

§ 904.11

shall be made available to the Contractors, in accordance with the priority entitlement of section 105(a)(1)(C) of the Hoover Power Plant Act (43 U.S.C. 619(a)(1)(c)). After the annual first- and second-priority entitlement to excess energy has been obligated for delivery, Western will make available one-third of the third-priority excess energy to the Arizona Power Authority, one-third to the Colorado River Commission of Nevada, and one-third to the California Contractors.

(b) Western will make available third-priority excess energy to the California Contractors based on the following formula:

$F = \frac{1}{2} (A/B + C/D)$ (E); Where:

A=Contractor's allocated Capacity

B=Total California allocated Capacity

C=Contractor's allocated Firm Energy

D=Total California allocated Firm Energy

E=Third-priority Excess Energy available to California

F=Contractor's third-priority Excess Energy

(c) The charge for all Excess Energy shall be the charge for Boulder Canyon Project Firm Energy existing at the time the Excess Energy is made available to the Contractor, including the appropriate Lower Basin Development Fund Contribution Charge.

§ 904.11 Lay off of energy.

(a) If any Contractor determines that it is temporarily unable to utilize Firm Energy or Excess Energy, Western will, at the Contractor's request, attempt to lay off the Firm Energy or Excess Energy the Contractor declares to be available for lay off, pursuant to the provisions for lay off of energy specified in the Contract.

(b) If Western is unable to lay off such energy, or if the Contractor fails to request Western to attempt to lay off the energy, the Contractor will be billed for the Firm Energy or Excess Energy that was available to the Contractor but could not be delivered to the Contractor or sold to another customer.

(c) In the event that Western must lay off the Firm Energy or Excess Energy at a rate lower than the effective Firm Energy rate, the Contractor will be billed for the difference between the amount that Western would have received at the then existing Firm En-

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ergy rate, including the appropriate Lower Basin Development Fund Contribution Charge, and the amount actually received.

§ 904.12 Payments to contractors.

(a) Funds advanced to the Secretary of the Interior for the Upgrading Program and costs reasonably incurred by the Contractor in advancing such funds, as approved by Western, shall be returned to the Contractor advancing the funds during the Contract period through credits on that Contractor's power bills. Appropriate credits will be developed and applied pursuant to terms and conditions agreed to by contract or agreement.

(b) All other obligations of the United States to return funds to a Contractor shall be repaid to such Contractor through credits on power bills, with or without interest, pursuant to terms and conditions agreed to by contract or agreement.

§ 904.13 Disputes.

(a) All actions by the Secretary of Energy, acting by and through the Administrator of Western, shall be binding unless or until reversed or modified in accordance with provisions contained herein.

(b) Any disputes or disagreements as to interpretation or performance of the provisions of these General Regulations under the responsibility of Western shall first be presented to and decided by the Administrator. The Administrator shall be deemed to have denied the Contractor's contention or claim if it is not acted upon within ninety (90) days of its having been presented.

(c) The decision of the Administrator shall be final unless, within thirty (30) days from the date of such decision, a written request for arbitration is received by the Administrator. The Administrator shall have ninety (90) days from the date of receipt of a request for arbitration either to concur in or deny in writing the request for such arbitration. Failure by the Administrator to take any action within the ninety (90) day period shall be deemed a denial of the request for arbitration. In the

event of a denial of a request for arbitration, the decision of the Administrator shall become final. Upon a decision becoming final, the disputing Contractor's remedy lies with the appropriate Federal court. Any claim that a final decision of the Administrator violates any right accorded the Contractor under the Project Act, the Adjustment Act, or Title I of the Hoover Power Plant Act is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one (1) year after final refusal by the Administrator to correct the action complained of, in accordance with section 105(h) of the Hoover Power Plant Act.

(d) When a timely request for arbitration is received by the Administrator and the Administrator concurs in writing, the disputing Contractor and the Administrator shall, within thirty (30) days after receipt of notice of such concurrence, each name one arbitrator to the panel of arbitrators which will decide the dispute. All arbitrators shall be skilled and experienced in the field pertaining to the dispute. In the event there is more than one disputing Contractor, the disputing Contractors shall collectively name one arbitrator to the panel of arbitrators. In the event of their failure collectively to name such an arbitrator within fifteen (15) days after their first meeting, that arbitrator shall be named as provided in the Commercial Arbitration Rules of the American Arbitration Association. The two arbitrators thus selected shall name a third arbitrator within thirty (30) days of their first meeting. In the event of their failure to so name such third arbitrator, that arbitrator shall be named as provided in the Commercial Arbitration Rules of the American Arbitration Association. The third arbitrator shall act as chairperson of the panel. The arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be limited to the issue submitted. The panel of arbitrators shall not rewrite, change, or amend these General Regulations or the Contracts of any of the parties to the dispute. The panel of arbitrators shall render a final decision in this dispute within sixty (60) days

after the date of the naming of the third arbitrator. A decision of any two of the three arbitrators named to the panel shall be final and binding on all parties involved in the dispute.

§904.14 Future regulations.

(a) Western may from time to time promulgate such additional or amendatory regulations as deemed necessary for the administration of the Project in accordance with applicable law; *Provided*, That no right under any Contract shall be impaired or obligation thereunder be extended thereby.

(b) Any modification, extension, or waiver of any provision of these General Regulations granted for the benefit of any one or more Contractors shall not be denied to any other Contractor.

(c) Western reserves the right to terminate, modify, or extend these regulations, either partially or in their entirety, to the extent permitted by law or existing contract.

PART 905—ENERGY PLANNING AND MANAGEMENT PROGRAM

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