

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

CUSTOM PRODUCT CONTRACT  
FOR  
VARIABLE RESOURCE SERVICE  
WITH

VARIABLE RESOURCE CUSTOMER

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**1. PREAMBLE:**

This Contract is made this \_\_\_ day of \_\_\_\_\_, 2004, pursuant to the Acts of Congress approved June 17, 1902, (32 Stat. 388); August 26, 1937, (50 Stat. 844); August 4, 1939, (53 Stat. 1187); and August 4, 1977, (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA, acting by and through the Administrator, WESTERN AREA POWER ADMINISTRATION, Department of Energy, hereinafter called Western, represented by the officer executing this Contract, or a duly appointed successor, also sometimes hereinafter called the Contracting Officer; and the VARIABLE RESOURCE CUSTOMER, hereinafter referred to as VRC or Contractor, a type of entity, its successors or assigns; also hereinafter referred to individually as Party and together as Parties.

**2. EXPLANATORY RECITALS:**

2.1 The Parties entered into Base Resource Contract 00-SNR-003\_\_ on \_\_\_\_\_, 2000. The Base Resource Contract provides the terms and conditions whereby Western will provide Base Resource Electric Service to VRC.

2.2 Western's final 2004 Power Marketing Plan, published in the Federal Register on June 25, 1999 (64 FRN 34417), provides for Western to develop Custom Products for customers who request them. Section [8.7] of the Base Resource Contract allows for Western to develop a Custom Product for VRC.

[2.3 In addition to its Base Resource, VRC requests to purchase Supplemental Power from Western to serve its load.]

[2.4 VRC [also] requests Western to provide other sources of power, if necessary, to ensure Final Day-Ahead Base Resource Schedules are firm.]

2.5 Western is willing to provide the Custom Products in accordance with VRC's request[s] in Section[s] [2.3] [and] [2.4] above.

**3. AGREEMENT:**

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

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

4.1 This Contract shall become effective upon execution by the Parties and shall remain in effect until September 30, 2010.

4.2 Service under this Contract shall begin on or after January 1, 2005.

4.3 Western may suspend or terminate service under this Contract pursuant to Section 15.

4.4 All obligations incurred under this Contract shall be preserved until satisfied.

## 5. **DEFINITION OF TERMS:**

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

- 5.1 “Base Resource” means CVP and Washoe Project power output, as determined by Western to be available for marketing, after (1) meeting the requirements of Project Use and First Preference Customers, and (2) any other adjustments required for maintenance, regulation, reserves, transformation losses, and ancillary services.
- 5.2 “Custom Product” means a combination of products and services, excluding provisions for load growth, which may be made available by Western per customer request, using the customer’s Base Resource and supplemental purchases made by Western.
- [ 5.3 “Final Day-Ahead Base Resource Schedule” means that amount of Base Resource that Western declares to VRC for each hour of a 24-hour period under VRC’s Base Resource Contract. The Final Day-Ahead Base Resource Schedule will be provided prior to the active day. Scheduling procedures are more fully described in Exhibit C of VRC’s Base Resource Contract.]
- [ 5.4 “Firming” means to ensure that the amount of power to be provided in accordance with a schedule is available by obtaining another resource when necessary.]
- [ 5.5 “Supplemental Power” means firm capacity and energy provided by Western that a customer needs in addition to its Base Resource to meet its load.]
- 5.6 “Variable Resource Customer” means a customer who is responsible for managing its own power portfolio and will purchase Final Day-Ahead Base Resource Schedule

Firming and/or Supplemental Power from Western in addition to its Base Resource percentage.

[6. **FINAL DAY-AHEAD BASE RESOURCE SCHEDULE FIRMING:**

6.1 In the event that Western is unable to provide the Base Resource as stated in VRC's Final Day-Ahead Base Resource Schedule(s), Western will provide another source of power to VRC in order to firm VRC's Final Day-Ahead Base Resource Schedule(s).

6.2 Western will continue to provide Final Day Ahead Base Resource Schedule Firming to VRC for the duration of VRC's Final Day-Ahead Base Resource Schedule(s) or until Base Resource generation is restored to a level necessary to support VRC's Final Day-Ahead Base Resource Schedule(s), whichever time period is shorter.

6.3 VRC shall be responsible for all costs associated with Western's provision of Final Day-Ahead Base Resource Schedule Firming to VRC.

6.4 Either party may terminate this service upon sixty (60) days advance written notice to the other party.]

[7. **SUPPLEMENTAL POWER FURNISHED BY WESTERN:**

7.1 Western may provide Supplemental Power to those Variable Resource Customers who request Supplemental Power to meet their loads. The minimum term for this service shall be thirty (30) days.

7.2 VRC will provide Western with the details of its Supplemental Power needs. Western shall have sole discretion in determining if it is able to provide Supplemental Power service to VRC as requested by VRC. If Western determines it is able to provide the Supplemental Power requested by VRC, Western will enter into a supply contract(s).

7.3 The specific terms of the Supplemental Power to be provided to VRC will be listed in Exhibit A, attached hereto. Exhibit A may be revised from time-to-time to meet the Supplemental Power needs of VRC as agreed to by the Parties.

7.4 VRC shall be responsible for all costs associated with such purchases.]

8. ADDITIONAL SERVICES NECESSARY TO PROVIDE CUSTOM PRODUCT(S):

VRC understands that additional services, including but not limited to, scheduling the resource and control area services may be necessary to provide the Custom Product(s) requested under this Contract.

9. DELIVERY ARRANGEMENTS:

[ 9.1 Day-Ahead Base Resource Schedule Firming will be provided to the point(s) of delivery specified in Exhibit A of VRC's Base Resource Contract.]

[ 9.2 Supplemental Power provided by Western will be made available to VRC at the point(s) of delivery specified in Section 4 of Exhibit A attached hereto.]

10. SCHEDULING, METERING, AND TRANSMISSION ORGANIZATIONS:

All services provided by Western to VRC under this Contract will be subject to the same Scheduling and Metering terms and conditions and Transmission Organization Protocols as provided under VRC's Base Resource Contract with Western the same as if they had been expressly set forth herein.

11. WESTERN RATES:

11.1 VRC shall pay for electric and related services furnished hereunder in accordance with the rates, charges, and conditions set forth in the CVP schedules of rates effective January 1, 2005, or any superseding rate schedules.

11.2 VRC shall be responsible for all costs incurred by Western to provide the Custom Product(s) specified in this Contract.

12. GENERAL POWER CONTRACT PROVISIONS:

12.1 The GPCP, effective July 10, 1998, attached hereto, are hereby made a part of this Contract, the same as if they had been expressly set forth herein [; Provided, That, For the term of Exhibit A to this Contract, VRC hereby agrees to waive its rights under this Contract to Article 11 of the GPCP. **ONLY APPLIES TO SUPPLEMENTAL POWER CUSTOMERS]**

13. **REIMBURSABLE FINANCING: FOR FEDERAL CUSTOMERS ONLY then skip to Section 15]**

13.1 Western may purchase power or provide other services using reimbursable authority pursuant to the Economy Act, 31 U.S.C. 1535. Reimbursable financing establishes the budgetary resource to fund Western's reimbursable financing program. Western's reimbursable authority shall not exceed the fiscal year (presently October 1st of the current calendar year through September 30th of the following calendar year) estimated costs related to power and other services provided by Western. Reimbursable financing under this Contract is limited to the total value of the Custom Product(s) provided by Western.

13.2 Each February 1st, VRC shall provide written notification to Western of its budgeted appropriations, or forecasted plan for budget requests for power and other

services provided by Western, for the upcoming fiscal year. VRC shall inform Western of any major changes to the forecasted budgeted authority.

13.3 VRC will obligate or otherwise commit the value of the Custom Product(s) to be provided by Western in a manner that is standard for the agency for the fiscal year.

13.4 Each monthly power bill issued by Western to VRC will identify the portion of such bill that will be designated as reimbursable.]

**CREDITWORTHINESS: FOR ALL CUSTOMERS EXCEPT FEDERAL CUSTOMERS**

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

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

13.2 Provide an alternate form of security acceptable to Western.

**14. ADVANCE FUNDING:**

Unless otherwise agreed to by the Parties, the following advance funding language shall apply. Any alternative method of advance funding shall be set forth in a separate contractual agreement.

14.1 Western shall use advanced funds for [Final Day-Ahead Base Resource Schedule Firming] [and] [Supplemental Power] costs. Western will bill VRC for the other services provided under this Contract as necessary.

14.2 Western will estimate the initial amount of funds required, and VRC shall deposit that amount into a Western trust account. The estimate for the advance

shall be based on the costs that Western anticipates incurring when providing [Final Day-Ahead Base Resource Schedule Firming for three (3) months] [and] [the entire cost of any contract Western enters into in order to provide Supplemental Power] to VRC.

[ 14.3 The amount of advance funding VRC is able to provide, as well as Western's funding authority, will determine the maximum term of any Supplemental Power provided by Western. The term of any Supplemental Power purchase will not exceed five (5) years.]

14.4 The advance funding amount determined by Western in accordance with Section 14.2 shall be due on the date specified on the initial bill for collection. The initial bill for collection will be issued [by October 1, 2004 for Day-Ahead Base Resource Schedule Firming] [and] [at least ninety (90) days prior to Western acquiring the resources necessary to provide Supplemental Power to VRC].

14.5 [VRC shall be required to maintain a trust account balance of at least three (3) months of estimated Final Day-Ahead Base Resource Schedule Firming purchase costs. ]Western shall monitor the trust account balance and, if, at any time, Western determines that:

14.5.1 There are not sufficient funds in the trust account, Western shall notify VRC, and VRC shall advance the requested amount of funds to Western within ten (10) days; or,

14.5.2 If excessive funds accumulate in the trust account, Western, at Western's discretion, will either 1) reduce the following month's advance funding amount; or, 2) return the difference to VRC.

14.6 Funds that VRC advances to Western for [Final Day-Ahead Base Resource Schedule Firming] [and] [Supplemental Power] provided under this Contract shall be sent via wire transfer in accordance with the information included on the Western bill for collection or as Western otherwise directs or agrees.

14.7 Western will provide VRC with:

14.7.1 A monthly statement of the transactions that were posted to the trust account, and the end-of-month balance in the account;

14.7.2 A bill for collection for the costs that Western anticipates it will incur while providing [Final Day-Ahead Base Resource Schedule Firming] [and] [Supplemental Power] to VRC for the following month, if necessary; and,

14.7.3 An electric service bill that may reflect [Final Day-Ahead Base Resource Schedule Firming] [and] [Supplemental Power] costs and any associated credits for advanced payments of such costs.

14.8 Western shall be under no obligation to provide service hereunder without VRC advancing sufficient funds and said funds being available in the Western trust account described herein.

14.9 Western shall return any funds that VRC advances under this Contract in excess of Western's actual total costs incurred, without interest, to VRC within sixty (60) days of the termination of service hereunder.]

**15. DEFAULT PROVISIONS:**

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

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

15.2 If VRC is determined to be in default and does not cure such default in a manner and within the timeframe established or allowed by Western, Western shall have the right to terminate this Contract, and assess damages, as follows:

15.2.1 If Western's aggregate gains exceed its aggregate losses and costs, Western, after any set-off, shall make no payment to VRC and, notwithstanding anything in this Contract to the contrary, the amount by which such gain exceeds the losses and costs for the purposes of this Contract shall be zero (0); or,

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

16. ENFORCEABILITY:

It is not the intent of the Parties that this Contract confer any rights on third parties to enforce the provisions of this Contract except as required by law or express provision in this Contract.

Except as provided in this Section, this Contract may be enforced, or caused to be enforced, only by Western or VRC, or their successors or assigns.

[17. EXHIBITS MADE PART OF CONTRACT:

Exhibit A (Variable Resource Supplemental Power) existing under this Contract may vary during the term hereof. Said Exhibit shall become a part of this Contract during the term fixed by its provisions. Exhibit A is attached hereto and shall be in force and effect in accordance with

its terms until superseded by a subsequent Exhibit, as allowed by the terms of the Exhibit, or terminated.]

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

VARIABLE RESOURCE CUSTOMER

By:

Title:

Address:

WESTERN AREA POWER ADMINISTRATION

By:

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, California 95630

[

Exhibit A  
(Variable Resource - Supplemental Power)

1. This Exhibit A, to be effective under and as a part of Contract 04-SNR-00\_\_\_\_ (Contract), shall become effective upon execution of the Contract, and shall remain in effect until the earlier of: 1) the date provided in Section 2.2 below; 2) being superseded by another Exhibit A; or 3) termination of the Contract.

2. On or after the effective date of this Exhibit A, and upon satisfaction of the conditions set forth in the Contract, Western will provide Supplemental Power to VRC, as follows:

- 2.1 Delivery beginning:
- 2.2 Delivery ending: (Date)
- 2.3 Amount: \_\_\_\_\_ MW per hour
- 2.4 Period: Beginning hour ending \_\_\_\_\_ through hour ending \_\_\_\_\_
- 2.5 Days: (Days of the Week)
- 2.6 Price: \_\_\_\_\_ dollars per megawatthour

3. Transmission for Supplemental Power provided under this Contract shall be provided under VRC's contract \_\_\_\_\_ with \_\_\_\_\_; and the delivery point is \_\_\_\_\_.

]