

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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1. **PREAMBLE:** This Contract is made this 13th day of August, 2004, 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, hereinafter called Western, represented by the officer executing this Contract, or a duly appointed successor, hereinafter called the Contracting Officer; and CITY AND COUNTY OF SAN FRANCISCO, HETCH HETCHY WATER AND POWER, a municipal corporation, hereinafter called the Contractor or CCSF, its successors and assigns; each sometimes hereinafter individually called the Party, and both sometimes hereinafter collectively called the Parties.

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2. EXPLANATORY RECITALS:

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

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

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

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

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

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

3. AGREEMENT:

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 ///

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

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

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

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

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

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

6. SCHEDULING COORDINATOR SERVICES PROVIDED BY WESTERN:

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

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

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

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

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

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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 1st 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.

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

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

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

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

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

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

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

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

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

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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

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

12.3 Western will provide CCSF with:

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

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

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

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

13. ESCROW ACCOUNT OPTION FOR ADVANCED FUNDS FOR ISO COSTS:

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

13.1 CCSF will be required to advance fund three (3) months of estimated dollars if the Parties are operating under either Sections 11.1 or 11.2. However if 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 ///

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

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

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

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

16. INDEMNIFICATION AND LIABILITY:

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

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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 ///

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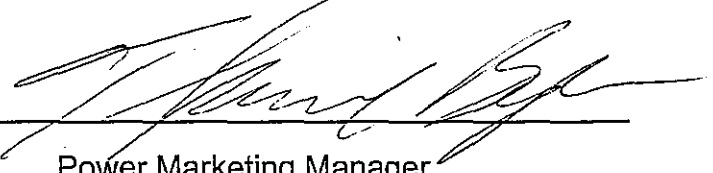
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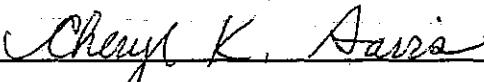
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1 **IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed the day
 2 and year first above written.

3
 4 **WESTERN AREA POWER ADMINISTRATION**

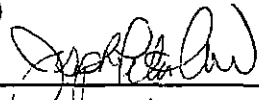
5
 6 By: 
 7 Title: Power Marketing Manager
 8 Address: 114 Parkshore Drive
 9 Folsom, CA 95630-4710

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

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 21
 22
 23
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 25
 26
 27
 28

(Attest)

By: 
 Title: Deputy City Attorney