

§ 904.9

(1) That Contractor's deficiency in Firm Energy, pursuant to section 105(a)(2) of the Hoover Power Plant Act (43 U.S.C. 619(a)(2)) and section F of the Conformed Criteria; and

(2) That Contractor's Up-rating Program credit carry forward as provided by Contract. A 4½ mills per kWh charge shall be applied to each kWh made available to an Arizona Contractor, and a 2½ mills per kWh charge shall be applied to each kWh made available to a California or Nevada Contractor; provided, that after the repayment period of the Central Arizona Project, a 2½ mills per kWh charge shall be applied to each kWh made available to the Arizona, California, and Nevada Contractors. The Lower Basin Development Fund Contribution Charge shall be applied to energy overruns. The Lower Basin Development Fund Contribution Charge shall be applied each billing period for each Contractor.

§ 904.9 Excess capacity.

(a) If the Up-rating Program results in Excess Capacity, Western shall be entitled to such Excess Capacity to integrate the operation of the Boulder City Area Projects and other Federal Projects on the Colorado River. Specific criteria for the use of Excess Capacity by Western will be provided by Contract. All Excess Capacity not required by Western for the purposes specified by Contract will be available to all Contractors at no additional cost on a pro rata basis based on the ratio of each Contractor's Capacity allocation to the total Capacity allocation.

(b) Credits for benefits resulting from project integration shall be determined by Western and such benefits shall be apportioned in accordance with paragraph (9) of § 904.5 of these General Regulations.

§ 904.10 Excess energy.

(a) If excess Energy is determined by the United States to be available, it 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,

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