

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 is currently revising Exhibit D of VRC's Base Resource Contract. Western will offer the revised Exhibit D to all customers prior to beginning service under the Base Resource Contract. If VRC rejects the provisions of Exhibit D, Revision 1, its Base Resource Contract with Western will terminate.

2.3 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.

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

[2.4][5] 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] [2.4] [and] 2.5] above once VRC has accepted Exhibit D, Revision 1 to its Base Resource Contract.

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; except as otherwise provided for herein.

4.2 In the event that VRC provides notice of termination of its Base Resource Contract 00-SNR-003___ pursuant to Exhibit D, Revision 1 of said Contract, this Contract shall immediately become null and void and no service shall be provided under this Contract.

4.3 Except as provided for in Section 4.2 above, service under this Contract shall begin on or after January 1, 2005.

4.4 Western may suspend or terminate service under this Contract pursuant to Section 17.

4.5 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 "Base Resource Firming" means to ensure that the amount of power to be provided in accordance with a customer's Final Day-Ahead Base Resource Schedule is available to the customer by obtaining another power resource when necessary.]

5.3 “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.

[5.4 “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.]

5.5 “Fiscal Year” means October 1st of a year through September 30th of the following year.

5.6 “Regional Transmission Organization” or “RTO” means an organization that meets the minimum characteristics and performs the minimum functions specified in Federal Energy Regulatory Commission Order 2000, as that order may be amended or superseded.

[5.7 “Supplemental Power” means firm capacity and energy provided by Western that a customer needs in addition to its Base Resource to meet its load.]

5.8 “Variable Resource Customer” means a Base Resource customer who is responsible for managing its own power portfolio and will purchase Base Resource Firming and/or Supplemental Power from Western in addition to its Base Resource percentage.

[6. **BASE RESOURCE FIRING:**

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 to replace the Base Resource Western cannot provide in order to firm VRC's Final Day-Ahead Base Resource Schedule(s). Western will provide a schedule of Base Resource Firming to VRC's scheduling entity.

6.2 Western will continue to provide Base Resource 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 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. The maximum term shall not exceed five (5) years or the remaining term of this Contract, whichever is less.

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 applicable to 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.]

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 Base Resource 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 2.8 of Exhibit A attached hereto.]

10. **SCHEDULING AND METERING:**

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

10.2 VRC shall provide the name and other pertinent information regarding its scheduling entity to Western no less than sixty (60) days prior to receiving service under this Contract. Western shall have no obligation to provide [Base Resource Firming] [and] [Supplemental Power] to VRC if this information has not been provided to Western. However, VRC shall not be relieved of its payment obligations for service hereunder.

11. REGIONAL TRANSMISSION ORGANIZATION OR CONTROL AREA:

Western currently operates within the California Independent System Operator's control area. The Parties understand that Western may join an RTO or become a part of a different control area. In the event Western either joins or is required to conform to the protocols of an RTO or a different control area, the Parties shall mutually agree to make any protocol changes to this Contract to conform to the terms and conditions required by such organization. In the event that:

- 1) Western incurs costs from an RTO or a different control area for serving VRC's load; or 2)

VRC does not abide by the protocols applicable to Western and Western incurs costs as a result, VRC agrees to pay all such costs attributable to VRC.

12. WESTERN RATES:

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

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

[13. REIMBURSABLE FINANCING: FOR FEDERAL CUSTOMERS ONLY

13.1 Western may purchase power or provide other services using reimbursable authority pursuant to the Economy Act, 31 U.S.C. 1535. Western's reimbursable authority shall not exceed the fiscal year estimated costs related to power and other services 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 budget authority.

13.3 Each fiscal year, 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.

13.4 Western shall be under no obligation to continue service under this Contract if the cost of continuing service exceeds VRC's budgeted appropriations for such service for a fiscal year.]

ICREDITWORTHINESS: Not Federal

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. BILLING AND PAYMENT FOR BASE RESOURCE FIRING:

[**Not Federal:** Western will bill and VRC shall pay for Base Resource Firming in accordance with the procedures established under either Section 14.1 or Section 14.2, as solely determined by Western. If determined necessary by Western, Western may change the section under which Western is billing and VRC is paying upon sixty (60) days notice to VRC.

14.1 After-The-Fact Billing:]

VRC shall pay Western for Base Resource Firming provided in the previous month as directed on the monthly electric service bill [**Not Federal:** ; or

14.2 Advance Funding:

14.2.1 Western will estimate the initial amount of funds required. The estimate shall be based on three (3) months of Western's costs attributable to VRC for Base Resource Firming.

14.2.2 The initial advance funding amount shall be due on the date specified on the bill for collection. The initial bill for collection will be issued in September 2004.

14.2.3 On a monthly basis, Western will estimate its costs associated with providing Base Resource Firming to VRC for the following month. VRC shall advance this amount to Western as specified on its electric service bill.

14.2.4 Western shall use funds from VRC's trust account on a monthly basis for Western's costs associated with providing Base Resource Firming to VRC in the previous month.

14.2.5 Any alternative method of advance funding shall be set forth in a separate contractual agreement.]]

[15. BILLING AND PAYMENT FOR SUPPLEMENTAL POWER:

[**Not Federal:** Western will bill and VRC shall pay for Supplemental Power in accordance with the procedures established under either Section 15.1 or Section 15.2, as solely determined by Western. If determined necessary by Western, Western may change the section under which Western is billing and VRC is paying upon sixty (60) days notice to VRC.

15.1 After-The-Fact Billing:]

VRC shall pay Western for Supplemental Power provided in the previous month as directed on the monthly electric service bill [**Not Federal:** ; or

15.2 Advance Funding:

15.2.1 Western will estimate the initial amount of funds required. The estimate shall be based on the entire cost of any contract Western enters into in order to provide Supplemental Power to VRC.

15.2.2 The amount of advance funding VRC is able to provide, Western's funding authority, and Section 7.1 of this Contract will determine the maximum term for which Western will provide a Supplemental Power Custom Product.

15.2.3 The advance funding amount determined by Western shall be due on the date specified on the bill(s) for collection. The bill(s) for collection will be issued no less than one hundred twenty (120) days prior to Western providing Supplemental Power to VRC in accordance with Exhibit A attached hereto or any revisions to said Exhibit.

15.2.4 Western shall use funds from VRC's trust account on a monthly basis for Western's costs associated with providing Supplemental Power to VRC in the previous month.

15.2.5 Any alternative method of advance funding shall be set forth in a separate contractual agreement.]]

[16. TRUST ACCOUNT[S] FOR ADVANCED FUNDS: NOT FEDERAL

VRC understands that it may be required to advance funds to Western for a trust account pursuant to Section[s] [14.2] [and/or] [15.2] and this section for the services provided under this Contract. This Section 16 provides for establishing and maintaining the trust account required if [Section 14.2] [and/or] [Section 15.2] [is/are] in effect.

16.1 Funds that VRC advances to Western shall be sent in accordance with the information included on the bill(s) for collection and electric service bills, or as otherwise directed.

16.2 VRC shall be required to retain a balance of [three (3) months of estimated Base Resource Firming costs] [and] [the estimated current dollar value of any Supplemental Power purchase made on behalf of VRC] in the trust account at all times. Western shall monitor the account; and, if Western determines that:

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

16.2.2 There are excessive funds in the account, Western, at its sole discretion, will either: 1) decrease subsequent amounts required by the amount in excess of the estimate, or 2) return any excess funds to VRC.

16.3 Western will provide VRC with:

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

16.3.2 An electric service bill that will reflect the previous month's [Base Resource Firming] [and] [Supplemental Power] costs[and the amount of advance funding required from VRC for the costs that Western anticipates it will incur while providing Base Resource Firming to VRC for the following month].

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

16.5 Within sixty (60) days of termination of this Contract, and after Western has determined that all obligations incurred under this Contract have been satisfied, Western shall return any funds remaining in the trust account to VRC without interest.]

17. DEFAULT PROVISIONS:

17.1 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.

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

17.2.1 If Western's aggregate gains exceed its aggregate losses and costs, including obligations incurred on behalf of VRC that extend past the current month, 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,

17.2.2 If Western's aggregate gains do not exceed its aggregate losses, including obligations incurred on behalf of VRC that extend past the current month, 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.

18. GENERAL POWER CONTRACT PROVISIONS:

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**]

19. 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.

20. EXHIBIT MADE PART OF CONTRACT:

Exhibit A, Variable Resource - Supplemental Power, attached to and 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 2.3 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 The credit rating of any energy provider(s) with which Western may contract to provide Supplemental Power to VRC shall be no less than _____.
- 2.2 Delivery Beginning: _____ (Date)
- 2.3 Delivery Ending: _____ (Date)
- 2.4 Amount: _____ MW per hour
- 2.5 Period: Hour ending _____ through hour ending _____
- 2.6 Days: _____ (Days of the Week)
- 2.7 Price: Up to _____ dollars per megawatthour
- 2.8 Delivery Point: _____
- 2.9 Other Terms: _____

[3. Transmission for Supplemental Power provided under this Contract shall be provided under VRC's contract _____ with _____.

DO NOT SIGN
Variable Resource Customer

Address _____

City, State, and Zip Code _____

Date _____

Final Price Per
Megawatthour is: _____

Thomas R. Boyko

Address

City, State, and Zip Code

Date

]