

**Department of Energy**  
Western Area Power Administration  
P.O. 11606  
Salt Lake City UT 84147-0606

**September 24, 1992**

Letter Agreement No: 92-SLC-0208

Mr. Roland Robison  
Regional Director  
Bureau of Reclamation  
Upper Colorado Region  
P. O. Box 11568  
Salt Lake City, UT 84147

Dear Mr. Robison:

The Salt Lake City Area Office of Western Area Power Administration ("Western"), the Upper Colorado Regional Office of the Bureau of Reclamation ("Reclamation"), and the Colorado River Energy Distributors Association ("CREDA") recently exchanged letters stating their concurrences with a Statement of Principles aimed at working toward implementing procedures for customer review of financial and work program data relating to power rates of the Salt Lake City Area Integrated Projects (SLCA/IP). The purpose of this letter agreement is to implement the Statement of Principles by adoption of Joint Procedures on an interim basis pending development of regulations to generally apply the procedures envisioned in the Statement of Principles. To this end, Western, Reclamation, and CREDA on behalf of its members (collectively the "Parties") agree as follows:

1. The Parties hereby reaffirm the attached Statement of Principles to govern customer review of financial and work program data relating to SLCA/IP;
2. Western and Reclamation shall use their best efforts to expeditiously implement the attached Joint Procedures, as may be amended, for the review of work program information by customers of the SLCA/IP in the form of regulations adopted pursuant to the Administrative Procedures Act;
3. Western recognizes that the attached Joint Procedures do not yet contain a provision to implement Western's commitment in Section IV of the Statement of Principles to utilize alternative dispute resolution procedures before the Federal Energy Regulatory Commission ("FERC"), including arbitration if requested by a customer, but Western will cooperate with CREDA to implement this commitment once the FERC issues its anticipated rulemaking implementing the Alternative Dispute Resolution Act of 1990;
4. Western, Reclamation, and CREDA recognize that the attached Joint Procedures are being implemented on an initial basis and will cooperate with each other to identify and resolve problems which arise under operation of the Joint Procedures; and

5. The Parties shall utilize from the date of this agreement the attached Joint Procedures, as may be amended, on an interim basis until regulations envisioned in paragraph 2 above are adopted.

Dated as of this 24th day of September, 1992.

Sincerely,

Signed by

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Lloyd Greiner  
Area Manager  
Western Area Power Administration

Agreed:

Signed by

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Roland Robison  
Regional Director  
U. S. Bureau of Reclamation

Agreed:

Signed by

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Clifford I Barrett  
Executive Director  
Colorado River Energy  
Distributors Association

cc:

Don Allen  
Duncan and Allen  
1575 Eye Street, NW  
Washington, DC 20005-1175

August 14, 1992

JOINT PROCEDURES FOR REVIEW OF  
WORK PROGRAM INFORMATION BY CUSTOMERS OF THE  
SALT LAKE CITY AREA INTEGRATED PROJECTS

Section 1 Preamble

(a) The Secretary of Energy, acting by and through the Administrator of the Western Area Power Administration (Western), pursuant to §302 of the Department of Energy Organization Act, 42 U. S. C. §7152, and acts amendatory thereof or supplementary thereto, and the Secretary of the Interior, acting by and through the Commissioner of the Bureau of Reclamation (Reclamation), pursuant to §10 of the Reclamation Act of 1902, 43 U. S. C. §373, and acts amendatory thereof or supplementary thereto, are authorized to adopt procedures affecting the Colorado River Storage Project (CRSP), the Collbran Project, the Provo River Project, the Rio Grande Project, and the Colorado River Basin Salinity Control activities. Western administratively defines the consolidation of the CRSP, Collbran Project and Rio Grande Project for power marketing and ratemaking purposes as the Salt Lake City Area Integrated Projects (SLCAIP).

(b) In accordance with the authorities cited in subsection (a), Western and Reclamation adopt these Joint Procedures to afford power Customers of the SLCAIP an opportunity to review and comment on Western's and Reclamation's Work Program Information.

(c) Nothing in these Joint Procedures shall be deemed to diminish Western's or Reclamation's administrative responsibilities and authorities.

Section 2 Definitions

The following terms, when used in these Joint Procedures, shall have the following meanings:

- (a) Completed Year shall mean the fiscal year immediately preceding the Past Year.
- (b) Current Year shall mean the fiscal year preceding the Planning Year.
- (c) Customer shall mean any entity with whom Western contracts to sell long-term

firm electric power and energy from the SLCAIP.

- (d) Out Year shall mean any fiscal year following the Planning Year.
- (e) Past Year shall mean the fiscal year immediately preceding the Current Year.
- (f) Planning Year shall mean the fiscal year which ends in the calendar year two

years after the current calendar year and is the year of the Work Program Information being reviewed by the Customers.

- (g) Reclamation Program Elements shall mean:

- (1) Operation and maintenance;
- (2) Replacements (both capitalized and expensed);
- (3) Capital additions (both capitalized and expensed);
- (4) Extraordinary maintenance (both capitalized and expensed);
- (5) Environmental studies;
- (6) Construction; and
- (7) Overheads, to the extent such information is separately available.

- (h) Reclamation Preliminary Work Program Information shall mean:

(1) Work Program Information for the Planning Year.<sup>1</sup> This should include information pertaining to the Completed Year,<sup>2</sup> Past Year,<sup>3</sup> the Current Year,<sup>4</sup> the Planning Year and forecasts for the first, second and third Out Years<sup>5</sup> immediately following the Planning Year.

<sup>1</sup> Presently this would be FY 1994.

<sup>2</sup> Presently this would be FY 1991.

<sup>3</sup> Presently this would be FY 1992.

<sup>4</sup> Presently this would be FY 1993.

<sup>5</sup> Presently these would be FY 1995, 1996 and 1997. - 2 -

(2) Reclamation's narrative description of the changes and reasons for changes between the Current Year and the Planning Year.

(3) The documents and analyses for the Planning Year relating to major O&M work and new construction work which are used by Reclamation officials to evaluate or justify such work, to calculate benefit/cost ratios or to compare alternative means which would accomplish the same purpose. "Major" or "new construction" work for purposes of this subsection shall mean any work estimated to cost in excess of \$1,000,000 per individual project, or CRSP Initial Units in the aggregate, or individual participating project of CRSP. If such documents or analyses contain an estimate of cost or other details which, if made available to prospective bidders would compromise the integrity of Reclamation's public bidding process, such detailed estimate of cost may be deleted from the document.

(4) Reports or updates to reports of annual costs (historical and forecast) and any changes in study plans for environmental studies by contract or function.

(i) Reclamation Final Work Program Information shall mean the documents and analyses available to Reclamation officials to show changes to the most recently available Reclamation Preliminary Work Program Information including, but not limited to, updated versions of documents and analyses comprising the most recently available Reclamation Preliminary Work Program Information.

(j) Western Program Elements shall mean:

(1) For Operation and maintenance:

- A. Power Marketing (including generation, load and purchases);
- B. Operation and maintenance;
- C. Extraordinary maintenance;
- D. Moveable Equipment;

- E. Replacements;
- F. Capital additions;
- G. Environmental study costs;
- H. Cash management and cash requirements (including interest and principal repayment);
- I. General Western Allocation;
- J. Administrative and general expenses, to the extent such information is available; and
- K. Associated direct expenses, to the extent such information is available.

(2) For Construction:

- A. Transmission lines;
- B. Substations;
- C. Other facilities;
- D. Administrative and general expenses, to the extent such information is available; and
- E. Associated direct expenses, to the extent such information is available.

(k) Western Preliminary Work Program Information shall mean:

- (1) Information derived from Western's:
  - A. Program Schedule Activity Reports or the equivalent for the Planning Year<sup>6</sup> relating to SLCAIP including information

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<sup>6</sup> Presently this would be FY 1994.

pertaining to the Completed Year,<sup>7</sup> Past year,<sup>8</sup> the Current year,<sup>9</sup> and projections for the first, second and third Out Years,<sup>10</sup> and

- B. Facility Data Sheets prepared for SLCAIP construction activities in excess of \$1,000,000 that are planned or under construction as of the date when Western's Preliminary Work Program Information becomes available.

Such information shall be in sufficient detail for Western officials to evaluate or justify the activities envisioned to be undertaken, to calculate their benefit/cost ratios or to compare them to alternative activities which would accomplish the same purpose; Provided, however, the information shall not be in such detail that it would compromise the integrity of Western's public bidding process.

(2) The most current Salt Lake City Area Construction and Rehabilitation Program Ten Year Plan and equivalent documents for the Loveland and Phoenix areas to the extent that they contain information pertaining to the SLCAIP.

(3) The most current monthly "Status of Programs" document for CRSP Construction, CRSP O&M, and Small Programs (as available).

(4) The most current CRSP cash flow tracking documents including, but not limited to, the document labeled "CRSP Revenues and Expenses" which summarizes the data on a monthly basis.

(I) Western Final Work Program Information shall mean the documents and analysis available to Western officials to show changes to the most recently available Western Preliminary Work Program Information including, but not limited to updated versions of

<sup>7</sup> Presently this would be FY 1991.

<sup>8</sup> Presently this would be FY 1992.

<sup>9</sup> Presently this would be FY 1993.

<sup>10</sup> Presently these would be FY 1995, 1996 and 1997.

documents and analyses comprising the most recently available Western Preliminary Work Program Information.

(m) Work Program Information shall mean the information for the CRSP, Collbran Project, Rio Grande Project, Provo River Project and any other projects or activities which is utilized to plan and schedule project work and which is the basis for formulation of rates for the sale of firm electric power and energy from the SLCAIP. In the case of the Provo River Provo River Project, generation is purchased by SLCAIP.

(n) Work Program Information Review Period shall mean the 45 days immediately following the date upon which Western or Reclamation supplies its respective Work Program Information in accordance with these Joint Procedures.

### Section 3 Supply of Work Program Information

(a) Western shall make available to Reclamation and the Customers upon request a report on or before March 1<sup>st</sup> and on or before July 15<sup>th</sup> of each year. The report supplied in March shall contain Western Preliminary Program Information categorized by Western Program Elements and the report supplied in July shall contain Western Final Work Program Information categorized by Western Program Elements.

(b) Reclamation shall make available to Western and the Customers upon request a report on or before April 15<sup>th</sup> and on or before October 20<sup>th</sup> of each year. The report supplied in April shall contain Reclamation Preliminary Work Program Information categorized by Reclamation Program and Elements and the report supplied in October shall contain Reclamation Final Work Program Information categorized by Reclamation Program elements.

(c) During any Work Program Information Review Period following the receipt of Work Program Information, Western, Reclamation and the Customers may confer with one

another and, upon request, shall meet for the purpose of reviewing and understanding the Work Program Information supplied and how it will be used to establish rates for the sale of electric power and energy to the Customers. Upon 5 days prior written notice during the Work Program Information Review Period to either Western or Reclamation, a Customer shall have the right, subject to applicable Federal laws and regulations, to review at Western or Reclamation offices during regular business hours relevant records, if any, as determined by Western or Reclamation in accordance with these Joint Procedures, upon which such Work Program Information is based. Western and Reclamation reserve the right to reject duplicative or unnecessarily burdensome requests. Customers shall have the opportunity to present written views on the Work Program Information supplied and how it should be used to establish rates for the sale of electric power and energy to the Customers to Western or Reclamation within 15 days of the close of a Work Program Information Review Period on the Work Program Information presented during such period. Western or Reclamation, as the case may be, shall respond to the Customers regarding the views they express within 30 days from receipt of such views and shall make responses available to all Customers who so request.

(d) Any dispute not resolved between Reclamation's Regional Director or Western's Area Manager and a Customer concerning Work Program Information provided by Western or Reclamation shall be resolved in accordance with Section 5 of these Joint Procedures.

(e) Communications and notices contemplated to be delivered by a sending party in these Joint Procedures shall be deemed received by the receiving party (a) on the date delivered via facsimile during the receiving party's normal business hours, provided the receiving party orally confirms receipt thereof to the sending party; or (b) on the date actually received during the recipient's normal business hours. The parties agree to use messenger or overnight delivery service to deliver bulky or lengthy documents.

Section 4

Utilization or Challenge of Work Program Information in Power Repayment Studies

(a) Western shall prepare Power Repayment Studies in accordance with Department of Energy Order RA 6120.2, the principles of the March 26, 1980 Agreement between Western and Reclamation and such other existing or future agreements between Western and Reclamation which affect the long term firm rate for SLCAIP power, as they may be amended. Western shall utilize the Work Program Information made available to its Customers by Western and Reclamation (including adjustments thereof which may result from reviews, from internal corrections or the dispute resolution process provided for in these Joint Procedures but excluding the costs of future transmission system additions in a Planning Year or Out Year which are conceptual in nature), to prepare the power repayment studies upon which it relies to promulgate any interim or final rates proposed or adopted for SLCAIP firm power or transmission services; Provided, however, that prior to the adoption of any rate change the Work Program Information utilized to develop such rates shall have been provided to the Customers; Provided further, that initiation of a rate adjustment process or adoption of an interim rate or seeking confirmation and approval of a final rate is not contingent upon resolution of disputes hereunder.

(b) A Customer may not challenge a Western Power Repayment Study, a rate promulgated by Western based on a Power Repayment Study or Western's Work Program Information underlying such rate or Power Repayment Study, in any administrative or judicial forum to the extent such Customer has sought and received or reasonably could have sought resolution of such challenge under these Joint Procedures.

(c) A Customer may not challenge any Reclamation Work Program Information or any other data or information furnished by Reclamation or any conclusion arrived at or decision

made by Reclamation hereunder in any judicial forum, unless such Customer has sought resolution by or from Reclamation as provided under these Joint Procedures

#### Section 5 Dispute Resolution

(a) Any disputes or disagreements regarding the Work Program Information, including but not limited to how such information should be utilized in the ratemaking process, shall first be presented to the Administrator of Western with regard to Western Work Program Information or the Commissioner of Reclamation with regard to Reclamation Work Program Information within 15 days after receipt of Western's or Reclamation's response to a Customer's views provided for in Section 3. The Customer shall include in its presentation a statement whether the customer wishes to resolve the dispute or disagreement through arbitration. The Administrator or the Commissioner shall respond to the Customer's presentation within 15 days after receipt of such presentation; Provided, however, the Administrator or the Commissioner shall be deemed to have decided the dispute or disagreement unfavorably to the Customer and to have denied any request to submit the matter to arbitration if the Administrator or Commissioner has not acted upon within 15 days of receipt of the Customer's presentation.

(b) In the event of a denial of a request for arbitration, the decision of the Administrator or the commissioner shall be deemed their final action. Any remedy shall lie with FERC and subsequently the appropriate Federal court in the case of Western, or the appropriate Federal court in the case of Reclamation; Provided, however, such final action by the Administrator shall not impair a party's right to pursue its lawful remedies vis-à-vis western before FERC.

(c) Arbitration shall take place in accordance with the provisions of the Administrative Dispute Resolution Act, Act of November 15, 1990, Pub. L. No. 101-552,

104 Stat. 2736, as it may be amended and in accordance with such rules or regulations thereunder as may be promulgated by the Department of Energy or the Department of the Interior. Upon establishment of acceptable principles of conduct and procedures and with the agreement of the affected parties, mediation or other forms of alternative dispute resolution may be used as a means of resolving any dispute between the parties in lieu of arbitration.

(d) Should the legal authority provided in the Administrative Dispute Resolution Act, supra, lapse, Western, Reclamation, and the Customers agree to utilize their best efforts to find another legally acceptable means of alternate dispute resolution.

(e) Nothing in these Joint Procedures shall be deemed to subject Reclamation to the jurisdiction of the Federal Energy Regulatory Commission.

STATEMENT OF PRINCIPLES  
CUSTOMER REVIEW OF FINANCIAL AND WORK PROGRAM DATA

I. The Western Area Power Administration's (Western) Salt Lake City Area Integrated Projects (SLCAIP) customers desire, on a regular basis, to review financial and work program data from both Western and the Upper Colorado Region of the Bureau of Reclamation (Reclamation) that affect the electric power rate for the SLCAIP.

II. Western and Reclamation each are committed to providing such information to the SLCAIP customers on a timely basis.

III. Several Federal laws and regulations control actions of Western and Reclamation in providing financial and work program data. Western and Reclamation will comply with the provisions of these laws and regulations in providing financial and work program data to the SLCAIP customers.

IV. It is in the best interests of Western, Reclamation, and the SLCAIP power customers to resolve disputes over financial and work program data in a timely and cost-efficient manner. To this end, Western, Reclamation, and the SLCAIP power customers agree to utilize dispute resolution techniques in accordance with the Administrative Dispute Resolution Act ("ADR Act"), Act of November 15, 1990, Pub. L. No. 101-552, 104 Stat. 2736, to resolve such disputes at the administrative level before Western or Reclamation. In addition, Western and the SLCAIP power customers agree to utilize ADR Act dispute resolution techniques before the Federal Energy Regulatory Commission, including arbitration if requested by a customer, provided FERC approves

the use of such techniques. The dispute resolution process will be conducted in an open manner with full records kept of the proceedings.

V. Neither Western nor Reclamation, as the case may be, are able to accept a decision arising out of a dispute resolution process that contravenes or infringes upon the authority of the Executive Branch of the Federal government.

VI. Western, Reclamation, and the SLCAIP power customers recognize that these principles provide a framework for further discussions. All agree to enter into such discussions on a good faith basis to refine and define further actions each party would take under these principles.

VII. Western and Reclamation believe that it is sound public policy to adopt these principles, as may be refined and defined. Accordingly, Western and Reclamation will initiate in a timely fashion an informal notice and comment rulemaking action under the Administrative Procedures Act to adopt these principles.

VIII. Recognizing that an informal notice and comment rulemaking can be a time-consuming process, Western and Reclamation agree to enter into a letter agreement with the SLCAIP power customers to adopt these principles, as may be refined and defined, in advance of the rulemaking referred to in principle VII. A draft version of the proposed rule will be attached to the letter agreement, but the letter agreement will be subject to the provisions of the rulemaking as adopted on a final basis.

IX. These principles, as may be refined and defined, will not in any way diminish Western's and Reclamation's rights and obligations to provide information to members of the public or any regulatory or public bodies.

