31.— Closing of Hearing

—The Arbitrator(s) shall specifically inquire of all Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, or if satisfied that the record is complete, the Arbitrator(s) shall declare the hearing closed.

—If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Arbitrator(s) for the receipt of briefs. The time limit within which the Arbitrator(s) is required to make the decision shall commence to run, in the absence of other agreements by the Parties, upon the closing of the hearing.

32.— Reopening of Hearing

—The hearing may be reopened on the Arbitrator's initiative or upon showing of good cause by a Party to reopen, at any time before the decision is made. If reopening the hearing would prevent

making the decision within the eight-month (8 month) time limit specified by these procedures~~the MAPP Restated Agreement~~, the matter may not be reopened unless the Parties agree in writing to an extension of time.

33.– Waiver of Oral Hearing (This should be moved to much earlier in Procedures.)

—The Parties may provide, by written agreement, for the waiver of oral hearings.

34.– Waiver of Rules

—Any Party that proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object. (This should have some time limit.)

35.– Serving of Notice

—Each Party shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith; or for the entry of judgment on any decision made under these rules may be served on a Party by mail addressed to the Party or its representative at its last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the Party. (Note – Canadian Arbitration rules have more stringent service requirements. These should be tightened.)

—The ~~MAPP ADR Administrator and the Parties~~ may agree to use facsimile transmission, telegram or other written forms of electronic communication to give the notices required by these rules. ~~MAPP requires that the Demand for Arbitration be sent by registered mail or some other type of mail system that provides a proof of receipt.~~

36. –Time of Decision

—The decision shall be made promptly by the Arbitrator(s). ~~Under the terms of the MAPP Restated Agreement, †The decision shall be issued (Already in Section 11) not later than eight (8) months from the date of the selection of the Arbitrator(s) and, unless otherwise agreed to by the Parties or specified by law, no later than forty-five (45) calendar days from the date of the closing of the hearing, or, if oral hearings have been waived, from the date of the Parties' MAPP ADR~~

~~Administrator's~~ transmittal of the final statements and proofs to the Arbitrator(s).

37.— Form of Decision

—The decision shall be in writing and shall be signed by a majority of the Arbitrators. It shall be executed in the manner required by law. The decision shall include findings of fact and conclusions of law for the decision.

38. Scope of Decision

38.1. The arbitral decision shall be based on:

- ! The evidence in the record;
- ! The terms of the MRO Bylaws~~MAPP Restated Agreement~~, including any applicable ~~policy~~tariff, ~~Service Schedule~~, ~~principle~~, ~~standard~~, requirement, procedure, ~~plan~~ or other right or obligation established by or pursuant to the MRO Bylaws~~MAPP Restated Agreement~~;
- ! Applicable United States federal and state and Canadian federal and provincial ~~law~~legal standards, including the Federal Power Act and any applicable ~~FERC~~ regulations and decisions and international treaties or agreements as applicable; and,
- ! —! — Relevant decisions in previous arbitration proceedings under the MRO Bylaws~~MAPP Restated Agreement~~.
- !

(Arbitrator bound by precedents of previous arbitral decisions under ????).

38.2.— The Arbitrator(s) shall have no authority to revise or alter any provision of the MRO Bylaws, policies, procedures or other ~~requierments~~~~MAPP Restated Agreement~~. Any arbitral decision issued pursuant to the MAPP Restated Agreement that affects matters subject to the jurisdiction of FERC under Section 205 of the Federal Power Act shall be filed with FERC. (Is this needed?)

39. Enforcement

—The decision of the Arbitrator(s) shall be binding, ~~p.~~ ~~Any judgment may be entered on an arbitral decision by any court having jurisdiction thereof;~~ provided, however, that

within one year of the issuance of the arbitral decision, any ~~Party Member or Regulatory Participant affected thereby~~ may request FERC or any other federal, state, or Canadian provincial regulatory or judicial authority having jurisdiction to vacate, modify or take such other action as may be appropriate with respect to any arbitral decision that is based upon an error of law or is contrary to the statutes, rules or regulations administered by such authority. (Need to discuss whether we want to broaden this to question of fact or mixed law and fact.)

—Any Party making, responding to or intervening in proceedings resulting from any such request to vacate, modify or take such other action as may be appropriate with respect to any arbitral decision, shall request the authority to adopt the resolution, if not clearly erroneous, of any issue of fact expressly or necessarily decided in the arbitral proceeding, whether or not the Party participated in the arbitral proceeding. (Note: I would delete this.)

Any judgment may be entered on an arbitral decision by any court having jurisdiction thereof;

40.— Decision upon Settlement

—If all the Parties settle their dispute during the course of arbitration, the Arbitrator may set forth the terms of the agreed settlement in a decision. Such a decision is referred to as a consent decision and shall have no precedential effect for future arbitrations under the ~~MRO Bylaws~~~~MAPP Restated Agreement~~.

41. —Delivery of Decision to Parties

—Parties shall accept as legal delivery of the decision the placing of the decision or a true copy thereof in the mail addressed to the last known address of a Party or its representative, personal service of the decision, or the filing of the decision in any other manner that is permitted by law. If delivery by one of these means is not possible, the Parties shall accept as legal delivery of the decision in any other manner that is permitted by law.

42.— Release of Documents for Judicial Proceedings

—The Arbitrator ~~MAPP ADR Administrator~~ shall, upon written request of a Party, furnish to the Party, at that Party's expense, certified copies of any papers in the Arbitrator's ~~MAPP ADR Administrator's~~ possession that may be required in judicial proceedings relating to the arbitration.

43. Applications to Court and Exclusion of Liability

43.1. Neither the ~~MMROAPP ADR Administrator, nor the MAPP Alternate~~ Dispute Resolution Committee members, nor any Arbitrator in a proceeding under these rules is a necessary Party in judicial proceedings relating to the arbitration.

43.2. Parties to these rules shall be deemed to have consented that judgment upon the arbitration decision may be entered in any United States federal or state or Canadian federal or provincial court having jurisdiction thereof.

43.3. Neither the ~~MAPP ADR Administrator, nor the MAPP Alternate-MRO~~ Dispute Resolution Committee members, nor any Arbitrator shall be liable to any Party for any act or omission in connection with any arbitration conducted under these rules. ~~and the MAPP Restated Agreement.~~

44. Administrative Fees

~~The Administrative fee for any arbitration proceeding will be according to the fee schedule in Attachment C.~~

45. Expenses

Unless the Arbitrator(s) shall decide otherwise, the costs of the time, expenses and other charges of the Arbitrator(s) shall be borne by the Parties to the dispute, with each Party and Intervenor on an arbitrated issue bearing a pro-rata share of such costs. Each Party and Intervenor to an arbitral proceeding shall bear its own costs and fees.

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the Arbitrator(s), shall be borne equally by each side, unless they agree otherwise or unless the Arbitrator(s), in the decision, assesses such expenses or any part thereof against any specified Party or Parties.

45.1 If, in the reasoned opinion of the Arbitrator(s), the Request for Arbitration, Response to a

Request for Arbitration or Counterclaim does not have a good faith basis in either law or fact, the Arbitrator(s) has the discretion to award the costs, expenses and other charges, including attorney's fees and wages of persons involved, and the Arbitrator(s)' fees to the prevailing Party.

~~45.24.~~ The Arbitrator(s) may also assign all or a portion of the costs of the time, expenses and other charges of the Arbitrator(s), the cost of arbitration, attorney(s)' fees, ~~and the costs of mediation, if any,~~ to any Party that substantially prevails on an issue determined by the Arbitrator(s) to have been raised without a substantial basis.

46. Arbitrator's Compensation

Arbitrators shall charge a rate consistent with the Arbitrator's stated hourly rate of compensation beginning with preparatory meetings through the delivery of the decision.

47. Hearing Room Rental (Note: Why is this specific expense addressed separately?)

The cost of hearing room rental shall be shared equally by the Parties. ADR Participants shall be charged a pro-rata portion of hearing room costs, whether or not they attend.

~~*If you have questions or comments about the MAPP ADR Process, please contact ADR Secretary, Mid-Continent Area Power Pool, MAPP Center, 1125 Energy Park Drive, St. Paul, MN 55108*~~

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B. Disputes Regarding Compliance with Organizational Standards

Note: We need to develop a process for:

- (1) Determinations of non-compliance by the Compliance Committee;
- (2) Appeals to MRO Board;
- (3) Appeal to ERO or other entity.

C.

Attachment A

**Confidential Information Statement Form
For use in MAPP ADR Procedure Only**

Disputant #1 v. Disputant #2

MAPP ADR Administrator File No. 01X-XXXXXX

Name of Primary Contact for Dispute: _____

Address _____

Phone # _____ Fax # _____ Email _____

Who else should receive copies of all materials pertinent to dispute? List their full names and addresses on a separate sheet.

Briefly Summarize (Please limit your responses for questions 1 - 5 to three pages):

1. The facts which led to this dispute.
2. The issues which must be resolved in order to settle this case.
3. Your settlement discussions to date, including the most recent demand and offer.
4. Any obstacles to settlement.
5. List the names of the persons who will attend the pre-mediation conference:
(If applicable, list the name and general job description of any employee(s) or agent(s) who will represent a corporate Party or insurer.)
6. The MAPP ADR Committee may determine, on the basis of information submitted in this form, that this dispute is “highly unlikely to be resolved in mediation.” If you believe that this case cannot be resolved in mediation, you may add not more than two pages of information or reasoning for that belief. The ADR Committee will consider the information in confidence when making its determination.

This form need not be served on the Court or other Parties. It is intended to be, and will be treated as, a confidential communication between you and the mediator.

A-1

Attachment B

Suggested Form of a Demand for Arbitration Letter

By first class registered mail, return receipt requested.

Date:

To: (Each MAPP Member Party) Attn: MAPP Management Committee Representative or Committee Chair (full name, address)

(Each Non- MAPP Member Party) Attn: Officer or Managing or General Agent (or other agent authorized by appointment or law to receive service of process)(full name and address)

Administrator, ADR Committee Attn: MAPP ADR Administrator (name and full address)

By copy of this letter and pursuant to Article 11, Section 11.2.2 of the MAPP Restated Agreement, (MAPP Member name), signatory to the MAPP Restated Agreement, hereby demands arbitration of the following claims in its dispute with (insert Party name). The list of addresses above includes all Parties to this dispute. I understand that this notice will not be deemed to be delivered until the MAPP ADR Committee delivers its Acknowledgment of Demand for Arbitration to myself and all Parties listed above.

The claims to be arbitrated are as follows:

Brief Description of Claim(s): (include all claims)

Basis for Claim(s): (Cite MAPP Restated Agreement Article and Section or other relevant authority)

Relief Sought:

Basis for Relief: (Cite MAPP Restated Agreement Article and Section, precedential decision or other relevant authority)

Sincerely,

Name
Title
Address
Phone/ Fax
E-mail

B-1

**Attachment C
Fee Schedule***

September 11, 1998

Administrative Fee for Mediation

\$625 per disputing Party

This is the fee paid to MAPP by the disputants for the administration of the Alternate Dispute Resolution Process. It includes:

- !Initial paperwork
- !Conference calls
- !Overnight mail delivery
- !Facility location and scheduling of meeting room (s)
- !Selection and scheduling of mediator
- !Selection and scheduling of Technical Advisor
- !Billing and collection costs
- !Database maintenance

Mediator Fees (divided equally among disputants)

\$225 per hour for Mediator from Interim panel (does not include travel time)

\$175 per hour for MAPP Mediator (does not include travel time)

Plus Expenses (MAPP per diem for food and lodging)

Technical Advisor Fees (divided equally among disputants)

\$250 fee for pre-mediation consultation (equal to two hours of consultation time)

\$125 per hour for consultation (if the Technical Advisor exceeds two hours of consultation time)

\$125 per hour during mediation (if the Technical Advisor attends mediation)

Plus Expenses (MAPP per diem for food and lodging)

**These fees are subject to change. The most current fee schedule can be obtained from the MAPP ADR Administrator or www.mapp.org.*

Fee Schedule*

Administrative Fee for Arbitration

\$4,000 per Disputing Party

This is the fee paid to MAPP by the disputants for the administration of the Alternate Dispute Resolution Process. It includes:

- !Initial paperwork
- !Conference calls
- !Overnight mail delivery
- !Notification of MAPP Membership
- !Processing of Interventions
- !Processing of ADR Participant filings
- !Facility location and scheduling of meeting room (s)
- !Selection and scheduling of arbitrator(s)
- !Pre-hearing Administrative Conference
- !Billing and collection costs
- !Database maintenance

Parties may be charged for additional expenses if they exceed the Administrative Fee.

**These fees are subject to change. The most current fee schedule can be obtained from the MAPP ADR Administrator or www.mapp.org.*