



# City of Grand Island

Tuesday, January 22, 2013

Council Session

## Item G7

### **#2013-21 - Approving the Extension of the Western Area Power Administration Contract**

Staff Contact: Tim Luchsinger, Robert Sivick

# **Council Agenda Memo**

**From:** Tim Luchsinger, Utilities Director  
Robert Sivick, City Attorney

**Meeting:** January 22, 2013

**Subject:** WAPA Contract for Firm Electric Service

**Item #'s:** G-7

**Presenter(s):** Tim Luchsinger, Utilities Director

## **Background**

The Utilities Department has been a customer of the Western Area Power Administration (WAPA) since 1970. WAPA is a federal agency that manages the operation and administration of the various hydroelectric power projects located along the Missouri River. Under the current contract, Grand Island receives a small amount of power on an hourly basis. The current WAPA Contract for Firm Electric Service expires on December 31, 2020.

## **Discussion**

The proposed WAPA contract for Firm Electric Service essentially extends the current contract and covers a thirty year period from January 1, 2021 through December 31, 2050. Pricing of WAPA energy has been fairly competitive averaging about \$40 per megawatt hour including transmission costs. WAPA is seeking early contract signatures in order to determine the need for additional customers prior to 2021.

## **Alternatives**

It appears that the Council that the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to a future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council approve the WAPA Contract for Firm Electric Service.

## **Sample Motion**

Move to approve the WAPA Contract for Firm Electric Service.

UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION

Pick-Sloan Missouri Basin Program--Eastern Division

CONTRACT FOR FIRM ELECTRIC SERVICE TO

THE CITY OF GRAND ISLAND, NEBRASKA

UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION

Pick-Sloan Missouri Basin Program--Eastern Division

CONTRACT FOR FIRM ELECTRIC SERVICE TO

THE CITY OF GRAND ISLAND, NEBRASKA

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UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION

Pick-Sloan Missouri Basin Program--Eastern Division

CONTRACT FOR FIRM ELECTRIC SERVICE TO

THE CITY OF GRAND ISLAND, NEBRASKA

1. PREAMBLE: This Contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388), December 22, 1944 (58 Stat. 887), August 4, 1977 (91 Stat. 565), and Acts amendatory or supplementary to the foregoing Acts between the UNITED STATES OF AMERICA, acting by and through the Administrator, Western Area Power Administration, Department of Energy, hereinafter called Western, represented by the officer executing this Contract, a duly appointed successor, or a duly authorized representative, hereinafter called the Contracting Officer, and the CITY OF GRAND ISLAND, NEBRASKA, a municipal corporation, duly organized under and by virtue of the laws of the State of Nebraska, hereinafter called the Contractor or Grand Island, its successors and assigns, each sometimes hereinafter individually called Party, and both sometimes hereinafter collectively called the Parties.

2. EXPLANATORY RECITALS:

2.1 Western published the Pick-Sloan Missouri Basin Program--Eastern Division (P-SMBP--ED), 2021 Power Marketing Initiative (2021 PMI) in the Federal Register (76 FR 71015) on November 16, 2011. The 2021 PMI provides the basis for marketing the long-term firm hydroelectric resources of the P-SMBP--ED from January 1, 2021, to December 31, 2050.

2.2 Western markets Federal power and energy to firm power customers in the Upper Great Plains Region from the portfolio of Federal hydroelectric generation resources in the P-SMBP--ED. Western does not designate a specific Federal generator to provide power and energy to a specific customer load.

2.3 Grand Island's Firm Electric Service Contract No. 90-BAO-413, as amended or supplemented, (Original Contract) is set to expire on December 31, 2020.

2.4 The 2021 PMI provides for Western to extend the existing Contract Rates of Delivery (CROD), as specified in Exhibit A, with associated energy to existing long-term firm power customers. The CROD with associated energy is subject to reductions, withdrawals, restrictions, limits, penalties, termination, and any other applicable adjustments under Grand Island's Original Contract, and is subject to any approved assignments. The CROD with associated energy may be reduced by up to 1 percent for each new resource pool in 2021, 2031, and 2041, and also is subject to other adjustments under this Contract.

2.5 This Contract is executory, which means as of the date in Section 1 above, the Parties are bound to perform services beginning January 1, 2021, as described in this Contract. This executory Contract will provide an orderly transition of firm electric service from the Original Contract to this Contract.

2.6 Exhibit B, Operating Agreement Including Quantitative Determinations, and Exhibit C, Transmission Path and Delivery and Measurement Conditions, are initially established under this Contract by adopting the existing Exhibit B and Exhibit C under the Original Contract. These exhibits may be revised from time to time under the Original Contract, until the Parties establish new or revised exhibits under this Contract.

The intent of the Parties is to minimize exhibit revisions during the orderly transition from the Original Contract to this Contract.

2.7 The Parties recognize this Contract does not include a 1 mill per kilowatthour wheeling discount for customers who made their own transmission arrangements in-lieu of Western making such arrangements, or an up to 7 percent transmission loss adjustment for delivery of Grand Island's CROD over a third-party transmission system(s). These two provisions will be addressed in the rates charged for firm electric service provided under this Contract.

2.8 Except as provided for in Section 12, this Contract does not provide for transmission, interconnection, system operations, or balancing area service arrangements. Such arrangements, as applicable, will be provided under separate contracts.

2.9 The Parties choose to enter into this Contract to provide for the conditions under which firm electric service will be furnished to Grand Island from January 1, 2021, through December 31, 2050.

3. AGREEMENT: The Parties agree to the terms and conditions set forth herein.

4. TERM OF CONTRACT: This Contract is executory as of the date in Section 1 above, and the terms and conditions contained herein governing the relationship of the Parties shall become effective upon the expiration of the Original Contract on December 31, 2020, and shall remain in effect through December 31, 2050, unless otherwise terminated.



5. EXPIRATION OF EXISTING CONTRACTS:

5.1 Reserve Contract No. 12-UGPR-622, dated May 2, 2012, between Grand Island and Western expires on its own terms as of the date this Contract is executed.

5.2 Grand Island's Original Contract expires on its own terms at midnight, December 31, 2020.

6. FIRM ELECTRIC POWER AND ENERGY TO BE FURNISHED:

6.1 Western shall supply power, CROD amount as specified in Exhibit A, and energy to Grand Island, and Grand Island shall accept delivery of such power and energy, during each billing period on the basis of the formulae shown on the following pages. This power and energy shall hereinafter be referred to as Western's Maximum Obligations. The power and energy portions of this obligation shall respectively be referred to as the Maximum Rate of Firm Power Obligation and the Maximum Energy Obligation. These obligations shall be computed on a seasonal basis. The Winter Season is defined as the November through April billing periods and the Summer Season is defined as the May through October billing periods for the purposes of this Contract.

6.2 The Maximum Rate of Firm Power Obligation shall never exceed an amount to be known as the CROD. This is the maximum power that Western is obligated to provide to Grand Island at any time during the corresponding season. The CROD used in the formulae is specified in Exhibit A.

6.3 In the formulae below, the X/Y factor shall never be greater than one.

6.3.1 During any Winter Season:

The Maximum Rate of Firm Power Obligation in any billing period =

$$(X/Y)(D)$$

The Maximum Energy Obligation in any billing period =

$$(X/Y)(E)$$

Where:

X = The Winter Season CROD as set forth in Exhibit A,

Y = The highest Grand Island System Demand, as determined pursuant to or as defined in Exhibit B, during the 7 Winter Season billing periods ending with the current billing period,

D = Grand Island's System Demand, as determined pursuant to or as defined in Exhibit B, in the current billing period, and

E = Grand Island's System Energy Requirements, as determined pursuant to or as defined in Exhibit B, in the current billing period.

6.3.2 During any Summer Season:

The Maximum Rate of Firm Power Obligation in any billing period =

$$(X/Y)(D)$$

Maximum Energy Obligation in any billing period =

$$(X/Y)(E)$$

Where:

X = The Summer Season CROD as set forth in Exhibit A,

Y = The highest Grand Island System Demand, as determined pursuant to or as defined in Exhibit B, during the 7 Summer Season billing periods ending with the current billing period,

D = Grand Island's System Demand, as determined pursuant to or as defined in Exhibit B, in the current billing period, and

E = Grand Island's System Energy Requirements, as determined pursuant to or as defined in Exhibit B, in the current billing period.

6.4 Western, under the terms and conditions stipulated herein, will furnish firm electric power to Grand Island, up to the CROD, along with its associated energy, to the Points of Delivery and under the conditions specified in Exhibit C.

6.5 Western shall have the right to restrict the taking of firm power and energy so as to conform generally with Grand Island's hourly load pattern. Such restrictions shall not be considered curtailments of firm electric service which are subject to billing adjustment.

6.6 Notwithstanding the provisions of Subsection 6.4, Western reserves the right to limit energy deliveries in all billing periods to a specified number of kilowatthours per kilowatt of the Maximum Rate of Firm Power Obligation upon not less than three years' advance notice given in writing by Western to Grand Island. Such limit of energy deliveries would be in accordance with provisions of the 2021 PMI, as published in the Federal Register on November 16, 2011, (76 FR 71015).

6.7 Power and energy supply requirements in excess of Western's Maximum Obligations are the responsibility of Grand Island and will normally be supplied from the sources identified in Exhibit B.

7. REACTIVE POWER: Each Party will supply or obtain all of its own reactive power requirements, in accordance with the Schedule of Rates for Firm Power Service to be attached hereto and made part of this Contract. If available, either Party may obtain reactive power from the other by mutual agreement.

8. BILLING AND PAYMENT PROVISIONS:

8.1 Western will bill Grand Island and Grand Island shall pay for the firm power and energy furnished by Western in accordance with the rates, charges, and conditions set out in the Schedule of Rates for Firm Power Service, attached hereto and made part of this Contract the same as if it had been expressly set forth herein. The Schedule of Rates may be revised in accordance with the General Power Contract Provisions (GPCP).

8.2 Western will bill Grand Island and Grand Island shall pay for costs assessed to Western associated with the delivery of power and energy to Grand Island and other costs as outlined in Subsection 11.5 below.

9. CREDITWORTHINESS PROCEDURES: Grand Island agrees to comply with Western's Upper Great Plains Region Creditworthiness Procedures dated July 12, 2012, attached hereto and made part of this Contract the same as if they had been expressly set forth herein.

10. BILL CREDITING:

10.1 Payments due Western by Grand Island shall be paid by Grand Island to a third party when so directed by Western. Any third party designated to receive payment in lieu of Western, and the amount to be paid to that party, will be so identified in writing to Grand Island with the monthly power bill. The payment to the third party shall be due and payable by the payment due date specified on Grand Island's power bill issued by Western in accordance with the GPCP. When remitting payment to a designated third

party, Grand Island shall indicate that such payment is being made on behalf of Western. Western shall credit Grand Island for the amount paid as if payment had been made directly to Western. All other payment provisions shall remain in full force and effect.

10.2 Grand Island shall accept payment from third parties of amounts due Grand Island from Western and shall notify Western of the date of receipt of each payment. Grand Island shall credit Western for such payments the same as if they had been made directly by Western. This obligation to accept payment from a third party does not release Western of its obligation to pay Grand Island if a third party is unwilling or unable to pay. In the event third party payment to Grand Island exceeds Western's payment obligation to Grand Island, Grand Island shall reimburse the difference to Western within 20 days of the receipt in full of such third party payment. In the event Western directs more than one third party to make payment to Grand Island and the total payments exceed Western's payment obligation to Grand Island, Grand Island shall reimburse the difference to Western within 20 days of the receipt of the last payment received by Grand Island.

## 11. POWER AND ENERGY DELIVERIES:

11.1 Deliveries of power and energy to Grand Island under this Contract shall be scheduled in advance, emergencies excepted, in accordance with procedures agreed upon in advance between the Authorized Representatives of the Parties, hereinafter referred to as Scheduling Procedures. The Scheduling Procedures shall provide for the adaptation of such schedules for day-to-day operational requirements, and shall be based on hourly load patterns. The Scheduling Procedures shall also specify the

handling of deliveries less than or in excess of Western's obligation as defined in Section 6 of this Contract.

11.2 The Scheduling Procedures shall be updated by Western, as required. Any required changes to the Scheduling Procedures shall be completed within six months of the date of notice to Grand Island, or a date as mutually agreed to in writing by the Parties. If new Scheduling Procedures are not agreed upon between the Parties, Western will unilaterally implement new Scheduling Procedures.

11.3 Grand Island is responsible for the schedule of power and energy deliveries from Western in accordance with the Scheduling Procedures referenced in Subsection 11.1 above.

11.4 Western shall have no obligation to replace any power and energy that is unavailable due to physical transmission constraints, such as scheduled maintenance, system emergencies, or forced outages.

11.5 Grand Island is responsible for scheduling error fees or charges, energy imbalance penalties or fees, and other penalties, fees, or charges not caused by Western-related errors to scheduling and delivery of Grand Island's firm electric service.

12. DELIVERY ARRANGEMENTS: Western is responsible for making arrangements to deliver Federal power and energy sold under this Contract to the edge of Western's transmission system facilities. Grand Island is responsible for obtaining its own transmission arrangements for delivery of Federal power and energy beyond these facilities, if necessary.

13. INTEGRATED RESOURCE PLAN REQUIREMENTS:

13.1 Western developed the Energy Planning and Management Program (Program), as extended by the 2021 PMI, in part to implement Section 114, of the Energy Policy Act of 1992 (106 Stat. 2776).

13.2 Grand Island shall comply with Integrated Resource Plan (IRP) requirements, as applicable, in accordance with the Program.

13.3 Western shall administer the IRP requirements, as applicable, in accordance with the Program as adopted under 10 CFR part 905, as amended.

13.4 Failure to comply with the IRP requirements will result in the application of penalties as specified in the Program. Such penalties shall not be applied until completion of the administrative appeals provided for in the Program.

13.5 In the event that Western, or any successor agency, shall promulgate changes to the Program after execution of this Contract, Grand Island, by written notice to the Contracting Officer within 90 days after the effective date of a Program change, may elect to terminate this Contract. The termination shall be effective not more than one year from the date of receipt of the notice by Western.

14. TERMS AND CONDITIONS CURRENTLY UNDER DEVELOPMENT: The Parties recognize that Western is working with existing firm power customers to address terms and conditions associated with delivering power and energy consistent with the 2021 PMI. As additional firm electric service contracts are executed, new terms and conditions may be developed relating to power and energy deliveries and implementation of the 2021 PMI. The Parties may mutually agree to incorporate those

new terms and conditions into this Contract to provide contract consistency. Grand Island agrees not to unreasonably withhold consent to such firm electric service contract modifications.

15. ENFORCEMENT AUTHORITY: Notwithstanding any provision herein, by entering into this Contract, Western has not, and will not be deemed to have: 1) waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction; 2) accepted any liability, responsibility, or obligation to pay any penalty or fine to which it would not have been subject in the absence of this Contract; or 3) accepted or assumed any obligation to act, or refrain from acting, in a manner that would violate, or exceed the authority conferred on it by, any applicable statute, regulation, or lawfully promulgated court or regulatory order.

16. SEVERABILITY: If any provision of this Contract is determined to be invalid, void, or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement, or covenant of this Contract.

17. EXHIBITS MADE PART OF THE CONTRACT: Exhibits A, B, and C, attached hereto, are hereby made a part of this Contract and each shall be in force and effect in accordance with its respective terms.



18. GENERAL POWER CONTRACT PROVISIONS: The GPCP effective September 1, 2007, attached hereto, are made part of this Contract the same as if they had been expressly set forth herein.

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

WESTERN AREA POWER ADMINISTRATION

By \_\_\_\_\_

Title Power Marketing Manager

Address P.O. Box 35800

Billings, MT 59107-5800

(SEAL)

CITY OF GRAND ISLAND, NEBRASKA

By \_\_\_\_\_

Title \_\_\_\_\_

Attest:

By \_\_\_\_\_

Address P.O. Box 1968

Title \_\_\_\_\_

Grand Island, NE 68802-1968

EXHIBIT A  
(Contract Rates of Delivery)

1. This Exhibit A made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, under and as a part of Contract No. 12-UGPR-1027, dated \_\_\_\_\_ 20\_\_\_\_, hereinafter called the Contract, shall become effective on January 1, 2021, and shall remain in effect until superseded by another Exhibit A or termination of the Contract.

2. CONTRACT RATES OF DELIVERY FOR FIRM POWER:

2.1 WINTER SEASON: On and after January 1, 2021, the Contract Rate of Delivery (CROD) for firm power during any Winter Season shall be 5,113 kilowatts. Effective the first day of the first full billing period beginning in January 2021, the CROD for firm power during any Winter Season may be adjusted as stated in this Exhibit A.

2.2 SUMMER SEASON: On and after January 1, 2021, the CROD for firm power during any Summer Season shall be 9,153 kilowatts. Effective January 1, 2021, the CROD for firm power during any Summer Season may be adjusted as stated in this Exhibit A.

3. CONTRACT RATES OF DELIVERY ADJUSTMENTS:

3.1 In the event that the CROD of Grand Island is altered or requires a revision due to the Original Contract or the 2021 PMI, Western reserves the right to unilaterally require the substitution of a new Exhibit A.

3.2 2021 RESOURCE POOL: Effective on the first day of the first full billing period in January 2021, Grand Island's CROD may be adjusted in accordance with the 2021 PMI. Western may reduce Grand Island's CROD for future Winter and Summer Seasons by up to 1 percent from the then current CROD. Western will give Grand Island two years' advance notice of such adjustment.

3.3 2031 RESOURCE POOL: Effective on the first day of the first full billing period in January 2031, Grand Island's CROD may be adjusted in accordance with the 2021 PMI. Western may reduce Grand Island's CROD for future Winter and Summer Seasons by up to 1 percent from the then current CROD. Western will give Grand Island two years' advance notice of such adjustment.

3.4 2041 RESOURCE POOL: Effective on the first day of the first full billing period in January 2041, Grand Island's CROD may be adjusted in accordance with the 2021 PMI. Western may reduce Grand Island's CROD for future Winter and Summer Seasons by up to 1 percent from the then current CROD. Western will give Grand Island two years' advance notice of such adjustment.

3.5 HYDROLOGY AND RIVER OPERATIONS WITHDRAWAL: On and after January 1, 2021, at the discretion and sole determination of Western, Grand Island's CROD will be subject to adjustment on five years' written notice in response to changes in hydrology and river operations. Proportional adjustments will be set forth in a revised Exhibit A only after an appropriate public process.

3.6 PROJECT USE WITHDRAWAL: Western reserves the right to reduce a customer's summer season CROD by up to 5 percent for new P-SMBP--ED project use requirements, by giving a minimum of five years' written notice in advance of such action.

EXHIBIT B

(Operating Agreement Including Quantitative Determinations)

1. Exhibit B under the Original Contract is also the Exhibit B under this Contract, Contract No. 12-UGPR-1027, dated \_\_\_\_\_, 20\_\_\_\_, hereinafter called the Contract, and shall become effective on January 1, 2021, and shall remain in effect until superseded by another Exhibit B or termination of the Contract.
2. In the event that the operating agreement, including quantitative determinations, of Grand Island is altered or requires a revision due to the Original Contract or the 2021 PMI, Western reserves the right to unilaterally require the substitution of a new Exhibit B.

EXHIBIT C  
(Transmission Path and Delivery and Measurement Conditions)

1. Exhibit C under the Original Contract, not including any provision for a 1 mill per kilowatthour wheeling discount or an up to 7 percent physical transmission loss adjustment, is also the Exhibit C under this Contract, Contract No. 12-UGPR-1027, dated \_\_\_\_\_, 20\_\_\_\_, hereinafter called the Contract, and shall become effective on January 1, 2021, and shall remain in effect until superseded by another Exhibit C or termination of the Contract.
2. In the event that the transmission path or the delivery and measurement conditions of Grand Island are altered or require a revision due to the Original Contract or the 2021 PMI, Western reserves the right to unilaterally require the substitution of a new Exhibit C.

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

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\*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.

**Western Area Power Administration  
Upper Great Plains Region  
Creditworthiness Procedures**

**1.0 OVERVIEW OF CREDITWORTHINESS PROCEDURES**

The purpose of the Western Area Power Administration Upper Great Plains Region (Western) Creditworthiness Procedures (Creditworthiness Procedures) is to implement appropriate risk mitigation procedures related to business conducted with Firm Electric Service (FES) Customers. Western supplies power and energy pursuant to its statutory mission outlined in Reclamation Law. Historically, Western's FES Customers have been very creditworthy and these procedures recognize that Western's risk of non-payment from FES Customers is low. Western shall conduct a creditworthiness review of the FES Customer using information provided by the FES Customer from the data collection process (Section 2.0) and pursuant to Section 4.1 or at the request of the FES Customer using the criteria outlined in Section 3.1. Therefore, existing FES Customers with a timely payment history as of the date these procedures are included in a new contract, shall be deemed to have satisfied the creditworthiness requirements at that time and be subject to re-evaluation pursuant to Section 4.1. As a result of Western's creditworthiness review or in response to the FES Customer's notice of any event that may cause an adverse material change in its financial condition, Western can require the FES Customer to provide or increase its provided financial assurances before service will be initiated or continued (Section 4.2).

**2.0 ADVERSE MATERIAL CHANGE**

The FES Customer must give Western written notice of any event that may cause an adverse material change in its financial condition within five (5) business days of the occurrence of the event. An event that may cause an adverse material change in financial condition may include, but is not limited to the following:

- (a) For entities that initially met the creditworthiness requirements under the policy and are not required to post financial assurance to Western, a change in financial condition that results in a downgrade of long or short-term debt rating by a major bond rating agency or being placed on a credit watch with negative implications by a major credit rating agency; or
- (b) The resignation of key officer(s); or
- (c) The issuance of a regulatory order or the filing of a lawsuit that could materially adversely impact current or future results; or
- (d) A default in payment obligations; or

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- (e) Any new investigations, arbitrations, contingencies or changes in affiliate relationships; or
- (f) The filing of a voluntary or involuntary petition to institute bankruptcy proceedings under the United States Bankruptcy Code or any successor statute, or the filing to institute any proceedings under state law concerning actual or potential insolvency.

### 3.0 CREDIT EVALUATION

#### 3.1 Determining Creditworthiness.

FES Customers are considered creditworthy and granted unsecured credit if all of the following exist:

- (a) The FES Customer is not in default of its payment obligations under the contract with Western; and
- (b) The FES Customer is not on Western's subscribed rating service watch list due to FES Customer being rated below investor grade, currently at or below "BB" on Standards & Poor's Ratings; and
- (c) The FES Customer is not in default of any payment obligation to Western; and
- (d) The FES Customer is not in bankruptcy proceedings; and
- (e) The FES Customer or its guarantor is a federal, state or other governmental agency/entity and its financial obligations are backed by the full faith and credit of the United States, state or other governmental entity as applicable; and/or
- (f) The FES Customer has the ability to set rates to cover outstanding obligations.

#### 3.2 Notification.

Western shall notify the FES Customer in writing whether relevant financial assurance is required within five (5) business days after determining that a change in creditworthiness status or change in financial assurance is required as determined by review under Section 2.0 or other reviews performed pursuant to Section 4.1.

Western shall, upon the FES Customer's written request, provide a written explanation of the basis for Western's determination via e-mail within five (5)

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business days for any: (a) non-creditworthy determination; (b) changes in creditworthiness status; or (c) changes in requirements for financial assurances.

### 3.3 Establishing Credit Limits.

If a FES Customer is determined to be creditworthy no credit limit will be established. For non-creditworthy FES Customers, the credit limit for total outstanding energy sales will equal five (5) months of total estimated service charges under the FES Contract, as determined by Western, from time to time. If at any time Western determines according to these creditworthiness standards that the FES Customer is not able to fully support its credit exposure based solely on its financial viability, Western may require collateral be provided.

### 3.4 Secured Credit.

#### 3.4.1 Posting Collateral

If a FES Customer fails to provide the collateral as defined in Section 3.4.3 and required by Western within five (5) business days of notification, or as agreed to in writing between the Parties, the FES Customer will be deemed in default of its contract and subject to discontinuing service in accordance with Nonpayment of Bills in Full When Due as provided for under the contract.

#### 3.4.2 Required Amount of Collateral

Given Western's current billing practices and payment terms, the required amount of security will be based on the maximum total estimated service charge for outstanding services provided by Western, but not yet paid by the FES Customer, plus an advance of 15 days of estimated service. In addition to this collateral, Western may also require the FES Customer to pre-pay 15 days of estimated service on a 15 day pre-payment cycle until the FES Customer becomes creditworthy under these guidelines. This represents the potential value of services rendered prior to termination of service in the event of a default arising from a failure of nonpayment.

#### 3.4.3 Acceptable Collateral

Acceptable collateral includes:

- (a) Prepayment for service; or
- (b) An unconditional and irrevocable letter of credit as security to meet the FES Customer's responsibilities and obligations. If this form of collateral is used, it will comply with the requirements as stated in the Uniform Customs and Practice for Documentary Credits; or

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- (c) An irrevocable and unconditional corporate guaranty from an entity that satisfies the creditworthiness requirements.

#### 4.0 RE-EVALUATION

##### 4.1 Timeframe.

Western will review its credit evaluation for each FES Customer annually. Timely payments by the FES Customer will be sufficient evidence for re-affirming the current credit arrangements, barring the reporting of any event that may cause an adverse material change. Western, at its sole discretion, may conduct additional reviews and updates of its credit evaluation in response to new facts or occurrences that may bear upon the FES Customer's creditworthiness due to an event that may cause an adverse material change in financial condition of the FES Customer, or if the FES Customer fails to pay invoices from Western on time. These reviews will follow the procedures set forth in Section 3.1.

##### 4.2 Change in Limit/Collateral.

As a result of Western's creditworthiness review or in response to the FES Customer's notice of any event that may cause an adverse material change in its financial condition, Western may adjust the FES Customer's credit limit and collateral requirements in accordance with Section 3.3 and Section 3.4, respectively. If required, additional collateral must be posted in accordance with Section 3.4.1.

The FES Customer may make reasonable requests for Western to re-evaluate the FES Customer's creditworthiness pursuant to the criteria detailed in Section 3.1.

#### 5.0 RIGHT TO DRAW UPON FINANCIAL ASSURANCES UPON DEFAULT

Western shall have the right to liquidate, or draw upon, all or a portion of the FES Customer's form of financial assurance(s) in order to satisfy the FES Customer's total net obligation to Western under the contract. The FES Customer shall within five (5) business days, or as agreed to in writing between the Parties, replace any liquidated or drawn-upon financial assurances.

#### 6.0 SUSPENSION OF SERVICE

##### 6.1 Notification.

Notwithstanding any other provision of a contract with Western, if the FES Customer fails to provide the entirety of required financial assurances described in 3.4.3 when due under these Creditworthiness Procedures, Western may

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suspend service to the FES Customer fifteen (15) days after Western's notification to such FES Customer.

6.2 Length of Suspension.

The suspension of service shall continue only for as long as the circumstances that entitle Western to suspend service continue.

6.3 Obligation to Pay.

A FES Customer is not obligated to pay for service that is not provided as a result of a suspension of service, however, a discontinuation of service will not relieve the FES Customer of liability for minimum charges during the time service is so discontinued.

7.0 CONTESTING CREDITWORTHINESS PROCEDURE DETERMINATIONS

The FES Customer may contest any determination by Western by submitting a written notice to Western explaining its reasons for contesting the determination and include the name of a designated senior representative authorized to represent the FES Customer. The written notice of a dispute of a determination by Western under these Creditworthiness Procedures shall be referred to a designated senior representative of Western for resolution on an informal basis with the designated senior representative of the FES Customer as promptly as practicable. It is expected that a final written decision from Western will issued within thirty (30) days, or such other period as the Parties may mutually agree upon.

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UNITED STATES DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION

PICK-SLOAN MISSOURI BASIN PROGRAM--EASTERN DIVISION  
MONTANA, NORTH DAKOTA, SOUTH DAKOTA, MINNESOTA, IOWA,  
NEBRASKA

**SCHEDULE OF RATES FOR FIRM POWER SERVICE**

(Approved Under Rate Order No. WAPA-147)

**Effective:** The first day of the first full billing period beginning on or after January 1, 2010, through December 31, 2014.

**Available:** Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program.

**Applicable:** To the power and energy delivered to Customers as firm power service.

**Character:** Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

**Monthly Rate:**

**CAPACITY CHARGE:** \$7.65 for each kilowatt per month (kWmo) of billing capacity.

**ENERGY CHARGE:** 19.05 mills for each kilowatthour (kWh) for all energy delivered as firm power service.

**BILLING CAPACITY:** The billing capacity will be as defined by the power sales contract.

**Charge Components:**

**Base:** A fixed revenue requirement that includes operation and maintenance expense, investments and replacements, interest on investments and replacements, normal timing purchase power (purchases due to operational constraints, not associated with drought), and transmission costs.

$$\text{Base Capacity} = \frac{50\% \times \text{Base Revenue Requirement}}{\text{Firm Metered Billing Units}} = \$3.80/\text{kWmo}$$

$$\text{Base Energy} = \frac{50\% \times \text{Base Revenue Requirement}}{\text{Annual Energy}} = 9.53 \text{ mills/kWh}$$

**Drought Adder:** A formula-based revenue requirement that includes future purchase power above timing purchases, previous purchase power drought deficits, and interest on the purchase power drought deficits.

$$\text{Drought Adder} = \frac{50\% \times \text{Drought Adder Revenue Requirement}}{\text{Capacity}} = \$3.85/\text{kWmo}$$

$$\text{Drought Adder} = \frac{50\% \times \text{Drought Adder Revenue Requirement}}{\text{Energy}} = 9.52 \text{ mills/kWh}$$

**Process:**

Any proposed change to the Base component will require a public process.

The Drought Adder may be adjusted annually using the above formulas for any costs attributed to drought of less than or equal to the equivalent of 2 mills/kWh to the Power Repayment Study composite rate. Any planned incremental adjustment to the Drought Adder greater than the equivalent of 2 mills/kWh to the PRS composite rate will require a public process.

**Adjustments:**

**For Character and Conditions of Service:**

Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5-percent discount on capacity and energy charges when facilities are provided by the Customer that results in a sufficient savings to Western to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in Western.

**For Billing of Unauthorized Overruns:**

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 times the above rate.

**For Power Factor:**

None. The Customer will be required to maintain a power factor at the point of delivery between 95-percent lagging and 95-percent leading.

RESOLUTION 2013-21

WHEREAS, the Utilities Department has been a customer of the Western Area Power Administration (WAPA) since 1970; and

WHEREAS, WAPA is a federal agency that manages the operation and administration of various hydroelectric power projects located along the Missouri River; and

WHEREAS, the City of Grand Island receives a small amount of power on an hourly basis at a competitive rate, and the current WAPA Contract for Firm Electric Services expires on December 31, 2020; and

WHEREAS, the proposed WAPA Contract for Firm Electric Service extends the current contract and covers a 30 year period from January 1, 2021 through December 31, 2050, and WAPA is seeking early contract signatures in order to determine the need for additional customers prior to 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Contract with the Western Area Power Administration (WAPA) is hereby extended to December 31, 2050.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, January 22, 2013.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	▣ _____
January 18, 2013	▣ City Attorney