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UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION

Pick-Sloan Missouri Basin Program, Eastern Division

INTERAGENCY AGREEMENT FOR FIRM ELECTRIC SERVICE TO

THE UNITED STATES AIR FORCE

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION

Pick-Sloan Missouri Basin Program, Eastern Division

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INTERAGENCY AGREEMENT FOR FIRM ELECTRIC SERVICE TO
THE UNITED STATES AIR FORCE

1. PREAMBLE: This Interagency Agreement is made this 21st day of November, 1994, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388), December 22, 1944 (58 Stat. 887), August 4, 1977 (91 Stat. 565), and Acts amendatory or supplementary to the foregoing Acts between the UNITED STATES OF AMERICA, acting by and through the Administrator, Western Area Power Administration, Department of Energy, hereinafter called Western, represented by the officer executing this Interagency Agreement or a duly appointed successor, hereinafter called the Contracting Officer, and THE DEPARTMENT OF THE AIR FORCE, hereinafter called the Contractor or Air Force, its successors and assigns, each sometimes hereinafter individually called Party, and both sometimes hereinafter collectively called the Parties.

2. EXPLANATORY RECITALS:

2.1 The Parties previously entered into Contract No. 14-06-600-7232, dated April 23, 1963, as it may have been supplemented, which provides, among other things, for the sale of firm electric power and energy to the Air Force under its own terms and under the terms of agreements that Western has with other entities for service to the Air Force at locations specified in Exhibit A.

2.2 The Parties desire to terminate Contract No. 14-06-600-7232 and update and consolidate the provisions contained in that Memorandum of Understanding with this Interagency Agreement.

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

4. TERMINATION OF EXISTING MEMORANDUM OF UNDERSTANDING: Contract No. 14-06-600-7232, dated April 23, 1963, as amended or supplemented, between the Air Force and (the United States Department of Interior, Bureau of Reclamation) Western is hereby terminated as of the effective date of this Interagency Agreement.

5. TERM OF INTERAGENCY AGREEMENT: This Interagency Agreement shall become effective on October 1, 1994, and, subject to prior termination as otherwise provided for herein, shall remain in effect through the hour ending 2400 on December 31, 2000.

See
Amd #1
dated
1/30/98

PART ONE
FIRM ELECTRIC POWER AND ENERGY

6. FIRM ELECTRIC POWER AND ENERGY TO BE FURNISHED:

6.1 Western shall supply power and energy to the Air Force during each billing period on the basis of the formulae shown on the following pages. This power and energy shall hereinafter be referred to as Western's Maximum Obligations. The power and energy portions of this obligation shall respectively be referred to as the Maximum Rate of Firm Power Obligation and the Maximum Energy Obligation. These obligations shall be computed on a seasonal basis. The Winter Season is defined as the November through April billing periods and the Summer Season is defined as the May through October billing periods for the purposes of this Interagency Agreement.

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

6.3 In the formulae below, the X/Y factor shall never be greater than one (1).

6.3.1 During any Winter Season:

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

$$X/Y \times D$$

The Maximum Energy Obligation in any billing period =

$$X/Y \times E$$

Where:

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

Y = The highest Air Force System Demand, as determined pursuant to or as defined in Exhibit B, during the seven (7) Winter Season billing periods ending with the current billing period,

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

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

6.3.2 During any Summer Season:

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

$$X/Y \times D$$

Maximum Energy Obligation in any billing period =

$$X/Y \times E$$

Where:

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

Y = The highest Air Force System Demand, as determined pursuant to or as defined in Exhibit B, during the seven (7) Summer Season billing periods ending with the current billing period,

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

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

6.4 Western, under the terms and conditions stipulated herein, will furnish and deliver firm electric power to the Air Force, up to the CROD, along with its associated energy, to the Point(s) of Delivery and under the conditions specified in Exhibit A.

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

6.6 Notwithstanding the provisions of Subsection 6.3, Western reserves the right to limit energy deliveries in all billing periods to a specified number of kilowatthours per kilowatt of the Maximum Rate of Firm Power Obligation upon not less than three (3) years' advance notice given in writing by Western to the Air Force. Such limit of energy deliveries would be in accordance with provisions of the Post-1985 Marketing Plan, as published in the Federal Register on October 30, 1980 (45 FR 71860).

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

7. PAYMENT PROVISIONS:

7.1 The Air Force shall pay for the firm power and energy furnished by Western in accordance with the rates, charges, and conditions set out in the Schedule of Rates for Firm Power Service, which is attached hereto and which may be revised in accordance with the terms of this Interagency Agreement.

7.2 In addition to the charges payable under the Schedule of Rates for Firm Power Service provided herein, when Western utilizes transmission facilities other than its own in providing firm power and energy to certain designated Point(s) of Delivery as identified in Exhibit C, and costs are incurred by Western for the use of such facilities, the Air Force shall, for those points, pay that portion of such costs, including transmission losses, which are in excess of one mill (\$0.001) for each kilowatthour transmission charge and seven percent (7%) transmission losses incurred in the delivery of firm power and energy over said transmission facilities to those certain Point(s) of Delivery.

7.2.1 Transmission charges in excess of those paid by Western hereunder shall be paid by Western to the transmission agent on behalf of the Air Force, and then shall be added to the Air Force's charges each billing period.

7.2.2 Transmission losses in excess of the amount provided by Western hereunder shall, for billing purposes, be added to the meter readings of power and energy delivered to the Air Force.

7.2.3 If increases in the rates of charge for transmission service and transmission losses, either or both, are made during the term of this Interagency Agreement, Western shall notify the Air Force of the effective date of such increase. The Air Force may elect to make its own transmission arrangements or may terminate this Interagency Agreement by written notice to Western at any time within one hundred eighty (180) days after the effective date of such increase. Such arrangements or termination shall be effective as of such subsequent date as the Air Force shall therein designate.

PART TWO
MAINTENANCE, REPLACEMENT, OR MODIFICATION, AND OWNERSHIP

8. LICENSES TO WESTERN: The Air Force hereby grants a license to authorized agents and employees of Western to enter the right(s) of way of the Air Force for the purpose of performing work pursuant to the terms of this Interagency Agreement, providing proper advance arrangements are made with the Air Force. All construction, installation, inspection, testing, operation, maintenance, and removal of equipment by Western under this license shall be coordinated with and approved by the Air Force or an authorized representative thereof so as to eliminate or minimize any interference with the operation and maintenance of the Air Force's facilities.

9. MAINTENANCE, REPLACEMENT, OR MODIFICATION (MRM) OF THE AIR FORCE'S

FACILITIES BY WESTERN: Western, at the expense of the Air Force, will perform various MRM work on the Air Force's facilities specified in Exhibit D. Such MRM work can consist of recurring Maintenance, non-recurring repairs, or emergency repairs as follows:

9.1 RECURRING MAINTENANCE: Recurring Maintenance is defined as maintenance performed on the Air Force's facilities identified in Exhibit D on a regularly scheduled basis. The Air Force will make annual advance payments of the amounts shown in Exhibit D to Western for such recurring maintenance on or before September 30th of each year. Payments for periods of less than one (1) year will be prorated on the basis of one-twelfth (1/12) of the annual amount for each month or part thereof that such recurring maintenance is furnished. The advance payment for recurring maintenance at each facility may, at the request of either Party, be reviewed at 2-year intervals from the date specified in Exhibit D. Western will prepare biennial detailed cost estimates for recurring maintenance performed by Western. Such cost estimates may be used to support adjustments to payment amounts. Any revision of the advance of funds for recurring maintenance shall become effective as to this Contract upon written notice by Western. The Air Force may request copies of the supporting cost estimates.

9.2 NON-RECURRING REPAIRS: Non-recurring repairs, replacements, or modifications are any repairs, replacements, or modifications of the Air Force's facilities not specifically identified in Exhibit D nor agreed to be emergency repairs. Such repairs will be performed by Western only upon request by the Air Force and upon execution of a separate implementing agreement. The Air Force will pay Western in advance for the cost, as determined by Western, of any non-recurring repairs.

9.3 EMERGENCY REPAIRS: Western reserves the right to perform any necessary repairs, replacements, or modifications on facilities of the Air Force, without advance notice to the Air Force, when Western determines that an emergency condition exists. Western will bill the Air Force for the actual cost of the work performed and the Air Force will pay Western for such emergency repairs.

10. COOPERATION OF PARTIES:

10.1 The interrelationship of equipment and control circuits requires the Parties to coordinate planning, design, construction, installation, operation, maintenance, and replacement of such. To this effect both Parties agree to cooperate with each other fully to promote efficiency, economy, safety, and reliability of operation.

10.2 The Parties will coordinate planning, design, construction, installation, check-out, and documentation to the mutual satisfaction of both Parties. This coordination will apply for installation of new facilities and equipment or modification of equipment and facilities that would affect the ability of either Party to operate and maintain its respective equipment.

11. REMOVAL OF FACILITIES: In the event that this Interagency Agreement is terminated or the Air Force no longer needs facilities that were installed in place of previously existing Western facilities, such facilities may, at the expense of the Air Force, be removed, provided that Western's New Underwood/Rapid City Transmission Line is restored to its full transmission capabilities. Instead of removing such facilities, the Air Force shall have the option of selling those facilities, in place, to Western at a price not to exceed their depreciated value. Any facilities that have become an integral part of Western's facilities may be retained in place by Western at no cost or expense to Western.

*deleted & superseded by
sect. 6 of
Amcl No 1 dated 4/30/98*

PART THREE
GENERAL PROVISIONS

12. CONSERVATION AND RENEWABLE ENERGY PROGRAM:

12.1 If the Air Force and each of its members has a Western approved ongoing conservation and renewable energy program, the Air Force and each of its members shall provide Western with verification of the continuance of the program in accordance with the Guidelines and Acceptance Criteria.

12.2 Conservation and renewable energy programs shall consist of a designated number of activities, as stipulated in the Guidelines and Acceptance Criteria. Credit will be given for past accomplishments if they are ongoing and current under the Guidelines and Acceptance Criteria. Approval and periodic review and verification of any program shall take place in accordance with the Guidelines and Acceptance Criteria.

12.3 The initial conservation and renewable energy program submitted by the Air Force or one of its members to Western will either be approved or disapproved within three (3) months of receipt. If an initial submittal is disapproved, a notification of deficiencies in the program will be given in writing by Western. Deficiencies must be remedied within twelve (12) months of the date of notification. If approval of an existing program is revoked at any time, a notification of deficiencies in such program will be given in writing by Western. Deficiencies must be remedied within twelve (12) months of the date of notification.

12.4 If deficiencies in any program are not corrected within twelve (12) months of Western's written rejection of a program, the Air Force's firm capacity and associated energy entitlement, or the member's pro-rata share of such entitlement as determined by Western, may be reduced by ten percent (10%) at the discretion of the Administrator.

13. EXHIBITS MADE PART OF INTERAGENCY AGREEMENT: Exhibits A, B, C and D attached hereto, are hereby made a part of this Interagency Agreement and each shall be in force and effect in accordance with its terms until respectively superseded by a subsequent exhibit.

*Terminated & superseded by Sect. 8
of Amend No 1 dated 1/30/98*

14. ENVIRONMENTAL RESPONSIBILITY FOR HAZARDOUS MATERIALS: When either Party owns equipment in the other Party's substation, switchyard, or right-of-way, the equipment owner shall be financially responsible for all activities related to hazardous materials that are necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (NEPA), the Toxic Substances Control Act (15 U.S.C. 2601, et seq.) (TSCA), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.) (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9657) (CERCLA), and the regulations implementing these laws as they may be amended; and any other existing or subsequent applicable Federal or State laws and regulations. Equipment will be labeled in accordance with the appropriate regulations. If the Party owning the equipment does not perform the required work within a reasonable time, the other Party may, after notice, perform or cause to be performed the required work at the sole expense of the Party owning the equipment.

PART FOUR
DELIVERY OF SERVICE PROVISIONS

15. CHARACTER OF SERVICE: Electric energy supplied or transmitted under this Interagency Agreement will be three-phase, alternating current, at a nominal frequency of sixty (60) hertz (cycles per second).

16. USE OF CAPACITY OR ENERGY IN EXCESS OF INTERAGENCY AGREEMENT OBLIGATION:

The Air Force 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 this Interagency Agreement except with the approval of the Contracting Officer. Unauthorized overruns of Interagency Agreement delivery obligations shall be subject to charges specified in this Interagency Agreement or the applicable rate schedules. Overruns shall not establish any continuing right thereto and the Air Force shall cease any overruns when requested by the Contracting Officer, or in the case of authorized overruns, when the approval expires, whichever occurs first. Nothing in this Interagency Agreement 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 Air Force.

17. 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 the "Uncontrollable Forces" Section 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.

18. 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 Air Force'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 Air Force's control or temporary conditions caused by scheduled outages.

19.3 Except as otherwise provided in Paragraph 19.4 hereof, should any meter that is needed by Western for billing or other accounting purposes fail to register accurately, the electric power and energy supplied or transmitted during such period of failure to register accurately, shall, for billing purposes, be estimated by the Contracting Officer from the best available information.

19.4 If acceptable inspections and tests of a meter needed by Western for billing or other accounting purposes disclose an error exceeding two percent (2%), then correction based upon the inaccuracy found shall be made of the records of services furnished during the period that such inaccuracy has existed as determined by the Contracting Officer; Provided, That if such period of inaccuracy cannot be determined, correction shall be made for the period beginning with the monthly billing period immediately preceding the billing period during which the test was made.

19.5 Any correction in billing resulting from correction in meter records shall normally be made in the next monthly bill rendered by Western to the Air Force. Payment of such bill shall constitute full adjustment of any claim between the parties hereto arising out of inaccuracy of metering equipment.

20. EXISTENCE OF TRANSMISSION SERVICE CONTRACT: If this Interagency Agreement 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 Air Force, Western, at its option, may furnish service over its own facilities.

21. CONDITIONS OF TRANSMISSION SERVICE:

21.1 When the electric service under this Interagency Agreement 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.

21.2 Unless otherwise provided in this Interagency Agreement or attached rate schedule, the Air Force shall maintain a power factor at each point of delivery from Western's transmission agent as required by the transmission agent.

21.3 Western will endeavor to inform the Air Force from time to time of any changes contemplated on the system over which the service is supplied, but the costs of any changes made necessary in the Air Force'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.

21.4 If the Air Force, because of changes or conditions on the system over which service under this Interagency Agreement is supplied, is required to make changes on its system at its own expense in order to continue receiving service under this Interagency Agreement, then the Air Force may terminate service under this Interagency Agreement upon not less than sixty (60) days'

written notice given to the Contracting Officer prior to making such changes, but not thereafter.

21.5 If Western notifies the Air Force that electric service provided for under this Interagency Agreement cannot be delivered to the Air Force because of an insufficiency of capacity available to Western in the facilities of others over which service under this Interagency Agreement is supplied, then the Air Force may terminate service under this Interagency Agreement upon not less than sixty (60) days' written notice given to the Contracting Officer prior to the date on which said capacity ceases to be available to Western, but not thereafter.

22. MULTIPLE POINTS OF DELIVERY INVOLVING DIRECT AND INDIRECT DELIVERIES:

When Western has provided line and substation capacity under this Interagency Agreement for the purpose of delivering electric service directly to the Air Force 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 Air Force shifts any of its loads served under this Interagency Agreement 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 the Contracting Officer, available at the direct delivery points affected is fully utilized.

19. METERING:

19.1 The total electric power and energy supplied or transmitted under this Interagency Agreement will be measured by metering equipment to be furnished and maintained by Western or by the Air Force acting as the designated representative of Western. The Air Force shall ensure that metering equipment furnished and maintained by the Air Force or another power supplier, as provided in this Interagency Agreement, meets the metering standards of Western if such metering equipment will be used for billing or other accounting purposes by Western.

19.2 Meters shall be sealed and the seals shall be broken only upon occasions when the meters are to be inspected, tested, or adjusted, and representatives of the interested parties shall be afforded reasonable opportunity to be present upon such occasions. Metering equipment shall be inspected and tested at least once each year except that solid state meters will be inspected and tested at least once every three years by the Party responsible for meter maintenance and at any reasonable time upon request by either Party hereto, a 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. Meters found with broken seals shall be tested for tampering and, if appropriate, meter readings shall be adjusted by Western pursuant to Paragraph 19.3 below.

23. CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE AIR FORCE'S POWER SYSTEM:

The Air Force 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 the Contracting Officer, will not interfere with the operation of the system of Western or its transmission agents over which electric services are furnished to the Air Force under this Interagency Agreement, 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 Air Force if, after notice by the Contracting Officer, the Air Force fails or refuses to make such changes as may be necessary to eliminate an unsatisfactory condition on the Air Force's power system which is determined by the Contracting Officer 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 Air Force of liability for any minimum charges provided for in this Interagency Agreement during the time said services are reduced or discontinued. Nothing in this section 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 Air Force's power system.

PART FIVE
RATES, BILLING, AND PAYMENT PROVISIONS

24. CHANGE OF RATES: Rates applicable under this Interagency Agreement 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 this Interagency Agreement, it will promptly notify the Air Force thereof. Rates shall become effective as to this Interagency Agreement as of the effective date of such rate. The Air Force, by written notice to the Contracting Officer 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 Air Force 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 Air Force exercises the option to terminate service.

25. MINIMUM SEASONAL OR ANNUAL CAPACITY CHARGE: When the rate in effect under this Interagency Agreement 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 Interagency Agreement 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.

26. BILLING AND PAYMENT:

26.1 Western will issue bills to the Air Force for service furnished during the preceding month within ten (10) days after the end of the billing period.

26.2 If Western is unable to issue a timely monthly bill, it may elect to render an estimated bill for that month to be followed by the final bill. Such estimated bill shall be subject to the same payment provisions as a final bill.

26.3 Payments are due and payable by the Air Force 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. Transfer of funds for payment may be made by use of a Standard Form 1080 Voucher or another appropriate method as agreed upon by the Parties.

26.4 Whenever the Parties agree, payments due Western by the Air Force may be offset against payments due the Air Force 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. For services included in net billing procedures, 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.

27. ADJUSTMENTS FOR FRACTIONAL BILLING PERIOD: For a fractional part of a billing period at the beginning or end of electric service, at the beginning or end of irrigation pumping service each year, a fractional billing period under a new rate schedule, and for fractional periods due to withdrawals of electric services, the demand or capacity charge and minimum charges shall each be proportionately adjusted in the ratio that the number of hours that electric service is available to the Air Force in such fractional billing period bears to the total number of hours in the billing period involved.

28. ADJUSTMENTS FOR CURTAILMENTS TO FIRM SERVICE:

28.1 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 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 Air Force or a discontinuance of electric service by Western pursuant to the "Nonpayment of Bills In Full When Due" Section. For purposes of billing adjustments under this section, the term power system of the United States shall include transmission facilities used under Interagency Agreement but not owned by the United States.

28.2 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, for each reduction, of: the number of hours of 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.

28.3 The Air Force 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 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 provisions of this section; Provided, That withdrawal of power and energy

under this Interagency Agreement shall not be considered a curtailment of electric service.

*Terminated by
Amendment No. 1 dated 1/30/98*

PART SIX

POWER SALES PROVISIONS

29. RESALE OF FIRM ELECTRIC SERVICE (WHOLESALE SALES FOR RESALE): The Air Force shall not sell any firm electric power or energy supplied under this Interagency Agreement to any electric utility customer of the Air Force for resale by that utility customer.

PART SEVEN

FACILITIES PROVISIONS

30. DESIGN APPROVAL: All facilities, construction, and installation by the Air Force pursuant to this Interagency Agreement 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 Interagency Agreement document providing for each interconnection, copies of which are available from the Contracting Officer. At least ninety (90) days, unless otherwise agreed, prior to the date the Air Force proposes to commence construction or to incur an obligation to purchase facilities to be installed pursuant to this Interagency Agreement, whichever date is the earlier, the Air Force shall submit, for the approval of Western,

detailed designs, drawings, and specifications of the facilities the Air Force proposes to purchase, construct, and install. The Air Force 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 Air Force's needs.

31. INSPECTION AND ACCEPTANCE: Western shall have the right to inspect the materials and work furnished by the Air Force, its agents, employees, and subcontractors pursuant to this Interagency Agreement. Such inspections shall be at reasonable times at the worksite. Any materials or work that the Contracting Officer 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 Air Force before the new facilities are energized.

32. AS-BUILT DRAWINGS: Within a reasonable time, as determined by the Contracting Officer, after the completion of construction and installation of facilities pursuant to this Interagency Agreement, the Air Force shall submit to Western marked as-built prints of all Western drawings affected by changes made pursuant to this Interagency Agreement and reproducible drawings the Air Force has prepared showing facilities of Western. The Air Force'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 the Contracting Officer. Western may prepare, revise, or complete said drawings

and bill the Air Force if the Air Force fails to provide such drawings to Western within a reasonable time as determined by the Contracting Officer.

33. EQUIPMENT OWNERSHIP MARKERS:

33.1 The Air Force shall identify all movable equipment and, to the extent agreed upon by the Parties, all other salvageable facilities constructed or installed on United States right-of-way or in Western substations pursuant to this Interagency Agreement which are owned by the Air Force, by permanently affixing thereto suitable markers clearly identifying the Air Force as the owner of said equipment and facilities.

33.2 If requested by the Air Force, Western shall identify all movable equipment and, to the extent agreed upon by the Parties, all other salvageable facilities constructed or installed on the Air Force's right-of-way or in the Air Force's substations pursuant to this Interagency Agreement 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.

34. THIRD-PARTY USE OF FACILITIES: The Air Force shall notify Western of any proposed system change relating to the facilities governed by this Interagency Agreement or allowing third-party use of the facilities governed by this Interagency Agreement. If Western notifies the Air Force that said system change will, as solely determined by the Contracting Officer, adversely affect the operation of Western's system the Air Force shall, at no cost to Western, provide a solution to said adverse effect acceptable to Western.

35. CHANGES TO WESTERN CONTROL FACILITIES: If at any time during the term of this Interagency Agreement, the Contracting Officer 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 Air Force's equipment installed under this Interagency Agreement, such changes or additions shall, after consultation with the Air Force, be made by Western with all costs or a proportionate share of all costs, as determined by the Contracting Officer, to be paid by the Air Force. The Contracting Officer shall notify the Air Force in writing of the necessary changes or additions and the estimated costs to be paid by the Air Force. If the Air Force fails to pay its share of said estimated costs, the Contracting Officer shall have the right, after giving sixty (60) days' written notice to the Air Force, to terminate the applicable facility installation provisions of this Interagency Agreement and require the removal of the Air Force's facilities.

36. MODIFICATION OF WESTERN FACILITIES: Western reserves the right, at any time, to modify its facilities. Western shall keep the Air Force informed of all planned modifications to Western facilities which impact the facilities installation pursuant to this Interagency Agreement. Western shall permit the Air Force 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 this Interagency Agreement. At the Air Force's option, Western shall cooperate with the Air Force in planning alternate arrangements for service which shall be implemented at no cost or expense to Western. The Air

Force and Western shall modify this Interagency Agreement, as necessary, to conform to the new facilities arrangements.

37. TRANSMISSION RIGHTS: If this Interagency Agreement involves an installation which sectionalizes a Western transmission line, the Air Force 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 this Interagency Agreement.

38. CONSTRUCTION AND SAFETY PROCEDURES:

38.1 The Air Force 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 Air Force pursuant to this Interagency Agreement. The Air Force and the authorized employees, agents, and subcontractors of the Air Force shall comply with all applicable safety laws and building and construction codes, including the provisions of Western's current "Power Systems Safety Manual," "Construction, Safety, and Health Standards," and "Power System Clearance Procedures" in effect upon the signing of this Interagency Agreement; Except, That, in lieu of the safety program required

herein, the Air Force may provide sufficient information to demonstrate that the Air Force's safety program is satisfactory to the United States.

38.2 The Air Force 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 Air Force under this Interagency Agreement. Prior to starting any construction, installation, or removal work, the Air Force 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 Air Force, its employees, agents, or subcontractors until written authorization to proceed is obtained from the Contracting Officer.

38.3 At all times when the Air Force, its employees, agents, or subcontractors are performing activities of any type pursuant to this Interagency Agreement, such activities shall be under supervision of a qualified employee, agent, or subcontractor of the Air Force who shall be authorized to represent the Air Force in all matters pertaining to the activity being performed. The Air Force and Western will keep each other informed of the names of their designated representatives at the site.

38.4 Upon completion of its work, the Air Force 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 Air Force or used under the Air Force's direction, and in the event of failure to do so the same may be removed by Western at the expense of the Air Force.

38.5 In the event the Air Force, its employees, agents, or subcontractors fail to comply with any provision of this section, or the "Inspection and Acceptance" Section herein, the Contracting Officer or an authorized representative may issue an order to stop all or any part of the work until such time as the Air Force demonstrates compliance with the provision at issue. The Air Force, its employees, agents, or subcontractors shall make no claim for compensation or damages resulting from such work stoppage.

PART EIGHT
OTHER PROVISIONS

39. AUTHORIZED REPRESENTATIVES OF THE PARTIES: Each Party to this Interagency Agreement, 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 this Interagency Agreement 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.

40. EFFECT OF SECTION HEADINGS: Section headings or section titles appearing in this Interagency Agreement are inserted for convenience only and shall not be construed as interpretations of text.

41. OPERATING GUIDELINES AND PROCEDURES: The Parties to this Interagency Agreement 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 this Interagency Agreement.

42. UNCONTROLLABLE FORCES: Neither Party to this Interagency Agreement shall be considered to be in default in performance of any of its obligations under this Interagency Agreement, except to make payment as specified in Section 27 (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 Interagency Agreement 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.

43. ENVIRONMENTAL COMPLIANCE: Facilities installed under this Interagency Agreement by any party shall be constructed, operated, maintained, replaced, and removed subject to compliance with laws, executive orders, and regulations applicable to that party, including the National Environmental Policy Act of 1969, as amended, 36 CFR 800, and the Archeological Resources Protection Act of 1979.

44. 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 this Interagency Agreement, 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 the "Billing and Payment" and the "Nonpayment of Bills in Full When Due" Sections herein. Western shall pay bills issued by the Air Force for services provided as soon as the necessary vouchers can be prepared which shall normally be within twenty (20) days.

45. TRANSFER OF INTEREST IN INTERAGENCY AGREEMENT BY THE AIR FORCE: No voluntary transfer of this Interagency Agreement or of the rights of the Air Force under this Interagency Agreement shall be made without the written approval of the Administrator of Western.
46. WAIVERS: Any waivers at any time by either party to this Interagency Agreement of its rights with respect to a default or any other matter arising under or in connection with this Interagency Agreement shall not be deemed a waiver with respect to any subsequent default or matter.
47. NOTICES: Any notice, demand, or request required by this Interagency Agreement or the provisions of these sections to be in writing shall be considered properly given when delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram addressed 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.
48. CONTINGENT UPON APPROPRIATIONS: Where activities provided for in this Interagency Agreement 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 this Interagency Agreement.

49. OFFICIALS NOT TO BENEFIT: No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of the Interagency Agreement or to any benefit that may have arisen from this Interagency Agreement, but this restriction shall not be construed to extend to this Interagency Agreement if made with a corporation or company for its general benefit.

50. COVENANT AGAINST CONTINGENT FEES: The Air Force warrants that no person or selling agency has been employed or retained to solicit or secure this Interagency Agreement 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 Air Force for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul this Interagency Agreement without liability or in its discretion to deduct from this Interagency Agreement price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

51. CONTRACT WORK HOURS AND SAFETY STANDARDS: This Interagency Agreement, 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.A. {329 (1986), is subject to the provisions of the Act, 40 U.S.C.A. {{327-333 (1986), and to regulations promulgated by the Secretary of Labor pursuant to the Act.

52. EQUAL OPPORTUNITY EMPLOYMENT PRACTICES: Section 202 of Executive Order No. 11246, 43 Fed. Reg. 46501 (1978), which provides, among other things, that the Air Force will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in this Interagency Agreement.

53. USE OF CONVICT LABOR: The Air Force agrees not to employ any person undergoing sentence of imprisonment in performing this Interagency Agreement except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

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

WESTERN AREA POWER ADMINISTRATION

By James R. Davies

Title Area Manager

Address P.O. Box 35800

Billings, MT 59107-5800

(SEAL)

AIR COMBAT COMMAND
DEPARTMENT OF THE AIR FORCE

By TIM GAVLE

Title Contracting Officer

Address 28 CONS/LGCV

Attest: _____

By _____

Title _____

ELLSWORTH AIR FORCE BASE SOUTH DAKOTA

*Terminated
7/2/98
Rev. 2 EXA*

Exhibit A
(Contract Rates of Delivery)

1. This Exhibit A is made this 21st day of November, 19 94, to be effective under and as a part of Contract No. 94-BAO-701, dated November 21 19 94 hereinafter called the Interagency Agreement, shall become effective on the effective date of the Interagency Agreement and shall remain in effect either until superseded by another Exhibit A or until termination of the Interagency Agreement.

2. ALLOTMENT OF FIRM POWER: Under the allocation of firm power for the Eastern Division, Missouri River Basin Project, approved June 29, 1964, the Secretary of the Interior made an allotment of firm power for certain Air Force installations in the amount of sixty-nine thousand one hundred and thirty (69,130) kilowatts of which six hundred and ten (610) kilowatts have been placed under contract with Cooperative Power Association for service to the Wadena Air Force Station, leaving a residual allotment of sixty-eight thousand five hundred and twenty (68,520) kilowatts. In addition to the residual amount, the United States allocated six thousand eight hundred (6,800) kilowatts of firm power for Ellsworth Air Force Base Missile Sites. The six thousand eight hundred (6,800) kilowatts shall be added to the residual allotment. The total residual allotment shall hereinafter be seventy-five thousand three hundred and twenty (75,320) kilowatts. This allotment shall be utilized for service under the contracts and for the installations specified in Section 3 below. Table I indicates the allotments for each site. Table II reflects transfers in the Contract Rate of Delivery (CROD) for the Ellsworth Air Force Base Missile Sites beginning with the start of the 1998 Summer Season, the May 1998 billing period.

3. MAXIMUM AGGREGATE RATE OF DELIVERY FOR FIRM POWER: The Maximum Aggregate Rate of Delivery for Firm Power under this Interagency Agreement at the points stipulated in Exhibit C of this Interagency Agreement and in the Contracts referenced in this Section 3 shall be the residual allotment described in Section 2 above (sixty-eight thousand five hundred and twenty [68,520] kilowatts), except that from this total there shall be subtracted the CROD for firm power as from time to time effective for deliveries to:

3.1 the Offutt Air Force Base under Contract No. 14-06-600-8532 between the Western Area Power Administration and the Omaha Public Power District;

3.2 the Minot Air Force Base under Contract No. 14-06-600-334A between the Western Area Power Administration and Central Power Electric Cooperative, Inc.;

3.3 the Grand Forks Missile Sites under Contract No. 88-BAO-313 between the Western Area Power Administration and Minnkota Power Cooperative, Inc.;

3.4 the Minot Air Force Base Missile Sites under Contract No. 14-06-600-7827 between the Western Area Power Administration and Upper Missouri G&T Electric Cooperative, Inc.;