

Contract 22-SNR-02771

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CUSTOM PRODUCT CONTRACT
FOR
SCHEDULING COORDINATOR SERVICES
WITH

CITY AND COUNTY OF SAN FRANCISCO
HETCH HETCHY WATER AND POWER

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CUSTOM PRODUCT CONTRACT
FOR
SCHEDULING COORDINATOR SERVICES
WITH

CITY AND COUNTY OF SAN FRANCISCO
HETCH HETCHY WATER AND POWER

| <u>Section</u> | <u>Table of Contents</u> | <u>Page</u> |
|----------------|---|-------------|
| 1. | Preamble | 1 |
| 2. | Explanatory Recitals..... | 2 |
| 3. | Agreement..... | 3 |
| 4. | Effective Date and Term of Contract..... | 3 |
| 5. | Definition of Terms | 3 |
| 6. | Scheduling Coordinator Services Provided by WAPA | 4 |
| 7. | Scheduling and Metering | 6 |
| 8. | Independent System Operator or Regional Transmission Organization | 7 |
| 9. | Scheduling Coordinator Charges and Costs..... | 8 |
| 10. | Creditworthiness | 8 |
| 11. | Billing and Payment of Services Provided Under this Contract..... | 9 |
| 12. | Trust Account for Advanced Funds | 10 |
| 13. | Default Provisions..... | 11 |
| 14. | Indemnification and Liability | 12 |
| 15. | Enforceability | 12 |
| 16. | General Power Contract Provisions | 13 |
| 17. | Exhibit Made Part of Contract..... | 13 |
| 18. | Execution by Counterparts..... | 13 |
| 19. | Electronic Signatures | 13 |
| | Signature Clause | |
| | Resolution/Certificate | |
| | General Power Contract Provisions (September 1, 2007) | |
| | Exhibit A – Scheduling Coordinator Services Charges | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CUSTOM PRODUCT CONTRACT
FOR
SCHEDULING COORDINATOR SERVICES
WITH

CITY AND COUNTY OF SAN FRANCISCO
HETCH HETCHY WATER AND POWER

1. PREAMBLE:

This Contract is made this _____ pursuant to the Acts of Congress approved June 17, 1902, (32 Stat. 388); August 26, 1937, (50 Stat. 844); August 4, 1939, (53 Stat. 1187); and August 4, 1977, (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA (United States), acting by and through the Administrator, Western Area Power Administration, Department of Energy, represented by the officer executing this Contract, or a duly appointed successor, hereinafter referred to as WAPA or the Contracting Officer; and CITY AND COUNTY OF SAN FRANCISCO, HETCH HETCHY WATER AND POWER, a Municipal Corporation organized and existing under the laws of the State of California, hereinafter referred to as CCSF or the Contractor, its successors and assigns; both also hereinafter referred to individually as Party and together as Parties.

///
///
///

1 **2. EXPLANATORY RECITALS:**

2 2.1 WAPA markets the surplus generation from and operates a high-voltage
3 transmission system as a part of the Central Valley Project (CVP).

4
5 2.2 On August 15, 2017, WAPA's final 2025 Power Marketing Plan (Marketing
6 Plan) was published in the Federal Register (82 FR 38675). The Marketing Plan
7 provides for WAPA to develop Custom Products for customers who request
8 them.

9
10 2.3 Pursuant to the Marketing Plan, WAPA executed Base Resource Contract
11 20-SNR-02377 (Base Resource Contract) with CCSF on August 16, 2021. Section
12 7 of the Base Resource Contract allows for WAPA to develop Custom Products for
13 CCSF.

14
15 2.4 Under the Base Resource Contract, WAPA requires that all WAPA power
16 be scheduled in accordance with the applicable balancing authority area operator
17 requirements and that each customer designate a certified Scheduling
18 Coordinator. WAPA is a certified California Independent System Operator
19 (CAISO) Scheduling Coordinator and is offering this service as a Custom
20 Product.

21
22 2.5 CCSF has requested that WAPA provide Scheduling Coordinator
23 services, as specified herein, as a Custom Product.

24
25 2.6 WAPA is willing to provide Scheduling Coordinator services to CCSF
26 under the terms and conditions of this Contract.

27 ///

28 ///

1 **3. AGREEMENT:**

2 The Parties agree to the terms and conditions set forth herein.

3
4 **4. EFFECTIVE DATE AND TERM OF CONTRACT:**

5 4.1 This Contract shall become effective upon execution by the Parties, and
6 shall remain in effect through December 31, 2029, except as otherwise provided
7 herein.

8
9 4.2 The date of initial service under this Contract is December 31, 2024, at
10 11:59:59 p.m.

11
12 4.3 Either Party may terminate this Contract by giving the other Party a one
13 (1) year advance written notice of the requested termination date.

14
15 4.4 WAPA may suspend or terminate this Contract pursuant to Section 13
16 herein.

17
18 4.5 WAPA may terminate this Contract upon thirty (30) days advance notice if
19 CCSF ceases to be a WAPA Base Resource customer.

20
21 4.6 All obligations incurred under this Contract shall be preserved until
22 satisfied.

23
24 **5. DEFINITION OF TERMS:**

25 As used herein, the following terms whether singular or plural, or used with or without
26 initial capitalization, shall have the following meanings:

27 5.1 "Base Resource" means CVP and Washoe Project power (capacity and
28 energy) output, determined by WAPA to be available for Customers, including

1 the Environmental Attributes, only after meeting the requirements of Project Use
2 and First Preference Customers, and any adjustments for maintenance,
3 reserves, system losses, and certain ancillary services.

4
5 5.2 “CAISO” means the California Independent System Operator or its
6 successor.

7
8 5.3 “CAISO Tariff” means the California Independent System Operator
9 Agreement and Tariff, conformed as of September 26, 2021, as it may be
10 modified or amended from time-to-time.

11
12 5.4 “Custom Product” means a combination of products and services which
13 may be made available by WAPA per customer request.

14
15 5.5 “Portfolio Manager” means an entity responsible for determining balanced
16 hourly load and resource schedules for a customer.

17
18 5.6 “Scheduling Coordinator” means an entity that is responsible for
19 submitting and modifying bids and interchange schedules and Inter-SC Trades to
20 and settling with the CAISO, in accordance with the protocols specified in the
21 CAISO Tariff.

22
23 **6. SCHEDULING COORDINATOR SERVICES PROVIDED BY WAPA:**

24 6.1 CCSF hereby authorizes WAPA to act as its Scheduling Coordinator and
25 WAPA shall be responsible for all obligations and duties of a Scheduling
26 Coordinator on behalf of CCSF pursuant to the CAISO Tariff.

27 ///

28 ///

1 6.2 In its capacity as Scheduling Coordinator, WAPA shall use data or other
2 information provided by CCSF's Portfolio Manager and submit day-ahead
3 schedules to the CAISO, in accordance with the CAISO Tariff, for CCSF's load.
4 When WAPA is not CCSF's Portfolio Manager, and CCSF's Portfolio Manager
5 does not provide WAPA with day-ahead schedules in accordance with the
6 CAISO Tariff or other necessary information in a timely manner and prior to the
7 time WAPA submits day-ahead schedules to the CAISO, WAPA will, at its
8 discretion, either: (1) not submit a day-ahead schedule on CCSF's behalf; or (2)
9 provide a day-ahead schedule based on reasonable estimates. In any case,
10 CCSF shall be responsible for all costs resulting from CCSF's Portfolio Manager
11 not providing information to WAPA in an appropriate and/or timely manner.
12

13 6.3 If WAPA is not CCSF's Portfolio Manager, WAPA is under no obligation to
14 submit a schedule to the CAISO if the schedule provided by CCSF's Portfolio
15 Manager is not in accordance with the CAISO Tariff.
16

17 6.4 Pursuant to the CAISO Tariff, CCSF's Portfolio Manager may request an
18 adjustment to CCSF's day-ahead schedule in the hour-ahead market. If WAPA
19 is not CCSF's Portfolio Manager, WAPA shall make the adjustment with the
20 CAISO; Provided, That, WAPA receives all information necessary to
21 accommodate the adjustment in a timely manner; Provided Further, That, the
22 requested adjustment does not conflict with existing contractual arrangements
23 between the Parties or the CAISO Tariff.
24

25 6.5 WAPA shall receive, validate, and disseminate CAISO data and
26 settlement information to CCSF or its designated representative.

27 ///

28 ///

1 6.6 On a monthly basis, WAPA will develop and transmit statements to CCSF
2 with a breakdown of CAISO charges and credits and any other costs related to
3 CCSF's CAISO transactions.

4
5 6.7 WAPA shall dispute those CAISO charges related to CCSF's CAISO
6 transactions that WAPA or CCSF believes to be incorrect and disputable under
7 the CAISO Tariff. If CCSF requests that WAPA dispute a CAISO charge(s),
8 WAPA shall initiate a dispute; Provided, That, WAPA agrees that such charge(s)
9 are incorrect and are disputable under the CAISO Tariff.

10
11 6.8 As CCSF's Scheduling Coordinator, WAPA may be required to provide
12 legal representation on behalf of CCSF in CAISO-related legal proceedings.
13 CCSF agrees to pay WAPA's legal fees, and all costs associated with its
14 involvement with any CAISO-related activities that require WAPA's legal support.

15
16 6.9 WAPA may provide additional Scheduling Coordinator-related services as
17 mutually agreed to by the Parties in writing.

18
19 **7. SCHEDULING AND METERING:**

20 All services provided by WAPA to CCSF under this Contract will be subject to the same
21 Scheduling and Metering terms and conditions as provided under CCSF's Base
22 Resource Contract with WAPA the same as if they had been expressly set forth herein;
23 Except, That, CCSF shall notify WAPA of any changes in metering devices and their
24 configurations used to meter CCSF's load within five (5) business days to the extent
25 that CCSF is aware of such changes.

26 ///

27 ///

28 ///

1 **8. INDEPENDENT SYSTEM OPERATOR OR REGIONAL TRANSMISSION**

2 **ORGANIZATION:**

3 8.1 WAPA is a sub-balancing authority area within BANC. WAPA operates in
4 conformance with its sub-balancing authority area and BANC's balancing
5 authority area protocols, business practices and procedures. In the event of
6 changes to any protocols, business practices and procedures, WAPA may make
7 any changes necessary to this Contract to conform to the operating and
8 scheduling protocols, business practices and procedures in accordance with
9 Section 17 of the Base Resource Contract.

10
11 8.2 The Parties understand that, in the future, WAPA may also change its
12 operating configuration such as by: (1) joining an independent system operator
13 or RTO; or (2) participating in future markets such as energy imbalance markets;
14 or (3) making system configurations to meet future operating requirements. In
15 such an event, if WAPA is required to conform to the protocols, business
16 practices or procedures, WAPA shall make changes to this Contract to conform
17 to the terms and conditions required by such events in accordance with
18 Section 17 of the Base Resource Contract.

19
20 8.3 In the event that: (1) WAPA incurs costs from the balancing authority
21 area, WAPA's sub-balancing authority area, CAISO, an RTO, or a different
22 balancing authority area for serving CCSF's load; or (2) CCSF does not abide by
23 the protocols of the balancing authority area, an RTO, or other balancing
24 authority area operator that are applicable to WAPA and WAPA incurs costs as a
25 result, CCSF agrees to pay all such costs attributable to CCSF.

26 ///

27 ///

28 ///

1 **9. SCHEDULING COORDINATOR CHARGES AND COSTS:**

2 9.1 WAPA Charge: The charge, including WAPA's labor and equipment
3 costs, associated with providing Scheduling Coordinator Services to CCSF under
4 this Contract is specified in Exhibit A attached hereto. CCSF shall pay for such
5 charge as described in Section 11. By August 1st of each year during the term of
6 this Contract, WAPA will review the charge for Scheduling Coordinator Services
7 and, if necessary, will revise Exhibit A to reflect the updated charge for providing
8 this service, and will send CCSF a revised Exhibit A for its signature. The
9 revised Exhibit A shall become effective on January 1st of the following year. If
10 WAPA has not received the signed revised Exhibit A from CCSF by the effective
11 date and has not received a notice of termination from CCSF, WAPA will begin to
12 operate and charge under the revised Exhibit A.

13
14 9.2 CAISO Costs: CCSF shall pay all CAISO costs charged by the CAISO for
15 transactions occurring under this Contract. CCSF shall pay for such costs as
16 described in Section 11.

17
18 **10. CREDITWORTHINESS:**

19 For determining the ability of CCSF to meet its obligations related to service hereunder,
20 WAPA may require reasonable credit review procedures. If WAPA determines that
21 CCSF does not meet WAPA's creditworthiness standards, WAPA may require CCSF to
22 provide and keep in effect during the term of this Contract, an unconditional and
23 irrevocable letter of credit or an alternate form of security acceptable to WAPA to meet
24 its responsibilities and obligations under this Contract; Provided, That, if WAPA
25 determines that CCSF has maintained a credit history that satisfies WAPA's
26 requirements for a period of time determined to be sufficient by WAPA, WAPA will
27 discuss with CCSF options regarding the letter of credit or an alternative form of
28 security.

1 **11. BILLING AND PAYMENT OF SERVICE PROVIDED UNDER THIS**

2 **CONTRACT:**

3 WAPA will bill, and CCSF shall pay for services provided under this Contract in
4 accordance with the procedures established under either Section 11.1 or Section 11.2,
5 as solely determined by WAPA. If determined necessary by WAPA, WAPA may
6 change the section under which WAPA is billing and CCSF is paying upon sixty (60)
7 days' notice to CCSF.

8 11.1 After-the-Fact Billing: CCSF shall pay WAPA for Scheduling Coordinator
9 services provided in the previous month as directed on the monthly electric
10 service bill; or

11
12 11.2 Advance Funding: WAPA will estimate the initial amount of funds
13 required. The estimate shall initially be based on two (2) months of WAPA's
14 costs attributable to CCSF for Scheduling Coordinator services; Provided,
15 That, if WAPA determines at a later date that two (2) months is either less
16 than, or in excess of, the amount that WAPA determines is appropriate to
17 maintain on behalf of CCSF, WAPA will either bill such shortage to CCSF
18 pursuant to Section 12.2.1, or refund such excess to CCSF pursuant to
19 Section 12.2.2.

20
21 11.3 The initial advance funding amount shall be due on the date specified on
22 the bill for collection.

23
24 11.4 Any alternative method of advance funding shall be set forth in a separate
25 contractual agreement.

26 ///

27 ///

28 ///

1 **12. TRUST ACCOUNT FOR ADVANCED FUNDS:**

2 CCSF understands that it may be required to advance funds to WAPA pursuant to
3 Section 11.2 and this section for services provided under this Contract. This Section 12
4 provides for establishing and maintaining the trust account(s) required if Section 11.2 is
5 in effect.

6 12.1 Funds that CCSF advances to WAPA shall be sent in accordance with the
7 information included on the bill(s) for collection or as otherwise directed.
8

9 12.2 CCSF shall be required to maintain a balance in the trust account in an
10 amount that WAPA, pursuant to Section 11.2, has determined to be appropriate
11 to maintain on behalf of CCSF. WAPA shall monitor the account and if WAPA
12 determines that:

13 12.2.1 There are not sufficient funds in the account, WAPA shall notify
14 CCSF of the shortage in writing and CCSF shall advance the requested
15 amount of funds to WAPA within ten (10) days; or

16 12.2.2 There are excessive funds in the WAPA trust account, WAPA, at
17 its sole discretion, will either: (1) decrease subsequent amounts required
18 by the amount in excess of the estimate, or (2) return any excess funds to
19 CCSF.
20

21 12.3 WAPA will provide CCSF with:

22 12.3.1 A monthly statement of transactions that were posted to the trust
23 account(s), and the end-of-month balance in the account(s); and,

24 12.3.2 An electric service bill that will reflect the previous month of
25 WAPA's costs and the CAISO costs and the amount of advance funding
26 required from CCSF for the costs that WAPA anticipates it will incur while
27 providing Scheduling Coordinator services for the following month.

28 ///

1 12.4 Should CCSF be required to maintain a trust account pursuant to
2 Section 11.2, and this Section 12, WAPA shall be under no obligation to provide
3 service under this Contract without CCSF advancing sufficient funds and said
4 funds being available to WAPA from the trust account(s) as described herein.

5
6 12.5 Within ninety (90) days after termination of this Contract and after WAPA
7 has determined that all obligations incurred under this Contract have been
8 satisfied, WAPA shall return any funds remaining in its trust account(s) to CCSF
9 without interest.

10
11 **13. DEFAULT PROVISIONS:**

12 13.1 The failure of CCSF to perform any of its payment obligations under this
13 Contract shall constitute a default. If WAPA determines CCSF to be in default,
14 WAPA shall notify CCSF, in writing via First-Class mail, return receipt requested,
15 FedEx, UPS or some other method that can be tracked. If CCSF has not cured
16 such default within seven (7) days of receiving the notice of default, WAPA may
17 suspend service under this Contract. Upon receipt of payment of amounts owed,
18 WAPA shall work with CCSF to reinstate service under this Contract as soon as
19 practicable.

20
21 13.2 If CCSF is determined to be in default and does not cure such default
22 within forty-five (45) days of receiving the notice of default, WAPA shall have the
23 right to terminate this Contract, and assess damages, as follows:

24 13.2.1 If WAPA's aggregate gains exceed its aggregate losses and
25 costs, including obligations incurred on behalf of CCSF that extend past
26 the current month, WAPA, after any set-off, shall make no payment to
27 CCSF and, notwithstanding anything in this Contract to the contrary, the

28 ///

1 amount by which such gain exceeds the losses and costs for the purposes
2 of this Contract shall be zero (0); or

3 13.2.2 If WAPA's aggregate gains do not exceed its aggregate losses,
4 including obligations incurred on behalf of CCSF that extend past the
5 current month, WAPA will promptly calculate the damages associated with
6 the default. As soon as practical, WAPA will provide notice to CCSF of
7 the amount of the damages. Payment for the damages shall be made by
8 CCSF to WAPA within ten (10) business days after such notice is
9 received.

10
11 **14. INDEMNIFICATION AND LIABILITY:**

12 CCSF shall at all times indemnify, defend, and save WAPA harmless from any and all
13 damages, losses, claims and actions relating to injury to or death of any person or
14 damage to property, demands, suits, recoveries, costs and expenses, court costs,
15 attorney fees, and all other obligations by or to third parties, arising out of or resulting
16 from WAPA's performance of its obligations under this Contract on behalf of CCSF,
17 except in cases of negligence or intentional wrongdoing by WAPA. WAPA's liability
18 shall be determined in accordance with the provisions of the Federal Tort Claims Act, as
19 amended.

20
21 **15. ENFORCEABILITY:**

22 It is not the intent of the Parties that this Contract confer any rights on third parties to
23 enforce the provisions of this Contract except as required by law or express provision in
24 this Contract. Except as provided in this Section, this Contract may be enforced, or
25 caused to be enforced, only by WAPA or CCSF, or their successors or assigns.

26 ///
27 ///
28 ///

1 **16. GENERAL POWER CONTRACT PROVISIONS:**

2 The GPCP, effective September 1, 2007, attached hereto, are hereby made a part of
3 this Contract, the same as if they had been expressly set forth herein.
4

5 **17. EXHIBIT MADE PART OF CONTRACT:**

6 Exhibit A (Scheduling Coordinator Services Charges) existing under this Contract may
7 vary during the term hereof. Exhibit A shall become a part of this Contract during the
8 term fixed by its provisions. Exhibit A is attached hereto and shall be in force and effect
9 in accordance with its terms until respectively superseded by a subsequent exhibit.
10

11 **18. EXECUTION BY COUNTERPARTS:**

12 This Contract may be executed in any number of counterparts and, upon execution and
13 delivery by each Party, the executed and delivered counterparts together shall have the
14 same force and effect as an original instrument as if all Parties had signed the same
15 instrument. Any signature page of this Contract may be detached by any counterpart of
16 this Contract without impairing the legal effect of any signatures thereon and may be
17 attached to another counterpart of this Contract identical in form hereto, by having
18 attached to it one or more signature pages.
19

20 **19. ELECTRONIC SIGNATURES:**

21 The Parties agree that this Contract may be executed by handwritten signature or
22 digitally signed using DocuSign, Adobe Sign, or Adobe E-Signature. An electronic or
23 digital signature is the same as a handwritten signature and shall be considered valid
24 and acceptable.

25 ///

26 ///

27 ///

28 ///

1 **IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed the day
2 and year first above written.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CITY AND COUNTY OF SAN FRANCISCO
HETCH HETCHY WATER AND POWER

(Attest)

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Address: _____

WESTERN AREA POWER ADMINISTRATION

By: _____
Name: Arun K. Sethi
Title: Vice President of Power Marketing
For Sierra Nevada Region
Address: 114 Parkshore Drive
Folsom, CA 95630-4710

RESOLUTION/CERTIFICATE
OF
CITY AND COUNTY OF SAN FRANCISCO
HETCH HETCHY WATER AND POWER

EXHIBIT A
(Scheduling Coordinator Services Charges)

1. This Exhibit A, to be effective under and as a part of Contract 22-SNR-02771 (Contract), shall become effective upon execution of the Contract; and shall remain in effect until superseded by another Exhibit A or termination of the Contract.

2. The monthly charges for Scheduling Coordinator services are set forth in the tables below. Table 1 sets forth a total monthly base charge applicable to all customers. Tables 2 and 3 set forth additive charges that may be applicable to customers based on schedule changes and additional meters in excess of those allowed for under the base charge.

3. The monthly Scheduling Coordinator services base charge is yet to be determined. Prior to January 1, 2025, WAPA will revise this Exhibit A to include a base charge and update any charges set forth in Tables 2 and 3 below if necessary.

Table 1 – Base Charge

| Service | Charge |
|---|--------|
| Scheduling Coordinator Services | TBD |
| Schedule Changes (less than or equal to 30 per month) | 0.00 |
| Metering Agent (less than or equal to 10 meters) | 0.00 |
| Trust Account(s) Administration | 0.00 |
| Total | TBD |

Table 2 – Additional Schedule Changes Charge

| Additional Schedule Changes | Charge |
|--|-----------|
| 31 to 50 | \$ 500.00 |
| 51 to 70 [additive to the charge above (\$500.00 plus \$1,000.00)] | 1,500.00 |
| 71 to 90 [additive to the charge above (\$1,500.00 plus \$1,500.00)] | 3,000.00 |

Table 3 – Additional Meter Charge

| Number of Meters | Charge |
|---|-----------|
| 11 to 20 | \$ 500.00 |
| 21 to 30 | 1,000.00 |
| 31 to 40 | 1,500.00 |
| Meters in excess of 41 will cost \$500.00 per every 10 meters | |

**WESTERN AREA POWER ADMINISTRATION
GENERAL POWER CONTRACT PROVISIONS**

Page

I. APPLICABILITY.

| | |
|------------------------|---|
| 1. Applicability | 1 |
|------------------------|---|

II. DELIVERY OF SERVICE PROVISIONS.

| | |
|---|-----|
| 2. Character of Service | 1 |
| 3. Use of Capacity or Energy in Excess of Contract Obligation | 1 |
| 4. Continuity of Service | 1 |
| 5. Multiple Points of Delivery | 2 |
| 6. Metering | 2 |
| 7. Existence of Transmission Service Contract | 3 |
| 8. Conditions of Transmission Service | 3 |
| 9. Multiple Points of Delivery Involving Direct and Indirect Deliveries | 3 |
| 10. Construction, Operation, and Maintenance of Contractor's Power System | 3-4 |

III. RATES, BILLING, AND PAYMENT PROVISIONS.

| | |
|--|-----|
| 11. Change of Rates | 4 |
| 12. Minimum Seasonal or Annual Capacity Charge | 4 |
| 13. Billing and Payment | 4-5 |
| 14. Nonpayment of Bills in Full When Due | 5 |
| 15. Adjustments for Fractional Billing Period | 5 |
| 16. Adjustments for Curtailments to Firm Service | 5-6 |

IV. POWER SALES PROVISIONS.

| | |
|--|---|
| 17. Resale of Firm Electric Service (Wholesale Sales for Resale) | 6 |
| 18. Distribution Principles | 6 |
| 19. Contract Subject to Colorado River Compact | 6 |

V. FACILITIES PROVISIONS.

| | |
|--|-----|
| 20. Design Approval | 6-7 |
| 21. Inspection and Acceptance | 7 |
| 22. As-Built Drawings | 7 |
| 23. Equipment Ownership Markers | 7 |
| 24. Third-Party Use of Facilities | 7 |
| 25. Changes to Western Control Facilities | 7-8 |
| 26. Modification of Western Facilities | 8 |
| 27. Transmission Rights | 8 |
| 28. Construction and Safety Procedures | 8-9 |
| 29. Environmental Compliance | 9 |
| 30. Responsibility for Regulated Materials | 9 |

VI. OTHER PROVISIONS.

| | |
|---|-------|
| 31. Authorized Representatives of the Parties | 9 |
| 32. Effect of Section Headings | 10 |
| 33. Operating Guidelines and Procedures | 10 |
| 34. Uncontrollable Forces | 10 |
| 35. Liability | 10 |
| 36. Cooperation of Contracting Parties | 10-11 |
| 37. Transfer of Interest in the Contract or Change in Preference Status | 11 |
| 38. Choice of Law and Forum | 12 |
| 39. Waivers | 12 |
| 40. Notices | 12 |
| 41. Contingent Upon Appropriations and Authorization | 12 |
| 42. Covenant Against Contingent Fees | 12 |
| * 43. Contract Work Hours and Safety Standards | 13 |
| 44. Equal Opportunity Employment Practices | 13 |
| 45. Use of Convict Labor | 13 |

*Legal Citation Revised September 1, 2007

WESTERN AREA POWER ADMINISTRATION
GENERAL POWER CONTRACT PROVISIONS

I. APPLICABILITY.

1. Applicability.

1.1 These General Power Contract Provisions (Provisions) shall be a part of the contract to which they are attached. In the event these Provisions differ from requirements of the contract, specific terms set forth in the contract shall prevail.

1.2 If the Contractor has member utilities which are either directly or indirectly receiving benefits from the contract, then the Contractor shall require such members to comply with Provisions 10, 17, 18, 19, 29, 30, 36, 43, 44, and 45 of these General Power Contract Provisions.

II. DELIVERY OF SERVICE PROVISIONS.

2. Character of Service.

Electric energy supplied or transmitted under the contract will be three-phase, alternating current, at a nominal frequency of sixty (60) hertz (cycles per second).

3. Use of Capacity or Energy in Excess of Contract Obligation.

The Contractor is not entitled to use Federal power, energy, or capacity in amounts greater than the Western contract delivery obligation in effect for each type of service provided for in the contract except with the approval of Western. Unauthorized overruns of contract delivery obligations shall be subject to charges specified in the contract or the applicable rate schedules. Overruns shall not establish any continuing right thereto and the Contractor shall cease any overruns when requested by Western, or in the case of authorized overruns, when the approval expires, whichever occurs first. Nothing in the contract shall obligate Western to increase any delivery obligation. If additional power, energy, or capacity is not available from Western, the responsibility for securing additional power, energy, or capacity shall rest wholly with the Contractor.

4. Continuity of Service.

Electric service will be supplied or transmitted continuously except for: (1) fluctuations, interruptions, or reductions due to uncontrollable forces, as defined in Provision 34 (Uncontrollable Forces) herein, (2) fluctuations, interruptions, or reductions due to operation of devices installed for power system protection; and (3) temporary fluctuations, interruptions, or reductions, which, in the opinion of the party supplying the service, are necessary or desirable for the purposes of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. The party supplying service, except in case of emergency, will give the party to whom service is being provided reasonable advance notice of such temporary interruptions or reductions and will remove the cause thereof with diligence.

5. Multiple Points of Delivery.

When electric service is supplied at or transmitted to two or more points of delivery under the same rate schedule, said rate schedule shall apply separately to the service supplied at or transmitted to each point of delivery; Provided, That where the meter readings are considered separately, and during abnormal conditions, the Contractor's system is interconnected between points of delivery such that duplication of metered power is possible, the meter readings at each affected point of delivery will be adjusted to compensate for duplication of power demand recorded by meters at alternate points of delivery due to abnormal conditions which are beyond the Contractor's control or temporary conditions caused by scheduled outages.

6. Metering.

6.1 The total electric power and energy supplied or transmitted under the contract will be measured by metering equipment to be furnished and maintained by Western, a designated representative of Western, or where situations deem it appropriate as determined by Western, by the Contractor or its agent(s). In the event metering equipment is furnished and maintained by the Contractor or its agent(s) and the equipment is used for billing and other accounting purposes by Western, the Contractor shall ensure that the metering equipment complies with applicable metering policies established by Western.

6.2 Meters shall be secured by appropriate security measures and meters shall not be accessed except when the meters are to be inspected, tested, adjusted, or repaired. Representatives of affected parties shall be afforded reasonable opportunity to be present upon such occasions. Metering equipment shall be inspected and tested each year by the party responsible for meter maintenance, unless a different test interval is determined in accordance with good utility practices by an applicable regional metering policy, or as agreed upon by the parties. Meters shall also be tested at any reasonable time upon request by a party hereto, or by an affected supplemental power supplier, transmission agent, or control area operator. Any metering equipment found to be damaged, defective, or inaccurate shall be repaired and readjusted or replaced by the party responsible for meter maintenance as soon as practicable. Meters found with security breaches shall be tested for tampering and, if appropriate, meter readings shall be adjusted by Western pursuant to Provision 6.3 below.

6.3 Except as otherwise provided in Provision 6.4 hereof, should any meter that is used by Western for billing or other accounting purposes fail to register accurately, the electric power and energy supplied or transmitted during the period of failure to register accurately, shall, for billing purposes, be estimated by Western from the best available information.

6.4 If inspections and tests of a meter used by Western for billing or other accounting purposes disclose an error exceeding 2 percent, or a lesser range in error as agreed upon by the parties, then a correction based upon the inaccuracy found shall be made to the service records for the period of inaccuracy as determined by Western. If the period of inaccuracy cannot be determined, the inaccuracy shall be assumed to have existed during the entire monthly billing period immediately preceding the billing period in which the inspection or test was made and the resulting correction shall be made accordingly.

6.5 Any correction in billing or other accounting information that results from a correction in meter records shall be made in a subsequent monthly bill rendered by Western to the Contractor. Payment of such bill shall constitute full adjustment of any claim between the parties arising out of inaccurate metering equipment.

7. Existence of Transmission Service Contract.

If the contract provides for Western to furnish services using the facilities of a third party, the obligation of Western shall be subject to and contingent upon the existence of a transmission service contract granting Western rights to use such facilities. If Western acquires or constructs facilities which would enable it to furnish direct service to the Contractor, Western, at its option, may furnish service over its own facilities.

8. Conditions of Transmission Service.

8.1 When the electric service under the contract is furnished by Western over the facilities of others by virtue of a transmission service arrangement, the power and energy will be furnished at the voltage available and under the conditions which exist from time to time on the transmission system over which the service is supplied.

8.2 Unless otherwise provided in the contract or applicable rate schedule, the Contractor shall maintain a power factor at each point of delivery from Western's transmission agent as required by the transmission agent.

8.3 Western will endeavor to inform the Contractor from time to time of any changes planned or proposed on the system over which the service is supplied, but the costs of any changes made necessary in the Contractor's system, because of changes or conditions on the system over which the service is supplied, shall not be a charge against or a liability of Western.

8.4 If the Contractor, because of changes or conditions on the system over which service under the contract is supplied, is required to make changes on its system at its own expense in order to continue receiving service under the contract, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to making such changes, but not thereafter.

8.5 If Western notifies the Contractor that electric service provided for under the contract cannot be delivered to the Contractor because of an insufficiency of capacity available to Western in the facilities of others over which service under the contract is supplied, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to the date on which said capacity ceases to be available to Western, but not thereafter.

9. Multiple Points of Delivery Involving Direct and Indirect Deliveries.

When Western has provided line and substation capacity under the contract for the purpose of delivering electric service directly to the Contractor at specified direct points of delivery and also has agreed to absorb transmission service allowance or discounts for deliveries of energy over other system(s) to indirect points of delivery and the Contractor shifts any of its load served under the contract from direct delivery to indirect delivery, Western will not absorb the transmission service costs on such shifted load until the unused capacity, as determined solely by Western, available at the direct delivery points affected is fully utilized.

10. Construction, Operation, and Maintenance of Contractor's Power System.

The Contractor shall, and, if applicable, shall require each of its members or transmission agents to construct, operate, and maintain its power system in a manner which, as determined by Western, will not interfere with the operation of the system of Western or its transmission agents over which electric services are furnished to the Contractor under the contract, and in a manner which will coordinate with the protective relaying and other protective arrangements of the system(s) of Western or Western's transmission agents. Western may reduce or

discontinue furnishing services to the Contractor if, after notice by Western, the Contractor fails or refuses to make such changes as may be necessary to eliminate an unsatisfactory condition on the Contractor's power system which is determined by Western to interfere significantly under current or probable conditions with any service supplied from the power system of Western or from the power system of a transmission agent of Western. Such a reduction or discontinuance of service will not relieve the Contractor of liability for any minimum charges provided for in the contract during the time said services are reduced or discontinued. Nothing in this Provision shall be construed to render Western liable in any manner for any claims, demands, costs, losses, causes of action, damages, or liability of any kind or nature arising out of or resulting from the construction, operation, or maintenance of the Contractor's power system.

III. RATES, BILLING, AND PAYMENT PROVISIONS.

11. Change of Rates.

Rates applicable under the contract shall be subject to change by Western in accordance with appropriate rate adjustment procedures. If at any time the United States promulgates a rate changing a rate then in effect under the contract, it will promptly notify the Contractor thereof. Rates shall become effective as to the contract as of the effective date of such rate. The Contractor, by written notice to Western within ninety (90) days after the effective date of a rate change, may elect to terminate the service billed by Western under the new rate. Said termination shall be effective on the last day of the billing period requested by the Contractor not later than two (2) years after the effective date of the new rate. Service provided by Western shall be paid for at the new rate regardless of whether the Contractor exercises the option to terminate service.

12. Minimum Seasonal or Annual Capacity Charge.

When the rate in effect under the contract provides for a minimum seasonal or annual capacity charge, a statement of the minimum capacity charge due, if any, shall be included in the bill rendered for service for the last billing period of the service season or contract year as appropriate, adjusted for increases or decreases in the contract rate of delivery and for the number of billing periods during the year or season in which service is not provided. Where multiple points of delivery are involved and the contract rate of delivery is stated to be a maximum aggregate rate of delivery for all points, in determining the minimum seasonal or annual capacity charge due, if any, the monthly capacity charges at the individual points of delivery shall be added together.

13. Billing and Payment.

13.1 Western will normally issue bills to the Contractor for services furnished during the preceding month within ten (10) days after the end of the billing period.

13.2 If Western is unable to issue timely monthly bill(s), Western may elect to render estimated bill(s). Such estimated bill(s) shall be subject to the same payment provisions as final bill(s), and any applicable adjustments will be shown on a subsequent monthly bill.

13.3 Payments of bills issued by Western are due and payable by the Contractor before the close of business on the twentieth (20th) calendar day after the date of issuance of each bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday. Bills shall be considered paid when payment is received by Western. Bills will be paid electronically or via the Automated Clearing House method of payment unless a written request to make payments by mail is submitted by the Contractor and approved by Western. Should Western agree to accept payments by mail, these payments will be accepted as timely and without assessment of the charge provided for in Provision 14 (Nonpayment of Bills in Full When Due) if a United States

Post Office first class mail postmark indicates the payment was mailed at least three (3) calendar days before the due date.

13.4 The parties agree that net billing procedures will be used for payments due Western by the Contractor and for payments due the Contractor by Western for the sale or exchange of electric power and energy, use of transmission facilities, operation and maintenance of electric facilities, and other services. Payments due one party in any month shall be offset against payments due the other party in such month, and the resulting net balance shall be paid to the party in whose favor such balance exists. The parties shall exchange such reports and information that either party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

14. Nonpayment of Bills in Full When Due.

14.1 Bills not paid in full by the Contractor by the due date specified in Provision 13 (Billing and Payment) hereof shall bear a charge of five hundredths percent (0.05%) of the principal sum unpaid for each day payment is delinquent, to be added until the amount due is paid in full. Western will also assess a fee of twenty-five dollars (\$25.00) for processing a late payment. Payments received will first be applied to the charges for late payment assessed on the principal and then to payment of the principal.

14.2 Western shall have the right, upon not less than fifteen (15) days advance written notice, to discontinue furnishing the services specified in the contract for nonpayment of bills in full when due, and to refuse to resume such services so long as any part of the amount due remains unpaid. Such a discontinuance of service will not relieve the Contractor of liability for minimum charges during the time service is so discontinued. The rights reserved to Western herein shall be in addition to all other remedies available to Western either by law or in equity, for the breach of any of the terms hereof.

15. Adjustments for Fractional Billing Period.

The demand or capacity charge and minimum charges shall each be proportionately adjusted when fractional billing periods are applicable under this contract. A fractional billing period can occur: 1) at the beginning or end of electric service; 2) at the beginning or end of irrigation pumping service each year; 3) for a fractional billing period under a new rate schedule; or 4) for fractional periods due to withdrawals of electric services. The adjustment will be made based on the ratio of the number of hours that electric service is available to the Contractor in such fractional billing period, to the total number of hours in the billing period involved. Energy billing shall not be affected by fractional billing periods.

16. Adjustments for Curtailments to Firm Service.

16.1 Billing adjustments will be made if firm electric service is interrupted or reduced because of conditions on the power system of the United States for periods of one (1) hour or longer in duration each. Billing adjustments will not be made when such curtailment of electric service is due to a request by the Contractor or a discontinuance of electric service by Western pursuant to Provision 14 (Nonpayment of Bills In Full When Due). For purposes of billing adjustments under this Provision, the term power system of the United States shall include transmission facilities used under contract but not owned by the United States.

16.2 The total number of hours of curtailed firm electric service in any billing period shall be determined by adding: (1) the sum of the number of hours of interrupted electric service to (2) the product, of each reduction, of: the number of hours reduced electric service and the percentage by which electric service was reduced below the delivery obligation of Western at the time of each said reduction of electric service. The demand or capacity charge and applicable minimum charges shall each be proportionately adjusted in the ratio that

the total number of hours of electric service determined to have been curtailed bears to the total number of hours in the billing period involved.

16.3 The Contractor shall make written claim within thirty (30) days after receiving the monthly bill, for adjustment on account of any curtailment of firm electric service, for periods of one (1) hour or longer in duration each, alleged to have occurred that is not reflected in said bill. Failure to make such written claim, within said thirty-day (30-day) period, shall constitute a waiver of said claim. All curtailments of electric service, which are due to conditions on the power system of the United States, shall be subject to the terms of this Provision; Provided, That withdrawal of power and energy under the contract shall not be considered a curtailment of electric service.

IV. **POWER SALES PROVISIONS.**

17. Resale of Firm Electric Service (Wholesale Sales for Resale).

The Contractor shall not sell any firm electric power or energy supplied under the contract to any electric utility customer of the Contractor for resale by that utility customer; Provided, That the Contractor may sell the electric power and energy supplied under the contract to its members on condition that said members not sell any of said power and energy to any customer of the member for resale by that customer.

18. Distribution Principles.

The Contractor agrees that the benefits of firm electric power or energy supplied under the contract shall be made available to its consumers at rates that are established at the lowest possible level consistent with sound business principles, and that these rates will be established in an open and public manner. The Contractor further agrees that it will identify the costs of firm electric power or energy supplied under the contract and power from other sources to its consumers upon request. The Contractor will demonstrate compliance with the requirements of this Provision to Western upon request.

19. Contract Subject to Colorado River Compact.

Where the energy sold under the contract is generated from waters of the Colorado River system, the contract is made upon the express condition and with the express covenant that all rights under the contract shall be subject to and controlled by the Colorado River Compact approved by Section 13 (a) of the Boulder Canyon Project Act of December 21, 1928, 43 U.S.C. §§ 617a-e, and the parties to the contract shall observe and be subject to and controlled by said Colorado River Compact in the construction, management, and operation of the dams, reservoirs, and powerplants from which electrical energy is to be furnished by Western to the Contractor under the contract, and in the storage, diversion, delivery, and use of water for the generation of electrical energy to be delivered by Western to the Contractor under the contract.

V. **FACILITIES PROVISIONS.**

20. Design Approval.

All facilities, construction, and installation by the Contractor pursuant to the contract shall be subject to the approval of Western. Facilities interconnections shall normally conform to Western's current "General Requirements for Interconnection," in effect upon the signing of the contract document providing for each interconnection, copies of which are available from Western. At least ninety (90) days, unless otherwise agreed,

prior to the date the Contractor proposes to commence construction or to incur an obligation to purchase facilities to be installed pursuant to the contract, whichever date is the earlier, the Contractor shall submit, for the approval of Western, detailed designs, drawings, and specifications of the facilities the Contractor proposes to purchase, construct, and install. The Contractor assumes all risks for construction commenced or obligations to purchase facilities incurred prior to receipt of approval from Western. Western review and approval of designs and construction work in no way implies that Western is certifying that the designs meet the Contractor's needs.

21. Inspection and Acceptance.

Western shall have the right to inspect the materials and work furnished by the Contractor, its agents, employees, and subcontractors pursuant to the contract. Such inspections shall be at reasonable times at the work site. Any materials or work that Western determines is defective or not in accordance with designs, drawings, and specifications, as approved by Western, shall be replaced or modified, as directed by Western, at the sole expense of the Contractor before the new facilities are energized.

22. As-Built Drawings.

Within a reasonable time, as determined by Western, after the completion of construction and installation of facilities pursuant to the contract, the Contractor shall submit to Western marked as-built prints of all Western drawings affected by changes made pursuant to the contract and reproducible drawings the Contractor has prepared showing facilities of Western. The Contractor's drawings of Western facilities shall use drawing title blocks, drawing numbers, and shall be prepared in accordance with drafting standards all as approved by Western. Western may prepare, revise, or complete said drawings and bill the Contractor if the Contractor fails to provide such drawings to Western within a reasonable time as determined by Western.

23. Equipment Ownership Markers.

23.1 The Contractor shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the United States right-of-way or in Western substations pursuant to the contract which are owned by the Contractor, by permanently affixing thereto suitable markers clearly identifying the Contractor as the owner of said equipment and facilities.

23.2 If requested by the Contractor, Western shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the Contractor's right-of-way or in the Contractor's substations pursuant to the contract which are owned by the United States, by permanently affixing thereto suitable markers clearly identifying the United States as the owner of said equipment and facilities.

24. Third-Party Use of Facilities.

The Contractor shall notify Western of any proposed system change relating to the facilities governed by the contract or allowing third-party use of the facilities governed by the contract. If Western notifies the Contractor that said system change will, as solely determined by Western, adversely affect the operation of Western's system the Contractor shall, at no cost to Western, provide a solution to said adverse effect acceptable to Western.

25. Changes to Western Control Facilities.

If at any time during the term of the contract, Western determines that changes or additions to control, relay, or communications facilities are necessary to maintain the reliability or control of Western's transmission

system, and said changes or additions are entirely or partially required because of the Contractor's equipment installed under the contract, such changes or additions shall, after consultation with the Contractor, be made by Western with all costs or a proportionate share of all costs, as determined by Western, to be paid by the Contractor. Western shall notify the Contractor in writing of the necessary changes or additions and the estimated costs to be paid by the Contractor. If the Contractor fails to pay its share of said estimated costs, Western shall have the right, after giving sixty (60) days' written notice to the Contractor, to terminate the applicable facility installation provisions to the contract and require the removal of the Contractor's facilities.

26. Modification of Western Facilities.

Western reserves the right, at any time, to modify its facilities. Western shall keep the Contractor informed of all planned modifications to Western facilities which impact the facilities installation pursuant to the contract. Western shall permit the Contractor to change or modify its facilities, in a manner satisfactory to and at no cost or expense to Western, to retain the facilities interconnection pursuant to the contract. At the Contractor's option, Western shall cooperate with the Contractor in planning alternate arrangements for service which shall be implemented at no cost or expense to Western. The Contractor and Western shall modify the contract, as necessary, to conform to the new facilities arrangements.

27. Transmission Rights.

If the contract involves an installation which sectionalizes a Western transmission line, the Contractor hereby agrees to provide a transmission path to Western across such sectionalizing facilities at no cost or expense to Western. Said transmission path shall be at least equal, in terms of capacity and reliability, to the path in the Western transmission line prior to the installation pursuant to the contract.

28. Construction and Safety Procedures.

28.1 The Contractor hereby acknowledges that it is aware of the hazards inherent in high-voltage electric lines and substations, and hereby assumes full responsibility at all times for the adoption and use of necessary safety measures required to prevent accidental harm to personnel engaged in the construction, inspection, testing, operation, maintenance, replacement, or removal activities of the Contractor pursuant to the contract. The Contractor and the authorized employees, agents, and subcontractors of the Contractor shall comply with all applicable safety laws and building and construction codes, including the provisions of Chapter 1 of the Power System Operations Manual, entitled Power System Switching Procedure, and the Occupational Safety and Health Administration regulations, Title 29 C.F.R. §§ 1910 and 1926, as amended or supplemented. In addition to the safety program required herein, upon request of the United States, the Contractor shall provide sufficient information to demonstrate that the Contractor's safety program is satisfactory to the United States.

28.2 The Contractor and its authorized employees, agents, and subcontractors shall familiarize themselves with the location and character of all the transmission facilities of Western and interconnections of others relating to the work performed by the Contractor under the contract. Prior to starting any construction, installation, or removal work, the Contractor shall submit a plan of procedure to Western which shall indicate the sequence and method of performing the work in a safe manner. No work shall be performed by the Contractor, its employees, agents, or subcontractors until written authorization to proceed is obtained from Western.

28.3 At all times when the Contractor, its employees, agents, or subcontractors are performing activities of any type pursuant to the contract, such activities shall be under supervision of a qualified employee, agent, or subcontractor of the Contractor who shall be authorized to represent the Contractor in all matters pertaining to the activity being performed. The Contractor and Western will keep each other informed of the names of their designated representatives at the site.

28.4 Upon completion of its work, the Contractor shall remove from the vicinity of the right-of-way of the United States all buildings, rubbish, used materials, concrete forms, and other like material belonging to the Contractor or used under the Contractor's direction, and in the event of failure to do so the same may be removed by Western at the expense of the Contractor.

28.5 In the event the Contractor, its employees, agents, or subcontractors fail to comply with any requirement of this Provision, or Provision 21 (Inspection and Acceptance) herein, Western or an authorized representative may issue an order to stop all or any part of the work until such time as the Contractor demonstrates compliance with the provision at issue. The Contractor, its employees, agents, or subcontractors shall make no claim for compensation or damages resulting from such work stoppage.

29. Environmental Compliance.

Facilities installed under the contract by any party shall be constructed, operated, maintained, replaced, transported, and removed subject to compliance with all applicable laws, including but not limited to the National Historic Preservation Act of 1966, 16 U.S.C. §§ 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347, the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa-470mm, and the regulations and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations, and executive orders.

30. Responsibility for Regulated Materials.

When either party owns equipment containing regulated material located on the other party's substation, switchyard, right-of-way, or other property, the equipment owner shall be responsible for all activities related to regulated materials in such equipment that are necessary to meet the requirements of the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675, the Oil Pollution Act of 1990, 33 U.S.C. §§ 2702-2761, the Clean Water Act, 33 U.S.C. §§ 1251-1387, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-j26, and the regulations and executive orders implementing these laws, as they may be amended or supplemented, and any other existing or subsequent applicable laws, regulations, and executive orders. Each party shall label its equipment containing regulated material in accordance with appropriate laws and regulations. If the party owning the equipment does not perform activities required under appropriate laws and regulations within the time frame specified therein, the other party may perform or cause to be performed the required activities after notice to and at the sole expense of the party owning the equipment.

VI. OTHER PROVISIONS.

31. Authorized Representatives of the Parties.

Each party to the contract, by written notice to the other, shall designate the representative(s) who is (are) authorized to act in its behalf with respect to those matters contained in the contract which are the functions and responsibilities of the authorized representatives of the parties. Each party may change the designation of its authorized representative(s) upon oral notice given to the other, confirmed promptly by written notice.

32. Effect of Section Headings.

Section headings or Provision titles appearing in the contract or these General Power Contract Provisions are inserted for convenience only and shall not be construed as interpretations of text.

33. Operating Guidelines and Procedures.

The parties to the contract may agree upon and put into effect from time to time, such other written guidelines and procedures as may be required in order to establish the methods of operation of the power system to be followed in the performance of the contract.

34. Uncontrollable Forces.

Neither party to the contract shall be considered to be in default in performance of any of its obligations under the contract, except to make payment as specified in Provision 13 (Billing and Payment) herein, when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" means any cause beyond the control of the party affected, including but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Either party rendered unable to fulfill any of its obligations under the contract by reason of an uncontrollable force shall give prompt written notice of such fact to the other party and shall exercise due diligence to remove such inability with all reasonable dispatch.

35. Liability.

35.1 The Contractor hereby agrees to indemnify and hold harmless the United States, its employees, agents, or contractors from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the Contractors', its employees', agents', or subcontractors' construction, operation, maintenance, or replacement activities under the contract.

35.2 The United States is liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, 2674-2680, as amended or supplemented.

36. Cooperation of Contracting Parties.

If, in the operation and maintenance of their respective power systems or electrical equipment and the utilization thereof for the purposes of the contract, it becomes necessary by reason of any emergency or extraordinary condition for either party to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the party so requested shall cooperate with the other and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall reimburse the party rendering such assistance for all costs properly and reasonably incurred by it in such performance, including administrative and general expenses, such costs to be determined on the basis of current charges or rates used in its own operations by the party rendering assistance. Issuance and payment of bills for services provided by Western shall be in accordance with Provisions 13 (Billing

and Payment) and 14 (Nonpayment of Bills in Full When Due) herein. Western shall pay bills issued by the Contractor for services provided as soon as the necessary vouchers can be prepared which shall normally be within twenty (20) days.

37. Transfer of Interest in Contract or Change in Preference Status.

37.1 No voluntary transfer of the contract or of the rights of the Contractor under the contract shall be made without the prior written approval of the Administrator of Western. Any voluntary transfer of the contract or of the rights of the Contractor under the contract made without the prior written approval of the Administrator of Western may result in the termination of the contract; Provided, That the written approval of the Administrator shall not be unreasonably withheld; Provided further, That if the Contractor operates a project financed in whole or in part by the Rural Utilities Service, the Contractor may transfer or assign its interest in the contract to the Rural Utilities Service or any other department or agency of the Federal Government without such prior written approval; Provided further, That any successor to or assignee of the rights of the Contractor, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of the contract to the same extent as though such successor or assignee were the original Contractor under the contract; and, Provided further, That the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfers within the meaning of this Provision.

37.2 The Contractor shall maintain its status as an entity eligible for preference in Western's sale of Federal power pursuant to Reclamation law, as amended and supplemented.

37.3 Western shall give the Contractor written notice of Western's proposed determination that the Contractor has violated Provision 37.1 and Western's proposed action in response to the violation.

37.4 The Contractor shall have 120 days after receipt of Western's notice provided under Provision 37.3 to submit a written response to Western. The Contractor may also make an oral presentation to the Administrator during this 120-day period.

37.5 At any time during this process, the Contractor and Western may agree upon corrective action to resolve Western's proposed determination that the Contractor is in violation of Provision 37.1.

37.6 Within 30 days of receipt of the Contractor's written response provided under Provision 37.4, Western will notify the Contractor in writing of its final decision. The Administrator's written notice will include the intended action, the effective date thereof, and the reasons for taking the intended action. Implementation of the Administrator's action shall take place no earlier than 60 days from the Contractor's receipt of such notice.

37.7 Any successor to Western shall be subject to all the provisions and conditions of the contract to the same extent as though such successor were an original signatory to the contract.

37.8 Nothing in this Provision shall preclude any right to judicial review available to the Contractor under Federal law.

38. Choice of Law and Forum.

Federal law shall control the obligations and procedures established by this contract and the performance and enforcement thereof. The forum for litigation arising from this contract shall exclusively be a Federal court of the United States, unless the parties agree to pursue alternative dispute resolution.

39. Waivers.

Any waivers at any time by either party to the contract of its rights with respect to a default or any other matter arising under or in connection with the contract shall not be deemed a waiver with respect to any subsequent default or matter.

40. Notices.

Any notice, demand, or request specifically required by the contract or these Provisions to be in writing shall be considered properly given when delivered in person or sent by postage prepaid registered or certified mail, commercial delivery service, facsimile, electronic, prepaid telegram, or by other means with prior agreement of the parties, to each party's authorized representative at the principal offices of the party. The designation of the person to be notified may be changed at any time by similar notice. Where facsimile or electronic means are utilized for any communication covered by this Provision, the sending party shall keep a contemporaneous record of such communications and shall verify receipt by the other party.

41. Contingent Upon Appropriations and Authorization.

41.1 Where activities provided for in the contract extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States' obligations under the contract. In case such appropriation is not made, the Contractor hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

41.2 In order to receive and expend funds advanced from the Contractor necessary for the continued performance of the obligations of the United States under the contract, additional authorization may be required. In case such authorization is not received, the Contractor hereby releases the United States from those contractual obligations and from all liability due to the lack of such authorization.

42. Covenant Against Contingent Fees.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

43. Contract Work Hours and Safety Standards.

The contract, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act.

44. Equal Opportunity Employment Practices.

Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into the contract, except that Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.

45. Use of Convict Labor.

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.