

MEMORANDUM OF UNDERSTANDING

NO. 10-DSR-12175

FOR

**PREPAYMENT FUNDING PROCESS
FOR CONSTRUCTION**

BETWEEN

**UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Region**

AND

**LONG-TERM TRANSMISSION CUSTOMERS
OF THE PARKER-DAVIS PROJECT AND THE
PACIFIC NORTHWEST- PACIFIC SOUTHWEST INTERTIE PROJECT**

RECITALS

Whereas, Western Area Power Administration (Western) receives payment in advance (Prepayments) for Long-Term Firm Point-to-Point Transmission Service on the Parker-Davis Project (P-DP) and the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) of the Desert Southwest Region (DSW); and

Whereas, the Prepayments are made for, among other purposes, to fund construction projects on the P-DP and Intertie transmission systems and Western intends to continue to utilize Prepayments for this purpose; and

Whereas, certain P-DP and Intertie transmission customers requested that Western implement a process for customer input on the prioritization of the projects in the use of Prepayments for construction funding; and

Whereas, P-DP and Intertie transmission customers acknowledge that Western has the responsibility for final decisions on the use of Prepayments for construction funding; and

Western hereby agrees to the customer oversight process on the use of Prepayments for construction funding as hereinafter defined and documented in this Memorandum of Understanding No. 10-DSR-12175 (MOU).

STATEMENTS OF UNDERSTANDING

1. DEFINITIONS:

- 1.1 Approved Project: A project funded by Prepayments that is approved under the Prepayment Funding Plan.
- 1.2 Eligible Customer: Entity with qualifications to enter into this MOU as specified in Section 2.
- 1.3 Long-Term Transmission Customer: An entity with one or more contracts with Western for firm point-to-point or network transmission service on the P-DP or Intertie transmission systems of five (5) years or longer in duration. This includes entities that have contracts with Western for firm electric service from Federal hydropower that include payment for transmission service on the P-DP or Intertie.
- 1.4 Participant: Eligible Customer whose authorized representative has signed this MOU.

- 1.5 Prepayment Funding Plan: An annual plan developed to prioritize the portion of the Ten-Year Program funded by Prepayments for the current fiscal year.
 - 1.6 Prepayment Funding Process: The process documented in this MOU for determining how to utilize Prepayments for funding of DSW construction projects.
 - 1.7 Ten-Year Program (TYP): The Ten-Year Capital Plan which provides for the planned construction projects in the Desert Southwest Region. The TYP is developed through an existing customer planning process.
2. **ELIGIBILITY**: All Long-Term Transmission Customers are eligible during the term of their transmission service agreements for participation in the Prepayment Funding Process under this MOU.
- 2.1 Eligible Customers will be required to sign this MOU to participate in the Prepayment Funding Process. Signatories to this MOU (Participants) shall designate an authorized representative and an alternate to participate in the Prepayment Funding Process.
 - 2.2 Western shall provide a copy of this MOU to each Eligible Customer.
3. **COORDINATION WITH THE TYP PROCESS**:
- 3.1 Western will formulate a draft TYP for construction with each project prioritized. The purpose of the TYP is to clearly describe challenges, goals, strategies, and accomplishments necessary to maintain reliable power delivery to Western's customers, as well as provide a mechanism for customer collaboration.

- 3.2 The level of funding for the first year of the TYP will be based on the available Prepayments and an estimate of appropriations and Transmission Infrastructure Program (TIP) funding (for eligible projects, if any) for the upcoming year. DSW will continue to request appropriations for all construction activities. Western will use appropriations to fund its construction activities whenever available. The remaining nine (9) years of the TYP will be based on system needs and will align with DSW's anticipated budget requests.
- 3.3 About early October of each year following execution of this MOU, the draft TYP will be sent to the customers and a meeting scheduled around early November to review the plan including the portion proposed to be financed with Prepayments. In addition to general information sharing regarding construction priorities, this meeting may also result in identifying additional construction projects the customers would like to see addressed.
- 3.4 After considering and incorporating feedback from the customers, DSW will finalize the TYP, send it out to the customers, and schedule a Prepayment Funding Meeting.
- 3.5 About early December, DSW will host the Prepayment Funding Meeting to briefly review the final TYP and seek Participant approval of the priority of projects funded with Prepayments. The agreed upon plan becomes the Prepayment Funding Plan which is distributed in accordance with Section 5.6. The final TYP will also be distributed again if changes are made during this meeting.

3.6 Western may propose to amend the Prepayment Funding Plan during the current year to finance additional projects with prepayments. Western shall schedule a Prepayment Funding Meeting for a vote of the Participants.

4. **PREPAYMENT FUNDING MEETING PROCEDURES:**

- 4.1 The meeting will be hosted by Western. Western shall provide the Participants notice of the date and location of the Prepayment Funding Meeting at least twenty (20) business days in advance and provide the amount of Prepayment funding available.
- 4.2 Participants will provide Western with agenda topics or materials for distribution at least ten (10) business days prior to the meeting.
- 4.3 Western will send out an agenda and distribute any working materials to the Participants at least five (5) business days prior to the meeting including the report on Approved Projects called for under Section 7.
- 4.4 The authorized representative or alternate for each Participant may participate.
- 4.5 The Prepayment Funding Plan is developed using the priorities of projects in the final TYP adjusted for changes agreed to during the Prepayment Funding Meeting.
- 4.6 The Prepayment Funding Plan is approved by a vote of the eligible Participants who have signed this MOU in accordance with Section 5.

5. **VOTING PROCESS:**

- 5.1 Western will work to cooperatively develop a Prepayment Funding Plan that receives broad-based customer support.

- 5.2 Each Participant will have one vote. Voting will be in the form of voice or show of hands during the meeting, email to person designated by Western; or by proxy on a form to be determined by Western.
- 5.3 Participant approval for each construction project in the Prepayment Funding Plan requires an affirmative vote of greater than fifty (50) percent of those Participants that vote by the close of the meeting.
- 5.4 Multi-year projects in the Prepayment Funding Plan will be approved for the total funding of the project and are not subject to re-voting in subsequent years except for additional funding when required in accordance with Section 8.
- 5.5 If Western needs to pursue a construction project that Participants do not approve to fund with Prepayments, Western shall find other sources to fund the project other than using Prepayments or move the project to a later fiscal year for reconsideration.
- 5.6 The final approved Prepayment Funding Plan will be formally recorded and mailed via a letter to each Eligible Customer.
6. **EMERGENCY EXCEPTION:** With any transmission system, emergencies are likely to occur. In the event of an emergency, Western will immediately initiate all actions and repairs necessary to preserve, maintain, or re-establish the safety, integrity, or operability of the DSW transmission assets that have been affected. Western may use any available sources of funding including Prepayments for emergency repairs to the P-DP and Intertie transmission systems without prior customer notification. DSW's maintenance crew

shall act swiftly to make the necessary repair and DSW representatives shall follow up with the Participants to inform them of the issue and provide estimated costs involved.

7. **PROJECT REPORTS:** Prior to the Prepayment Funding Meeting each year, Western shall prepare and distribute to Eligible Customers a report on Approved Projects that are in progress or completed since the prior meeting. The report shall include project status, costs to date, and actual or estimated changes to the total project costs.
8. **PREPAYMENT PROGRAM EXECUTION:** Projects in the Prepayment Funding Plan are approved with an estimated total project cost provided by Western. Western will manage Prepayment funding of Approved Projects within the following limitations:
 - 8.1 For Approved Projects that exceed the approved estimated total cost by not more than ten (10) percent, no further Participant approval is required.
 - 8.2 For Approved Projects that exceed the approved estimated total cost by not more than twenty-five (25) percent, Western may re-program funds from other Approved Projects that are completed or anticipated to be completed below their approved estimated total cost without further approval to the extent these projects are below their approved estimated cost.
 - 8.3 For Approved Projects that are anticipated to exceed the estimated total cost limitations in subsections 8.1 and 8.2, approval of the Participants for additional Prepayment funding is required. Western shall schedule a Prepayment Funding Meeting for a vote of the Participants, if needed.

9. **USE OF PREPAYMENTS:** DSW shall not transfer Prepayment dollars to other Western Regions or other DSW systems or fund construction projects with Prepayments that financially impact systems other than P-DP and Intertie.
10. **MODIFICATIONS:** Western is receptive to continuing to work with the Participants to make future improvements to this process. This MOU may be modified by mutual agreement of Western and the Participants. Approval of modifications shall be made by an affirmative vote of the Participants in accordance with Section 5 of this MOU and written agreement by Western.
11. **TERMINATION OF CONTRACT AND LIABILITY HEREUNDER**
- 11.1 Any Participant may withdraw from this MOU for any reason with ten (10) calendar days notice. The Participants also agree that no Participant shall have any liability of any kind or nature to the other Participants for a termination or breach of this MOU. Withdrawal from this MOU negates any Participant's ability to vote on the use of prepayments, but does not relieve the Participant of any obligation to make payment under contracts with Western for transmission service or firm electric service.
- 11.2 This MOU may be terminated at any time by mutual agreement of Western and the Participants. Termination of this MOU shall require by an affirmative vote of the Participants in accordance with Section 5 of this MOU and written agreement by Western.

- 11.3 In the event that Western permanently discontinues the use of Prepayments as a source for funding construction projects, Western will terminate this MOU by written notice to the Participants.
12. **EXECUTION BY COUNTERPARTS**: This MOU may be executed in any number of counterparts and, upon execution and delivery by each party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if all parties had signed the same instrument. Any signature page of this MOU may be detached by any counterpart of this MOU without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this MOU identical in form hereto, by having attached to it one or more signature pages.
13. **AUTHORITY TO EXECUTE**: Each individual signing this MOU certifies that the party represented has duly authorized such individual to execute this MOU.

This MOU for the Prepayment Funding Process is executed this ____ day of _____, 2011.