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## Agenda – Legal Committee Special Meeting

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**Notice Date:** September 28, 2020  
**Meeting Date:** October 1, 2020 Legal Committee Special Meeting  
**Meeting Time:** 8:30 a.m. PT  
**Location:** Teleconference Meeting

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**This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Act, Governor Gavin Newsom’s Emergency Declaration related to COVID-19, and Governor Newsom’s Executive Order N-29-20 issued March 17, 2020 that allows attendance by NCPA Legal Committee Members, staff, and the public to participant and conduct the meeting by teleconference.**

**Dial: 1-669-900-6833**

**Meeting ID: 967 3105 7991**

Hosted through Zoom

**Or Join by Computer: <https://zoom.us/j/96731057991>**

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*Persons requiring accommodations in accordance with the Americans with Disabilities Act in order to participate in this meeting are requested to contact the NCPA Secretary at 916.781.3636 in advance of the meeting to arrange for such accommodations.*

### **Review Safety Procedures**

- 1. CALL MEETING TO ORDER AND ROLL CALL**
- 2. PUBLIC COMMENT**

Any member of the public who desires to address the NCPA Legal Committee on any item considered by the Legal Committee at this meeting, before or during the Committee’s consideration of that item, shall so advise the Chair and shall thereupon be given an opportunity to do so. Any member of the public who desires to address the NCPA Legal Committee on any item within the jurisdiction of the Legal Committee and not listed on the Agenda may do so at this time.

- 3. APPROVAL OF MEETING MINUTES** - Seeking approval of September 3, 2020 meeting minutes

## **CLOSED SESSION**

- 4. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** – Discussion pursuant to Government Code Section 54956.9(d)(1) – one (1) case.

Case Name: *Northern California Power Agency, City of Redding, City of Roseville, and City of Santa Clara v. the United States, United States Court of Federal Claims No. 14-817-C.*

## **OPEN SESSION**

- 5. REPORT FROM CLOSED SESSION**
- 6. 2025 POWER MARKETING PLAN - WESTERN AREA POWER ADMINISTRATION BASE RESOURCE CONTRACT** - Discussion of the main provisions of the 2025 CVP Base Resource Contracts distributed by WAPA to Members for execution by March 16, 2021. The contracts entitle Members to extend 98% of their existing CVP hydropower base resource allocation for 30 years beginning January 1, 2025, and add any additional amounts requested and allocated. (A sample contract between WAPA and Truckee Donner Public Utility District is provided with permission of TDPUD).
- 7. PROPOSED LEGAL COMMITTEE MEETING DATES FOR 2021** – Review and approval of Legal Committee regular meeting dates for calendar year 2021.
- 8. GENERAL COUNSEL UPDATES** - NCPA's General Counsel will update the Committee on miscellaneous business matters of interest.
- 9. ADJOURNMENT**

*Note: The Committee may act on any of the items listed on this Agenda regardless of whether an item is described as an Action Item, a Report or an Informational Item. This agenda may be supplemented by Staff Reports which are available to the public upon request. Pursuant to California Government Code Section 54957.5, the following is the location at which the public can view Agendas and other public writings: NCPA Offices, 651 Commerce Drive, Roseville, California, or [www.ncpa.com](http://www.ncpa.com).*



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# Minutes – Legal Committee Meeting

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**To:** NCPA Legal Committee  
**From:** Linda Stone  
**Subject:** September 3, 2020, NCPA Legal Committee Meeting Minutes

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## 1. Call Meeting to Order and Roll Call

The meeting was called to order at 8:39 pm by Chair Barry DeWalt. At roll call the following members were present by telephone:

Alameda Municipal Power- Alan Cohen, BART-Marco Gomez, Biggs-Gregory Einhorn, Lodi-Janice Magdich, Lompoc-Joe Pannone, Palo Alto-Amy Bartel, Plumas-Sierra- Michael Vergara, Redding-Barry DeWalt, Roseville-Joe Mandell, and Santa Clara-Brian Doyle. A quorum was present.

Also participating in the meeting were NCPA General Counsel Jane Luckhardt, NCPA General Manager Randy Howard, NCPA Legislative and Regulatory Assistant General Manager Jane Cirrincione, Roseville-Bob Schmitt, Santa Clara-Caio Arellano, and NCPA administrative support Linda Stone.

## 2. Public Comment

The Chair read the notification regarding Public Comment and asked if any member of the public would like to address the Committee. There was no public comment.

## 3. Approval of Meeting Minutes

The minutes of the June 4, 2020 special meeting, July 2, 2020 regular meeting, and August 19, 2020 special meeting were presented by staff for review and approval. Mike Vergara (Plumas Sierra) made a motion to approve all minutes as presented; second by Brian Doyle (Santa Clara). There was no discussion. A roll call vote was taken, as follows. The motion passed.

<b>Vote Summary on Motion</b>	
<b>Participant</b>	<b>Vote</b>
Alameda Municipal Power	Yes
BART	Yes
Biggs	Yes
Gridley	Absent
Healdsburg	Absent
Lodi	Yes
Lompoc	Yes
Palo Alto	Yes
Plumas-Sierra	Yes
Port of Oakland	Absent
Redding	Yes
Roseville	Yes
Santa Clara	Yes
Shasta Lake	Absent
Truckee Donner PUD	Absent
Ukiah	Absent
<b>Vote Summary</b>	
Total Yes	10
Total Noes	0
Total Abstain	0
Total Absent	6
Result:	Pass

#### 4. Closed Session

The committee went into Closed Session at 8:45 a.m. - Conference with Legal Counsel – existing litigation pursuant to Government Code Section 54956.9(d)(1) – two cases.

- a. Case Name: *Northern California Power Agency, City of Redding, City of Roseville, and City of Santa Clara v. the United States, United States Court of Appeals for the Federal Circuit - Appeal from the United States Court of Claims No. 14-817-TCW.*
- b. Case Name: *Voluntary Petitions for Filing of Chapter 11 Bankruptcy, PG&E Corporation, Debtor, and Pacific Gas and Electric Company, Debtor, United States Bankruptcy Court, Northern District of California, San Francisco Division, jointly administered under No. 19-30088*

The meeting reconvened to Open Session at 9:12 a.m.

#### 5. Report from Closed Session

General Counsel Jane Luckhardt advised that no reportable action was taken during Closed Session.

## **6. NCPA Strategic Plan**

Jane Luckhardt presented a PowerPoint presentation entitled “Strategic Plan – Powering the Future 2021-2026.” She briefed the committee that NCPA is now working to update its Strategic Plan for calendar years 2021-2026. The plan identifies the current and future needs of the Agency and its members, helps prioritize staffing and resources to support the Agency’s goals, will include several strategic initiatives and supporting goals, and will act as a roadmap but will be updated over time. Jane advised the committee that its charge is to review the goals to be sure issues of legal risk and liability are addressed. She also asked that the committee members advise if there are additional areas of concern which should be included. Jane said one of the key questions for the Legal Committee’s review is the strategy for NCPA’s organizational structure for holding, developing or acquiring joint assets. Another important area is to create opportunities for additional services allowed by NCPA’s JPA structure to benefit its members. She is anxious to receive feedback about what the committee and members want to see.

Amy Bartell (Palo Alto) said she is happy NCPA is looking at these issues and is anxious to hear what conclusions are reached. Janice Magdich (Lodi) said the presentation and information is extremely helpful.

## **7. General Counsel Updates**

Jane Luckhardt advised that on August 12, 2020, the Ninth Circuit Court of Appeal issued a decision in the matter of the American Public Power Association v. Federal Communications Commission, *et al.* denying APPA’s appeal on the legal challenge to the FCC’s Small Cell Orders. NCPA, along with a number of other public power systems and public entities, filed an amicus brief in the case emphasizing the need for local review and approval. She said the decision is a disappointing outcome, but that APPA and public power parties are exploring alternatives. She said a conference call is scheduled for tomorrow, September 11, 2020 at 2:00 p.m. ET. Jane said she will provide the committee with further information confidentially following the call.

## **8. Adjournment**

The meeting was adjourned at 9:38 a.m.

# 2025 Power Marketing Plan

## Base Resource Contract Overview

The following summarizes the main provisions of the Base Resource (BR) Contract:

### **Section 4 (Effective date and term of contract):**

- States that the BR contracts will become effective upon execution by WAPA and shall remain in effect through December 31, 2054, subject to prior termination.
- Allows for a customer to reduce its BR percentage or terminate its BR Contract for any reason through June 30, 2024.
- Stipulates that service under the BR contract begins on January 1, 2025.

### **Section 6 (Base Resource estimates and availability forecast):**

- At the beginning of each water year, WAPA will post to its external website, a 5-year forecast of BR Operating Capability estimated to be available under various hydrologic conditions.
- On a monthly basis, WAPA will post to its external website, a monthly BR forecast of BR Operating Capability and energy estimated to be available for each month on a rolling 12-month basis based on high, average, and low hydrological conditions.
- The forecasts will include the estimated Maximum Operating Capability for the CVP for each month and the estimated energy required for Project Use loads, First Preference Customers' loads and ancillary service requirements.

### **Section 7 (Electric service furnished by WAPA):**

- A percentage of the BR to each customer;
- Minimum amounts of energy that customers will have to schedule;
- Maximum amounts of energy that customers can schedule;
- The benefit of available regulation and operating reserves from the CVP in proportion to each customer's BR percentage;
- Custom products under a separate contractual arrangement.

Specifies that WAPA shall not be obligated to replace any BR that is unavailable due to scheduled maintenance, system emergencies, forced outages, or other constraints.

### **Section 8 (Delivery arrangements):**

- BR will be made available at the generator bus or such other delivery point on the CVP transmission system as specified in Exhibit A to the BR contract.
- If requested, customer must provide written notification to WAPA by July 1, 2024, demonstrating that it has arranged for transmission service.

**Section 9 (Scheduling procedures business practices and protocols):**

- Stipulates that all power will be provided on a scheduled basis.
- Requires that if customer needs a Scheduling Coordinator (SC), it will notify WAPA of its designated SC 90 days prior to the date of initial service under the BR contract.
- WAPA will be responsible for all scheduling activities and responsibilities if WAPA is the customer's Portfolio Manager (PM).
- Specifies that if WAPA ceases to be the PM, the customer will assume all the PM-related duties.
- Allows for customers to comment on WAPA's maintenance and operations plans.

**Section 10 (Exchange program):**

- Provides that power in excess of a customer's load will be made available to WAPA, for provision to other customers, through a WAPA-managed exchange program.
- WAPA will develop the details of a seasonal exchange program upon customer request.

**Section 11 (Independent System Operator or regional transmission organization):**

- Allows for changes to the contract, upon mutual consent between WAPA and its customers, in the event WAPA either joins or is required to conform to the protocols of an ISO or RTO.
- Specifies that if a customer does not abide by the protocols made effective by FERC and applicable to WAPA, and WAPA incurs costs as a result, that customer will pay for all such costs.

**Section 12 (WAPA rates):**

- Specifies that the BR is provided on a take-or-pay basis.
- States that rates applicable under the BR contract are subject to change in accordance with the appropriate Rate Adjustment Procedures.
- Allows for customer to reduce its BR percentage or terminate the BR contract by providing a 90-day notice to WAPA after WAPA notifies customer of the effective date of a new rate schedule or a rate schedule extension.

**Section 13 (Integrated resource plan):**

- States that customers must fulfill the requirements of WAPA's Energy Planning and Management Program (EPAMP). This involves the submission of an integrated resource plan (IRP) or alternative report.
- States that if the EPAMP requirement is eliminated, customers will not be required to submit and IRP or alternative report.

**Section 14 (Adjustment of Base Resource percentage):**

- Stipulates that WAPA has the ability to adjust a customer's BR percentage, under certain conditions.

**Section 15 (Metering and power measurement responsibilities):**

- Specifies that a customer is responsible for the metering equipment requirements and power measurement data associated with the use of WAPA power.
- Requires customer to provide certified, settlement quality meter data to WAPA as requested.
- Allows for WAPA to have unrestricted physical access to its revenue meter equipment.
- Upon request, WAPA will provide the customer data as evidence of receiving the Environmental Attributes associated with the BR.

**Section 16 (Changes in organizational status):**

- Allows for WAPA to adjust its obligation under the contract if a customer makes an organizational change or otherwise changes its obligation to supply electric power to preference loads.

**Section 17 (Protocols, business practices, and procedures):**

- Provides for WAPA to make changes to its protocols, business practices, and procedures as needed.
- Sets for a process for customers to comment on any proposed changes.



**Exhibit A (Base Resource Percentage and Point(s) of Delivery):**

- Sets forth customer's BR percentage and point(s) of delivery.
- Allows for WAPA to adjust a customer's BR percentage.
- Provides for WAPA to adjust a customer's BR percentage to allow for the 2040 Resource pool.
- Sets for a customer's point(s) of delivery.
- States that WAPA may revise Exhibit A unilaterally.

**Exhibit B (Exchange Program):**

- Sets forth the procedures of the Exchange Program.
- Allows for WAPA to make changes to the Exchange Program after consultation with the customers.
- Allows for customers to change its participation in the Exchange Program.

**Exhibit C (Regulation and Reserves):**

- Sets forth WAPA's disposition of Contingency Reserves and Regulation.

**Exhibit D (Rate Schedule):**



**Department of Energy**  
Western Area Power Administration  
Sierra Nevada Region  
114 Parkshore Drive  
Folsom, CA 95630-4710

Sent via E-Mail

SAMPLE PROVIDED WITH PERMISSION

Mr. Jeff Bender  
President of the Board of Directors  
Truckee Donner Public Utility District  
11570 Donner Pass Road  
Truckee, CA 96161-4947

OF TRUCKEE DONNER PUD

Dear Mr. Bender:

The Truckee Donner Public Utility District (TDPUD) and the Western Area Power Administration (WAPA) are parties to the Base Resource Contract. Under the Contract, WAPA provides TDPUD a percentage of the Base Resource. This Contract is scheduled to terminate at midnight on December 31, 2024.

WAPA published its 2025 Power Marketing Plan (Marketing Plan) in the Federal Register (82 FR 38675) on August 15, 2017. The Marketing Plan provides existing customers with 98 percent of their current Base Resource allocation beginning January 1, 2025. TDPUD also received an additional allocation through the 2025 Resource Pool.

Enclosed is an electronic version of Contract 20-SNR-02339 (Base Resource Contract) between TDPUD and WAPA. The Base Resource Contract provides TDPUD's percentage of the Base Resource and the terms and conditions for WAPA to provide the Base Resource to TDPUD January 1, 2025 through December 31, 2024.

If the terms and conditions of the Base Resource Contract are acceptable, please have the appropriate official sign the Base Resource Contract, have the signature attested, and return to Mr. Joshua Blake, mail code N6205, to the address above or [jblake@wapa.gov](mailto:jblake@wapa.gov) by **March 16, 2021**. Once we have countersigned the Base Resource Contract, we will return an executed version for your files. If you have any questions regarding the above, please contact Ms. Sandee Peebles at (916) 353-4454.

Sincerely,

Arun K. Sethi

Digitally signed by Arun K.  
Sethi  
Date: 2020.09.10  
10:50:10 -07'00'

Arun K. Sethi  
Vice President of Power Marketing for  
Sierra Nevada Region

Enclosure

Contract 20-SNR-02339

This Sample Provided with Permission of Truckee Donner PUD

UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
SIERRA NEVADA REGION  
  
CONTRACT FOR ELECTRIC SERVICE  
BASE RESOURCE  
WITH  
  
TRUCKEE DONNER PUBLIC UTILITY DISTRICT

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

CONTRACT FOR ELECTRIC SERVICE  
BASE RESOURCE  
WITH

TRUCKEE DONNER PUBLIC UTILITY DISTRICT

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1  
2  
3  
4 UNITED STATES  
5 DEPARTMENT OF ENERGY  
6 WESTERN AREA POWER ADMINISTRATION  
7 SIERRA NEVADA REGION

8 CONTRACT FOR ELECTRIC SERVICE  
9 BASE RESOURCE  
10 WITH

11 TRUCKEE DONNER PUBLIC UTILITY DISTRICT

12 1. **PREAMBLE:** This Contract is made this \_\_\_\_\_ day of \_\_\_\_\_,  
13 202\_\_\_\_, pursuant to the Acts of Congress approved June 17, 1902, (32 Stat. 388);  
14 August 26, 1937, (50 Stat. 844); August 4, 1939, (53 Stat. 1187); and August 4, 1977,  
15 (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between  
16 the UNITED STATES OF AMERICA (United States), acting by and through the  
17 Administrator, Western Area Power Administration, Department of Energy, hereinafter  
18 called WAPA, represented by the officer executing this Contract, or a duly appointed  
19 successor, hereinafter called the Contracting Officer; and TRUCKEE DONNER PUBLIC  
20 UTILITY DISTRICT, a public utility district, organized and existing under the laws of the  
21 State of California, hereinafter called the Contractor or TDPUD, its successors and  
22 assigns; each sometimes hereinafter individually called the Party, and both sometimes  
23 hereinafter collectively called the Parties.

24  
25 2. **EXPLANATORY RECITALS:**

26 2.1 WAPA markets the surplus generation from, and operates a high-voltage  
27 transmission system as a part of, the Central Valley Project (CVP).

28 ///

1 2.2 WAPA and the U.S. Department of the Interior, Bureau of Reclamation  
2 (Reclamation), have agreed to work together to efficiently serve Project Use and  
3 Preference Customer loads.  
4

5 2.3 On August 15, 2017, WAPA's final 2025 Power Marketing Plan (Marketing  
6 Plan) was published in the Federal Register (82 FR 38675). The Marketing Plan  
7 sets forth how WAPA's Sierra Nevada Region will market the power generated  
8 from the CVP and Washoe Project.  
9

10 2.4 The Marketing Plan provides that starting on January 1, 2025, WAPA will  
11 provide 98 percent of available CVP power to its existing Customers. Existing  
12 Customers will have the right to extend 98 percent of their current Base  
13 Resource percentage as provided in the Marketing Plan and under the terms and  
14 conditions of this Contract.  
15

16 2.5 On June 17, 2019, WAPA's Notice of Final 2025 Resource Pool  
17 Allocations was published in the Federal Register (84 FR 28039), and TDPUD  
18 received an allocation.  
19

20 2.6 TDPUD desires to purchase and WAPA is willing to provide a percentage  
21 of the Base Resource consistent with the Marketing Plan and the terms and  
22 conditions of this Contract.  
23

24 2.7 Under the Marketing Plan, WAPA requires that its Customers schedule  
25 power in accordance with applicable operating requirements, including those of  
26 the balancing authority area operator and WAPA's sub-balancing authority area  
27 requirements.  
28

///

1 2.8 WAPA markets power to Federal Preference Customers at the lowest  
2 possible rates consistent with sound business principles pursuant to Section 1.1  
3 of Delegation Order 00-037.00B.  
4

5 3. **AGREEMENT:**

6 The Parties agree to the terms and conditions set forth herein.  
7

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

9 4.1 This Contract shall become effective on the date of execution and shall  
10 remain in effect until midnight of December 31, 2054, subject to prior termination  
11 as otherwise provided for herein.  
12

13 4.2 TDPUD may reduce its Base Resource percentage or terminate this  
14 Contract for any reason through June 30, 2024.  
15

16 4.3 The date of initial service under this Contract is January 1, 2025.  
17

18 5. **DEFINITION OF TERMS:**

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

21 5.1 "Ancillary Services" means those services that are necessary to support  
22 the transmission of capacity and energy from resources to loads while  
23 maintaining reliable operation of the transmission system in accordance with  
24 Good Utility Practice.  
25

26 5.2 "BANC" means the Balancing Authority of Northern California or its  
27 successor.  
28

///

1 5.3 “Base Resource” means CVP and Washoe Project power (capacity and  
2 energy) output determined by WAPA to be available for Customers, including the  
3 Environmental Attributes, only after meeting the requirements of Project Use and  
4 First Preference Customers, and any adjustments for maintenance, reserves,  
5 system losses, and certain ancillary services.

6  
7 5.4 “Base Resource Operating Capability” means that portion of the Maximum  
8 Operating Capability that WAPA determines to be available to Customers in any  
9 hour.

10  
11 5.5 “CAISO” means the California Independent System Operator or its  
12 successor.

13  
14 5.6 “Capacity” means the electrical capability of a generator, transformer,  
15 transmission circuit or other equipment.

16  
17 5.7 “Central Valley Project (CVP)” means the multipurpose Federal water  
18 development project extending from the Cascade Range in northern California to  
19 the plains along the Kern River, south of the City of Bakersfield.

20  
21 5.8 “Custom Product” means a combination of products and services which  
22 may be made available by WAPA per Customer request.

23  
24 5.9 “Customer” means an entity with a contract and receiving electric service  
25 from WAPA’s Sierra Nevada Region.

26 ///

27 ///

28 ///



1 5.10 "Energy" means capacity measured in terms of the work it is capable of  
2 doing over a period of time; electric energy is usually measured in kilowatthours  
3 or megawatthours.

4  
5 5.11 "Environmental Attributes" means any and all credits, benefits, emissions  
6 reductions, offsets, and allowances, howsoever entitled, attributable to the Base  
7 Resource, and its avoided emission of pollutants.

8  
9 5.12 "FERC" means the Federal Energy Regulatory Commission or its  
10 successor.

11  
12 5.13 "First Preference Customer" means a Preference Customer within a  
13 county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity  
14 River Division Act (69 Stat. 719) and the New Melones Project provisions of the  
15 Flood Control Act of 1962 (76 Stat. 1173, 1191-1192).

16  
17 5.14 "Full Load Service Customer" means a Customer that will have its entire  
18 load at its delivery point(s) met by WAPA, and its Portfolio Manager functions for  
19 those delivery point(s) performed by WAPA.

20  
21 5.15 "Marketing Plan" means WAPA's final 2025 Power Marketing Plan for the  
22 Sierra Nevada Region.

23  
24 5.16 "Maximum Operating Capability" means the maximum electrical capability  
25 from CVP generation available to produce energy, capacity and/or provide  
26 ancillary services in any one or more hours.

27 ///

28 ///

1 5.17 "Minimum Base Resource" means the amount of Base Resource energy  
2 generated each hour as a result of CVP minimum water releases.

3  
4 5.18 "NERC" means the North American Electric Reliability Corporation or its  
5 successor.

6  
7 5.19 "Operating Reserves" means the combination of spinning and non-  
8 spinning reserves required to meet WECC, NERC, and operating requirements,  
9 including those of the balancing authority area or WAPA's sub-balancing  
10 authority area.

11  
12 5.20 "Portfolio Manager" means an entity responsible for determining balanced  
13 hourly load and resource schedules for a Customer.

14  
15 5.21 "Power" means capacity and energy.

16  
17 5.22 "Preference" means the requirements of Reclamation Law that provide for  
18 preference in the sale of Federal power be given to certain entities, such as  
19 governments (state, Federal and Native American), municipalities and other  
20 public corporations or agencies, and cooperatives and other nonprofit  
21 organizations financed in whole or in part by loans made pursuant to the Rural  
22 Electrification Act of 1936 (See, e.g., Reclamation Project Act of 1939,  
23 Section 9(c), 43 USC 485h(c)).

24  
25 5.23 "Primary Marketing Area" means the area generally encompassing  
26 northern and central California, extending from the Cascade Range to the  
27 Tehachapi Mountains and west-central Nevada.

28 ///

1 5.24 "Project Use" means power as defined by Reclamation Law and/or used to  
2 operate CVP and Washoe Project facilities.

3  
4 5.25 "Rate" means the monetary charge or the formula for computing such a  
5 charge for any electric service provided by WAPA, including but not limited to  
6 charges for capacity (or demand), energy, or transmission service; however, it  
7 does not include leasing fees, service facility charges, or other types of facility  
8 use charges. A Rate will be set forth in a Rate Schedule or in a contract.

9  
10 5.26 "Rate Adjustment" means a change in an existing Rate or Rates, or the  
11 establishment of a Rate or Rates for a new service. It does not include a change  
12 in Rate Schedule provisions or in contract terms, other than changes in the price  
13 per unit of service, nor does it include changes in the monetary charge pursuant  
14 to a formula stated in a Rate Schedule or a contract.

15  
16 5.27 "Rate Adjustment Procedures" means those procedures for Rate  
17 Adjustments developed by WAPA, Department of Energy (DOE) or FERC which  
18 include DOE Order 00-037.00B, DOE Order RA 6120-2, 10 CFR 903, and  
19 18 CFR 300, as may be amended.

20  
21 5.28 "Rate Effective Date" means the first date of the billing period to which a  
22 Rate Schedule or Rate Schedule extension applies. WAPA will provide notice to  
23 the Customers of the Rate Effective Date.

24  
25 5.29 "Rate Schedule" means a document identified such as a "Rate Schedule,"  
26 "Schedule of Rates," or "Schedule Rate" which designates the Rate or Rates  
27 applicable to a class of service specified therein and may contain other terms  
28 and conditions relating to the service. On the effective date of this Contract,

1 18 CFR 300.1(b)(6) provides FERC may not approve a WAPA Rate Schedule for  
2 a period that exceeds five (5) years. The Rate Schedule shall include the Rate  
3 Effective Date and the effective period of the Rate Schedule.  
4

5 5.30 "Regional Transmission Organization (RTO)" means an organization that  
6 meets the minimum characteristics and performs the minimum functions  
7 specified in FERC Order 2000, as that order may be amended or superseded.  
8

9 5.31 "Regulation" means the service provided by generating units equipped  
10 and operating with automatic generation control which will enable such units to  
11 respond to direct control signals in an upward or downward direction to match, on  
12 a real time basis, demand and resources, consistent with WECC, NERC, and the  
13 balancing authority area operator's criteria.  
14

15 5.32 "Scheduling Coordinator" means an entity that is responsible for providing  
16 hourly load and resource schedules to the balancing authority area operator or  
17 WAPA's sub-balancing authority area, in accordance with a FERC-approved tariff  
18 or WAPA's procedures and practices.  
19

20 5.33 "Variable Resource Customer" means a Customer that is responsible for  
21 managing its own energy portfolio.  
22

23 5.34 "Washoe Project" means the Federal water project located in the  
24 Lahontan Basin in west-central Nevada and east-central California.  
25

26 5.35 "WECC" means the Western Electricity Coordinating Council or its  
27 successor.  
28

///

1 **6. BASE RESOURCE ESTIMATES AND AVAILABILITY FORECAST:**

2 6.1 At the beginning of each water year, WAPA will post to WAPA's external  
3 website a five-year forecast of Base Resource Operating Capability estimated to  
4 be available, based on high, average, and low hydrological conditions. The  
5 forecast will contain the following information:

6 6.1.1 Maximum Operating Capability of the CVP for each month;

7 6.1.2 Energy required for estimated Project Use loads, First Preference  
8 Customers' loads, and ancillary service requirements.

9  
10 6.2 Each month, WAPA will post to WAPA's external website a monthly Base  
11 Resource forecast of Base Resource Operating Capability and energy estimated  
12 to be available for each month on a rolling twelve-month basis, based on high,  
13 average, and low hydrological conditions. The monthly forecast will contain the  
14 following information:

15 6.2.1 Maximum Operating Capability of the CVP for each month;

16 6.2.2 Energy required for estimated Project Use loads, First Preference  
17 Customers' loads, and ancillary service requirements.

18  
19 6.3 WAPA shall make reasonable efforts, within its control, to ensure the  
20 forecasted Base Resource will be available.

21  
22 **7. ELECTRIC SERVICE FURNISHED BY WAPA:**

23 7.1 TDPUD will be entitled to receive a percentage of the Base Resource as  
24 set forth in Exhibit A.

25  
26 7.2 The estimated amount of energy available to TDPUD shall be determined  
27 by multiplying its Base Resource percentage by the total amount of Base  
28 Resource energy available during that period.

1 7.3 The minimum amount of energy TDPUD will be required to schedule for  
2 each hour shall be determined by multiplying its Base Resource percentage by  
3 the Minimum Base Resource, unless otherwise agreed to by WAPA. However, if  
4 TDPUD does not have sufficient load to take its percentage of the Minimum Base  
5 Resource, any excess energy shall be made available to WAPA for the  
6 Exchange Program as described later in this Contract under Section 10 and  
7 Exhibit B.

8  
9 7.4 The maximum amount of energy TDPUD may schedule in any hour shall  
10 be determined by multiplying its Base Resource percentage by the Base  
11 Resource Operating Capability. However, TDPUD may schedule energy in  
12 excess of this maximum, if approved by WAPA, to accommodate purchases or  
13 exchanges from the Exchange Program.

14  
15 7.5 TDPUD will be entitled to the benefit of available regulation and operating  
16 reserves from the CVP in proportion to its Base Resource percentage. The  
17 method for calculating regulation and operating reserves is set forth in Exhibit C.

18  
19 7.6 WAPA's obligation to provide TDPUD's Base Resource is limited to the  
20 actual CVP generation available on a real-time basis. WAPA shall have no  
21 obligation to replace any Base Resource that is unavailable; for instance, Base  
22 Resource that is unavailable due to scheduled maintenance, system  
23 emergencies, forced outages, or other constraints. Any costs incurred by either  
24 Party as a result of deviations between actual and scheduled Base Resource  
25 energy shall be the responsibility of TDPUD. WAPA will notify TDPUD as soon  
26 as reasonably practicable of any situation that will impact the availability of the  
27 Base Resource, and will modify schedules accordingly, on a pro-rata basis.

28 ///

1 7.7 Due to the variable nature of the Base Resource, WAPA may provide a  
2 Custom Product upon a Customer's request. Any Custom Product will be the  
3 subject of a separate contractual arrangement.  
4

5 **8. DELIVERY ARRANGEMENTS:**

6 8.1 WAPA will make TDPUD's Base Resource available at the generator bus  
7 or such other delivery point(s) on the CVP transmission system as the Parties will  
8 mutually agree, as specified in Exhibit A. WAPA reserves Network Integration  
9 Transmission Service for the delivery of Base Resource on the CVP transmission  
10 system under its Open Access Transmission Tariff (OATT). The rates and terms  
11 of this service shall be in accordance with WAPA's then-current rate schedule  
12 and OATT.  
13

14 8.2 If requested by WAPA, TDPUD must provide written notification to WAPA  
15 by July 1, 2024, demonstrating that it has arranged for delivery of its Base  
16 Resource energy to its load. Such notification shall include both transmission  
17 and distribution level arrangements, as applicable. WAPA shall have no  
18 obligation to make Base Resource available to TDPUD if delivery arrangements  
19 are not in effect. However, TDPUD shall not be relieved of its obligation to pay  
20 its percentage share of the Base Resource during the time in which delivery  
21 arrangements are not in effect.  
22

23 **9. SCHEDULING PROCEDURES, BUSINESS PRACTICES AND PROTOCOLS:**

24 9.1 All energy furnished by WAPA to TDPUD will be provided on a scheduled  
25 basis. TDPUD agrees to abide by the scheduling procedures, business practices  
26 and protocols of the applicable balancing authority area or WAPA's sub-  
27 balancing authority area, as set forth on WAPA's website. The Parties recognize  
28 that the scheduling procedures, business practices and protocols may require

1 modification from time-to-time to reflect updated operating procedures that may  
2 become applicable to the Parties. In such event, WAPA will make such changes  
3 in accordance with Section 17 of this Contract.  
4

5 9.2 Designation of Scheduling Coordinator (SC): If TDPUD is required to  
6 have a Scheduling Coordinator; TDPUD shall notify WAPA of its designated  
7 Scheduling Coordinator not less than ninety (90) days prior to the date of initial  
8 service under this Contract. In the event that TDPUD's Scheduling Coordinator  
9 arrangement changes, TDPUD shall notify WAPA in writing, not less than thirty  
10 (30) days prior to the change, unless a shorter notification period is agreed to by  
11 WAPA.  
12

13 9.3 **If WAPA is TDPUD's Portfolio Manager, as set forth in a separate**  
14 **Custom Product Contract, all scheduling activities and responsibilities will**  
15 **be performed by WAPA on behalf of TDPUD.** At such time as WAPA is no  
16 longer TDPUD's Portfolio Manager, then TDPUD will be responsible for  
17 performance of its duties under this Section 9.  
18

19 9.4 WAPA will provide Customers with the opportunity to comment on  
20 WAPA's maintenance and operations plans. WAPA will facilitate Customer  
21 meetings with the Bureau of Reclamation regarding cost and operation planning.  
22

23 9.5 In the event that TDPUD does not abide by the protocols, business  
24 practices and procedures and WAPA incurs costs as a result, TDPUD is  
25 responsible for and shall pay such costs.

26 ///

27 ///

28 ///



1 **10. EXCHANGE PROGRAM:**

2 10.1 WAPA will establish and manage an Exchange Program to allow all  
3 Customers to fully and efficiently use their Base Resource percentage. The  
4 Exchange Program is a mechanism to:

5 10.1.1 Make available to WAPA, for provision to other Customers, any  
6 Base Resource energy a Customer cannot use on a pre-scheduled basis  
7 due to insufficient load; and

8 10.1.2 Help mitigate the costs incurred by a Customer for the power it is  
9 obligated to pay for, but may not be able to use.

10  
11 10.2 Under the Exchange Program, all Base Resource energy in excess of  
12 TDPUD's load will be retained by WAPA and offered by WAPA for sale to other  
13 Customers. TDPUD may purchase energy from the Exchange Program. While  
14 WAPA's retention of excess Base Resource is mandatory, purchasing from the  
15 Exchange Program is voluntary.

16  
17 10.3 The Exchange Program procedures are set forth in Exhibit B. WAPA may  
18 change the program and procedures of the Exchange Program in accordance  
19 with Section 17 of this Contract.

20  
21 10.4 WAPA will also offer a seasonal Exchange Program. Under the seasonal  
22 Exchange Program, TDPUD may elect to make available to WAPA that portion of  
23 its Base Resource percentage that it is unable to use due to insufficient load.  
24 TDPUD, through WAPA, will be able to exchange its unusable Base Resource  
25 percentage with other Customers. Any Customer may submit a request to  
26 WAPA to exchange or purchase energy through the seasonal Exchange  
27 Program. Details of a seasonal exchange will be developed with the Customer  
28 upon request by that Customer.

1 10.5 Exchanges of the Base Resource between TDPUD and others outside of  
2 the WAPA-managed Exchange Programs, or other WAPA-managed programs,  
3 are prohibited.  
4

5 **11. INDEPENDENT SYSTEM OPERATOR OR REGIONAL TRANSMISSION**

6 **ORGANIZATION:**

7 11.1 WAPA is a sub-balancing authority area within BANC. WAPA operates in  
8 conformance with its sub-balancing authority area and BANC's balancing  
9 authority area protocols, business practices and procedures. In the event of  
10 changes to any protocols, business practices and procedures, WAPA may make  
11 any changes necessary to this Contract to conform to the operating and  
12 scheduling protocols, business practices and procedures in accordance with  
13 Section 17 of this Contract.  
14

15 11.2 The Parties understand that, in the future, WAPA may also change its  
16 operating configuration such as by: (1) joining an independent system operator or  
17 RTO or (2) participating in future markets such as energy imbalance markets; or  
18 (3) making system configurations to meet future operating requirements. In such  
19 an event, if WAPA is required to conform to the protocols, business practices or  
20 procedures, WAPA shall make changes to this Contract to conform to the terms  
21 and conditions required by such events in accordance with Section 17 of this  
22 Contract.  
23

24 11.3 In the event that: 1) WAPA incurs costs from the balancing authority area,  
25 WAPA's sub-balancing authority area, CAISO, an RTO, or a different balancing  
26 authority area for serving TDPUD's load; or 2) TDPUD does not abide by the  
27 protocols business practices, or procedures of the balancing authority area, an  
28 RTO, or other balancing authority area operator that are applicable to WAPA and

1 WAPA incurs costs as a result, TDPUD agrees to pay all such costs attributable  
2 to TDPUD.

3  
4 12. **WAPA RATES:**

5 12.1 The Base Resource will be provided on a take-or-pay basis. TDPUD will  
6 be obligated to pay its Base Resource percentage share in accordance with the  
7 Rate Schedule attached hereto, whether or not it takes or uses its full Base  
8 Resource percentage.

9  
10 12.2 TDPUD shall pay for the electric service furnished hereunder in  
11 accordance with the Rates, charges, and conditions set forth in the CVP  
12 Schedule of Rates applicable to the Base Resource, effective January 1, 2025,  
13 or any superseding Rate Schedule.

14  
15 12.3 Rates applicable under this Contract shall be subject to change by WAPA  
16 in accordance with appropriate Rate Adjustment Procedures. If, at any time,  
17 WAPA announces that it has received approval of a Rate Schedule, or extension  
18 of an existing Rate Schedule applicable to this Contract, or if a Rate Adjustment  
19 Procedure is amended, WAPA will promptly notify TDPUD thereof.

20  
21 12.4 TDPUD, by providing written notice to WAPA within ninety (90) days after  
22 the Rate Effective Date of a Rate Schedule or Rate Schedule extension  
23 applicable to this Contract, may elect to reduce its Base Resource percentage or  
24 terminate this Contract. TDPUD shall designate a Base Resource percentage  
25 reduction or termination effective date that will be effective on the last day of the  
26 billing month not later than two (2) years after the Rate Effective Date. If the  
27 termination effective date is after the Rate Effective Date, the new or extended  
28 Rates shall apply for service taken by TDPUD until the termination effective date.

1 Once TDPUD provides notice to terminate or reduce its Base Resource  
2 percentage, WAPA will begin the process to reallocate the Base Resource to  
3 other Preference Customers. TDPUD may not revoke its notice to terminate or  
4 reduce its Base Resource unless WAPA provides written consent.

5  
6 12.5 Rates shall become effective under this Contract on the Rate Effective  
7 Date stated in a Rate notice.

8  
9 13. **INTEGRATED RESOURCE PLAN:**

10 13.1 In accordance with the Energy Policy Act of 1992, TDPUD is required to  
11 meet the requirements of WAPA's Energy Planning and Management Program  
12 (EPAMP). To fulfill the requirements of EPAMP, TDPUD must develop and  
13 submit an integrated resource plan or alternative report, as applicable. Specific  
14 EPAMP requirements are set forth in the Federal Register at (64 FR 62604) and  
15 may be found on WAPA's website. Failure to comply with WAPA's EPAMP  
16 requirements may result in penalties as specified therein. TDPUD understands  
17 that WAPA may re-evaluate its EPAMP requirements and change them from  
18 time-to-time as appropriate. Such changes will be subject to a public process  
19 and publication in the Federal Register.

20  
21 13.2 Should the EPAMP requirements be eliminated, TDPUD shall have no  
22 responsibilities under Section 13.1.

23  
24 14. **ADJUSTMENT OF BASE RESOURCE PERCENTAGE:**

25 14.1 Prior to the date of initial service, WAPA may adjust TDPUD's Base  
26 Resource percentage, as set forth in Exhibit A herein, if WAPA determines that  
27 TDPUD's Base Resource percentage is greater than its actual usage, as  
28 specified in the Marketing Plan.

1 14.2 After the date of initial service, WAPA may adjust TDPUD's Base  
2 Resource percentage under any of the following conditions:

3 14.2.1 TDPUD sells energy associated with its Base Resource  
4 percentage to another entity for resale by that entity;

5 14.2.2 TDPUD uses the energy associated with its Base Resource  
6 percentage to serve loads outside of the Sierra Nevada Region's Primary  
7 Marketing Area;

8 14.2.3 TDPUD's annual energy associated with its Base Resource  
9 percentage, is ten percent or more than its actual annual energy usage.  
10

11 14.3 If WAPA determines that TDPUD has met any of the conditions in  
12 Section 14.2 above, WAPA will take the following steps:

13 14.3.1 Notify TDPUD of the nature of the concern;

14 14.3.2 Analyze TDPUD's usage of the energy associated with its Base  
15 Resource percentage and determine if an adjustment is necessary on a  
16 case-by-case basis, with due consideration of any circumstance that may  
17 have temporarily altered TDPUD's energy usage;

18 14.3.3 If an adjustment is determined to be necessary, provide a 90-day  
19 written notice of such adjustment; and

20 14.3.4 Reduce or rescind TDPUD's Base Resource percentage  
21 permanently on the effective date specified in the notice.  
22

23 15. **METERING AND POWER MEASUREMENT RESPONSIBILITIES:**

24 TDPUD shall be responsible for electric power metering equipment requirements and  
25 power measurement data associated with the use of WAPA power under this Contract  
26 as follows:

27 15.1 Unless previously installed and furnished by WAPA, TDPUD shall furnish,  
28 install, operate, maintain, and replace, meters and associated metering

1 equipment required for deliveries of WAPA power scheduled to each delivery  
2 point on the WAPA grid, the CAISO-controlled grid, a utility distribution company  
3 grid, or other electrical system, as may be applicable. Such meters shall comply  
4 with the all applicable meter requirements. For instance, meters on:

5 15.1.1 WAPA's system must meet WAPA's meter requirements;

6 15.1.2 CAISO's system must meet CAISO's meter requirements; and/or

7 15.1.3 Pacific Gas and Electric Company's (PG&E) system must meet  
8 PG&E's meter requirements.

9  
10 15.2 TDPUD shall measure power deliveries and provide certified settlement-  
11 quality metering data to WAPA as requested. It is generally contemplated that  
12 WAPA will require this data on a monthly basis.

13  
14 15.3 If WAPA previously installed and furnished a meter to TDPUD, WAPA  
15 shall be allowed unrestricted, unescorted access to its revenue meter equipment.  
16 TDPUD shall provide a minimum of three (3) keys or the combination to  
17 TDPUD's existing locks. Alternatively, WAPA may provide a WAPA-owned  
18 padlock(s). Access shall include all gates and/or doors required to access the  
19 metering equipment.

20  
21 15.4 Upon request by TDPUD, to evidence receipt of the Environmental  
22 Attributes, WAPA shall timely provide meter data or other mutually agreed upon  
23 data to TDPUD measuring the amount of CVP energy that is generated and  
24 delivered to TDPUD. Upon mutual agreement of Customers, WAPA and  
25 Reclamation, such meters shall be modified or replaced to meet appropriate  
26 standards or requirements to convey CVP Environmental Attributes to  
27 Customers.

28 ///

1 **16. CHANGES IN ORGANIZATIONAL STATUS:**

2 16.1 If TDPUD changes its organizational status or otherwise changes its  
3 obligation to supply electric power to Preference loads, WAPA reserves the right  
4 to adjust WAPA's power sales obligations under this Contract or to terminate this  
5 Contract, as WAPA deems appropriate. Changes in organizational status  
6 include but are not limited to:

7 16.1.1 Merging with another entity;

8 16.1.2 Acquiring or being acquired by another entity;

9 16.1.3 Creating a new entity from an existing one;

10 16.1.4 Joining or withdrawing from a member-based power supply  
11 organization; or

12 16.1.5 Adding or losing members from its membership organization.

13  
14 16.2 For the purposes of this Section 16, a member is any Preference entity  
15 that is included in a membership, which has the responsibility of supplying power  
16 to the end-use consumer or Customer. Memberships include but are not limited  
17 to:

18 16.2.1 Municipality;

19 16.2.2 Cooperative;

20 16.2.3 Joint powers authority; or

21 16.2.4 Governmental agency.

22  
23 16.3 For purposes of this Section 16, participation in a State promulgated direct  
24 access program shall not be deemed to be a change in a Customer's  
25 organizational status or its obligation to supply electric power to Preference  
26 loads.

27 ///

28 ///

1 16.4 Prior to making an organizational change, TDPUD may request an opinion  
2 from WAPA as to whether TDPUD's proposed organizational change will result in  
3 an adjustment of TDPUD's Base Resource percentage or termination under this  
4 Section 16. TDPUD shall provide WAPA with all relevant documents and  
5 information regarding the proposed organizational change. Based on the  
6 documents and information furnished, WAPA will provide TDPUD with an  
7 opinion.

8  
9 16.5 In addition to the above, if the change in organizational status results in a  
10 proposed transfer of the Contract, or any portion thereof, Section 37 of the  
11 General Power Contract Provisions (GPCP), "Transfer of Interest in Contract,"  
12 generally requires the Customer to obtain prior written approval from WAPA's  
13 Administrator. Organizational changes that typically propose transfer of the  
14 Contract, or a portion of the Contract, and require prior written approval from  
15 WAPA include but are not limited to:

16 16.5.1 Merging with another entity;

17 16.5.2 Acquiring or being acquired by another entity;

18 16.5.3 Joining an entity; and

19 16.5.4 Creating a new entity.

20  
21 **17. PROTOCOLS, BUSINESS PRACTICES AND PROCEDURES:**

22 WAPA reserves the right to make changes to protocols, business practices and  
23 procedures, as needed. Prior to making any changes, WAPA will provide notice to  
24 TDPUD and provide TDPUD with an opportunity to comment on such changes. WAPA  
25 will consider any comments made by TDPUD before making any changes, and shall  
26 provide a written response to the comments. After a final decision is made by WAPA, if  
27 TDPUD is not satisfied with the decision, TDPUD shall have thirty (30) days from the  
28 date of WAPA's final decision to appeal the change to WAPA's Administrator. WAPA



1 will not implement a change that has been appealed until a final decision by the  
2 Administrator. Notwithstanding the provisions within this Section 17, TDPUD shall  
3 retain its right to pursue other legal remedies available to it.  
4

5 **18. ENFORCEABILITY:**

6 It is not the intent of the Parties that this Contract confer any rights on third parties to  
7 enforce the provisions of this Contract except as required by law or express provision in  
8 this Contract. Except as provided in this Section, this Contract may be enforced, or  
9 caused to be enforced, only by WAPA or TDPUD, or their successors or assigns.  
10

11 **19. GENERAL POWER CONTRACT PROVISIONS:**

12 The GPCP, effective September 1, 2007, attached hereto, are hereby made a part of  
13 this Contract, the same as if they had been expressly set forth herein; Except  
14 Section 11 shall not be applicable to this Contract. In the event of a conflict between  
15 the GPCP and the provisions in the body of this Contract, the Contract shall control.  
16 The usage of the term "Contractor" in the GPCP shall mean TDPUD. The usage of the  
17 term "firm" in Articles 17 and 18 of the GPCP shall be deemed to be replaced with the  
18 words "Base Resource."  
19

20 **20. EXHIBITS MADE PART OF CONTRACT:**

21 Exhibit A (Base Resource Percentage and Point(s) of Delivery), Exhibit B (Exchange  
22 Program), Exhibit C (Regulation and Reserves), and Exhibit D (Rate Schedule) existing  
23 under this Contract may vary during the term hereof. Each of said exhibits shall  
24 become a part of this Contract during the term fixed by its provisions. Exhibits A, B, C,  
25 and D are attached hereto, and each shall be in force and effect in accordance with its  
26 terms until respectively superseded by a subsequent exhibit.

27 ///

28 ///

1 **21. EXECUTION BY COUNTERPARTS:**

2 This Contract may be executed in any number of counterparts and, upon execution and  
3 delivery by each Party, the executed and delivered counterparts together shall have the  
4 same force and effect as an original instrument as if all Parties had signed the same  
5 instrument. Any signature page of this Contract may be detached by any counterpart of  
6 the Contract without impairing the legal effect of any signatures thereon, and may be  
7 attached to another counterpart of this Contract identical in form hereto, by having  
8 attached to it one or more signature pages.

9

10 **22. ELECTRONIC SIGNATURES:**

11 The Parties agree that this Contract may be executed by handwritten signature or  
12 digitally signed using Adobe Sign or Adobe E-Signature. An electronic or digital  
13 signature is the same as a handwritten signature and shall be considered valid and  
14 acceptable.

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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.

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**WESTERN AREA POWER ADMINISTRATION**

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

**TRUCKEE DONNER PUBLIC UTILITY DISTRICT**

Attest:  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Jeff Bender  
Title: President of the Board  
Address: 11570 Donner Pass Road  
Truckee, CA 96161

TRUCKEE DONNER PUBLIC UTILITY DISTRICT  
Resolution/Certificate

EXHIBIT A  
(Base Resource Percentage and Point(s) of Delivery)

1. This Exhibit A, to be effective under and as part of Contract 20-SNR-02339 (Contract), shall become effective upon execution of the Contract; and shall remain in effect until either superseded by another Exhibit A or termination of the Contract.
2. Pursuant to the Marketing Plan, TDPUD's extended Base Resource percentage is 0.27146.
3. Pursuant to the Final 2025 Resource Pool Allocations, TDPUD received 0.03716 percent of the Base Resource.
4. On the effective date of this Exhibit A, TDPUD's percentage of the Base Resource is 0.30862.
5. TDPUD's Base Resource percentage may be adjusted by WAPA as specified in the Contract.
6. TDPUD's Base Resource percentage will be adjusted effective January 1, 2040, in accordance with the Marketing Plan, to establish the 2040 Resource Pool for new power allocations.
7. The point(s) of delivery on the CVP transmission system for Shelter Cove's Base Resource shall be either WAPA's Tracy 230-kV or Tracy 500-kV or Cottonwood 230-kV Substations, or as requested by TDPUD and approved by WAPA.
8. All power deliveries provided under this Contract shall be adjusted for the applicable transformation and transmission losses on the 230-kV system. Additional transformation and/or transmission losses shall be applied to deliveries at other than the 230-kV level.
9. This Exhibit A shall be replaced by WAPA as necessary under the terms and conditions set forth in the Contract, and a signature is not required by either Party.

EXHIBIT B  
(Exchange Program)

1. This Exhibit B, to be effective under and as a part of Contract 20-SNR-02339, (Contract) shall become effective upon execution of the Contract; and, shall remain in effect until superseded by another Exhibit B or termination of the Contract.
2. TDPUD is in agreement with the procedures set forth herein.
3. If necessary, WAPA retains the right to make subsequent revisions to Exhibit B after consultation with its Customers. At such time as WAPA promulgates a revision of this Exhibit B, TDPUD shall have the option of either accepting the new revision to this Exhibit B or opting out of making purchases from the Exchange Program. If WAPA does not receive notice from TDPUD opting out of making purchases from the Exchange Program within 30 days of TDPUD's receipt of a revised Exhibit B, TDPUD may automatically continue to make purchases from the Exchange Program if already participating.
4. Exchange Program:
  - 4.1 WAPA has established separate Exchange Program for the Full Load Service Customer group and the Variable Resource Customer group. A Customer cannot be in both the Full Load Service Customer group and the Variable Resource Customer group at the same time.
  - 4.2 The Exchange Program will take place on a pre-scheduled basis.
  - 4.3 Base Resource power in excess of a Customer's load in any hour will be distributed by WAPA in the applicable Exchange Program group (Full Load Service or Variable Resource).
  - 4.4 A Customer may choose whether to make purchases from the Exchange Program for its group. Participation in making purchases from the Exchange Program requires a Customer to accept Exchange Program power if it has load in that hour. However, even if a Customer chooses not to participate in making purchases, if that Customer's Base Resource amount exceeds its load in any hour, the excess will go into the Exchange Program for that Customer's group for that hour, for use by participating Customers with load not met by Base Resource power in that hour. In other words, the retention of Base Resource in excess of a Customer's load is mandatory, while participation in making purchases from the Exchange Program is voluntary.

4.5 If a Customer chooses not to make purchases from the Exchange Program, a written notice to that effect must be submitted to WAPA by November 1, 2024. Thereafter, a Customer must submit a written notice to WAPA at least one (1) month prior to changing its participation status; Except if a Customer has elected to make purchases from the Exchange Program and subsequently changes its participation status, the Customer must wait a minimum of one (1) year to again participate in the Exchange Program. Participation status will change on the first day of the month following the required notice period or the minimum one (1) year waiting period.

4.6 A Customer must use its Base Resource power prior to using any other source to meet its load, unless agreed to by WAPA in writing. A Customer participating in the Exchange Program must use Exchange Program power prior to any other source to meet its load, unless agreed to by WAPA in writing.

4.7 Each participating Customer in each group will receive an equal share in megawatts of that group's Exchange Program power available for that hour, up to the Customer's unmet load in that hour.

4.8 Any Exchange Program power that is excess to a Customer's unmet load will go back to the Exchange Program for the group to which the Customer belongs, for that same hour. This power will be reallocated to participating Customers in that group on an equal basis until either that group's Exchange Program has no remaining power in that hour, or no participating Customers in that group have unmet load in that hour.

4.9 If there is power remaining in the Full Load Service Exchange Program or the Variable Resource Exchange Program in any hour, and none of the participating Customers in that group have unmet load in that hour, the remaining power will go to the other group's Exchange Program for that same hour.

4.10 If, in any hour, no participating Customers have unmet load but there is power remaining in either group's Exchange Program, that power may be offered for sale by WAPA unless the amount of power is de minimis.

4.11 Customers' power bills will be adjusted to reflect transactions into and out of the Exchange Program.

EXHIBIT C  
(Regulation and Reserves)

1. This Exhibit C to be effective under and as a part of Contract 20-SNR-02339 (Contract), shall become effective upon execution of the Contract; and, shall remain in effect until superseded by another Exhibit C or termination of the Contract.
2. Definitions of Terms:
  - 2.1 Contingency Reserve: An additional amount of operating reserves sufficient to reduce Area Control Error (ACE) to zero in ten minutes following loss of generating capacity, which would result from the most severe single contingency. Contingency Reserves will consist of Spinning and Nonspinning Reserves.
  - 2.2 Frequency Response Reserves: Spinning Reserves which provide the required Frequency Response needed for the reliable operation of an interconnection. The energy is provided by the generator's governor's response to a frequency deviation from scheduled system frequency.
  - 2.3 Nonspinning Reserve: That operating reserve not connected to the system but capable of serving demand within ten minutes, or interruptible load that can be removed from the system within ten minutes.
  - 2.4 Spinning Reserve: Unloaded generation which is synchronized and ready to serve additional demand.
3. WAPA's Disposition of Contingency Reserves and Regulation:
  - 3.1 Contingency Reserves: WAPA will provide all Base Resource schedules with Contingency Reserves, including Spinning, Nonspinning, and Frequency Response Reserves. Contingency Reserves will be provided from CVP generation as available, or procured from other sources as necessary.
  - 3.2 Regulation: WAPA will not provide Regulation with Base Resource schedules. Any sales of Regulation by WAPA will be credited against the Power Revenue Requirement.



EXHIBIT D  
(Rate Schedule)

1. This Exhibit D to be effective under and as a part of Contract 20-SNR-02339 (Contract), shall become effective upon execution of the Contract; and, shall remain in effect until superseded by another Exhibit D or termination of the Contract.
2. The CVP Schedule of Rates for Base Resource and First Preference Power (CV-F13) begins on page 2 of this Exhibit D.
3. This Exhibit D shall be replaced by WAPA as necessary under the terms and conditions set forth in the Rate Schedule, and a signature is not required by either Party.

**UNITED STATES DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION**

**CENTRAL VALLEY PROJECT**

**SCHEDULE OF RATES FOR BASE RESOURCE AND FIRST PREFERENCE POWER**

**Effective:**

October 1, 2011, through September 30, 2019. [Note: This rate schedule was extended by Rate Order No. WAPA-185 through September 30, 2024.]

**Available:**

Within the marketing area served by the Western Area Power Administration (Western), Sierra Nevada Customer Service Region.

**Applicable:**

To the Base Resource (BR) and First Preference (FP) Power Customers.

**Character and Conditions of Service:**

Alternating current, 60-hertz, three-phase, delivered and metered at the voltages and points established by contract. This service includes the Central Valley Project (CVP) transmission (to include reactive supply and voltage control from Federal generation sources needed to support the transmission service), spinning reserve service, and supplemental reserve service.

**Power Revenue Requirement (PRR):**

Western will develop the PRR prior to the start of each fiscal year (FY). The PRR will be divided in two 6-month periods, October through March and April through September, based

on FP and BR percentages. The PRR for the April-through-September period will be reviewed in March of each year. The review will analyze financial data from the October-through-February period, to the extent information is available, as well as forecasted data for the March-through-September period. If there is a change of \$5 million or more, the PRR will be recalculated for the entire FY. The PRR is allocated to FP Customers and BR Customers based on formula rates, as adjusted for Hourly Exchange (HE), FP true-up calculation, and midyear adjustments.

<b>Example of PRR Allocation to FP and BR</b>		
<b>Component</b>	<b>Formula</b>	<b>Allocation</b>
Annual PRR		\$70,000,000
FP Customers' Allocation (Total FP % = 5%)	$\$70,000,000 \times 5\%$	\$3,500,000
Remaining PRR Allocated to BR	$\$70,000,000 - \$3,500,000$	\$66,500,000
Note: This example is intended to show the PRR allocation to the customer groups and is not adjusted for billing, midyear adjustments or FP true-up calculation.		

**FP Power Formula Rate:**

The annual FP customer allocation is equal to the annual PRR multiplied by the relevant FP percentage. The formula rate for FP power has three components.

**Component 1:**

$\text{FP Customer Percentage} = \frac{\text{FP Customer Load}}{\text{Gen} + \text{Power Purchases} - \text{Project Use}}$ $= \text{FP Customer Percentage} \times \text{MRR}$
--

Where:

FP Customer Load = An FP Customer's forecasted annual load in megawatthours (MWh).

Gen = The forecasted annual CVP and Washoe generation (MWh).

Power Purchases = Power purchases for Project Use and FP loads (MWh).

Project Use = The forecasted annual Project Use loads (MWh).

MRR = Monthly PRR.

Western will develop each FP customer’s percentage prior to the start of each FY. During March of each FY, each FP customer’s percentage will be reviewed. If, as a result of the review, there is a change in a FP customer’s percentage of more than one-half of 1 percent, the percentage will be revised for the April-through-September period and billing adjustments made for the October-through-March period to reflect the revised percentage.

<b>Table 1: Estimated and Actual Year 1 PRR Allocation Due to FP % True-up</b>					
FP Customer	Year 1 FP % (Based on estimate)	Year 1 FP and BR PRR Allocation	Year 1 Actual FP % (Determined during Year 2)	Year 1 FP and BR Actual (adjusted) PRR Allocation	Difference (Applied in Year 3)
Customer A	0.35%	\$262,500	0.38%	\$285,000	\$22,500
Customer B	0.90%	\$675,000	0.85%	\$637,500	(\$37,500)
Customer C	2.80%	\$2,100,000	2.90%	\$2,175,000	\$75,000
Customer D	0.75%	\$562,500	0.75%	\$562,500	\$0
<b>Total</b>	<b>4.80%</b>	<b>\$3,600,000</b>	<b>4.88%</b>	<b>\$3,660,000</b>	<b>\$60,000</b>
BR Customers	Contractual %	\$71,400,000	Contractual %	\$71,340,000	(\$60,000)
<b>Total PRR (Year 1)</b>		<b>\$75,000,000</b>	<b>Total PRR</b>	<b>\$75,000,000</b>	<b>\$0</b>

In addition, Western is adopting a true-up methodology for FP Customers each year in order to ensure FP Customers pay their proportionate share of the PRR. The FP percentage true-up calculation will use actual data for the FY being adjusted. Changes to the PRR based on FP percentage true-up calculations will be incorporated in the PRR at the beginning of each FY as shown in the example below. As shown in the example in Table 1, the total PRR for Year 1, on October 1, is \$75 million, and estimated revenue requirements are allocated to customers based on their estimated FP and BR percentages. A true-up of each FP percentage for Year 1 occurs in Year 2 and the difference between the estimated and actual will be reflected in the PRR in Year 3.

Beginning in Year 3, the PRR, as published on October 1, is \$73,000,000. Based on the true-up methodology, the adjustment (difference seen in Table 1) from Year 1 is factored in the PRR for Year 3, and payment obligations for both FP and BR Customers are appropriately adjusted as shown in the Table 2 below.

<b>Table 2: FP % Adjustment from Year 1 (Actual to Estimated) Applied in Year 3</b>				
FP Customer	Year 3 Est. FP %	Year 3 Estimated PRR Payment	PY FP True-Up (Year 1 True-Up Amount)	Total Year 3 Bill
Customer A	0.35%	\$255,500	\$22,500	\$278,000
Customer B	0.90%	\$657,000	(\$37,500)	\$619,500
Customer C	2.85%	\$2,080,500	\$75,000	\$2,155,500
Customer D	0.77%	\$562,100	\$0	\$562,100
<b>Total</b>	<b>4.87%</b>	<b>\$3,555,100</b>	<b>\$60,000</b>	<b>\$3,615,100</b>
BR Customers	Contractual %	\$69,444,900	(\$60,000)	\$69,384,900
<b>Total PRR (Year 3)</b>		<b>\$73,000,000</b>	<b>\$0</b>	<b>\$73,000,000</b>

Based on the true-up adjustment from Year 1, the adjusted PRR for Year 3 is appropriately allocated to both FP and BR Customers.

The percentages in the table below are the maximum percentages for each FP customer that will be applied to the MRR during the rate period October 1, 2011, through September 30, 2016. The maximum percentages were determined based on a critically dry year where there are hydrologic conditions that result in low CVP generation and, consequently, low levels of BR. An FP percentage cannot exceed the maximum except in instances where individual FP customer percentages increase due to load growth. If these maximum percentages are used for determining the FP customer charges for more than one year, Western will evaluate customer percentages from the formula rate versus the maximum percentage and make adjustments as appropriate.

<b>FP Actual Maximum Percentages Effective Rate Period FY 2012 through FY 2016</b>	
FP Customer	Maximum FP Customer Percentage Applied to the MRR
Sierra Conservation Center	1.58%
Calaveras Public Power Agency	3.81%
Trinity Public Utilities District	12.01%
Tuolumne Public Power Agency	3.16%
<b>Total</b>	<b>20.56%</b>

Below is a sample calculation for an FP customer's monthly charge for power.

<b>Example: FP Monthly Customer Charge Calculation</b>	
<b>Numerator</b>	
FP Customer's Load - MWh	10,000
<b>Denominator</b>	
Washoe Generation - MWh	2,500
CVP Generation - MWh	3,700,000
PU Load - MWh	(1,200,000)
PU Purchase - MWh	47,000
<b>Calculated Percentage</b>	
FP Customer's Percentage	0.39%
Monthly Power Revenue Requirement (MRR)	\$3,333,333
<b>FP Customer Monthly Charge = (FP % x MRR)</b>	<b>\$13,000</b>

Component 2:

Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Federal Energy Regulatory Commission (FERC) or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3:

Any charges or credits from the Host Balancing Authority (HBA) applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

BR Formula Rate:

The annual BR allocation is equal to the annual PRR less the annual FP customer allocation. The formula rate for BR has three components.

Component 1:

$\text{BR Customer Allocation} = (\text{BR RR} \times \text{BR}\%)$
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Where:

BR RR = BR Monthly Revenue Requirement (RR)

BR% = BR percentage for each customer as indicated in the BR contract after adjustments for programs, such as HE, if applicable.

After the FP Customers' share of the annual PRR has been determined, including a prior period true-up from the FP formula rate, the remainder of the annual PRR is recovered from the BR Customers. BR Customers' allocation will also be adjusted by the amount of under- or overpayment by FP Customers. The BR RR will be collected in two 6-month periods. For October through March, 25 percent of the BR RR will be collected. For April through September, 75 percent of the BR RR will be collected. The monthly BR RR is calculated by dividing the BR 6-month RR by six. The revenues from the sale of surplus BR will be applied to the annual BR RR for the following FY.

An example of a reallocation program is the HE program. BR Customers pay for exchange energy, hourly or seasonally, by adjusting the BR percentage that is applied to the BR RR. Adjustments to a customer's BR percentage for seasonal exchanges will be reflected in the customer's BR contract.

An illustration of the adjustment to a customer's BR percentage for HE energy is shown in the example below.

Example of BR Percentage Adjustments for HE Energy						
BR Customer	BR % from Contract	Hourly BR = 30 MWh	Customer's BR > Load	Customers Receiving HE	BR Delivered (Adj'd for HE)	Revised BR %
Customer A	20%	6	3	0	3	10.0%
Customer B	10%	3	0	1	4	13.3%
Customer C	70%	21	0	2	23	76.7%
Total	100%	30	3	3	30	100.0%

Component 2:

Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by FERC or other regulatory bodies will be passed on to each relevant customer. The FERC's or other regulatory bodies' accepted or approved charges or credits apply to the service to which this rate methodology applies. When possible, Western will pass through directly to the relevant customer FERC's or other regulatory bodies' accepted or approved charges or credits in the same manner Western is charged or credited. If FERC's or other regulatory bodies' accepted or approved charges or credits cannot be passed through directly to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Component 3:

Any charges or credits from the HBA applied to Western for providing this service will be passed through directly to the relevant customer in the same manner Western is charged or credited to the extent possible. If the HBA's costs or credits cannot be passed through to the relevant customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the formula rate.

Billing:

Billing for BR and FP power will occur monthly using the respective formula rate. Any adjustment made at midyear is applicable to the entire FY and billed over the remainder the FY.



Adjustment for Losses:

Losses will be accounted for under this rate schedule as stated in the service agreement.

Adjustment for Audit Adjustments:

Financial audit adjustments that apply to the formula rate under this rate schedule will be evaluated on a case-by-case basis to determine the appropriate treatment for repayment and cash flow management.

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.

significant environmental impacts. This is because Super Hornet flight training is nearly identical to Hornet flight training. Consequently, there would be little to no change to the type and quantity of flight training operations at NAS Oceana and NALF Fentress as a result of the transition. The analysis also showed there would be only minor noise increases in a few areas; however, no increases would be greater than 1.6 decibels (dB) Day-Night Average Sound Level (DNL). A 3 dB DNL or less change in noise levels is barely perceptible to the human ear. No significant environmental impacts were identified for the other resources analyzed in the EA, including air quality, public health and safety, environmental justice, land use, biological resources, and cultural resources. Accordingly, the DoN announces to public the redesignation of the EIS as an EA for this action.

With this redesignation of the EIS as an EA, the DoN is initiating a 30-day public review and comment period on the Draft EA beginning on August 16, 2017 and ending on September 15, 2017. The Draft EA is available at the following link: <http://www.oceanastrikefighter.com>. A printed copy and an electronic copy of the Draft EA have also been placed in the following libraries:

1. Great Neck Area Library, 1251 Bayne Drive, Virginia Beach, Virginia 23454.
2. Meyera E. Oberndorf Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia 23452.
3. Oceanfront Area Library, 700 Virginia Beach Boulevard, Virginia Beach, Virginia 23451.
4. Princess Ann Area Library, 1444 Nimmo Parkway, Virginia Beach, Virginia 23456.
5. Wahab Public Law Library, 2425 Nimmo Parkway, Judicial Center, Bldg 10B, Virginia Beach, Virginia 23456.
6. Windsor Wood Area Library, 3612 South Plaza Trail, Virginia Beach, Virginia 23452.
7. Chesapeake Central Library, 298 Cedar Road, Chesapeake, Virginia 23322.
8. Greenbrier Library, 1214 Volvo Parkway, Chesapeake, Virginia 23320.

The DoN will hold public meetings to inform the public and answer questions about the Draft EA and the proposed action as well as provide opportunities for the public to comment on the Draft EA. Federal, state, and local agencies and officials, Native American Indian Tribes and Nations, and interested organizations and individuals are encouraged to provide comments in person at the public meetings or in writing during the 30-day public review

period. Two public meetings will be held from 5:00 p.m. to 7:00 p.m. on:

1. Tuesday, August 29, 2017, at the Columbian Club, 1236 Prosperity Road, Virginia Beach, Virginia 23451.
2. Wednesday, August 30, 2017, at the Hickory Ruritan Club, 2752 Battlefield Boulevard South, Chesapeake, Virginia 23322.

The public meetings will be open house sessions with informational poster stations. Members of the public will have the opportunity to ask questions of DoN representatives and subject matter experts. Attendees will also be able to provide verbal comments to a stenographer or submit written comments during the public meetings. In addition to participating in the public meetings, members of the public may submit comments via the U.S. Postal Service using the mailing address identified in the contact information later in this notice or electronically using the project Web site (<http://www.oceanastrikefighter.com>). All comments made at the public meetings, or postmarked or received online by September 15, 2017, will become part of the public record and be considered in the Final EA.

The DoN may release the city, state, and 5-digit zip code of individuals who provide comments during the Draft EA public review and comment period. However, the names, street addresses, email addresses and screen names, telephone numbers, or other personally identifiable information of those individuals will not be released by the DoN unless required by law. Prior to each commenter making verbal comments to the stenographer at the public meetings the commenter will be asked whether he or she agrees to a release of their personally identifiable information. Those commenters submitting written comments, either using comment forms or via the project Web site, will be asked whether they authorize release of personally identifiable information by checking a "release" box.

**FOR FURTHER INFORMATION CONTACT:** NAS Oceana Strike Fighter Transition EA Project Manager (Code EV21/TW); Naval Facilities Engineering Command Atlantic, 6506 Hampton Boulevard, Norfolk, Virginia 23508.

Dated: August 7, 2017.

**A.M. Nichols,**  
*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2017-17142 Filed 8-14-17; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### 2025 Power Marketing Plan

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of final plan.

**SUMMARY:** The Department of Energy (DOE), Western Area Power Administration (WAPA), announces its final 2025 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Region (SNR). On December 31, 2024, all of SNR's long-term power sales contracts will expire. This notice responds to comments received on the Proposed 2025 Power Marketing Plan (Proposed Plan) and sets forth the Marketing Plan. The Marketing Plan specifies the terms and conditions under which WAPA will market power from the Central Valley Project (CVP) and the Washoe Project beginning January 1, 2025. This Marketing Plan supersedes all previous marketing plans for these projects. WAPA will offer new contracts for the sale of power to existing customers as more fully described in the Marketing Plan. Entities who wish to apply for a new allocation of power from WAPA, and who meet the criteria defined in the Marketing Plan, should submit formal applications. Application procedures will be set forth in the Call for 2025 Resource Pool Applications in a separate **Federal Register** notice to be published after the Marketing Plan is applicable.

**DATES:** The Marketing Plan will become applicable September 14, 2017 in order to make power allocations and complete the other processes necessary to begin providing services on January 1, 2025.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sonja Anderson, Vice President of Power Marketing, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA, 95630-4710, by email at [sanderso@wapa.gov](mailto:sanderso@wapa.gov), or by telephone (916) 353-4421. Information on development of the Marketing Plan can be found at <https://www.wapa.gov/regions/SN/PowerMarketing/Pages/2025-Program.aspx>.

#### SUPPLEMENTARY INFORMATION:

##### Development of the 2025 Power Marketing Plan

WAPA currently markets power from the CVP and the Washoe Project under long-term contracts to approximately 80 preference customers in northern and central California and Nevada. On December 31, 2024, all of SNR's long-



term power sales contracts will expire. This notice sets forth WAPA's Marketing Plan and responds to comments received on the Proposed Plan. The Marketing Plan specifies the terms and conditions under which WAPA will market power from CVP and the Washoe Project beginning January 1, 2025. This Marketing Plan supersedes all previous marketing plans for these projects.

CVP power facilities include 11 powerplants with a maximum operating capability of about 2,113 megawatts (MW) and an estimated average annual generation of 4.6 million megawatthours (MWh). The Washoe Project, Stampede Powerplant has a maximum operating

capability of 3.65 MW with an estimated annual generation of 10,000 MWh.

To deliver CVP power, WAPA owns the 94 circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line (an integral part of the Pacific AC Intertie (PACI)), the 84 circuit-mile Los Banos-Gates No. 3 500-kV transmission line, 803 circuit miles of 230-kV transmission line, 7 circuit miles of 115-kV transmission line, and approximately 63 circuit miles of 69-kV and below transmission line. WAPA also has partial ownership in the 342-mile California-Oregon Transmission Project (COTP) 500-kV transmission line. Many of WAPA's existing customers have no direct access to

WAPA's transmission lines and receive service over transmission lines owned by other utilities. The Washoe Project is not directly connected to the CVP. Sierra Pacific Power Company (SPPC) owns and operates the only transmission system available for access to the Washoe Project.

The following table lists a range of estimated CVP and Washoe Project power resources and adjustments. This table is for informational purposes only and does not imply the power resources and adjustments shown will be the actual amounts available or adjustments applied.

Estimated CVP power resources and adjustments prior to first preference entitlements and base resource allocations

Power resources/adjustment	Range/value
Annual energy generation .....	2,400,000–8,600,000 MWh.
Monthly energy generation .....	87,000–1,100,000 MWh.
Monthly capacity .....	360–1,900 MW.
Annual project use .....	334,000 MWh–1,670,000 MWh.
Monthly project use .....	10,000–180,000 MWh.
Monthly project use (on peak) .....	30–360 MW.
Monthly maintenance .....	0–300 MW.
Reserves—hydro .....	minimum 5% of monthly capacity.
CVP transmission and transformation losses from the generator bus to a 230–kV load bus .....	1.6%.

WAPA began developing the Marketing Plan with a series of three informal public information meetings. These meetings helped WAPA identify pertinent issues, including contract provisions and methodologies for creating resource pools.

WAPA subsequently published its Proposed Plan (81 FR 27433, dated May 6, 2016). WAPA held a public information forum on June 1, 2016, to present the Proposed Plan and answer questions. On July 12, 2016, WAPA held a public comment forum to accept verbal comments, and accepted written comments from the public through August 4, 2016. WAPA considered the comments received in developing the Marketing Plan.

**Responses to Comments Received on the Notice of Proposed Plan**

During the public consultation and comment period, WAPA received 13 letters commenting on the Proposed Plan. In addition, six customers and interested stakeholder representatives commented during the July 12, 2016, public comment forum. In preparing the Marketing Plan, WAPA reviewed and considered all comments received during the public consultation and comment period.

The following is a summary of the comments received during the consultation and comment period, and

WAPA's responses to those comments. Comments are grouped by subject and paraphrased for brevity. Specific comments are used for clarification where necessary.

*I. Marketing Plan Term*

*Comment:* All commenters supported the 30-year term; however, several stated without some additional balancing of the termination provisions and/or the rate procedures, the additional term could result in cost or risk exposure that negatively impacts Base Resource customers. Additionally, Base Resource customers will be exposed to increased risks due to the take-or-pay nature of the power contracts unless WAPA includes reduction and early termination provisions.

*Response:* Please see WAPA's response under Termination and Reduction Provisions for a response to the reduction and early termination portion of these comments.

*II. Marketable Resource—Base Resource*

*Comment:* Two commenters stated WAPA should explicitly define the Base Resource and list all applicable attributes including energy, capacity, ancillary services, reserves, transmission and environmental attributes.

*Response:* WAPA has modified the definition of Base Resource in the Marketing Plan to clarify that power includes capacity and energy. Transmission is not an attribute of the Base Resource. It is the customers' responsibility to secure any necessary transmission service; however, WAPA will provide transmission service to deliver the Base Resource on the CVP system. The definition continues to include ancillary services reserves, and environmental attributes.

*Comment:* A commenter stated it understands that Project Use, First Preference, maintenance, reserves, and system and transmission losses are subtracted from the CVP generation prior to determining the Base Resource available. The commenter asked if there were any other existing or new obligations on the CVP resource that should be explicitly identified in the Marketing Plan.

*Response:* At this time, there are no additional obligations on CVP power resources other than those listed.

*Comment:* A commenter stated WAPA should determine the amount of Base Resource available in an equitable manner, and not by which balancing authority area the customers are located. WAPA can improve the equity by considering all aspects of its CVP portfolio of assets, including generation,

capacity, ancillaries, and transmission assets.

*Response:* The Marketing Plan defines Base Resource and allocates Base Resource to each preference customer based on the preference customer's percentage. WAPA does not consider a customer's balancing authority area when determining the amount of Base Resource available.

*Comment:* A commenter encouraged greater efforts by WAPA and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) to consider measures to increase the value and flexibility of the Base Resource.

*Response:* WAPA will continue to work with Reclamation to maximize the value of the Base Resource.

### III. Marketable Resource—Custom Products

*Comment:* Several commenters supported offering Custom Products. The commenters stated that WAPA's commitment to explore requested Custom Products provides needed certainty and possible additional opportunities for customers to explore new uses for the Base Resource and transmission assets. The commenters further stated that WAPA's process for establishing Custom Products involves appropriate customer input, and ensures that WAPA's other customers may even benefit indirectly from the offering of Custom Products. The commenters also stated that Custom Products improve the value of the Base Resource to all customers. The customers support all costs incurred being paid by those customers contracting for such Custom Products.

*Response:* WAPA will continue to offer Custom Products with all costs incurred paid by those customers contracting for those products and/or services.

*Comment:* A commenter encouraged WAPA to identify the Custom Products being offered to customers, including the product terms and cost, and to increase the visibility and availability of the price and terms and conditions of Custom Products. The commenter suggested that WAPA provide periodic reports on the Custom Products used by preference customers, including data on prices, terms, and conditions for all products.

*Response:* WAPA anticipates it will continue to offer Full Load, Variable Resource, and Scheduling Coordinator Services. WAPA is open to assisting customers with their electric service needs under a Custom Product contract if WAPA is able to do so. Custom Products will initially be offered for 5-year terms. The cost for such products

and services will be on a pass-through basis. WAPA will not know what other products or services it may provide until those services are requested, nor will WAPA know the cost of any Custom Products until those services are determined, along with the number of customers participating in those services, and other relevant parameters. At such time as the pricing, terms and conditions related to Custom Products is no longer considered proprietary and/or market sensitive, WAPA may provide it upon request.

*Comment:* A commenter asked WAPA to clarify how it will carry out the collaborative process to ensure all stakeholder perspectives are considered.

*Response:* Custom Products are any product or service requested by an individual customer or group of customers. These products or services will be mutually negotiated between a specific customer or a specific group of customers and WAPA.

*Comment:* A commenter stated that, to the extent the Custom Products offered reduce the value of the Base Resource to other preference customers by reducing the availability of electricity, capacity, reserves, ancillary services, transmission and/or environmental attributes, the beneficiary should pay for the value of the displaced Base Resource. WAPA should modify the Marketing Plan to clearly define the Custom Products that could reduce power and transmission available for Base Resource generation before all customers are asked to execute a contract in 2020.

*Response:* Custom Products do not include the Base Resource or CVP generation. Custom Products are meant to enhance the Base Resource for those customers that may need additional services from WAPA to maximize the benefit from the Base Resource. WAPA provides transmission with the Base Resource; therefore, Custom Products do not affect the availability of transmission for Base Resource delivery.

*Comment:* If WAPA is providing a service or facility for voltage support or some similar benefit to a specific entity, according to WAPA's Open Access Transmission Tariff (OATT), the costs for such a project must be paid by that individual entity. If WAPA does not follow its own OATT and allocates these costs to other entities, these other entities must be authorized an off-ramp.

*Response:* All costs associated with providing Custom Products are passed to those customers requesting Custom Products. If a Custom Product involves services under WAPA's OATT, the customer will take and pay for those services under the OATT.

### IV. Exchange Program

*Comment:* A commenter supported the hourly and seasonal exchange programs provided that they are administered and implemented fairly whereby all who can share in the benefits of Base Resource can do so without taking on additional burdens.

*Response:* WAPA intends to develop the exchange program with input from the customers and the public to maximize the benefits and lessen any burdens associated with exchange program participation. The exchange program is an optional program.

### V. Extension of the Resource

*Comment:* Several commenters support extending 98 percent of the Base Resource to existing customers.

*Response:* WAPA will extend 98 percent of the Base Resource to existing customers as specified in the Marketing Plan.

*Comment:* A commenter stated WAPA should allow existing customers to take less than 98 percent of their current Base Resource percentage.

*Response:* WAPA will allow an existing customer to reduce its base resource percentage allocation under this Marketing Plan with at least six months' written notice to WAPA prior to January 1, 2025.

*Comment:* A commenter supported limiting allocations to no more than 100 percent of load, but suggested using consistent data to determine load between existing and new customers.

*Response:* A customer should not have an allocation larger than its load. Reviewing a 5-year period of energy consumption for existing customers is appropriate so an existing customer is not unduly harmed due to unusual factors (drought, environmental impacts, etc.) that may affect their load for just one year.

### VI. Resource Pools

*Comment:* Several commenters support creating the resource pools; the calculation methodology to create the resource pools; and the 2 and 1 percent resource pools in 2025 and 2040, respectively, which are sufficient to broaden the preference customer base without overly penalizing existing customers.

*Response:* WAPA acknowledges the comment.

*Comment:* Two commenters stated the Marketing Plan should have a provision to address how WAPA will manage returned allocations from customers that either do not opt for new power contracts or exercise early termination. A commenter recommends that

surrendered or excess allocations (where load exceeds allocations) be offered to existing customers on a *pro rata* basis. Another commenter supports returning all surrendered allocations to existing customers, even if that amount is beyond 2 percent.

*Response:* The Marketing Plan states that surrendered allocations will be returned to existing customers on a *pro rata* basis, up to 100 percent of each existing customer's pre-2025 allocations. WAPA will not allocate Base Resource above an existing customer's pre-2025 allocation unless that existing customer applies for an additional allocation because some existing customers may neither need nor want more Base Resource. Any Base Resource available after returning existing customers to 100 percent of their pre-2025 allocations will be included in the resource pool. Any Base Resource available from excess allocations, which WAPA believes will be minimal, will also be included in the resource pool. Existing customers interested in receiving additional Base Resource are encouraged to apply for a resource pool allocation. This same process will be used for the 2040 resource pool.

#### VII. Allocation Criteria

*Comment:* A commenter stated the Northern California Power Agency members with small allocations due to prior withdrawals should receive at least equal consideration with Native American tribes.

*Response:* WAPA will consider all applications received in response to the Calls for Applications. It is WAPA's policy to provide assistance to Native American tribes consistent with 25 U.S.C. 3505.

*Comment:* A commenter stated that under the Proposed Plan, a new customer could potentially receive up to 2 percent of the Base Resource in 2025 if additional customers are not available to split the resource pool. The commenter stated that if there are not enough new customers to fully subscribe to the 2 percent offering, the remaining share of the Base Resource product that is not allocated to a new customer can then be distributed to existing customers. The commenter also stated that existing customers could still potentially receive less than 1 percent of the Base Resource if several existing customers sign up to receive a share of unsubscribed Base Resource in the resource pool for new customers.

*Response:* WAPA has not determined how much Base Resource will be allocated to any allottee or group of allottees, which would include new

allottees or increases in existing customers' allocations. Existing customers may apply for additional Base Resource.

*Comment:* A commenter said the allocation methodology states the allocation of Base Resource "will be based on applicant's load during the calendar year prior to the Call for Applications or the amount requested, whichever is less." The commenter advocated establishing this load ratio share benchmark to determine which existing customers' Base Resource allocations exceed their load ratio share and subjecting only those excess allocations to the 2 percent reduction to establish the resource pool. Those existing customers whose Base Resource allocations fall below the benchmark would not be subject to the 2 percent reduction and would also be eligible for participation in the resource pool.

*Response:* WAPA considered several different methodologies to create the Resource Pools, including reducing only a subset of existing customers' allocations. After reviewing the comments received during informal stakeholder meetings, WAPA determined it would treat all customers equally by reducing the existing customers' allocation by 2 percent and 1 percent to create the 2025 and 2040 Resource Pools, respectively.

*Comment:* A commenter strongly encouraged development of minimum threshold criteria to ensure that the existing customers are not disadvantaged by the resource pool and that the resource value is not weakened or jeopardized by new customers. The commenter encouraged setting standards or carefully monitoring the resource pool process to ensure the resource is being used consistent with the project purposes.

*Response:* The Marketing Plan sets forth the eligibility criteria necessary to be met to qualify for an allocation of Federal power. The criteria apply to both existing and new customers. All new and existing customers will execute the same electric service contract and are bound by the same terms and conditions.

*Comment:* A commenter was concerned by the proposal to allow only those customers who have a load ratio share below 25 percent to receive additional allocations under the resource pool. The commenter understands the intent to avoid allocating additional Base Resource to entities who already have large allocations; however, the commenter stated the 25 percent threshold is somewhat arbitrary and that a set threshold negates consideration of

customers' socio-economic conditions or technical issues.

*Response:* In an informal public information meeting, WAPA proposed only existing customers whose allocation meets less than 25 percent of their load could apply for an additional allocation of Base Resource. Several stakeholders stated concerns with that proposal. Based on those concerns, the Marketing Plan does not contain a threshold. Any existing customer can apply for a resource pool allocation.

#### VIII. General Criteria and Contract Principles

*Comment:* Section V.B. states that "Allocation percentages are subject to adjustment." A commenter stated the circumstances of such an adjustment need to be specified so customers have an understanding of the nature of their commitment to an allocation. WAPA should clarify that Base Resource percentage adjustments will only be made in very limited circumstances, such as by customer termination or reduction, or when a customer no longer exists.

*Response:* WAPA agrees there are limited circumstances when Base Resource percentages may be adjusted as defined by the Marketing Plan. For instance, existing customers' Base Resource percentages may be increased if one or more existing customers reduce their Base Resource percentage or terminate their contracts prior to 2025. All customers' Base Resource percentages will be reduced for the 2040 Resource Pool. If it is determined that a customer has too large of an allocation, or is using the Base Resource for purposes other than serving its own load, that customer's Base Resource percentage may be reduced or withdrawn. An assignment, or withdrawal of an assignment, also would cause an adjustment in a customer's Base Resource percentage.

*Comment:* Section V.I. states "Contracts will include clauses specifying criteria that customers must meet on a continuous basis to be eligible to receive electric service from WAPA." Two commenters stated if WAPA intends to include criteria in the contracts that differ from the criteria for eligibility for an allocation, then the nature of the intended ongoing criteria should be explained. WAPA should clarify the criteria a customer must continue to meet to remain a customer.

*Response:* The eligibility criteria listed in the Marketing Plan will remain during the term of the Marketing Plan. However, other criteria may be required during the 30-year term to maintain flexibility and adapt to changes. Criteria

that a customer may need to meet will be included in contracts which can be modified as necessary to correspond with changes in the electric utility industry.

*Comment:* A commenter asked what version of the General Power Contract Provisions (GPCP) will be attached to the new contracts.

*Response:* The GPCP in effect at the time of the contract offer will be attached to the contracts for electric service.

#### IX. Termination/Reduction

*Comment:* Several commenters expressed interest in contract termination/Base Resource reduction. Commenters stated that to achieve balance for a 30-year take-or-pay obligation, the contract should include a reasonable termination or reduction provision. Commenters asserted that precedent for contract termination provisions within contracts has been set by Federal Energy Regulatory Commission (FERC)-approved transmission contracts. Due to the vague language in the GPCP, commenters stated that the Marketing Plan should clearly articulate customers' ability to terminate or reduce their Base Resource percentages when rates are extended. Commenters asserted that the Marketing Plan should clarify a customer's ability to terminate its contract under the GPCP. While the current GPCP provide for any customer, during a 90-day notification window, to terminate a contract following a rate change or formula rate extension, commenters recommended that a clear termination or allocation reduction provision be included in the body of the new agreement. Commenters asserted that there is clear precedent in major WAPA agreements for a reasonable termination notice provision. Commenters stated that specific language should be included in the body of the power contracts to allow a customer to reduce or terminate its allocation upon notice to WAPA, because GPCP termination triggered by rate change action is not sufficient risk protection for customers.

*Response:* WAPA acknowledges a 30-year term for a contract is a significant commitment and understands the concern regarding the ability to terminate the contract. WAPA's GPCP provide for customers to terminate service in the event of a change of rates. However, to address the commenters' concerns, WAPA will exclude Section 11 of the GPCP and, in collaboration with the customers, will clarify Section 11 and insert it directly into the contract.

*Comment:* Several commenters also stated the contracts should provide an exit clause at 5-year intervals during the term, after a change in the rates or terms of service, or after a significant regulatory change. According to the commenters, such a provision would provide protection for customers' ratepayers. Without an undisputable termination provision, commenters asserted that a 30-year take-or-pay contract will be a difficult commitment to make in the current environment of low cost renewable resources relative to the highly uncertain resource availability and allocated costs associated with the Base Resource. Commenters stated that sufficient notice periods would give WAPA time to explore alternative means for marketing power. The commenters strongly recommended consideration of a process that allows customers to terminate or reduce their Base Resource percentages under prescribed conditions. Such conditions could include a requirement that customers attempt to reassign the Base Resource percentage; longer notice provisions; or other criteria that would provide a balance for all parties. Some of these commenters advocated an opportunity for customers, upon reasonable notice, to terminate or modify their Base Resource allocation, for any reason, every five years throughout the term of the contract.

*Response:* As discussed above, WAPA will allow for termination as a result of a rate adjustment. WAPA anticipates electric utility industry changes and has provided for the ability to modify contracts in collaboration with customers in this Marketing Plan; therefore, WAPA does not believe an exit clause will be necessary in response to changes in the electric utility industry. Additionally, WAPA will use best efforts to assist customers that wish to reassign an allocation to the extent there are customers interested in additional allocations.

*Comment:* A commenter advocated a process whereby those customers intending to terminate their Base Resource contracts make an offering to other remaining Base Resource customers prior to filing a notice to terminate the contract. This would allow the remaining Base Resource customers to elect the level of additional Base Resource product that they would want to take and provide an overall balance of certainty for the entire program.

*Response:* If an existing customer surrenders some or all of its Base Resource percentage during a resource pool process, WAPA will first use that

surrendered Base Resource percentage to return all existing customers up to their full Base Resource percentage prior to the resource pool reduction. Any remaining Base Resource percentage after all customers are returned to their full Base Resource percentage will be included in the resource pool. Outside of a resource pool period, if a customer were to surrender any or all of its Base Resource percentage, WAPA, at its discretion, will reallocate that Base Resource percentage.

#### X. First Preference Entitlement and Allocation

*Comment:* A commenter stated the Final Plan should state that any and all preference entities located within Calaveras County are eligible to join a joint powers authority (JPA) as members and receive power through such JPA, irrespective if any of those entities receive a Base Resource allocation.

*Response:* Increasing Calaveras County's first preference allocation to serve additional loads of other preference customers would circumvent the allocation process. Additionally, it would lower the amount of Base Resource available for all preference customers.

#### XI. Transmission

*Comment:* A commenter supported continued use of the CVP transmission for Base Resource deliveries.

*Response:* Western acknowledges the comment.

*Comment:* A commenter stated WAPA should work with customers to ensure transmission arrangements are completed to provide for delivery of power made available by the Marketing Plan.

*Response:* WAPA will use best efforts to assist customers with their transmission arrangements. However, because WAPA does not own all the transmission and distribution necessary to serve all customers' loads, obtaining the transmission and distribution service necessary for delivery of WAPA power is ultimately the customers' responsibility.

*Comment:* Several commenters support consideration of the PACI to aid and benefit the CVP. Commenters stated that WAPA's transmission assets can be used to improve the economic benefit of the CVP to preference customers. Commenters also stated that WAPA should carefully manage and use all of its transmission assets to maximize and enhance economic and operational benefits to allow CVP costs to be minimized and benefits to be shared with preference customers. Commenters supported WAPA's commitment to

make surplus transmission available to aid and benefit the CVP. Commenters encouraged WAPA to explore the best use of its surplus transmission, including the Path 15 transmission line, to minimize costs for the CVP while honoring its existing commitments.

*Response:* Under WAPA's OATT, WAPA is required to charge all customers the same rate it charges itself, unless there is a statutory exemption. The PACI legislation (16 U.S.C. 837g) provides that WAPA should sell the excess capacity at equitable rates. Operational control of Path 15 has been turned over to the California Independent System Operator (CAISO). WAPA will continue to examine ways to utilize the PACI to aid and benefit the CVP.

### *XII. Changes in the Electric Utility Industry*

*Comment:* Numerous commenters support WAPA incorporating specific provisions to negotiate changes to contracts should changes in the electric industry/markets be significant enough that CVP transactions would need to be managed differently than might be articulated in the contracts. Commenters stated that this may be important in light of the significant changes that continue to impact the electric utility industry. Commenters further stated that the Marketing Plan needs to remain flexible due to the evolving power system, and that WAPA may need to re-evaluate the products and services it offers to continue to provide power at the lowest possible rates consistent with sound business principles. Commenters requested that WAPA clarify that any changes will be done with mutual agreement by WAPA and the customers.

*Response:* WAPA may need to re-evaluate the manner in which it markets the resource due to changes in the electric market. Any contractual changes will be made via mutual consent through an amendment executed by both parties to the contract.

### *XIII. Additional Comments*

*Comment:* A commenter stated that, in the Proposed 2025 Schedule, the one-time termination milestone should be removed and replaced with the opportunity to terminate or reduce the Base Resource percentage prior to contract start date.

*Response:* WAPA has determined that a minimum of 6 months is needed to allow time to reallocate any returned allocations. Customers may reduce or return their allocations no later than July 1, 2024.

*Comment:* A commenter asked what credit provisions will be applied to all customers.

*Response:* WAPA's standard credit provisions in effect at the time of contract execution will be applied to all customers.

*Comment:* Numerous commenters stated the Marketing Plan should include a limiter that would cap power customers' payments when power customers' combined CVP power and Restoration Fund payments exceed the annual average of the North of Path 15 market rate. A commenter strongly requested the Marketing Plan include a cap on costs that can be allocated to power customers under certain conditions to ensure the contract remains financially sustainable for customers and provides for a more proportionate allocation of costs between water and power customers. The commenters also stated that contracts should include a cap on power customers' payments when CVP power, Restoration Fund payments, Twin Tunnel payment and all other fees in total exceed the annual average market price. Commenters further stated that Restoration Fund costs are more than a third of the total cost of the Base Resource. While customers indicated that they understand that WAPA's cost recovery mechanisms for the CVP are based on the foundation of recovery for direct project costs through the power revenue requirement, they asked that WAPA explore further the Central Valley Project Improvement Act (CVPIA) costs that are being passed through by Reclamation before Plan implementation. Commenters stated that cost containment and cost certainty must be part of the equation so that Base Resource customers are able to better plan on power expenses and better justify budget impacts. If no significant benefits to power customers are associated with certain cost types, commenters argued that sound cost causation principles would suggest that those costs should not be passed on to power customers. Customers recommended that WAPA agree to suspend the collection of non-essential costs and projects when CVP generation levels are reduced, allowing Federal power to be assessed at rates equal or near alternative power costs. In the customers' view, the GPCP alone would not give customers protection from the CVP cost impacts occurring because of continually increasing CVPIA Restoration Fund costs. Because WAPA rate actions establish total revenue requirements, and not per unit costs, customers believe that the GPCP do not protect customers from increasing per

unit costs due to declining CVP power production. Lastly, customers argued that because WAPA rate actions establish total revenue requirements, and do not consider the value of CVP power generated, the GPCP do not protect customers from declining value of CVP production due to water management shifts to periods when power is less valuable.

*Response:* WAPA will sell the Base Resource at a cost-based rate. WAPA is required to recover costs within a statutorily defined period. The public ratemaking process is separate from the development of, and allocation of power under, the Marketing Plan. WAPA encourages the public to participate in WAPA's rate processes. Costs and availability will be more clearly identified by the time commitments are required for the Base Resource. Reclamation develops and implements the programs under the CVPIA, and determines the costs associated with its programs. WAPA is the billing agent for the Restoration Fund charges to the power customers and has no control over those costs; however, WAPA minimizes WAPA components of power costs to provide the best possible service at the lowest possible rates consistent with sound business principles. WAPA will continue to work with Reclamation and the customers on the CVPIA costs Reclamation is passing on to WAPA's customers.

### **Summary of Revisions to the Proposed Plan**

WAPA revised the Proposed Plan as a result of the comments received during the comment period and public forums. Additionally, changes have been made to more clearly define the intent, but not to alter the substance, of the original proposal. The revisions are summarized as follows:

WAPA will exclude GPCP Section 11 from the electric service contract and, instead, will include language in the electric service contract developed in collaboration with customers that clearly defines the customers' ability to terminate their contracts after certain rate processes.

The definition of Base Resource is modified to clarify that power includes both capacity and energy. Additionally, the word "forfeit" is being replaced with "surrender" to more accurately refer to a voluntary return of an allocation.

In response to comments regarding the Custom Product, the definition of Custom Product is modified to clarify it does not include Base Resource and may not necessarily be supplemental power.

## 2025 Power Marketing Plan

The Marketing Plan addresses: (1) The power to be marketed after December 31, 2024, which is the termination date for all existing SNR electric service contracts; (2) the general terms and conditions under which the power will be marketed January 1, 2025, through December 31, 2054; and (3) the criteria to determine who will be eligible to receive allocations from the resource pools.

WAPA will continue a collaborative process in implementing the terms set forth in this Marketing Plan.

Within broad statutory guidelines, WAPA has discretion as to whom and under what terms it will contract for the sale of Federal power, as long as preference is accorded to statutorily-defined public bodies. WAPA markets power in a manner that will encourage the most widespread use at the lowest possible rates consistent with sound business principles. All products and services provided under this Marketing Plan will be subject to the operational requirements and constraints of the CVP and the Washoe Project, transmission availability, purchase power limitations, and Federal authorities.

### I. Acronyms and Definitions

As used herein, the following acronyms and terms, whether singular or plural, capitalized or not capitalized, shall have the following meanings:

**Allocation** An offer from WAPA to sell Federal power for a certain period of time, which will convert to a right to purchase after execution of a contract.

**Allocation Criteria** Criteria used to determine the amount of energy allocated to allottees.

**Allottee** A preference entity receiving an allocation percentage.

**Ancillary Services** Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission provider's transmission system in accordance with good utility practice. Ancillary services are generally defined by the North American Electric Reliability Corporation.

**Base Resource** CVP and Washoe Project power (capacity and energy) output determined by WAPA to be available for marketing, including the environmental attributes, after meeting the requirements of project use and first preference customers, and any adjustments for maintenance, reserves, system losses, and certain ancillary services.

**Bill Crediting** Contractual provisions whereby payments due to WAPA by a customer shall be paid by a

customer to a third party when so directed by WAPA.

**Capacity** The electrical capability of a generator, transformer, transmission circuit or other equipment.

**Central Valley Project (CVP)** A multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River, south of the City of Bakersfield.

**Contract Principles** Provisions of the electric service contracts, including WAPA's General Power Contract Provisions.

**Custom Product** A combination of products and services which may be made available by WAPA per customer request.

**Customer** An entity with a contract and receiving electric service from WAPA's Sierra Nevada Region.

**Eligibility Criteria** Conditions that must be met to qualify for an allocation.

**Energy** Measured in terms of the work it is capable of doing over a period of time; electric energy is usually measured in kilowatthours or megawatthours.

**Firm** A type of product and/or service that is available to a customer at the times it is required.

**First Preference Customer/Entity** A preference customer and/or a preference entity (an entity qualified to use, but not using, preference power) within a county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones Project provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

**General Power Contract Provisions (GPCP)** Standard terms and conditions included in WAPA's electric service contracts.

**Integrated Resource Plan (IRP)** A process and framework within which the costs and benefits of both demand and supply-side resources are evaluated to develop the least total cost mix of utility resource options.

**Kilowatt (kW)** A unit measuring the rate of production of electricity; one kilowatt equals one thousand watts.

**Marketing Plan** WAPA's final 2025 Power Marketing Plan for the Sierra Nevada Region.

**Megawatt (MW)** A unit measuring the rate of production of electricity; one megawatt equals one million watts.

**Net Billing** Payments due to WAPA by a customer may be offset against payments due to that customer by WAPA.

**Power** Capacity and energy.

**Preference** The requirements of Reclamation Law that provide for

preference in the sale of Federal power be given to certain entities, such as governments (state, Federal and Native American), municipalities and other public corporations or agencies, and cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (*See, e.g.*, Reclamation Project Act of 1939, Section 9(c), 43 USC 485h(c)).

**Primary Marketing Area** The area generally encompassing northern and central California extending from the Cascade Range to the Tehachapi Mountains and west-central Nevada.

**Project Use** Power as defined by Reclamation Law and/or used to operate CVP and Washoe Project facilities.

**Reclamation Law** Refers to a series of Federal laws with a lineage dating back to the late 1800s. Viewed as a whole, those laws create the framework under which WAPA markets power.

**Reimbursable Financing** WAPA may purchase power or provide other services using reimbursable authority pursuant to the Economy Act, 31 USC 1535. This is a funding mechanism used by Federal customers.

**Sierra Nevada Region (SNR)** The Sierra Nevada Region of the Western Area Power Administration.

**Unbundled** Electric service that is separated into its components and offered for sale with separate rates for each component.

**WAPA** Western Area Power Administration, United States Department of Energy, a Federal power marketing administration responsible for marketing and transmitting Federal power pursuant to Reclamation Law and the DOE Organization Act (42 USC 7101, *et seq.*).

**Washoe Project** A Federal water project located in the Lahontan Basin in west-central Nevada and east-central California.

### II. Base Resource

The Base Resource, as defined in Section I., will include CVP and Washoe Project power. CVP generation will vary hourly, daily, monthly, and annually because it is subject to hydrological conditions and other constraints that may govern CVP operations. CVP generation must be adjusted for project use, first preference, maintenance, reserves, system losses, and certain ancillary services before the Base Resource is available for marketing. The Base Resource will be further adjusted

for transmission losses to the point of delivery.

The U.S. Department of the Interior, Fish and Wildlife Service (F&WS), Lahontan National Fish Hatchery and Marble Bluff Fish Facility are project use loads of the Washoe Project and have first priority to those power resources. WAPA will continue to make every effort to provide the Washoe Project power resource to F&WS. The generation available after serving the F&WS needs will be marketed with the CVP power resources. The Washoe Project is subject to the same variability and constraints as the CVP.

### III. Products and Services

WAPA will market its Base Resource alone or in combination with a Custom Product, which could include purchasing some level of firming power on behalf of all customers, a group of customers, or individual customers. All costs incurred by WAPA in providing additional services to customers will be paid by those customers using the services. The degree to which WAPA continues to purchase power will depend on customer requests and Federal authorities.

Each allottee will be allocated a percentage of the Base Resource. All allottees will be required to commit to the Base Resource within 6 months of a contract offer.

Upon request, WAPA may develop a Custom Product for any customer. A Custom Product may include any products or services mutually negotiated between WAPA and a customer. This may include firming and/or renewable power purchases, ancillary services, reserves, portfolio management services, scheduling coordinator services, etc. Commitments to purchase a Custom Product must be made by January 1, 2023, for a period of no less than 5 years of service, beginning January 1, 2025. Thereafter, the Custom Product will be offered for periods as determined by WAPA. All costs incurred by WAPA in providing Custom Product services to customers will be paid by those customers using the services.

WAPA may, at its discretion, extend the commitment dates for the Base Resource and/or Custom Products.

WAPA will manage an exchange program to allow all customers to fully and efficiently use their power allocations. Any power allocated by WAPA to a customer that cannot be used on a real-time basis due to that customer's load profile will be offered under this program to other customers. The exchange program will be

developed in collaboration with the customers.

Any unused resources may be marketed for periods of time as determined by WAPA, and may be marketed outside the primary marketing area. Such sales may be to any entity (preference or non-preference), under any terms, conditions, rates, or charges determined solely by WAPA.

### IV. Resource Extensions and Resource Pool Allocations

WAPA will initially provide 98 percent of its available power resources to existing customers and establish a resource pool with the remaining power resources for new allocations. Starting on January 1, 2040, WAPA will reduce the then-existing customers' allocations by 1 percent to develop the 2040 resource pool.

#### A. Extension for Existing Customers

Starting January 1, 2025, existing customers will have a right to purchase 98 percent of their current Base Resource percentage amount; except as provided below:

1. In the event that an existing customer(s) surrenders some or all of its allocation prior to 2025, that percentage, up to 2 percent of the total Base Resource, will be returned to the existing customers on a *pro rata* basis.

2. In January 2024, WAPA will compare all existing customers' allocations to their loads. WAPA will use the average Base Resource MWh annual generation and the customers' previous 5 years energy consumption to compare allocations to loads. No customer should have an allocation greater than its load. If, after the comparison, WAPA believes a customer(s) has an allocation greater than its load, WAPA will consult with the customer(s) to determine if the allocation is, in fact, larger than its load. If WAPA determines the allocation is too large, WAPA will reduce that customer(s) allocation to 98 percent of its load.

3. Starting on January 1, 2040, WAPA will reduce all customers' allocations, including 2025 Resource Pool customers, by an additional 1 percent to create the 2040 Resource Pool. WAPA will follow the steps listed in IV.A.1. and IV.A.2. in January 2039 when creating the 2040 Resource Pool.

#### B. Resource Pool Allocations

WAPA will establish a resource pool by reserving a portion of the power available after 2024 for allocation to eligible preference entities and existing customers. A second resource pool will be established for service starting on

January 1, 2040. Allocations from the resource pools will be determined through a separate public process at a later date.

#### 1. Resource Pool Amount

The 2025 Resource Pool will initially consist of 2 percent of the power resources available after 2024, and the 2040 Resource Pool will initially consist of 1 percent of the power resources available after 2039. Should any Base Resource become available because of Sections IV.A.1., IV.A.2., or IV.A.3., above, WAPA will include the additional Base Resource in the appropriate resource pool. WAPA will, at its discretion, allocate a percentage of the resource pools to applicants that meet the Eligibility and Allocation Criteria.

#### 2. Eligibility Criteria

WAPA will apply the following Eligibility Criteria to all applicants seeking a resource pool allocation under the Marketing Plan:

a. Applicants must meet the preference requirements under Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)(1)), as amended and supplemented.

b. Applicants should be located within SNR's primary marketing area (map of marketing area available upon request). If SNR's power resources are not fully subscribed, WAPA may market its resource outside the primary marketing area.

c. Applicants that require power for their own use must be ready, willing, and able to receive and use Federal power.

d. Applicants that provide retail electric service must be ready, willing, and able to receive and use the Federal power to provide electric service to their customers, not for resale to others.

e. Applicants must submit an application in response to the Call for Resource Pool Applications issued by WAPA in a separate **Federal Register** notice. The notice will include the deadline for receipt of those applications.

f. Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975 (25 U.S.C. 5304).

g. WAPA generally will not allocate power to applicants with loads of less than 1 MW; however, allocations to applicants with loads which are at least 500 kilowatts may be considered, provided the loads can be aggregated with other allottees' loads to schedule and deliver to a minimum load of 1 MW.

### 3. Allocation Criteria

The following Allocation Criteria will apply to all applicants receiving a resource pool allocation under the Marketing Plan:

a. Allocations will be made in amounts as determined solely by WAPA in the exercise of its discretion under Reclamation Law and considered to be in the best interest of the U.S. Government.

b. Allocations will be based on the applicant's load during the calendar year prior to the Call for Applications or the amount requested, whichever is less.

c. An allottee will have the right to purchase power from WAPA only upon the execution of an electric service contract between WAPA and the allottee, and satisfaction of all conditions in that contract.

d. All customers, including those receiving an allocation from the 2025 Resource Pool, will be subject to the 2040 Resource Pool adjustment.

e. Eligible Native American applicants will receive greater consideration for an allocation of up to 65 percent of their total energy load in the calendar year prior to the Call for Applications, as authorized by 25 U.S.C. 3505.

#### *V. General Criteria and Contract Principles*

The following criteria and contract principles apply to all contracts executed under the Marketing Plan, except that certain criteria may not apply to contracts for first preference customers (see Section VI.):

A. Electric service contracts shall be executed within 6 months of a contract offer, unless otherwise agreed to in writing by WAPA.

B. Allocation percentages shall be subject to adjustment.

C. All power supplied by WAPA will be delivered pursuant to a scheduling arrangement.

D. Customers will be required to pay for their percentage of the Base Resource, regardless of whether they can actually use the power.

E. Customers must pay for all charges associated with the products and services provided, including charges associated with ancillary services, Custom Products, and transmission. Those charges will be passed on to the customer(s) contracting for the product or service.

F. WAPA will develop rate schedules for services provided under the Marketing Plan. Such rates will be developed through a separate public process.

G. Customers must pay all applicable rates and charges in the manner and

within the time prescribed in the contract.

H. A written commitment to the Custom Product will be required on or before January 1, 2023. WAPA may extend the final commitment dates for the Custom Product.

I. Contracts will include clauses specifying criteria that customers must meet on a continuous basis to be eligible to receive electric service from WAPA.

J. Upon request, WAPA may provide, or assist each new and existing customer in obtaining, transmission arrangements for delivery of power marketed under the Marketing Plan; nonetheless, each entity is ultimately responsible for obtaining its own delivery arrangements for its load. Transmission service over the CVP system will be provided in accordance with Section VII. of this Marketing Plan.

K. Contracts shall provide for WAPA to furnish electric service beginning either January 1, 2025, or January 1, 2040, and continuing through December 31, 2054.

L. Specific products and services may be provided for periods of time as agreed to in the electric service contract.

M. Contracts shall incorporate WAPA's standard provisions, policies and procedures for electric service contracts, integrated resource plans, and GPCP, as determined by WAPA. WAPA will exclude Section 11 of the GPCP from the electric service contracts and, instead, will include language developed in collaboration with the customers that clearly defines the customers' ability to terminate their electric service contracts after certain rate processes.

N. Contracts will include a clause that allows WAPA to reduce or rescind a customer's allocation percentage, upon 90 days' notice, if WAPA determines that (1) the customer is not using this power to serve its own loads, except as otherwise specified in Section III.; or (2) the allocation amounts are consistently greater than the customer's maximum load.

O. Any power not under contract may be allocated at any time, at WAPA's sole discretion, or sold as deemed appropriate by WAPA, consistent with Federal law.

P. Contracts will include a clause providing for WAPA to adjust the customers' allocation percentage for the 2040 Resource Pool.

Q. Contracts may include a clause providing for alternative funding arrangements, including Net Billing, Bill Crediting, Reimbursable Financing, and advance payment.

#### *VI. First Preference Entitlement and Allocation*

The Trinity River Division Act and the New Melones Project provisions of the Flood Control Act of 1962 (Acts) specify that contracts for the sale and delivery of the additional electric energy, available from the CVP power system as a result of the construction of the plants authorized by these Acts and their integration into the CVP system, shall be made in accordance with preferences expressed in Reclamation Laws. These Acts also provide that a first preference of up to 25 percent of the additional energy shall be given, under Reclamation Law, to preference customers in the counties of origin (Trinity, Tuolumne, and Calaveras), for use in those counties, who are ready, willing, and able to enter into contracts for the energy.

WAPA will calculate and allocate the Maximum Entitlements of First Preference Customers (MEFPC), which is the maximum amount of energy available to first preference customers/entities, in accordance with the following:

A. The MEFPC will be calculated separately for the New Melones Project, Calaveras and Tuolumne Counties, and the Trinity River Division (TRD), Trinity County (first preference projects). To determine the 25 percent of additional energy made available to the CVP as a result of the construction of each of these projects, WAPA will use the average of the previous 20 years of historical annual generation. The TRD MEFPC includes generation from Trinity, Carr, and Spring Creek Powerplants and a portion of the Keswick Powerplant generation. Based on the most current information available, this calculation results in an estimated MEFPC of 122,800 MWh available from the New Melones Project, and an estimated MEFPC of 361,500 MWh available from the TRD. WAPA will calculate the MEFPC on June 1, 2024, to be applicable January 1, 2025. WAPA will recalculate the MEFPC every 5 years thereafter.

B. Upon recalculation, if the MEFPC from a first preference project is 10 percent above or below the currently applicable MEFPC from that first preference project, the MEFPC will be adjusted to reflect that increase or decrease. WAPA will notify affected first preference customers at least 6 months before making an adjustment to the MEFPC. If recalculation reduces the MEFPC to an amount less than the load previously served, WAPA may, upon request and at its discretion, make purchases necessary to replace that



amount of power no longer available. The costs for all such purchases made on behalf of a first preference customer will be passed on to that first preference customer.

C. An allocation made to a first preference customer/entity under the Marketing Plan will be based on the power requirements of that first preference customer/entity. The sum of allocations of first preference power, including losses, shall not exceed the MEFFPC from each first preference project, or a county of origin's share of the MEFFPC, except as allowed under Section VI.G. below.

D. WAPA will provide full requirements service as described below to first preference customers. The first preference customer will be responsible for transformation and transmission losses to the first preference customer delivery point. Transmission losses shall include losses for CVP transmission and third-party transmission.

WAPA will provide the first preference customer with its full power requirements (capacity and energy) up to its right to the MEFFPC at the Base Resource rate. If there is more than one first preference customer in a county of origin, or a first preference entity in that county makes a request for power, WAPA reserves the right to establish a maximum amount of power available to each first preference customer from the MEFFPC. Payment for full requirements service will be based on usage.

E. A first preference entity may exercise its right to use a portion of the MEFFPC by providing written notice to WAPA at least 18 months prior to the anniversary date of the first preference project located in its county. The anniversary date is the successive fifth year anniversary of the date the Secretary of the Interior declared the availability of power from the powerplants in the counties of origin. New applications for service to begin on January 1, 2025, must be received 18 months prior to January 1, 2022 (*i.e.*, July 1, 2020), for Trinity County and 18 months prior to April 5, 2022 (*i.e.*, October 5, 2020), for Calaveras and Tuolumne Counties. Other anniversary years applicable to this Marketing Plan are 2027, 2032, 2037, 2042, 2047, and 2052.

F. If the request of a first preference customer/entity for power, including adjustment for losses, is greater than the remaining MEFFPC from that county's first preference project, then WAPA will allocate the remaining MEFFPC to the first preference customer/entity first making a request for a power allocation

or a justified increase in its allocation percentage.

G. Power allocated to first preference customers/entities in Tuolumne and Calaveras Counties will be subject to the following additional conditions:

1. Tuolumne and Calaveras Counties shall each be entitled to one-half of the New Melones Project MEFFPC.

2. If first preference customers in either Tuolumne County or Calaveras County are not using their county's full one-half share, and a first preference customer/entity in the other county requests power in an amount exceeding that county's one-half share, then WAPA will allocate the unused power, on a withdrawable basis, to the requesting first preference customer/entity. Such power may be withdrawn for use by a first preference customer/entity in the county not using its full one-half share upon 6 months' written notice from WAPA.

H. Trinity Public Utilities District is currently the sole recipient of the TRD's first preference rights.

I. Transmission service will be provided in accordance with applicable laws and Section VII. of this Marketing Plan.

J. For planning purposes, first preference customers may be required to provide forecasts and other information required by WAPA as set forth in the electric service contract.

K. The general criteria and contract principles set forth in Sections V.A., C. through I., K., M., and O. of this Marketing Plan will apply to first preference customers.

#### VII. Transmission Service

Allottees and customers must secure necessary transmission service to deliver Federal power. WAPA will provide transmission service to deliver the Base Resource over the CVP transmission system. WAPA will work with allottees and customers to secure bundled or unbundled transmission services as appropriate beyond its CVP transmission system in conjunction with its power sales in a manner consistent with FERC orders, legislated mandates, or CAISO agreements. While WAPA will work with allottees and customers, it is the allottees' and customers' obligations to secure all necessary transmission service.

Generally, WAPA will market surplus transmission capacity on the CVP and COTP available under WAPA's OATT. The legislation authorizing the PACI (16 U.S.C. 837g) provides for the Secretary of Energy to market surplus available transmission capacity on the PACI at equitable rates to aid and benefit the CVP. WAPA will determine the use of

its transmission resources concurrently with further development of the products and services under this Marketing Plan. Specific terms and conditions for surplus transmission sales will be provided for in future service agreements. WAPA will develop transmission rates under a separate proceeding.

#### VIII. Changes in the Electric Utility Industry

WAPA recognizes that there have been, and continue to be, significant changes in the electric utility industry. To address this concern, WAPA, in collaboration with its customers, will include the ability to make changes in how the Federal resource is marketed if there is deemed a benefit to WAPA and its customers. Any changes implemented would be done through negotiation and revision to individual customer contracts.

#### Authorities

WAPA developed this Marketing Plan in accordance with its power marketing authorities pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts specifically applicable to the projects involved.

#### Regulatory Procedure Requirements

##### Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), WAPA has received approval from the Office of Management and Budget for the collection of customer information in this rule, under control number 1910-5136, which expires on September 30, 2017.

##### Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility analysis whenever an agency is required by 5 U.S.C. 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule. A final regulatory flexibility analysis is required whenever the agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking. WAPA has determined that the analytical requirements of the Regulatory Flexibility Act do not apply to this rulemaking because it is a

rulemaking involving services applicable to public property.

#### *Environmental Compliance*

In compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4370), Council on Environmental Quality NEPA implementing regulations (40 CFR parts 1500–1508), and DOE NEPA implementing regulations (10 CFR part 1021), WAPA completed a Categorical Exclusion (CX). Since WAPA is reallocating its existing resources and is not planning to increase its generation or transmission under this Marketing Plan, a CX is the appropriate level of environmental review.

#### *Determination Under Executive Order 12866*

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this **Federal Register** notice by the Office of Management and Budget is required.

Dated: July 6, 2017.

Mark A. Gabriel,  
Administrator.

[FR Doc. 2017-17210 Filed 8-14-17; 8:45 am]

BILLING CODE 6450-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OLEM-2017-0458; FRL-9966-52-OLEM]

### Release of Interim Final Guidance for State Coal Combustion Residuals Permit Programs; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the availability of and requests comment on a document titled *Coal Combustion Residuals State Permit Program Guidance Document; Interim Final*. As a result of the Water Infrastructure Improvements for the Nation (WIIN) Act signed by the President on December 16, 2016, States may submit coal combustion residuals (CCR) programs to EPA for review and approval. This document describes EPA's interpretations of the WIIN Act provisions and the way in which EPA generally intends to review State programs.

**DATES:** Comments must be received on or before September 14, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2017-0458; Title: Coal Combustion Residuals (CCR) State Permit Program Guidance Document (Interim Final) at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Mary Jackson, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (703) 308-8453; email address: [jackson.mary@epa.gov](mailto:jackson.mary@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 2301 of the Water Infrastructure Improvements for the Nation Act (WIIN) Act amended the Resource Conservation and Recovery Act to allow States to submit and EPA to approve State permit (or other system of prior approval and conditions) programs for CCR.

*Coal Combustion Residuals State Permit Program Guidance Document; Interim Final* is designed to provide information about the provisions of the 2016 WIIN Act, related to CCR, as well as the process and procedures EPA generally intends to use to review and make determinations on State CCR Permit Programs. The purpose of this document is to provide States guidance for developing and submitting a State CCR Permit Program for EPA approval.

The document has four (4) chapters. The first two are in the form of

questions and answers. The first chapter provides an overview of the provisions of the WIIN Act. The second chapter contains the process and procedures EPA is currently planning to use to review and make determinations on State CCR programs, as well as the documentation EPA generally expects to request from States seeking approval of a program. The third and fourth chapters consist of checklists to aid the States as they are considering and developing their program submittals. Chapter 3 contains a checklist of all the requirements of the current CCR rule at 40 CFR part 257 subpart D. Chapter 4 provides a checklist of those items EPA generally expects a State would submit when seeking approval of its CCR program.

This guidance describes EPA's statutory interpretations and the way in which EPA generally intends to review State programs. As such, EPA encourages States to consult this interim final guidance and to use it as a technical resource as they develop and submit State CCR Permit programs to EPA for review and approval. As provided by Section 2301 of the WIIN Act, EPA must provide public notice and an opportunity for comment prior to approval of a State program by EPA. Thus, EPA's review and approval of a State program will be a separate process from this action that will provide for public notice and opportunity for comment on each State program.

The information and procedures in the document are intended as a technical resource to States that may be useful in developing and submitting a State CCRs Permit Program to EPA for approval. This Guidance does not constitute rulemaking by the Agency, and cannot be relied on to create a substantive or procedural right enforceable by any party in litigation with the United States. As indicated by the use of non-mandatory language such as "may" and "should," it only provides recommendations and does not impose any legally binding requirements.

The guidance document can be found in the docket (Docket ID No. EPA-HQ-OLEM-2017-0458; Title: Coal Combustion Residuals (CCR) State Permit Program Guidance Document (Interim Final)) at <http://www.regulations.gov>. In addition, a copy of the guidance document and additional resources on CCR can also be found on EPA's Web site: [www.epa.gov/coalash](http://www.epa.gov/coalash).



# PROPOSED 2021 Committee Meeting Calendar

Facilities/ Pooling Committees 9:00 am	LEC PPC Committee 10:00 am	Finance Committee 10:00 am	Utility Directors 9:00 am	Legal Committee	L&R Affairs Committee 12:00 pm	Executive Committee 8:00 am	*Commission 9:30 am
	January 11		January 14	January 7		January 28	January 28
	February 8		February 11	February 4		February 25	February 25
	March 8		March 11	March 4		March 25	March 25
	April 12		April 15	April 1		April 29	April 29
	May 10		May 13	May 6		May 27	May 27
	June 7		June 10	June 3		June 17	June 17
	July 12		July 15	July 1		July 29	July 29
	August 9		August 12	August 5		August 26	August 26
	September 13		September 9	September 29 Annual Napa, CA		**October 1 Napa, CA	**October 1 Napa, CA
	October 11		October 14	No October Meeting		October 28	October 28
	November 15		November 18	November 4		No November Meeting	No November Meeting
	December 6		December 9	December 16		December 2	December 2

\*Commission Packet mailed the Thursday or Friday prior to the meeting date.

\*\*The October 1 Commission meeting will be held on a Friday.

### NCPA CONFERENCES / EVENTS:

**NCPA 101 Presentation: TBD – Zoom Meeting**

**NCPA Strategic Issues Conference: CANCELLED**

**Capitol Day: CANCELLED**

**NCPA/NWPPA Federal Policy Conference: CANCELLED**

**NCPA Annual Conference: September 29 – October 1, 2021, at the Silverado Resort, Napa, CA**