

UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
CENTRAL VALLEY PROJECT, CALIFORNIA

CUSTOM PRODUCT CONTRACT  
FOR  
SCHEDULING COORDINATOR SERVICES  
WITH  
CITY AND COUNTY OF SAN FRANCISCO  
HETCH HETCHY WATER AND POWER

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3  
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14 HETCH HETCHY WATER AND POWER

15  
16 1. **PREAMBLE:** This Contract is made this 13<sup>th</sup> day of August,  
17 2004, pursuant to the Acts of Congress approved June 17, 1902, (32 Stat. 388);  
18 August 26, 1937, (50 Stat. 844); August 4, 1939, (53 Stat. 1187); and August 4, 1977,  
19 (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between  
20 the UNITED STATES OF AMERICA (United States), acting by and through the  
21 Administrator, Western Area Power Administration, Department of Energy, hereinafter  
22 called Western, represented by the officer executing this Contract, or a duly appointed  
23 successor, hereinafter called the Contracting Officer; and CITY AND COUNTY OF SAN  
24 FRANCISCO, HETCH HETCHY WATER AND POWER, a municipal corporation,  
25 hereinafter called the Contractor or CCSF, its successors and assigns; each sometimes  
26 hereinafter individually called the Party, and both sometimes hereinafter collectively  
27 called the Parties.

28 ///

1 2. EXPLANATORY RECITALS:

2 2.1 Western 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 June 25, 1999, Western's final 2004 Power Marketing Plan (Marketing  
6 Plan) was published in the Federal Register (64 FR 34417). The Marketing Plan  
7 provides for Western to develop Custom Products for customers who request  
8 them.

9  
10 2.3 Pursuant to the Marketing Plan, Western executed Base Resource  
11 Contract 00-SNR-00347 (Base Resource Contract) with CCSF on  
12 December 29, 2000. Section 8 of the Base Resource Contract allows for  
13 Western to develop Custom Products for CCSF.

14  
15 2.4 Under the Base Resource Contract, Western requires that all Western  
16 power be scheduled in accordance with the applicable control area operator  
17 requirements, and that each customer must designate a certified Scheduling  
18 Coordinator. Western is a certified Scheduling Coordinator and is offering this  
19 service as a Custom Product.

20  
21 2.5 CCSF has requested that Western provide Scheduling Coordinator  
22 services, as specified herein, as a Custom Product.

23  
24 2.6 Western is willing to provide Scheduling Coordinator services to CCSF  
25 under the terms and conditions of this Contract.

26  
27 3. AGREEMENT:

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

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

2 4.1 This Contract shall become effective on September 1, 2004, and shall  
3 remain in effect until midnight of September 30, 2010 except as otherwise  
4 provided herein.

5  
6 4.2 The date of initial service under this Contract is January 1, 2005.

7  
8 4.3 Either Party may terminate this Contract by giving the other Party a three  
9 (3) month advance written notice of the requested termination date. Either Party  
10 may also terminate this Contract pursuant to Section 8 herein.

11  
12 4.4 Western may suspend or terminate this Contract pursuant to Section 15  
13 herein.

14  
15 4.5 Western may terminate this Contract upon 30 days notice if CCSF ceases  
16 to be a Western customer.

17  
18 4.6 All obligations incurred hereunder shall be preserved until satisfied.

19  
20 **5. DEFINITION OF TERMS:**

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

23 5.1 "Base Resource" means CVP and Washoe Project power output, as  
24 determined by Western to be available for marketing, after (1) meeting the  
25 requirements of Project Use and First Preference Customers, and (2) any other  
26 adjustments required for maintenance, regulation, reserves, transformation  
27 losses, and ancillary services.

28 ///

1 5.2 "Central Valley Project" means the multipurpose Federal water and power  
2 project extending from the Cascade Range in northern California to the plains  
3 along the Kern River, south of the City of Bakersfield.

4  
5 5.3 "Custom Product" means a combination of products and services,  
6 excluding provisions for load growth, which may be made available by Western  
7 per customer request, using the customer's Base Resource and supplemental  
8 purchases made by Western.

9  
10 5.4 "ISO" means the California Independent System Operator or its  
11 successor.

12  
13 5.5 "ISO Tariff" means the California Independent System Operator  
14 Agreement and Tariff, conformed as of October 8, 2003, as it may be modified or  
15 amended from time-to-time.

16  
17 5.6 "Portfolio Manager" means an entity responsible for determining balanced  
18 hourly load and resource schedules for a customer.

19  
20 5.7 "Scheduling Coordinator" means an entity that is responsible for providing  
21 hourly load and resource schedules to the ISO, in accordance with the protocols  
22 specified in the ISO Tariff.

23  
24 6. **SCHEDULING COORDINATOR SERVICES PROVIDED BY WESTERN:**

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

28 ///

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

12  
13 6.3 If Western is not CCSF's Portfolio Manager, Western is under no  
14 obligation to submit a schedule to the ISO if the schedule provided by CCSF's  
15 Portfolio Manager is not in accordance with the ISO Tariff.

16  
17 6.4 Pursuant to the ISO Tariff, CCSF's Portfolio Manager may request an  
18 adjustment to CCSF's day-ahead schedule in the hour-ahead market. If Western  
19 is not CCSF's Portfolio Manager, Western shall make the adjustment with the  
20 ISO; Provided, That, Western 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 ISO Tariff.

24  
25 6.5 Western shall receive, validate, and disseminate ISO data and settlement  
26 information to CCSF or its designated representative.

27 ///

28 ///

1 6.6 On a monthly basis, Western will develop and transmit statements to  
2 CCSF with a breakdown of its ISO charges and credits and any related costs.

3  
4 6.7 Western shall dispute those ISO charges related to CCSF's ISO  
5 transactions that Western believes to be incorrect and disputable under the ISO  
6 Tariff. If CCSF requests that Western dispute an ISO charge(s), Western shall  
7 initiate a dispute; Provided, That, Western agrees that such charge(s) are  
8 incorrect and are disputable under the ISO Tariff.

9  
10 6.8 As CCSF's Scheduling Coordinator, Western may be required to provide  
11 legal representation in ISO-related legal proceedings. CCSF agrees to pay  
12 Western's legal fees and all costs associated with its involvement with any ISO-  
13 related activities that require Western's legal support.

14  
15 6.9 Western may provide additional Scheduling Coordinator-related services  
16 as mutually agreed to by the Parties.

17  
18 **7. SCHEDULING AND METERING:**

19 All services provided by Western to CCSF under this Contract will be subject to the  
20 same Scheduling and Metering terms and conditions as provided under CCSF's Base  
21 Resource Contract with Western the same as if they had been expressly set forth  
22 herein.

23  
24 **8. REGIONAL TRANSMISSION ORGANIZATION OR CONTROL AREA:**

25 Western currently operates within the ISO control area. The Parties understand that  
26 Western may join a regional transmission organization (RTO) or become part of a  
27 different control area. In the event that Western either joins or is required to conform to  
28 the protocols of an RTO or a different control area, the Parties shall mutually agree to



1 make any protocol changes to this Contract to conform to the terms and conditions  
2 required by such organization. If CCSF does not agree with the protocol changes, it  
3 may terminate this Contract by providing a one-month written notice to Western. If  
4 Western is not able to conform to the protocols, it may terminate this Contract by  
5 providing a one-month written notice to CCSF. In the event that Western incurs costs  
6 from an RTO or a different control area for serving CCSF's load, or CCSF does not  
7 abide by the protocols applicable to Western, and Western incurs costs as a result,  
8 CCSF agrees to pay all such costs attributable to CCSF.

9  
10 **9. SCHEDULING COORDINATOR-RELATED COSTS:**

11 9.1 Western Charges: CCSF shall pay the Western charges associated with  
12 providing Scheduling Coordinator services to CCSF pursuant to Exhibit A  
13 attached hereto. By August 1<sup>st</sup> of each year during the term of this Contract;  
14 Western will review the Scheduling Coordinator services charges and, if  
15 necessary, will revise Exhibit A to reflect the updated costs for this service.

16  
17 9.2 ISO Costs: CCSF shall pay all ISO costs charged by the ISO for  
18 transactions which occur under this Contract. CCSF shall pay for such costs as  
19 described in Section 11.

20  
21 **10. BILLING AND PAYMENT OF WESTERN CHARGES:**

22 Western shall identify and bill CCSF for the labor and equipment costs associated with  
23 providing Scheduling Coordinator services to CCSF. CCSF shall pay for Western  
24 charges in accordance with the methods set forth in either Section 10.1 or Section 10.2,  
25 as solely determined by Western. If Western has selected one method and  
26 subsequently determines to change to the other method, Western will provide CCSF  
27 with a two (2) month notification of this change.

28 ///

1 10.1 After-the-Fact-Billing: CCSF shall pay Western for charges for providing  
2 Scheduling Coordinator services for the previous month on the monthly electric  
3 service bill or other bill as Western deems appropriate; or  
4

5 10.2 Advance Funding: CCSF's Western charges for Scheduling Coordinator  
6 services will be paid from funds advanced from CCSF to Western. For  
7 Scheduling Coordinator services charges collected pursuant to this section, the  
8 following shall apply:

9 10.2.1 Western will estimate the initial amount of funds required. The  
10 estimate shall be based on three (3) months of Western's charges for  
11 providing Scheduling Coordinator services.

12 10.2.2 The initial advance funding amount shall be due on the date  
13 specified on the bill for collection. The initial bill for collection will be  
14 issued in September 2004.

15 10.2.3 On a monthly basis, Western will estimate its charges for  
16 providing Scheduling Coordinator services to CCSF for the following  
17 month. CCSF shall advance this amount to Western as specified on its  
18 electric service bill or other bill as Western deems appropriate.

19 10.2.4 Western shall use funds from CCSF's trust account(s) on a  
20 monthly basis for Western's charges associated with providing Scheduling  
21 Coordinator services to CCSF.  
22

23 11. BILLING AND PAYMENT OF ISO COSTS:

24 Western shall identify and bill CCSF for its attributable ISO costs. CCSF shall pay for  
25 the ISO costs in accordance with one of the methods set forth in Section 11.1, Section  
26 11.2, or Section 11.3, as solely determined by Western. If Western has selected one  
27 method and subsequently determines to change to another method, Western will  
28 provide CCSF with a two (2) month notification of this change.

1 11.1 CCSF Pays the ISO: CCSF makes a monthly direct payment to the ISO  
2 for its monthly ISO costs. For ISO costs remitted directly to the ISO, the  
3 following shall apply:

4 11.1.1 CCSF will be required to advance fund to Western three (3)  
5 months of estimated ISO costs. Such funds will be used to pay the ISO in  
6 the event that CCSF does not make payment to the ISO on the date  
7 directed by Western.

8 11.1.2 Western will estimate the amount of funds required. The estimate  
9 shall be based on three (3) months of ISO costs attributable to CCSF.

10 11.1.3 The advance funding amount determined by Western shall be due  
11 on the date specified on the bill for collection. The initial bill for collection  
12 will be issued in September 2004.

13  
14 11.2 Western Pays the ISO: Western makes a monthly payment to the ISO on  
15 behalf of CCSF for its ISO costs. When Western pays the ISO on behalf of  
16 CCSF, the following shall apply:

17 11.2.1 CCSF will be required to advance fund to Western three (3)  
18 months of estimated ISO costs.

19 11.2.2 Western will estimate the initial amount of funds required and  
20 CCSF shall remit that amount to Western to be collected into a Western  
21 trust account. The estimate shall be based on three (3) months of ISO  
22 costs attributable to CCSF.

23 11.2.3 The advance funding amount determined by Western shall be due  
24 on the date specified on the bill for collection. The initial bill for collection  
25 will be issued in September 2004.

26 11.2.4 On a monthly basis, Western will estimate the ISO costs it  
27 anticipates incurring on CCSF's behalf for the following month. CCSF  
28

1 shall advance this amount to Western. Western shall use the funds  
2 advanced on a monthly basis to pay the ISO on behalf of CCSF.

3  
4 11.3 Third Party Payment to the ISO: An entity other than Western or CCSF  
5 makes payment to the ISO on behalf of CCSF for its monthly ISO costs. This  
6 payment arrangement will require that CCSF and the non-Western entity have  
7 entered into a contractual arrangement that sets forth the terms and provisions of  
8 this payment method. This arrangement must be approved by Western prior to  
9 payment under this section is implemented, and must include provisions to  
10 protect Western from non-payment of ISO costs by the third party. Using this  
11 method, CCSF will not be required to advance funds to Western for CCSF's ISO  
12 costs.

13  
14 12. TRUST ACCOUNT(S) FOR ADVANCED FUNDS:

15 CCSF understands that it may be required to advance funds, to be collected into a  
16 Western trust account(s) for services provided under this Contract. If advance funds  
17 are required pursuant to Sections 10.2, 11.1, or 11.2, the following shall apply:

18 12.1 Funds that CCSF advances to Western shall be sent in accordance with  
19 the information included on a Western bill(s) for collection, electric service bill, or  
20 other bill as Western deems appropriate.

21  
22 12.2 CCSF shall be required to maintain a balance in the trust account(s) at all  
23 times of three (3) months of estimated Western costs, if Section 10.2 is in effect,  
24 and three (3) months of estimated ISO costs if Sections 11.1 or 11.2 are in effect.

25 Western shall monitor the account(s) and if, Western determines that:

26 12.2.1 There are not sufficient funds in the account(s), Western shall  
27 notify CCSF of the shortage and CCSF shall advance the requested  
28 amount of funds to Western within ten (10) days; or

1 12.2.2 There are excessive funds in the Western trust account(s),  
2 Western, at its sole discretion, will either: 1) decrease subsequent  
3 amounts required by the amount in excess of the estimate, or 2) return  
4 any excess funds to CCSF.

5  
6 12.3 Western will provide CCSF with:

7 12.3.1 A monthly statement to CCSF of transactions that were posted to  
8 the trust account(s), and the end-of-month balance in the account(s); and,

9 12.3.2 An electric service bill that will reflect the previous month's  
10 Western's costs and the ISO costs and the amount of advance funding  
11 required from CCSF for the costs that Western anticipates it will incur  
12 while providing Scheduling Coordinator services for the following month.

13  
14 12.4 Western shall be under no obligation to provide service under this  
15 Contract without CCSF advancing sufficient funds and said funds being available  
16 to Western from the trust account(s) as described herein.

17  
18 12.5 Within sixty (60) days after termination of this Contract, and after Western  
19 has determined that all obligations incurred under this Contract have been  
20 satisfied, Western shall return any funds remaining in its trust account(s) to  
21 CCSF without interest.

22  
23 **13. ESCROW ACCOUNT OPTION FOR ADVANCED FUNDS FOR ISO COSTS:**

24 For ISO costs, CCSF may establish and maintain an escrow account for advanced  
25 funds. If CCSF chooses to have an escrow account, the following shall apply:

26 13.1 CCSF will be required to advance fund three (3) months of estimated  
27 dollars if the Parties are operating under either Sections 11.1 or 11.2. However if  
28 CCSF chooses, it may have Western collect forty-five (45) days of estimated

1 dollars into a Western trust account(s) and it may deposit forty-five (45) days of  
2 estimated dollars into a CCSF-managed escrow account.

3  
4 13.2 CCSF shall be required to seek and establish an escrow account.

5  
6 13.3 CCSF shall arrange for a three party escrow agreement between Western,  
7 CCSF, and the financial institution maintaining the escrow account, that sets forth  
8 the terms and conditions of the account. Such agreement must be structured to  
9 allow the financial institution to make direct payments to Western immediately  
10 upon request from CCSF.

11  
12 13.4 CCSF shall have full responsibility for all costs associated with the  
13 establishment and maintenance of an escrow account.

14  
15 **14. CREDITWORTHINESS:**

16 For the purpose of determining the ability of CCSF to meet its obligations related to  
17 service hereunder, Western may require reasonable credit review procedures. In  
18 addition, Western may require CCSF to:

19 14.1 Provide and keep in effect during the term of this Contract, an  
20 unconditional and irrevocable letter of credit as security to meet its  
21 responsibilities and obligations under this Contract; or

22  
23 14.2 Provide an alternate form of security, acceptable to Western.

24  
25 **15. DEFAULT PROVISIONS:**

26 15.1 The failure of CCSF to perform any of its payment obligations under this  
27 Contract shall constitute a default. If Western determines CCSF to be in default,

28 ///

1 Western shall notify CCSF in writing. If CCSF has not cured such default within  
2 seven (7) days, Western may suspend service under this Contract.

3  
4 15.2 If CCSF has not cured a default within forty-five (45) days (from the date  
5 of default), or in a timeframe established by Western, Western shall have the  
6 right to terminate this Contract, and assess damages, as follows:

7 15.2.1 If Western's aggregate gains exceed its aggregate losses and  
8 costs, including obligations incurred on behalf of CCSF that extend past  
9 the current month, Western, after any set-off, shall make no payment to  
10 CCSF and, notwithstanding anything in this Contract to the contrary, the  
11 amount by which such gain exceeds the losses and costs for the purposes  
12 of this Contract shall be zero (0).

13 15.2.2 If Western's aggregate gains do not exceed its aggregate losses,  
14 including obligations incurred on behalf of CCSF that extend past the  
15 current month, Western will promptly calculate the damages associated  
16 with the default. As soon as practical, Western will provide notice to  
17 CCSF of the amount of the damages. Payment for the damages shall be  
18 made by CCSF to Western within ten (10) business days after such notice  
19 is received.

20  
21 **16. INDEMNIFICATION AND LIABILITY:**

22 CCSF shall at all times indemnify, defend, and save Western harmless from any and all  
23 damages, losses, claims and actions relating to injury to or death of any person or  
24 damage to property, demands, suits, recoveries, costs and expenses, court costs,  
25 attorneys fees, and all other obligations by or to third parties, arising out of or resulting  
26 from Western's performance of its obligations under this Contract on behalf of CCSF,  
27 except in cases of negligence or intentional wrongdoing by Western. Western's liability

28 ///

1 shall be determined in accordance with the provisions of the Federal Tort Claims Act, as  
2 amended.

3

4 17. **ENFORCEABILITY:**

5 It is not the intent of the Parties that this Contract confer any rights on third parties to  
6 enforce the provisions of this Contract except as required by law or express provision in  
7 this Contract. This Contract may be enforced, or caused to be enforced, only by  
8 Western or CCSF, or their successors or assigns.

9

10 18. **GENERAL POWER CONTRACT PROVISIONS:**

11 The GPCP, effective July 10, 1998, attached hereto, are hereby made a part of this  
12 Contract, the same as if they had been expressly set forth herein.

13

14 19. **EXHIBIT MADE PART OF CONTRACT:**

15 Inasmuch as the Scheduling Coordinator Services Charges exist under this Contract  
16 may vary during the term hereof, it will be set forth in Exhibit A. Exhibit A shall become  
17 a part of this Contract during the term fixed by its provisions. Exhibit A is attached  
18 hereto, and shall be in force and effect in accordance with its terms until superseded by  
19 a subsequent exhibit.

20 ///

21 ///

22 ///

23 ///

24 ///

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.

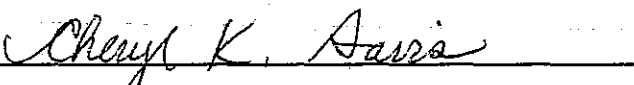
3  
4 WESTERN AREA POWER ADMINISTRATION

5  
6 By: 

7 Title: Power Marketing Manager

8 Address: 114 Parkshore Drive  
9 Folsom, CA 95630-4710


10  
11 CITY AND COUNTY OF SAN FRANCISCO  
12 HETCH HETCHY WATER AND POWER

13 By: 

14 Title: Acting General Manager

15 Address: 1155 Market Street  
16 San Francisco, CA 94103

17 (Attest)

18  
19 By:   
20 Title: Deputy City Attorney