

Department of Energy

§ 904.13

(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.

§ 904.12 Payments to contractors.

(a) Funds advanced to the Secretary of the Interior for the Uprating 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