

COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM E
FOR MEETING OF SEPTEMBER 11, 2018

SUBJECT:

For Possible Action: Discussion and possible action to approve, deny or condition the approval of the Joint Application of Tronox LLC (Tronox) and EMD Acquisition LLC (EMD) for assignment of all contracts and agreements between the Commission and Tronox to EMD upon closing of the sale of Tronox's Electrolytic Division to EMD. Current Contracts and Agreements include but are not limited to:

- Contract No. P05-BCPESC-A for the Sale of Electric Service from the Boulder Canyon Project.
- Contract No. P05-70R for the Sale of Electric Power from the Parker Davis Project.
- Acknowledgement of Assignment Agreement to assign all rights, interests and obligations to EMD under Contract No. 14-06-300-2083 for delivery of Colorado River Water as amended and supplemented.
- Contract No. P20-77 Agreement to Advance Funds for Parker-Davis Project Generation Facilities.
- Contract No. P05-79 Agreement to Repay its Proportionate Share of the Cost of Securities Issued by the Commission to Prepay Hoover Power Base Charges.
- Contract No. P05-62 for Supplemental Electric Power Supply Services.
- Contract No. P05-TSNF for Transmission Service.
- Contract No. CRC-BMIOM for the Interconnection, Operation and Maintenance of Electric Facilities.
- Contract No. P20-47 First Amended Agreement to Share the Costs of Implementation of the Lower Colorado River Multi-Species Conservation Program.
- Letter Agreement for Designation of Scheduling Entity dated June 5, 2017.
- Letter Agreement for Billing Procedures dated June 21, 2017.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

Staff recommends that the Commission approve the Joint Application of Tronox LLC (Tronox) and EMD Acquisition LLC (EMD) for Assignment with the following conditions:

- 1) EMD deposits cash in the amount of \$750,000 to satisfy its collateral requirement; and
- 2) EMD executes an agreement with Commission containing the following provisions:
 - a) EMD will demonstrate that its facilities can be turned off without affecting the flow of energy to NERT (Nevada Environmental Response Trust);
 - b) EMD will agree that any subsequent changes to its facilities will preserve the ability to supply energy to NERT if its facilities are turned off;
 - c) EMD agrees to turn off power to its own facilities at the Commission's request, after they have received the required notices under NAC 538.746;
 - d) Commission Staff has the right to witness the shut-off and install locks which will prevent EMD from re-energizing their facilities;
 - e) Such turn off will be done in a manner that allows for NERT to continue to receive energy; and

RECOMMENDATION OR RECOMMENDED MOTION (CONTINUED):

- f) In the event EMD refuses to provide personnel, Commission staff has the right to enter the property and perform the shut off and locking itself.

FISCAL IMPACT:

None.

STAFF COMMENTS AND BACKGROUND:

A. Introduction

Tronox LLC (Tronox) has entered into a Purchase Agreement with EMD Acquisition LLC (EMD) for the sale of Tronox's Electrolytic Division which operates the chemical manufacturing facilities located at the Black Mountain Industrial Complex (BMI). Tronox and EMD have requested that the Commission approve the assignment of all current contracts and agreements between Tronox and the Commission to EMD.

The Commission has jurisdiction to decide whether Tronox's request for approval of an assumption of contracts and related rights should be granted, under NRS 538.161(2), NRS 538.166(f) and the Commission's regulation NAC 538.550, that specifically requires prior written approval of the Commission provided that the assignment is consistent with the Commission's regulations.

However, the Commission may only provide power to customers as allowed in NRS 704.787. The customers referenced in the statute refers to the "load and location" being served by the Commission and not the legal entity. Meaning that, if the "load and location" remain the same, there is no problem with a different legal entity being served. It is not the legal entity that is referenced in NRS 704.787 but the electric load being provided at a specific location. Thus, the Commission may allow the contracts to be assigned to EMD provided that it is Tronox's load which is being assigned at Tronox's location. In this instance, EMD is stepping into the shoes of Tronox and has indicated that it will be running the plant so the "load and location" criteria would be satisfied. (See also August 1, 2001 Declaratory Order of the Public Utilities Commission of Nevada.)

B. Background

Currently, Tronox has contracts and agreements which include electric service contracts for Boulder Canyon Project (Hoover Dam), and Parker-Davis Project power, transmission arrangements, bond payments and other operational agreements.

Also listed is the Colorado River Water Service Contract in which Tronox has an interest. Specifically, contract No. 14-06-300-2083 dated September 18, 1969, as amended, between Basic Water Company, the United States Bureau of Reclamation and the Commission for delivery of Colorado River water to the BMI complex. Basic Water Company consists of multiple member entities that own an interest in this contract and are entitled to delivery of a proportionate share of Colorado River water under this contract. Commission staff is working with the Bureau of Reclamation in the development of an Acknowledgement of Assignment Agreement to assign Tronox's interest in the water service contract to EMD.

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STAFF COMMENTS AND BACKGROUND (CONTINUED):

1. Tronox – Henderson Remediation Power Agreement

Tronox also has entered into the Henderson Remediation Power Agreement dated February 14, 2011 with the Nevada Environmental Response Trust (NERT) wherein Tronox provides a portion of the CRC provided power to NERT to power the groundwater intercept and treatment systems located at BMI which address environmental contamination from the Tronox site. The Commission approved this arrangement in November of 2010.

An interruption of the ongoing groundwater intercept and treatment systems would cause an “imminent and substantial threat to human health” as documented by the Nevada Department of Environmental Protection in its 2009 Administrative Order. Tronox has worked with NERT to assign the Remediation Power Agreement to EMD. The Commission must ensure that NERT continues to receive power in the event EMD is in default and electric service is suspended to its plant.

2. EMD Acquisition LLC (EMD)

EMD is acquiring the Tronox assets and will be the entity that operates the plant. EMD is a Nevada Company and was formed on January 25, 2018. EMD is owned by Polymathes Mojave Funding LLC, a Delaware Company that is in turn owned by EMD Holdings LLC which owns 75 percent and Acrewood VIII LLC that owns 25 percent. A chart showing the ownership hierarchy and percentages are attached as Exhibit A.

EMD is a startup company and formed to acquire and operate the Tronox plant. EMD’s Balance Sheet shows Cash of \$3.5 million Paid in Capital. The Balance Sheets for EMD Acquisition LLC, Polymathes Mojave Funding LLC, and EMD Holdings LLC are attached as Exhibit B.

Given that EMD is a new company without any operating history or established credit, Staff has no operating history by which to assess the risk of not being paid for power delivered to EMD. Further, the Commission is a state agency that purchases and sells energy at cost plus a small administrative fee added. Consequently, the Commission is not in a position to assume risk of non-payment of power sold to its customers.

Further, NRS 538.181(2) requires that certain of Commission’s power customers, provide collateral “in such sum and in such manner as the commission may require, conditioned on the full and faithful performance” of their power contracts. Additionally, NAC 538.744 requires “during October of each operating year, and at any other time it deems necessary, the Commission will conduct a review to determine creditworthiness of each of its contractors.”

C. Staff’s Recommended Conditions:

1. Access to Shutoff Power and assure continued service to NERT

Staff recommends that the assignment be conditioned on EMD executing an agreement with Commission containing the following provisions:

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STAFF COMMENTS AND BACKGROUND (CONTINUED):

- a) EMD will demonstrate that its facilities can be turned off without affecting the flow of energy to NERT;
- b) EMD will agree that any subsequent changes to its facilities will preserve the ability to supply energy to NERT if its facilities are turned off;
- c) EMD agrees to turn off power to its own facilities at the Commission's request, after they have received the required notices under NAC 538.746;
- d) Commission Staff has the right to witness the shut-off and install locks which will prevent EMD from re-energizing their facilities;
- e) Such turn off will be done in a manner that allows for NERT to continue to receive energy; and
- f) In the event EMD refuses to provide personnel, Commission staff has the right to enter the property and perform the shut off and locking itself.

2. Required Collateral for Electric Service

Based on Staff's review, the Commission establishes the amount and prescribes the manner in which the customer is required to furnish collateral pursuant to its contracts with the Commission. Pursuant to NAC 538.744(3), the required amount of collateral can be no less than one-fourth of the Contractor's gross annual purchases.

For Calendar Year 2018, the Commission approved collateral for Tronox in the amount of \$508,630.44. Tronox provided the Commission with a letter of credit. Given that EMD is a new company without any operating history or established credit, Staff recommends that the collateral amount be increased from \$508,630.44 to \$750,000 which represents approximately one-third of Tronox's gross annual purchases during the period of July 1, 2017 through June 30, 2018. Staff also recommends that the Commission require that cash be provided in lieu of other forms of collateral.

AGENDA ITEM E
EXHIBIT A
Member/Managers

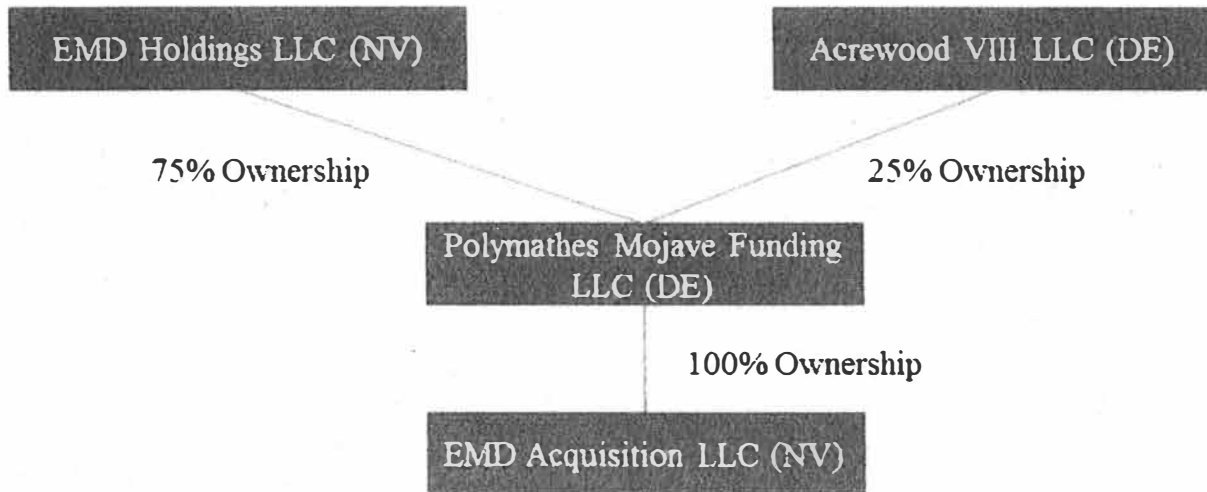
EMD Acquisition LLC (NV LLC) – Member/Manager is Polymathes Mojave Funding LLC. John Wachter is President and William J. Golden is General Counsel.

Polymathes Mojave Funding LLC (DE LLC) – Members are EMD Holdings LLC and Acrewood VIII, LP. Manager is EMD Holdings LLC.

EMD Holdings LLC (NV LLC) – Member/Managers are William J. Golden and John Wachter.

Acrewood VIII, LP – Does not have a Board of Directors.

Ownership Chart



AGENDA ITEM E

EXHIBIT B

Pre-Closing Balance Sheet – EMD Acquisition LLC (Accrual in ‘000s)

Cash	3,500
Total Assets	3,500
Total Liabilities	0
Paid in capital	3,500
Member's Equity	3,500
Total Equity	3,500

Pre-Closing Balance Sheet – Polymathes Mojave Funding LLC (Accrual in ‘000s)

Cash	3,500
Total Assets	3,500
Total Liabilities	0
Paid in capital	3,500
Member's Equity	3,500
Total Equity	3,500

Pre-Closing Balance Sheet – Acrewood VIII LLC (Accrual)

Attached as PDF

Pre-Closing Balance Sheet – EMD Holdings (Accrual in ‘000s)

Cash	500
Total Assets	500
Total Liabilities	0
Paid in capital	500
Member's Equity	500
Total Equity	500

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM F
FOR MEETING OF SEPTEMBER 11, 2018**

SUBJECT:

Consideration and possible action to approve the Contract for Capacity Services, Contract No. 18-DSR-12831 (Contract) between Western Area Power Administration (WAPA) and the Commission related to the unused hydropower capacity available from the Boulder Canyon Project.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

Staff recommends the Commission approve Contract No. 18-DSR-12831 between WAPA and the Commission and authorize the Executive Director to execute the Contract.

FISCAL IMPACT:

Revenues received from WAPA's use of unused hydropower capacity will be credited to the participating contractors.

STAFF COMMENTS AND BACKGROUND:

The Commission's contracts with each of its Boulder Canyon Project Contractors (Contractors) contain provisions for the Commission to market its Contractors' unused hydropower resources. At times, Contractors cannot utilize all of the hydropower capacity available to them under their contracts with the Commission. Western Area Power Administration (WAPA) has the ability to utilize this unused capacity. The attached Contract for Capacity Services contains provisions for WAPA to use the hydropower capacity made available by the Commission and to compensate the Commission for it. The Commission approved a similar agreement in May of 2018 benefitting the Southern Nevada Water Authority and the City of Boulder City which reside in WAPA's balancing area. The attached Contract for Capacity Services provides similar benefits to the remaining Commission Contractors that reside in other Balancing Authority areas.

Staff offered the ability to participate in the attached Contract to all of its Contractors that were eligible to participate, except the City of Boulder City, and SNWA. Thus far, Lincoln County Power District No. 1 and Overton Power District No. 5 have indicated that they would like to participate. The Agreement contains provisions to add or remove Contractors with 30 days written notice. Revenue received by the Commission from WAPA will be credited to the participating Contractors.

Staff recommends that the Commission authorize the Executive Director to execute the Contract.



**United States
Department of Energy**

**WESTERN AREA
POWER ADMINISTRATION
Desert Southwest Region**

CONTRACT

CONTRACT NO. 18-DSR-12831

BETWEEN

**UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Customer Service Region
Boulder Canyon Project**

AND

COLORADO RIVER COMMISSION OF NEVADA

FOR

CAPACITY SERVICE

CONTRACT NO. 18-DSR-12831

BETWEEN

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Customer Service Region
Boulder Canyon Project

and

COLORADO RIVER COMMISSION OF NEVADA

FOR

CAPACITY SERVICE

Table of Contents

<u>Section</u>	<u>Title</u>	<u>Page No.</u>
1	Preamble	1
2	Explanatory Recitals	2
3	Agreement.....	3
4	Effective Date and Term.....	3
5	Capacity Service	3
6	Compensation	4
7	Billing and Payment.....	4
8	Severability	5
9	Existing Agreements Preserved	5
10	Amendments and Modifications.....	5
11	Exhibits	6
12	Attachments	6
13	General Power Contract Provisions.....	6
14	Execution by Counterparts.....	6
15	Authority to Execute	7
	Signature Clause	8
	Exhibit A, Capacity Service Costs	
	Attachment No. 1, List of Entities Participating in Capacity Service Contract	
	Attachment No. 2, Billing and Payment Instructions	
	General Power Contract Provisions	

CONTRACT NO. 18-DSR-12831

BETWEEN

**UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Customer Service Region
Boulder Canyon Project**

and

COLORADO RIVER COMMISSION OF NEVADA

FOR

CAPACITY SERVICE

1. **PREAMBLE:** This Contract is made this ____ day of _____ 2018, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388); December 21, 1928 (45 Stat. 1057); August 4, 1939 (53 Stat. 1187); July 19, 1940 (54 Stat. 774); September 2, 1958 (72 Stat. 1726); August 4, 1977 (91 Stat. 565); August 17, 1984 (98 Stat. 1333), December 20, 2011 (125 Stat. 777, 43U.S.C.), and Acts amendatory or supplementary to the foregoing Acts; between the United States of America, Department of Energy, acting by and through the Administrator, WESTERN AREA POWER ADMINISTRATION, hereinafter called WAPA, represented by the officer executing this Contract or a duly appointed successor; COLORADO RIVER COMMISSION OF NEVADA, an agency of the state of Nevada, hereinafter called the CRCNV; WAPA and the CRCNV may be referred to herein singly as “Party” and collectively as “Parties”.

2. **EXPLANATORY RECITALS:**

- 2.1 WAPA is engaged in marketing, generation, and transmission of electric power, and operates the Western Area Lower Colorado (WALC) Balancing Authority (BA) in the Desert Southwest Region, which includes the Boulder Canyon Project (BCP), and Parker-Davis Project (P-DP).
- 2.2 The CRCNV is engaged in the purchase, resale, transmission, and/or distribution of electric power in the State of Nevada. The CRCNV's customers are user(s) of Federal Hydropower capacity and energy from the BCP, P-DP, and/or Salt Lake City Area Integrated Projects (SLCA/IP), pursuant to the CRCNV's contracts with WAPA.
- 2.3 CRCNV's electric power service contracts provide for contractual responsibilities to its customers for finding markets for their unused hydropower and making arrangements for the sale of that power.
- 2.4 The CRCNV, WAPA, and the Silver State Energy Association (SSEA) are parties to a Capacity Services Agreement dated May 18, 2018, pursuant to which some of the CRCNV's hydropower customers located in the WAPA Balancing Authority Area (BAA) and who are also members of the SSEA, provide unused hydropower capacity to WAPA and receive compensation from WAPA in the form of ancillary service credits and/or direct payments to the SSEA.
- 2.5 Certain of the CRCNV's other hydropower customers, specified in Attachment No. 1, attached hereto, that are located in the NV Energy BAA also have unused hydropower capacity and request that the CRCNV market their unused capacity.

- 2.6 The CRCNV, on behalf of the Customers listed in Attachment No. 1, seeks to layoff unused BCP capacity to WAPA and for WAPA to receive BCP capacity through the use of the unscheduled BCP capacity made available to the CRCNV through its Customers' contracts with the CRCNV.
3. **AGREEMENT:** The Parties agree to the terms and conditions set forth herein.
4. **EFFECTIVE DATE AND TERM:**
- 4.1 This Contract shall become effective upon execution by the parties. The CRCNV or WAPA may terminate this Contract, for any reason, by providing twenty-four (24) months written notice.
- 4.2 If not otherwise terminated earlier under subsection 4.1 herein, this Contract will terminate no later than September 30, 2032.
- 4.3 All obligations pursuant to this Contract incurred prior to its termination shall be preserved until satisfied.
5. **CAPACITY SERVICE:**
- 5.1 CRCNV agrees to allow WAPA to utilize some of the unscheduled BCP capacity associated with its Customers' BCP contracts, as shown on Attachment No. 1.
- 5.2 The CRCNV customers participating in this Capacity Service arrangement are shown in Attachment No. 1. Attachment No. 1 may be amended by the CRCNV, from time to time, with the addition or deletion of a customer. The CRCNV will give WAPA thirty (30) days' notice prior to issuing a new Attachment No. 1.
- 5.3 The Scheduling Entity representing each of the Customers as specified in Attachment No. 1, will provide to WAPA an hourly energy and associated capacity schedule, hereinafter called Static Schedule, prior to the corresponding

Western Electricity Coordinating Council's (WECC's) pre-scheduling day. The amount of BCP capacity available for Western's use (Available Capacity) will be calculated to be the Customer's available capacity minus the final submitted schedule.

5.4 The CRCNV agrees that, for the term of this agreement, the unused BCP capacity that is determined to be Available Capacity will be deemed to be laid off to WAPA.

6. **COMPENSATION:**

6.1 WAPA shall value Available Capacity as described in Exhibit A, attached hereto, of this Contract and compensate the CRCNV for WAPA's use of this capacity.

6.2 Exhibit A may be amended by WAPA, from time to time, to reflect changes in market prices. WAPA will give the CRCNV thirty (30) days' notice prior to issuing a new Exhibit A.

7. **BILLING AND PAYMENT:**

7.1 The CRCNV shall submit an itemized invoice to WAPA each month, as soon as practicable after receiving a report by WAPA after the close of each month, for the capacity service provided by the customers of the CRCNV. The CRCNV's invoice shall specify the payment due from WAPA for the Available Capacity provided in accordance with Exhibit A, subsection 3.4. WAPA shall pay such CRCNV invoice within twenty (20) calendar days after receipt thereof.

7.2 Invoices shall be submitted by the CRCNV to WAPA in accordance with the instructions provided in Attachment No. 2, attached hereto.

- 7.3 WAPA shall make payments to the CRCNV in accordance with the instructions provided in Attachment No. 2.
- 7.4 Attachment No. 2 may be revised from time to time by either party to reflect their updated information.
8. **SEVERABILITY**: To the fullest extent possible, each term of this Contract shall be interpreted in such fashion as to be effective and valid under applicable law. If any term of this Contract is declared void or unenforceable with respect to particular circumstances, such term shall remain in force and effect in all other circumstances. If any term of this Contract is declared void or unenforceable, such term shall be deemed severed from this Contract, which shall otherwise remain in force and effect. Any action taken in accordance with this Contract which conflicts with the CRCNV's obligations under its power sales contract will require cessation of the conflicting action or remedial action as agreed to by the CRCNV and WAPA.
9. **EXISTING AGREEMENTS PRESERVED**: Nothing in this Contract shall be interpreted to supersede the requirements of any existing agreement unless expressly stated herein. This Contract shall be implemented consistently with the requirements of the electric service and transmission contracts between WAPA and the CRCNV.
10. **AMENDMENTS AND MODIFICATIONS**: This Contract may not be amended or modified by any Party except by subsequent mutual written agreement duly executed by the Parties.
11. **EXHIBITS**: The initial exhibits to this Contract, as they may be amended or revised from time to time in accordance with subsection 6.2 or by written agreement of the parties, are attached to this Contract and are incorporated by reference as if herein fully

set forth. New exhibits may be added in the future, as required, and shall be made part of this Contract by mutual written agreement of the Parties shown on the revised exhibit.

Each superseding Exhibit shall be attached to and become part of this Contract.

12. **ATTACHMENTS**: The initial attachments to this Contract, as they may be amended or revised from time to time in accordance with subsection 5.2 and Section 7 are attached to this Contract and are incorporated by reference as if herein fully set forth. New attachments may be added in the future, as required, and shall be made part of this Contract by mutual written agreement of the Parties shown on the revised attachments. Each superseding Attachment shall be attached to and become part of this Contract.
13. **GENERAL POWER CONTRACT PROVISIONS**: The General Power Contract Provisions (GPCP) dated September 1, 2007 are hereby made a part of this Contract the same as if they had been expressly set forth herein; provided that, if the provisions in the GPCP conflict with this Contract, the terms of this Contract shall control.
14. **EXECUTION BY COUNTERPARTS**: This Contract 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 Contract may be detached by any counterpart of this Contract without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Contract identical in form hereto, by having attached to it one or more signature pages.
15. **AUTHORITY TO EXECUTE**: Each individual signing this Contract certifies that the Party represented has duly authorized such individual to execute this Contract that binds and obligates the Party.

The Party named below has caused this Contract No. 18-DSR-12831 to be effective in accordance with Section 1, herein.

DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION

By _____

Title Energy Management and

Marketing Manager

Address Desert Southwest Region

P.O. Box 6457

Phoenix, AZ 85005-6457

COLORADO RIVER COMMISSION
OF NEVADA

By _____

Jayne Harkins, P.E.

Title Executive Director

Address 555 E. Washington Ave., Suite 3100

Las Vegas, NV 89101

APPROVED AS TO FORM:

By _____

Title: Special Counsel

Exhibit A
Contract No. 18-DSR-12831
Colorado River Commission of
Nevada

CAPACITY SERVICE COSTS

1. This Exhibit A (Exhibit), made this _____ day of _____ 2018, to be effective under and as a part of Contract No. 18-DSR 12831 (Contract), becomes effective upon execution of the Contract, and shall remain in effect until superseded by another Exhibit A; provided, this Exhibit A, or any superseding Exhibit A, will terminate upon expiration of the Contract.
2. **CAPACITY SERVICE COMPENSATION:**
 - 2.1 For every megawatt (MW) available to WAPA to claim as reserve capacity, WAPA will pay to the CRCNV a per MW value. The Fiscal Year 2018 per MW value will be Thirty-Five Cents (\$0.35). This per MW compensation will be reviewed on an annual basis and is subject to change if WAPA determines the Available Capacity provides an increase or decrease in benefit.
 - 2.2 WAPA will provide the CRCNV a report within thirty (30) days after the close of each month, which identifies the amount of capacity available for WAPA's use. The Contractor will invoice WAPA for such capacity in accordance with Section 7 of the Contract.
 - 2.3 For every MW of actual capacity used by WAPA to cover its reserve requirement, WAPA will pay to CRCNV \$14.68 per MW of reserved capacity, which is equal to WAPA's average market price per MW for spinning reserves, less 10 percent, for the period of August 2016 through July 2017.

Exhibit A
Contract No. 18-DSR-12831
Colorado River Commission of
Nevada

- 2.4 WAPA and the CRCNV agree to review per MW compensation under subsection 2.3 of this Exhibit A to determine if synchronous and motoring losses incurred through utilization of Available Capacity has a significant impact on WAPA's benefit under this Contract.
 - 2.5 WAPA will provide the CRCNV a report within thirty (30) days after the close of each month identifying the actual amount of capacity used to cover WAPA's reserve requirement. The CRCNV will invoice WAPA for the used capacity in accordance with Section 7 of the Contract.
 - 2.6 If WAPA determines that the CRCNV's unscheduled capacity has additional benefits, then WAPA and the CRCNV will discuss such benefits to arrive at a mutually acceptable compensation price.
 - 2.7 In no event will the total compensation paid to the Contractor exceed WAPA's published composite rate for the Boulder Canyon Project.
3. This Exhibit A may be modified in accordance with Section 11 of the Contract.

Attachment No. 1 to
Contract No. 18-DSR-12831
Colorado River Commission of
Nevada

LIST OF ENTITIES PARTICIPATING IN CAPACITY SERVICE CONTRACT

1. This Attachment No. 1, to be effective under and as a part of Contract No. 18-DSR-12831 (Contract), becomes effective upon the execution of the Contract, and will remain in effect until superseded by another Attachment No. 1; provided that, this Attachment No. 1, or any superseding Attachment No. 1, will terminate upon expiration of the Contract.
2. The following CRC customers are participating in the capacity services contract:

Customer	Scheduling Entity
Lincoln County Power District No. 5	ACES/AEPCO

3. This Attachment No. 1 may be modified in accordance with Section 12 of the Contract.

Attachment No. 2 to
Contract No. 18-DSR-12831
Colorado River Commission of
Nevada

BILLING AND PAYMENT INSTRUCTIONS

1. Invoices are to be submitted to WAPA at the following address:

Department of Energy
Western Area Power Administration
Attention: Accounts Payable A8210
P.O. Box 281111
Lakewood, CO 80228-8111

2. WAPA shall make payments to the CRCNV in accordance with the following:

Name: State of Nevada Treasurer
Bank: Wells Fargo Bank
Address: 530 Las Vegas Blvd., 2nd Floor, Las Vegas, NV 89101
Routing and
Transit #: 121000248 (for both ACH and Wires)
Account #: 4000101030

3. This Attachment No. 2 may be modified in accordance with Section 12 of the Contract.

WESTERN AREA POWER ADMINISTRATION
GENERAL POWER CONTRACT PROVISIONS

Page

I. APPLICABILITY.	
1. Applicability	1
II. DELIVERY OF SERVICE PROVISIONS.	
2. Character of Service	1
3. Use of Capacity or Energy in Excess of Contract Obligation	1
4. Continuity of Service	1
5. Multiple Points of Delivery	2
6. Metering	2
7. Existence of Transmission Service Contract	3
8. Conditions of Transmission Service	3
9. Multiple Points of Delivery Involving Direct and Indirect Deliveries	3
10. Construction, Operation, and Maintenance of Contractor's Power System	3-4
III. RATES, BILLING, AND PAYMENT PROVISIONS.	
11. Change of Rates	4
12. Minimum Seasonal or Annual Capacity Charge	4
13. Billing and Payment	4-5
14. Nonpayment of Bills in Full When Due	5
15. Adjustments for Fractional Billing Period	5
16. Adjustments for Curtailments to Firm Service	5-6
IV. POWER SALES PROVISIONS.	
17. Resale of Firm Electric Service (Wholesale Sales for Resale)	6
18. Distribution Principles	6
19. Contract Subject to Colorado River Compact	6
V. FACILITIES PROVISIONS.	
20. Design Approval	6-7
21. Inspection and Acceptance	7
22. As-Built Drawings	7
23. Equipment Ownership Markers	7
24. Third-Party Use of Facilities	7
25. Changes to Western Control Facilities	7-8
26. Modification of Western Facilities	8
27. Transmission Rights	8
28. Construction and Safety Procedures	8-9
29. Environmental Compliance	9
30. Responsibility for Regulated Materials	9
VI. OTHER PROVISIONS.	
31. Authorized Representatives of the Parties	9
32. Effect of Section Headings	10
33. Operating Guidelines and Procedures	10
34. Uncontrollable Forces	10
35. Liability	10
36. Cooperation of Contracting Parties	10-11
37. Transfer of Interest in the Contract or Change in Preference Status	11
38. Choice of Law and Forum	12
39. Waivers	12
40. Notices	12
41. Contingent Upon Appropriations and Authorization	12
42. Covenant Against Contingent Fees	12
* 43. Contract Work Hours and Safety Standards	13
44. Equal Opportunity Employment Practices	13
45. Use of Convict Labor	13

WESTERN AREA POWER ADMINISTRATION
GENERAL POWER CONTRACT PROVISIONS

I. APPLICABILITY.

1. Applicability.

1.1 These General Power Contract Provisions (Provisions) shall be a part of the contract to which they are attached. In the event these Provisions differ from requirements of the contract, specific terms set forth in the contract shall prevail.

1.2 If the Contractor has member utilities which are either directly or indirectly receiving benefits from the contract, then the Contractor shall require such members to comply with Provisions 10, 17, 18, 19, 29, 30, 36, 43, 44, and 45 of these General Power Contract Provisions.

II. DELIVERY OF SERVICE PROVISIONS.

2. Character of Service.

Electric energy supplied or transmitted under the contract will be three-phase, alternating current, at a nominal frequency of sixty (60) hertz (cycles per second).

3. Use of Capacity or Energy in Excess of Contract Obligation.

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

4. 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 Provision 34 (Uncontrollable Forces) 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.

5. 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 Contractor'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 Contractor's control or temporary conditions caused by scheduled outages.

6. Metering.

6.1 The total electric power and energy supplied or transmitted under the contract will be measured by metering equipment to be furnished and maintained by Western, a designated representative of Western, or where situations deem it appropriate as determined by Western, by the Contractor or its agent(s). In the event metering equipment is furnished and maintained by the Contractor or its agent(s) and the equipment is used for billing and other accounting purposes by Western, the Contractor shall ensure that the metering equipment complies with applicable metering policies established by Western.

6.2 Meters shall be secured by appropriate security measures and meters shall not be accessed except when the meters are to be inspected, tested, adjusted, or repaired. Representatives of affected parties shall be afforded reasonable opportunity to be present upon such occasions. Metering equipment shall be inspected and tested each year by the party responsible for meter maintenance, unless a different test interval is determined in accordance with good utility practices by an applicable regional metering policy, or as agreed upon by the parties. Meters shall also be tested at any reasonable time upon request by a party hereto, or by an affected 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 as soon as practicable. Meters found with security breaches shall be tested for tampering and, if appropriate, meter readings shall be adjusted by Western pursuant to Provision 6.3 below.

6.3 Except as otherwise provided in Provision 6.4 hereof, should any meter that is used by Western for billing or other accounting purposes fail to register accurately, the electric power and energy supplied or transmitted during the period of failure to register accurately, shall, for billing purposes, be estimated by Western from the best available information.

6.4 If inspections and tests of a meter used by Western for billing or other accounting purposes disclose an error exceeding 2 percent, or a lesser range in error as agreed upon by the parties, then a correction based upon the inaccuracy found shall be made to the service records for the period of inaccuracy as determined by Western. If the period of inaccuracy cannot be determined, the inaccuracy shall be assumed to have existed during the entire monthly billing period immediately preceding the billing period in which the inspection or test was made and the resulting correction shall be made accordingly.

6.5 Any correction in billing or other accounting information that results from a correction in meter records shall be made in a subsequent monthly bill rendered by Western to the Contractor. Payment of such bill shall constitute full adjustment of any claim between the parties arising out of inaccurate metering equipment.

7. Existence of Transmission Service Contract.

If the contract 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 Contractor, Western, at its option, may furnish service over its own facilities.

8. Conditions of Transmission Service.

8.1 When the electric service under the contract 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.

8.2 Unless otherwise provided in the contract or applicable rate schedule, the Contractor shall maintain a power factor at each point of delivery from Western's transmission agent as required by the transmission agent.

8.3 Western will endeavor to inform the Contractor from time to time of any changes planned or proposed on the system over which the service is supplied, but the costs of any changes made necessary in the Contractor'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.

8.4 If the Contractor, because of changes or conditions on the system over which service under the contract is supplied, is required to make changes on its system at its own expense in order to continue receiving service under the contract, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to making such changes, but not thereafter.

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

9. Multiple Points of Delivery Involving Direct and Indirect Deliveries.

When Western has provided line and substation capacity under the contract for the purpose of delivering electric service directly to the Contractor 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 Contractor shifts any of its load served under the contract 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 Western, available at the direct delivery points affected is fully utilized.

10. Construction, Operation, and Maintenance of Contractor's Power System.

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

III. RATES, BILLING, AND PAYMENT PROVISIONS.

11. Change of Rates.

Rates applicable under the contract 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 the contract, it will promptly notify the Contractor thereof. Rates shall become effective as to the contract as of the effective date of such rate. The Contractor, by written notice to Western 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 Contractor 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 Contractor exercises the option to terminate service.

12. Minimum Seasonal or Annual Capacity Charge.

When the rate in effect under the contract 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 contract 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.

13. Billing and Payment.

13.1 Western will normally issue bills to the Contractor for services furnished during the preceding month within ten (10) days after the end of the billing period.

13.2 If Western is unable to issue timely monthly bill(s), Western may elect to render estimated bill(s). Such estimated bill(s) shall be subject to the same payment provisions as final bill(s), and any applicable adjustments will be shown on a subsequent monthly bill.

13.3 Payments of bills issued by Western are due and payable by the Contractor 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. Bills will be paid electronically or via the Automated Clearing House method of payment unless a written request to make payments by mail is submitted by the Contractor and approved by Western. Should Western agree to accept payments by mail, these payments will be accepted as timely and without assessment of the charge provided for in Provision 14 (Nonpayment of Bills in Full When Due) if a United States

Post Office first class mail postmark indicates the payment was mailed at least three (3) calendar days before the due date.

13.4 The parties agree that net billing procedures will be used for payments due Western by the Contractor and for payments due the Contractor 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. 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.

14. Nonpayment of Bills in Full When Due.

14.1 Bills not paid in full by the Contractor by the due date specified in Provision 13 (Billing and Payment) hereof shall bear a charge of five hundredths percent (0.05%) of the principal sum unpaid for each day payment is delinquent, to be added until the amount due is paid in full. Western will also assess a fee of twenty-five dollars (\$25.00) for processing a late payment. Payments received will first be applied to the charges for late payment assessed on the principal and then to payment of the principal.

14.2 Western shall have the right, upon not less than fifteen (15) days advance written notice, to discontinue furnishing the services specified in the contract for nonpayment of bills in full when due, and to refuse to resume such services so long as any part of the amount due remains unpaid. Such a discontinuance of service will not relieve the Contractor of liability for minimum charges during the time service is so discontinued. The rights reserved to Western herein shall be in addition to all other remedies available to Western either by law or in equity, for the breach of any of the terms hereof.

15. Adjustments for Fractional Billing Period.

The demand or capacity charge and minimum charges shall each be proportionately adjusted when fractional billing periods are applicable under this contract. A fractional billing period can occur: 1) at the beginning or end of electric service; 2) at the beginning or end of irrigation pumping service each year; 3) for a fractional billing period under a new rate schedule; or 4) for fractional periods due to withdrawals of electric services. The adjustment will be made based on the ratio of the number of hours that electric service is available to the Contractor in such fractional billing period, to the total number of hours in the billing period involved. Energy billing shall not be affected by fractional billing periods.

16. Adjustments for Curtailments to Firm Service.

16.1 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 one (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 Contractor or a discontinuance of electric service by Western pursuant to Provision 14 (Nonpayment of Bills In Full When Due). For purposes of billing adjustments under this Provision, the term power system of the United States shall include transmission facilities used under contract but not owned by the United States.

16.2 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, of each reduction, of: the number of hours 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.

16.3 The Contractor 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 one (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 terms of this Provision; Provided, That withdrawal of power and energy under the contract shall not be considered a curtailment of electric service.

IV. POWER SALES PROVISIONS.

17. Resale of Firm Electric Service (Wholesale Sales for Resale).

The Contractor shall not sell any firm electric power or energy supplied under the contract to any electric utility customer of the Contractor for resale by that utility customer; Provided, That the Contractor may sell the electric power and energy supplied under the contract to its members on condition that said members not sell any of said power and energy to any customer of the member for resale by that customer.

18. Distribution Principles.

The Contractor agrees that the benefits of firm electric power or energy supplied under the contract shall be made available to its consumers at rates that are established at the lowest possible level consistent with sound business principles, and that these rates will be established in an open and public manner. The Contractor further agrees that it will identify the costs of firm electric power or energy supplied under the contract and power from other sources to its consumers upon request. The Contractor will demonstrate compliance with the requirements of this Provision to Western upon request.

19. Contract Subject to Colorado River Compact.

Where the energy sold under the contract is generated from waters of the Colorado River system, the contract is made upon the express condition and with the express covenant that all rights under the contract shall be subject to and controlled by the Colorado River Compact approved by Section 13 (a) of the Boulder Canyon Project Act of December 21, 1928, 43 U.S.C. §§ 617a-e, and the parties to the contract shall observe and be subject to and controlled by said Colorado River Compact in the construction, management, and operation of the dams, reservoirs, and powerplants from which electrical energy is to be furnished by Western to the Contractor under the contract, and in the storage, diversion, delivery, and use of water for the generation of electrical energy to be delivered by Western to the Contractor under the contract.

V. FACILITIES PROVISIONS.

20. Design Approval.

All facilities, construction, and installation by the Contractor pursuant to the contract 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 contract document providing for each interconnection, copies of which are available from Western. At least ninety (90) days, unless otherwise agreed,

prior to the date the Contractor proposes to commence construction or to incur an obligation to purchase facilities to be installed pursuant to the contract, whichever date is the earlier, the Contractor shall submit, for the approval of Western, detailed designs, drawings, and specifications of the facilities the Contractor proposes to purchase, construct, and install. The Contractor 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 Contractor's needs.

21. Inspection and Acceptance.

Western shall have the right to inspect the materials and work furnished by the Contractor, its agents, employees, and subcontractors pursuant to the contract. Such inspections shall be at reasonable times at the work site. Any materials or work that Western 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 Contractor before the new facilities are energized.

22. As-Built Drawings.

Within a reasonable time, as determined by Western, after the completion of construction and installation of facilities pursuant to the contract, the Contractor shall submit to Western marked as-built prints of all Western drawings affected by changes made pursuant to the contract and reproducible drawings the Contractor has prepared showing facilities of Western. The Contractor'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 Western. Western may prepare, revise, or complete said drawings and bill the Contractor if the Contractor fails to provide such drawings to Western within a reasonable time as determined by Western.

23. Equipment Ownership Markers.

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

23.2 If requested by the Contractor, Western shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the Contractor's right-of-way or in the Contractor's substations pursuant to the contract 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.

24. Third-Party Use of Facilities.

The Contractor shall notify Western of any proposed system change relating to the facilities governed by the contract or allowing third-party use of the facilities governed by the contract. If Western notifies the Contractor that said system change will, as solely determined by Western, adversely affect the operation of Western's system the Contractor shall, at no cost to Western, provide a solution to said adverse effect acceptable to Western.

25. Changes to Western Control Facilities.

If at any time during the term of the contract, Western 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 Contractor's equipment installed under the contract, such changes or additions shall, after consultation with the Contractor, be made by Western with all costs or a proportionate share of all costs, as determined by Western, to be paid by the Contractor. Western shall notify the Contractor in writing of the necessary changes or additions and the estimated costs to be paid by the Contractor. If the Contractor fails to pay its share of said estimated costs, Western shall have the right, after giving sixty (60) days' written notice to the Contractor, to terminate the applicable facility installation provisions to the contract and require the removal of the Contractor's facilities.

26. Modification of Western Facilities.

Western reserves the right, at any time, to modify its facilities. Western shall keep the Contractor informed of all planned modifications to Western facilities which impact the facilities installation pursuant to the contract. Western shall permit the Contractor 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 the contract. At the Contractor's option, Western shall cooperate with the Contractor in planning alternate arrangements for service which shall be implemented at no cost or expense to Western. The Contractor and Western shall modify the contract, as necessary, to conform to the new facilities arrangements.

27. Transmission Rights.

If the contract involves an installation which sectionalizes a Western transmission line, the Contractor 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 the contract.

28. Construction and Safety Procedures.

28.1 The Contractor 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 Contractor pursuant to the contract. The Contractor and the authorized employees, agents, and subcontractors of the Contractor shall comply with all applicable safety laws and building and construction codes, including the provisions of Chapter 1 of the Power System Operations Manual, entitled Power System Switching Procedure, and the Occupational Safety and Health Administration regulations, Title 29 C.F.R. §§ 1910 and 1926, as amended or supplemented. In addition to the safety program required herein, upon request of the United States, the Contractor shall provide sufficient information to demonstrate that the Contractor's safety program is satisfactory to the United States.

28.2 The Contractor 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 Contractor under the contract. Prior to starting any construction, installation, or removal work, the Contractor 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 Contractor, its employees, agents, or subcontractors until written authorization to proceed is obtained from Western.

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

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

28.5 In the event the Contractor, its employees, agents, or subcontractors fail to comply with any requirement of this Provision, or Provision 21 (Inspection and Acceptance) herein, Western or an authorized representative may issue an order to stop all or any part of the work until such time as the Contractor demonstrates compliance with the provision at issue. The Contractor, its employees, agents, or subcontractors shall make no claim for compensation or damages resulting from such work stoppage.

29. Environmental Compliance.

Facilities installed under the contract by any party shall be constructed, operated, maintained, replaced, transported, and removed subject to compliance with all applicable laws, including but not limited to the National Historic Preservation Act of 1966, 16 U.S.C. §§ 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347, the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa-470mm, and the regulations and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations, and executive orders.

30. Responsibility for Regulated Materials.

When either party owns equipment containing regulated material located on the other party's substation, switchyard, right-of-way, or other property, the equipment owner shall be responsible for all activities related to regulated materials in such equipment that are necessary to meet the requirements of the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675, the Oil Pollution Act of 1990, 33 U.S.C. §§ 2702-2761, the Clean Water Act, 33 U.S.C. §§ 1251-1387, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-j26, and the regulations and executive orders implementing these laws, as they may be amended or supplemented, and any other existing or subsequent applicable laws, regulations, and executive orders. Each party shall label its equipment containing regulated material in accordance with appropriate laws and regulations. If the party owning the equipment does not perform activities required under appropriate laws and regulations within the time frame specified therein, the other party may perform or cause to be performed the required activities after notice to and at the sole expense of the party owning the equipment.

VI. OTHER PROVISIONS.

31. Authorized Representatives of the Parties.

Each party to the contract, 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 the contract 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.

32. Effect of Section Headings.

Section headings or Provision titles appearing in the contract or these General Power Contract Provisions are inserted for convenience only and shall not be construed as interpretations of text.

33. Operating Guidelines and Procedures.

The parties to the contract 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 the contract.

34. Uncontrollable Forces.

Neither party to the contract shall be considered to be in default in performance of any of its obligations under the contract, except to make payment as specified in Provision 13 (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 contract 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.

35. Liability.

35.1 The Contractor hereby agrees to indemnify and hold harmless the United States, its employees, agents, or contractors from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the Contractors', its employees', agents', or subcontractors' construction, operation, maintenance, or replacement activities under the contract.

35.2 The United States is liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, 2674-2680, as amended or supplemented.

36. 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 the contract, 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 Provisions 13 (Billing

and Payment) and 14 (Nonpayment of Bills in Full When Due) herein. Western shall pay bills issued by the Contractor for services provided as soon as the necessary vouchers can be prepared which shall normally be within twenty (20) days.

37. Transfer of Interest in Contract or Change in Preference Status.

37.1 No voluntary transfer of the contract or of the rights of the Contractor under the contract shall be made without the prior written approval of the Administrator of Western. Any voluntary transfer of the contract or of the rights of the Contractor under the contract made without the prior written approval of the Administrator of Western may result in the termination of the contract; Provided, That the written approval of the Administrator shall not be unreasonably withheld; Provided further, That if the Contractor operates a project financed in whole or in part by the Rural Utilities Service, the Contractor may transfer or assign its interest in the contract to the Rural Utilities Service or any other department or agency of the Federal Government without such prior written approval; Provided further, That any successor to or assignee of the rights of the Contractor, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of the contract to the same extent as though such successor or assignee were the original Contractor under the contract; and, Provided further, That the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfers within the meaning of this Provision.

37.2 The Contractor shall maintain its status as an entity eligible for preference in Western's sale of Federal power pursuant to Reclamation law, as amended and supplemented.

37.3 Western shall give the Contractor written notice of Western's proposed determination that the Contractor has violated Provision 37.1 and Western's proposed action in response to the violation.

37.4 The Contractor shall have 120 days after receipt of Western's notice provided under Provision 37.3 to submit a written response to Western. The Contractor may also make an oral presentation to the Administrator during this 120-day period.

37.5 At any time during this process, the Contractor and Western may agree upon corrective action to resolve Western's proposed determination that the Contractor is in violation of Provision 37.1.

37.6 Within 30 days of receipt of the Contractor's written response provided under Provision 37.4, Western will notify the Contractor in writing of its final decision. The Administrator's written notice will include the intended action, the effective date thereof, and the reasons for taking the intended action. Implementation of the Administrator's action shall take place no earlier than 60 days from the Contractor's receipt of such notice.

37.7 Any successor to Western shall be subject to all the provisions and conditions of the contract to the same extent as though such successor were an original signatory to the contract.

37.8 Nothing in this Provision shall preclude any right to judicial review available to the Contractor under Federal law.

38. Choice of Law and Forum.

Federal law shall control the obligations and procedures established by this contract and the performance and enforcement thereof. The forum for litigation arising from this contract shall exclusively be a Federal court of the United States, unless the parties agree to pursue alternative dispute resolution.

39. Waivers.

Any waivers at any time by either party to the contract of its rights with respect to a default or any other matter arising under or in connection with the contract shall not be deemed a waiver with respect to any subsequent default or matter.

40. Notices.

Any notice, demand, or request specifically required by the contract or these Provisions to be in writing shall be considered properly given when delivered in person or sent by postage prepaid registered or certified mail, commercial delivery service, facsimile, electronic, prepaid telegram, or by other means with prior agreement of the parties, 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. Where facsimile or electronic means are utilized for any communication covered by this Provision, the sending party shall keep a contemporaneous record of such communications and shall verify receipt by the other party.

41. Contingent Upon Appropriations and Authorization.

41.1 Where activities provided for in the contract 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 the contract. In case such appropriation is not made, the Contractor hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

41.2 In order to receive and expend funds advanced from the Contractor necessary for the continued performance of the obligations of the United States under the contract, additional authorization may be required. In case such authorization is not received, the Contractor hereby releases the United States from those contractual obligations and from all liability due to the lack of such authorization.

42. Covenant Against Contingent Fees.

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

43. Contract Work Hours and Safety Standards.

The contract, 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. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act.

44. Equal Opportunity Employment Practices.

Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into the contract, except that Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.

45. Use of Convict Labor.

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM G
FOR MEETING OF SEPTEMBER 11, 2018**

SUBJECT:

For Information Only: Update on the activities of the Financial and Audit Subcommittee.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

None.

FISCAL IMPACT:

None.

STAFF COMMENTS AND BACKGROUND:

Staff will provide an update at the meeting.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM H
FOR MEETING OF SEPTEMBER 11, 2018**

SUBJECT:

For Information Only: Update on pending legal matters, including Federal Energy Regulatory Commission or Public Utilities Commission of Nevada filings.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

None.

FISCAL IMPACT:

None.

STAFF COMMENTS AND BACKGROUND:

Special Counsel will provide an update at the meeting.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM I
FOR MEETING OF SEPTEMBER 11, 2018**

SUBJECT:

For Information Only: Status update on the hydrologic conditions, drought, and climate of the Colorado River Basin, Nevada's consumptive use of Colorado River water, and other developments on the Colorado River.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

None.

FISCAL IMPACT:

None.

STAFF COMMENTS AND BACKGROUND:

Staff will provide a report at the meeting.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM J
FOR MEETING OF SEPTEMBER 11, 2018**

SUBJECT:

Comments from the public. (No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken.)

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

None.

FISCAL IMPACT:

None.

STAFF COMMENTS AND BACKGROUND:

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM K
FOR MEETING OF SEPTEMBER 11, 2018**

SUBJECT:

Comments and questions from the Commission members.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

None.

FISCAL IMPACT:

None.

STAFF COMMENTS AND BACKGROUND:

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM L
FOR MEETING OF SEPTEMBER 11, 2018**

SUBJECT:

Selection of next possible meeting date.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

None.

FISCAL IMPACT:

None.

STAFF COMMENTS AND BACKGROUND:

The next meeting is tentatively scheduled for 1:30 p.m. on Tuesday, October 9, 2018, at the Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada.

**COLORADO RIVER COMMISSION OF NEVADA
AGENDA ITEM M
FOR MEETING OF SEPTEMBER 11, 2018**

SUBJECT:

Adjournment.

RELATED TO AGENDA ITEM:

None.

RECOMMENDATION OR RECOMMENDED MOTION:

None.

FISCAL IMPACT:

None.

STAFF COMMENTS AND BACKGROUND: