

Southwestern Power Administration  
Request for Proposals  
Regarding Purchase Power Contract  
January 19, 2018

1. **PURPOSE:** Southwestern Power Administration (Southwestern), a Power Marketing Administration within the United States of America, represented by the Secretary of Energy, acting by and through the Administrator, is issuing this Request for Proposals (RFP) to meet its firm power commitments. Southwestern intends to award one or more Purchase Power Contracts for firm schedulable/dispatchable capacity and associated energy in quantities of 25 megawatts (MW) up to a combined total of 300 MW deliverable to Southwestern's transmission system. Southwestern seeks delivery of power to begin as soon as contractual arrangements are in place.
  
2. **BACKGROUND:**
  - 2.1. Southwestern is acting pursuant to Section 302(a)(1) of the Department of Energy Organization Act (91 Stat. 578; 42 U.S.C. 7152), Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890; 16 U.S.C. 825s), and Public Law 95-456 (92 Stat. 1230; 16 U.S.C. 825S-3).
  - 2.2. This RFP is not subject to the Federal Acquisition Regulation, Department of Energy Acquisition Regulations, or the Competition in Contracting Act.
  - 2.3. Southwestern serves more than 100 firm power customers on a wholesale basis in Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas.
  - 2.4. The U.S. Army Corps of Engineers operates and maintains hydroelectric power plants and switchyard facilities which Southwestern uses to provide power to its customers.

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3. COMMUNICATIONS AND SUBMITTALS:

3.1. All questions and other communications concerning this RFP should be directed to:

**Mailing Address**

Mr. Aiden Smith  
Vice President, Power Marketing and Transmission Strategy  
Southwestern Power Administration  
1 W. 3rd St., Suite 1600  
Tulsa, OK, 74103-3502

**Telephone:**

(918) 595-6764

**Email:**

aiden.smith@swpa.gov

4. PROCESS AND SCHEDULE:

4.1. Notice of Intent to Bid: All potential Offerors shall submit a Notice of Intent to Bid, Attachment 1, to the address (hard copy) or email address (Adobe Acrobat .pdf format) set forth in Subsection 3.1 above. The Notice of Intent to Bid must be received by Southwestern by 4:00 PM CST on February 16, 2018.

4.2. Questions Deadline: The deadline for asking questions concerning the RFP is February 28, 2018. Southwestern will post questions and responses by March 7, 2018.

4.3. Offerors Conference: An Offerors Conference will be held March 7, 2018.

4.4. Proposals: All Offerors shall submit four hard copies of completed Proposals which must be received by Southwestern at the mailing address provided in Subsection 3.1 above. In addition to the submittal of hard copies, submittal of Proposals in Adobe Acrobat .pdf format on a compact disc is encouraged. Only the Notice of Intent to Bid will be accepted by email. Proposals themselves must be submitted in hard copy. Proposals submitted by facsimile or email will be not be accepted. Offerors

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proposing a variety of generation resources should submit separate Proposals for each discretely scheduled/dispatched resource.

- 4.5. Proposal Deadline: Proposals must be received by Southwestern by 4:00 PM CST on March 30, 2018. Any Proposals received after the due date may be excluded from consideration.
- 4.6. Proposal Validity: Each Offeror must hold its Proposal open and valid for a period of 60 days following the proposal deadline (March 30, 2018).
- 4.7. Delivery: Southwestern is seeking to begin purchasing power as soon as contractual arrangements are in place.
- 4.8. Southwestern will not verify receipt of either Notices of Intent to Bid or Proposals.

5. POWER REQUIREMENTS:

- 5.1. Term: Any resultant contract will be for a term of up to four (4) years.
- 5.2. Sink: SPA
- 5.3. Product: Firm capacity and energy delivered to SPA in quantities of 25 MW up to a combined total of 300 MW. Southwestern is seeking energy to be continuously available; however, proposals for intermittent energy will be considered, provided such resources are schedulable/dispatchable.
- 5.4. Scheduling: Notice of schedule profile and duration will be provided to Seller no later than 3:00 PM Central Prevailing Time (CPT) on the business day prior to scheduled delivery. Unless otherwise mutually agreed upon between Southwestern and the Seller, Southwestern will schedule the energy for delivery each day in time periods that are a minimum of four (4) consecutive hours in duration and may schedule energy for delivery for more than one time period in a day. For example, Southwestern may schedule two (2) separate time periods in a day to accommodate

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seasonal double peaks, such as a block of consecutive hours during the morning peak period and a block of consecutive hours during the evening peak period.

6. EVALUATION CRITERIA: Southwestern, in seeking the best value, will evaluate each Proposal as a whole. The following criteria will be used to evaluate Proposals:
  - 6.1. Availability Period: Southwestern is seeking to purchase power for up to four (4) years.
  - 6.2. Dependability: Dependability of the generating resource will be determined based on forced outage rates, scheduled maintenance outages, fuel supply, and other factors, including the possibility that the failure of a single generating unit or transmission facility will interrupt power delivery. The generation must meet Southwest Power Pool, Inc. (SPP), Electric Reliability Council of Texas (ERCOT), or Midcontinent Independent System Operator (MISO) accrediting standards, including, but not limited to, capacity accreditation and compliance with resource adequacy requirements such that the Offeror's generation resource purchased by Southwestern shall be included as part of Southwestern's reported capacity resources for compliance with resource adequacy requirements. The Offeror must identify any and all conditions under which the resource could be curtailed in real-time or made unavailable for scheduling, due to limitations such as contractual emergency commitments or statutory or regulatory requirements for service to native load, and for Proposals subject to such conditions, Southwestern will consider the appurtenant risks.
  - 6.3. Legal and Regulatory Compliance: The generation source(s) and supporting facilities must be properly permitted and in compliance with applicable Federal and state statutes and regulations.
  - 6.4. Past Performance: Documentation must be submitted describing relevant past experience and performance. Past performance may include Federal and non-Federal

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customer references. The Offeror must provide current contact information for all past performance references provided. The Offeror agrees to permit Southwestern's representatives to contact the listed references and inquire about the Offeror's past performance. Failure to provide past performance documentation may result in exclusion from further evaluation/consideration. Offerors with no past performance due to recent business establishment/incorporation must provide supporting documentation verifying the recent business establishment/incorporation.

- 6.5. Financial Capability: Southwestern will determine if the Offeror has or can acquire adequate financial resources to fulfill the requirements of the contract.
  - 6.6. Price: The total delivered price, taking into account energy charges, firm capacity charges, firm transmission costs, administrative costs, and any other charges, will be considered. For Proposals with index-based price formulas subject to volatile market conditions, Southwestern will assess the risks associated with such prices. For Proposals subject to curtailment or unavailability, financial or physical mitigations to address such conditions will be considered.
  - 6.7. Transmission: Southwestern will evaluate the ability of the Offeror to obtain firm transmission service from the generation source(s) to the SPA sink delivery point, and the likelihood, in Southwestern's opinion, that transmission service may be subject to curtailment.
7. SUBMITTAL PREPARATION INSTRUCTIONS: Proposals shall be prepared in accordance with the guidelines set forth in this Section 7 and delivered in accordance with Section 4.4. Failure to follow the preparation instructions may result in the exclusion of the Proposal from consideration. Each Proposal shall be organized by section as described below. Each Proposal shall be signed by a company official with the authority to make offers and legally bind the Offeror. Each page of the Proposal shall have the name of the Offeror in the top right corner, and pages shall be numbered.

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- 7.1. Proposal Overview and Executive Summary: The Proposal shall contain a general overview and a summary of the Proposal. This section should also include the name, address, and legal description of the entity submitting the Proposal. The description should include the type of Proposal offered and the key benefits it will provide to Southwestern. The summary should include the technology and location of the facility that will be the source of energy supplied for the Proposal. The summary should be limited to one page.
- 7.2. Proposed beginning delivery date: The Proposal shall contain the proposed beginning delivery date.
- 7.3. Technical Information: The following technical information should be specified in this section of the Proposal, as applicable to the project proposed:
  - 7.3.1. Fuel supply;
  - 7.3.2. Description of resources;
  - 7.3.3. Ability to provide ancillary services (list the services);
  - 7.3.4. Limitations that may constrain operation or dispatch; and
  - 7.3.5. Start-up times and load-ramping rates.
- 7.4. Capacity and Energy Limitations: The Proposal must specify any and all capacity, energy, and delivery limitations. Any and all potential limitations must be specified in the Proposal. Southwestern reserves the right to request additional information from the Offeror regarding limitations or any other details related to the Proposal. Limitations may be caused by factors including, but not limited to:
  - 7.4.1. Capacity and associated energy sales to other parties;
  - 7.4.2. Transmission limitations;
  - 7.4.3. Environmental permit, weather condition, or emissions limitations;
  - 7.4.4. Limited hours of operation due to staffing or external constraints;

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- 7.4.5. Fuel supply interruptions; and
- 7.4.6. Potential intra-hour volatility in power output to determine the impact on Southwestern system control requirements.
- 7.5. Legal and Regulatory Compliance: This section should address whether the generation source(s) and/or supporting facilities have obtained the necessary permits and/or authorizations to comply with applicable Federal and state statutes and regulations.
- 7.6. Financial Capability: The financial viability of the Offeror must be demonstrated to provide assurance that the Offeror, and any other party involved in the Proposal, has adequate financial capability. Southwestern may request additional financial information; however, each Proposal must include the following information at a minimum: Bond rating of Offeror (not a parent or affiliated entity) by Moody's and/or Standard & Poor's.
- 7.7. Economic Information: Price information should include any and all capacity, energy, transmission, administrative, and other applicable costs, including losses and congestion at the delivery point. The following economic information should be specified in this section of the Proposal, as applicable:
  - 7.7.1. Capacity price;
  - 7.7.2. Energy price; and
  - 7.7.3. Seasonal pricing, if offered.
- 7.8. Delivery of Power and Energy:
  - 7.8.1. Describe and list the current status of any agreements for interconnection and firm transmission service that are applicable to delivery of power and energy to the SPA sink.

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- 7.8.2. Provide copies of any studies performed which demonstrate transmission availability from the generation source to the SPA sink, and any proposed mitigation to curtailments over third-party transmission systems.
  - 7.8.3. The title of the power and energy shall pass to Southwestern at the delivery point.
  - 7.8.4. All environmental attributes that accompany the purchased power and energy, including, but not limited to, Renewable Energy Credits (RECs), shall vest with Southwestern.
8. USE OF INFORMATION IN PROPOSALS: Offerors who do not desire to have their Proposals or portions thereof made available to the public should so indicate by marking the entire document or applicable portions "Official Use Only." Disclosure of information to Southwestern will be subject to the Freedom of Information Act. Southwestern will not return any documents to Offerors.
9. NEGOTIATIONS AND SELECTION OF PROPOSALS:
- 9.1. The right is reserved by Southwestern to reject any or all Proposals, or re-solicit for Proposals, if desired, based on the sole judgment and discretion of Southwestern, where such action is deemed the most advantageous to Southwestern. Any Proposal that is incomplete, conditional, or obscure, or that contains irregularities of any kind, may be rejected. In the event a contract agreement cannot be reached with the successful Offeror(s), Southwestern reserves the right to accept the Proposal(s) of any other Offeror(s) or to seek additional Proposals. Southwestern will evaluate Proposals to determine which Proposals provide the best overall value to Southwestern and its firm power customers. Southwestern may also seek clarification of Proposal information or additional Proposal information from Offerors.
  - 9.2. Southwestern will initiate contract negotiations with Offeror(s), as appropriate. Southwestern reserves the right to enter into a contract at any time with an Offeror



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which, in the opinion of Southwestern, will provide the best overall value to Southwestern and its firm power customers. Southwestern reserves the right to enter into discussions with multiple Offerors at any time.

10. CONTRACT PROVISIONS: Any resultant contract will include the mandatory terms and conditions included as Attachment 2, *Southwestern Power Administration GENERAL CONTRACT PROVISIONS*.

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**ATTACHMENT 1 - NOTICE OF INTENT TO BID**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Contact Person: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Type of Proposal: \_\_\_\_\_

Brief Description of Generation Source(s) and Location(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Expected Quantity in MW: \_\_\_\_\_

Generation Fuel: \_\_\_\_\_

Proposed Starting Delivery Date: \_\_\_\_\_

Authorized by: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Southwestern Power Administration**  
**GENERAL CONTRACT PROVISIONS**

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**A ACCOUNTING, BILLING, PAYMENT, AND LATE PAYMENT CHARGES**

1. **Billing by Southwestern.** (a) Southwestern shall maintain an accurate record of power, energy, and any other services purchased by the Customer under this Contract.
  - (b) For each billing period in which the Customer makes one or more purchases under this Contract, Southwestern shall prepare an invoice in which such purchases are set forth in necessary detail, including the specific quantities of power, energy, and other services provided to the Customer during such billing period, and in which the compensation due Southwestern for such purchases is specified.
  - (c) Invoiced quantities may be based on estimates if actual quantities are not available. Adjustments, if any, due to a difference between estimated and actual quantities will be made on an invoice prepared during the billing cycle following the invoice which was based on estimated quantities.
2. **Payment Terms.** (a) Invoices shall be due and payable by the Customer on or before the close of business 20 calendar days after the invoice date, or shall be due and payable on the next business day thereafter if the said due date should fall on a Saturday, Sunday, or official Federal holiday.
  - (b) Payment of amounts due to Southwestern may be made through electronic funds transfer (EFT) or may be submitted as checks and mailed to:

Southwestern Power Administration  
One West Third Street  
Tulsa, Oklahoma 74103-3502

- (c) EFT payments shall conform to Southwestern protocols for electronic transfer of funds in effect at the time of the transaction.
  - (d) The designation of the address where payment is to be submitted may be changed by Southwestern upon 30 days' written notice to the Customer.
  - (e) Invoices shall be considered paid when payment is received into Southwestern's designated depository account or credited to Southwestern's depository account in the U.S. Treasury by the end of the business day; Provided, That payments received by mail are accepted as timely and will not be assessed late charges if a U.S. Postal Service postmark for first class mail shows that the payment was received by the Postal Service at least 2 calendar days before the due date; Provided Further, That payments received through EFT are accepted as timely and will not be assessed late charges if they are credited to Southwestern's depository account in the U.S. Treasury on or before the third day after the due date or on the next business day thereafter if said third day is a Saturday, Sunday, or official Federal holiday.
3. **Net Billing.** (a) Whenever the parties agree, payments due Southwestern by the Customer may be offset against payments due the Customer by Southwestern for the sale or exchange of electric power, energy, and other services.
    - (b) For services included in net billing procedures, 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.

- (c) The parties shall exchange such reports and information as either party requires for billing purposes.
  - (d) Net billing procedures shall not be used for any amounts which Southwestern determines, in its sole judgment, to be in dispute.
4. **Payments By Southwestern.** Any payment due the Customer not satisfied by the Net Billing provision of Section 3 of this Provision A, shall be made by Southwestern to the banking account of the Customer by Electronic Funds Transfer.
5. **Propriety of Rates.** (a) Southwestern shall bill the Customer for the Customer's purchases of power, energy, and other services in accordance with the rates placed in effect pursuant to statute.
- (b) The Customer hereby agrees to promptly pay Southwestern under such rate schedules, whether or not the Customer agrees with the propriety or the levels of the rates placed into effect pursuant to law, regulation, or the order of an appropriate authority.
  - (c) In the event that the U.S. Congress amends the manner in which Southwestern calculates or charges for its power sales, the Customer hereby agrees to promptly pay in such an amended manner, subject to the Customer's right to terminate.
6. **Late Payment Charge.** (a) Southwestern shall assess the Customer a Late Payment Charge for each instance in which the Customer is delinquent in making payment to Southwestern.
- (b) Such Late Payment Charge shall be computed by dividing by 12 the then-effective annual interest rate published in the Federal Register by the Department of Treasury, and multiplying the resultant monthly rate times the principal amount past due.
  - (c) Such Late Payment Charge shall be assessed only once for a particular invoiced amount which is past due, irrespective of the number of days between the due date and the final payment of such particular invoiced amount.
7. **Late Payment Interest Charge.** (a) In addition to the Late Payment Charge provided in Section 6 of this Provision A, a daily interest charge shall be assessed on the principal amount past due for each day after the due date until the said amount is paid in full.
- (b) Such daily interest rate shall be computed by recalculating the annual interest rate cited in Section 6(b) of this Provision A for a daily rate.
8. **Penalty Charge for Late Payment.** (a) In the event that the Customer should fail to pay Southwestern any portion of an invoiced amount for a period of more than 90 days past its due date, Southwestern shall assess a penalty charge of 6 percent per year on such outstanding amount.
- (b) This penalty charge shall accrue for the period from the date that the debt became past due until the date when such invoiced amount is paid, and shall be assessed in addition to other charges for late payment which are specified in this Provision A.
9. **Late Payment Administrative Charge.** (a) Southwestern shall assess charges to cover administrative costs incurred as a result of a collection action against the Customer to cover the additional costs incurred in processing and handling such debt collection.

(b) Calculation of administrative costs shall be based upon actual costs incurred by Southwestern in processing and handling claims against other debtors in similar stages of delinquency.

**10. Partial Payment.** In the event that an invoice is not paid in full, amounts received by Southwestern shall be applied first to outstanding Late Payment penalty and administrative charges; second to outstanding daily interest charges for late payments assessed on the principal; and finally, to payment of the principal amount past due, unless a different rule is prescribed by Federal statute or regulation.

**11. Discontinuance of Service.** (a) If the Customer fails to pay any amount due under this Contract, Southwestern may, at its option, cause the delivery of power, energy, and other services under this Contract to be discontinued upon 90 days' prior written notice to the Customer, unless payment of the amounts due is made by the Customer within such 90-day period.

(b) Such discontinuance of the delivery of power, energy, and other services, as herein provided, shall not relieve the Customer of liability for any minimum Southwestern charges under rate schedules applicable to this Contract during the period of such discontinuance.

(c) The rights granted Southwestern herein shall be in addition to all other remedies available to Southwestern, either by law or in equity, for the breach of any of the provisions of this Contract.

## **B STANDARD PROVISIONS**

**1. Convict Labor.** In connection with the performance of work under this Contract, the Customer agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. § 3622(c)), and Executive Order 11755, December 29, 1973, as amended.

**2. Equal Employment Opportunity.** During the performance of this Contract, the Customer agrees to abide by and to fulfill the nondiscrimination requirements of the "equal opportunity clause" contained in Section 202 of Executive Order 11246 dated September 28, 1965 (30 F.R. 12319), any Executive Order amending such order, and any other Executive Order superseding such order.

**3. Resale Rates.** The parties hereto understand and agree that the purpose of making federally generated power available is to encourage the most widespread use thereof, and the Customer therefore agrees that the benefits of any federally generated power received pursuant to this Contract shall be made available at fair and reasonable terms to all of its consumers at the lowest possible rates consistent with sound business principles.

**4. Availability of Funds to Southwestern.** (a) This Contract and all rights and obligations hereunder, and the expenditure of funds by Southwestern under the provisions hereof, are expressly conditioned and contingent upon the Congress making available (through direct appropriation, authorization of a revolving fund, the authority to borrow funds, or through such other means as it may provide) the necessary funds or the authority to accept funds from others to enable Southwestern to carry out the provisions of this Contract, and if such funds or authorities are not available, this Contract shall terminate and have no further force or effect as of the last day for which

funds or authorities were available, and the Customer hereby releases Southwestern from any and all liability for failure to perform and fulfill its obligations under this Contract for that reason.

- (b) No obligation contained herein for the future payment of money by Southwestern, or liability on the part of Southwestern for breach of any of the provisions contained herein, shall be binding upon or enforceable against Southwestern unless and until funds, as provided in Section 4(a) of this Provision B, are available out of which such obligations or liability can be legally paid.
- (c) Nothing in this Contract may be considered as implying that Congress will, at a later date, appropriate funds sufficient to meet any deficiencies or obligations incurred under this Contract.

**5. Termination for Breach.** (a) If either party hereto breaches a material provision of this Contract, the other party, at its option, may terminate this Contract upon 30 days' prior written notice of its intention to do so, and this Contract ipso facto shall terminate at the end of such 30-day period unless such violation is corrected within that period.

- (b) Neither party hereto shall be considered to be in default or breach with respect to any obligation under this Contract if prevented from fulfilling such obligation by reason of an Uncontrollable Force as herein defined.

**6. Waivers.** Waiver at any time of rights with respect to a default or any other matter arising in connection with this Contract shall not be deemed to be a waiver with respect to any subsequent default or matter.

**7. Reliability and Adequacy of Service.** (a) Electric service rendered by Southwestern under this Contract shall meet accepted standards of reliability and adequacy.

- (b) If questions are raised concerning the quality of service, factual data shall be obtained with respect to the character of such service, and appropriate corrective or remedial action shall be promptly taken by the party at fault.

**8. Continuity of Service.** (a) Services provided by Southwestern to the Customer under this Contract shall be delivered by Southwestern as scheduled, except for interruptions or curtailments in delivery caused by an Uncontrollable Force as herein defined, by the operation of devices or dispatcher action for system protection, or by the necessary installation, maintenance, repair, and replacement of equipment.

- (b) Such interruptions or reductions in service, as hereinbefore set forth, shall not constitute a breach of this Contract, and neither party shall be liable to the other for damages resulting therefrom.
- (c) Except in case of an emergency, Southwestern shall give the Customer reasonable advance notice of temporary interruptions or curtailments in service necessary for such installation, maintenance, repair, and replacement of equipment, and shall, insofar as is practicable, schedule such interruptions or curtailments so as to cause the least inconvenience to the Customer.

**9. Transfer of Interest by Customer.** (a) No voluntary transfer of this Contract or of the rights of the Customer hereunder shall be made without the written approval of the Administrator, Southwestern; Provided, That any successor to or assignee of the rights of the Customer, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of this Contract to the same extent as though such successor or assignee were the original contractor

hereunder; Provided Further, That the execution of a mortgage or trust deed, or judicial or foreclosure sale made thereunder, shall not be deemed voluntary transfers within the meaning of this Section 9.

- (b) If receiving Federal power pursuant to this contract, the Customer will not sell, lease, or otherwise dispose of its electrical distribution system without giving Southwestern at least 120 days' prior written notice.
- (c) The Customer's rights to Federal power and concomitant services, as may be set forth in this Contract and in Southwestern's Final Power Allocations (1980-1988), 45 F.R. 19032 (1980), come by virtue of the Customer's status as an entity entitled to preference in Southwestern's marketing of Federal power pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 887,890; 16 U.S.C. 825s). If the Administrator, Southwestern, determines, in his or her sole judgment, that actions taken by the Customer have abrogated the Customer's status as a "preference" entity, then the Administrator may, at his or her sole option, terminate this Contract, such termination to become effective on the date specified by Southwestern, in an official written notice to the Customer.

**10. Uncontrollable Force.** The term "Uncontrollable Force," as used herein, shall mean any force which is not within the control of the party affected, including, but not limited to, failure of water supply, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, riot, civil disturbance, labor disturbance, sabotage, war, act of war, terrorist acts, or restraint by court of general jurisdiction, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid.

**11. Liability.** The Customer 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 Customer's, its employees', agents', or subcontractors' construction, operation, maintenance, or replacement activities under the contract. The United States shall be 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.

## **C FACILITIES AND CONDITIONS OF SERVICE**

- 1. Facilities to be Furnished by Southwestern and the Customer.** Southwestern and the Customer shall furnish, install, maintain, and operate, or cause to be furnished, installed, maintained, and operated, such facilities and equipment, including metering equipment, as may be necessary to fulfill their respective obligations under this Contract and to assure reasonable protection to the facilities of others.
- 2. Reliability, Safety, Health, and Environmental Requirements in Regard to Construction, Operation, and Maintenance of Non-Federal Facilities on U.S. Government Property.** (a) The provisions of this Section 2 shall apply only if the Customer, its agents or contractors, or its member entities perform maintenance, operations, or construction on the property of the U.S. Government (Government), or on easements shared by the Government and the Customer.



- (b) Such construction, maintenance, and operation shall be performed in accordance with standards at least equal to those provided by the National Electrical Safety Code and shall conform to safety, environmental, and security procedures identified by Southwestern as appropriate to each facility in which such work is performed. Southwestern provides such written procedures in each of the facilities it maintains and to affected customers.
- (c) The Customer and/or its member entities shall take all reasonable precautions in the performance of such work to protect the public and the environment. The Customer and/or its member entities shall comply with all applicable local, state, and Federal regulations and requirements in the performance of such work, including, but not limited to, the National Environmental Policy Act; the Clean Air Act; the Clean Water Act; the Comprehensive Environmental Responsibility, Compensation, and Liability Act; the Toxic Substances Control Act; the Oil Pollution Act; the Resource Conservation and Recovery Act; the Superfund Amendments and Reauthorization Act (SARA); SARA Title III (Emergency Planning and Community Right-to-Know Act of 1986); and the Occupational Safety and Health Act.
- (d) In the event that Southwestern, at its sole option and in its sole judgment, determines that construction, maintenance, or operation of facilities which are performed under this Contract by the Customer, and/or one of its member entities, do not meet the standards and/or regulations and requirements specified in this Section 2, or if Southwestern determines, in its sole judgment, that a condition exists which provides a potentially adverse impact (1) on the reliability of services provided by Southwestern to its customers, (2) on the safety and/or health of the public or employees and agents of the parties hereto, and/or (3) on the environment, then Southwestern may provide written notice to the Customer and/or its member entity of the deficient condition; Provided, That if such condition, in Southwestern's sole judgment and at Southwestern's sole option, requires immediate attention and does not allow time for such notice, Southwestern will remedy the condition and, where appropriate, bill the Customer in accordance with Section 8(b) of this Provision C.
- (e) Where, in Southwestern's sole judgment, remedy of the said deficient condition is not time critical, the Customer and/or its member entity shall provide a written plan and schedule to Southwestern within 30 days of receipt of the said written notice. Such plan and schedule shall provide for correction of the said deficiency at the earliest possible time available to the Customer and/or its member entity; Provided, That the maximum time allowed for the Customer and/or its member entity to correct any such deficiency shall not exceed 18 months from receipt of the said written notice. The Customer shall coordinate or, if applicable, cause its member entity to coordinate, any work and outages which may involve Southwestern's facilities with Southwestern's Dispatch Center (Dispatch Center) in Springfield, Missouri.
- (f) Unless otherwise agreed in writing, correction of deficiencies pursuant to this Section 2 shall be at the expense of the Customer.
- (g) If the Customer and/or its member entity fails to correct the deficiency within the time provided pursuant to this Section 2, Southwestern shall have the right, at its sole option and in its sole discretion, to terminate service through the affected facilities until such deficiencies are corrected to the satisfaction of Southwestern.
- (h) If, within the time period provided pursuant to this Section 2, an emergency condition occurs which, in the sole judgment of Southwestern, may cause an adverse impact on the reliability of the System of Southwestern and/or on the environment, or which poses a hazard to the safety and/or health of the public or employees and agents of

the parties hereto, then Southwestern may, at its sole option, remedy or repair such condition or equipment and bill the Customer in accordance with Section 8(b) of this Provision C, and the Customer agrees to render Southwestern reimbursement as provided in the said Section 8(b).

- 3. Right of Installation and Access.** (a) Each party hereto grants to the other permission, or will obtain such permission for the other party, to install, maintain, and operate, or cause to be installed, maintained, and operated, on the System of Southwestern and on the System of the Customer, at the points of delivery between the System of Southwestern and the System of the Customer described in this Contract, any and all terminal equipment and associated electrical apparatus and devices necessary in the performance of this Contract.
- (b) Each party hereto shall permit, or shall obtain permission for, duly authorized representatives and employees of the other party to enter upon the System of Southwestern and the System of the Customer at the said points of delivery for the purpose of reading or checking meters; for inspecting, testing, repairing, renewing, or exchanging any or all of the equipment owned by the other party located on such premises; or for the purpose of performing any other work necessary in the performance of this Contract.
- (c) Access for any work performed by one party under this Section 3 which may affect the other party's equipment shall normally be preceded by at least one day's notice to the affected party, except in the event of an emergency, in which case such notice shall be made as soon as possible after such emergency occurrence. Notice to Southwestern pursuant to this Section 3 shall be made to the Dispatch Center.
- (d) Any access to property controlled by Southwestern shall include notification to Southwestern at the time of entry. Any employee or agent of the Customer, or of its member entities, who enters a Southwestern facility is expected to call the Dispatch Center from a telephone located in the control building in that facility and to identify himself or herself. Security devices located in the control buildings at Southwestern facilities sound an alarm in the Dispatch Center when the building is entered. Local law enforcement officers may be asked to investigate any unidentified entry.
- (e) Any equipment, apparatus, or devices installed on the System of Southwestern by the Customer, as provided under this Section 3, shall be clearly and permanently marked to indicate ownership, and, in addition, a detailed description of each item so installed (including, if applicable, manufacturer's name, serial number, model number, etc.) shall be transmitted to Southwestern to aid in maintenance of plant accounts.
- (f) In the event the equipment, apparatus, or devices are not marked in accordance with Section 3(e) of this Provision C, ownership of said equipment, apparatus, or devices shall be presumed to be vested in Southwestern.
- (g) The Customer agrees that, if requested by Southwestern, the description required under Section 3(e) of this Provision C shall include a detailed analysis of all dielectrical oil, including, but not limited to, tests for polychlorinated biphenyls (PCBs). If such analysis indicates the presence of a known hazardous substance, which, in Southwestern's sole judgment, presents a significant hazard to the environment or to the health and safety of employees of the parties hereto, Southwestern may require, at its sole option, by written request, removal of any equipment containing such substance, and the Customer agrees to comply with such request for removal at no cost to Southwestern.

4. **Rights for Land Use Acquired by the Customer.** (a) The System of Southwestern is constructed, operated, and maintained by Southwestern subject to and in accordance with the terms and conditions of certain transmission line right-of-way easements. Rights and privileges granted thereunder to the Government may not be available to the Customer for operations connected with performance of this Contract.
- (b) The Customer is therefore responsible for acquiring, or causing to be acquired, from the appropriate landowners, any and all rights and privileges for land use, by good and sufficient legal instruments, to authorize and permit entry by the Customer upon and across tracts affected by such land use as may be necessary and appropriate for performance of this Contract.
5. **Right of Removal.** Any and all equipment, apparatus, or devices placed or installed or caused to be placed or installed by the parties hereto on or in the System of Southwestern or the System of the Customer shall be and shall remain the property of the party owning and installing such equipment, apparatus, devices, or facilities, regardless of the mode or manner of annexation or attachment to real property, and, upon the termination of this Contract, the owner thereof shall have the right to enter upon the premises or system of the other and shall, within a reasonable time, remove such equipment, apparatus, devices, or facilities, subject to the provisions of Section 3 of this Provision C.
6. **Right to Upgrade Facilities.** (a) Southwestern reserves the right to modify or upgrade its transmission system and any of the elements which support the Southwestern transmission system, including, but not limited to, changes in: (1) Southwestern's transmission voltages, (2) Southwestern's transmission system components, (3) Southwestern's communications system, (4) Southwestern's Supervisory Control and Data Acquisition (SCADA) System, and (5) other modifications necessary to comply with the standards and/or regulations and requirements mentioned in Section 2 of this Provision C.
- (b) If, during the term of this Contract, Southwestern determines, in its sole judgment and at its sole option, that modifications or upgrades to its transmission system and associated facilities are required, then, in that event, the Customer shall be responsible for any and all costs and expenses incurred by the Customer in order to continue to receive services provided under this Contract.
- (c) If the Customer elects not to make changes in its facilities which, in Southwestern's judgment, are required for the Customer to continue to receive reliable service from Southwestern's modified or upgraded facilities, then the Customer will discontinue receipt of the services provided under this Contract which are dependent on such modified or upgraded facilities, and the provisions of this Contract which describe such services shall be terminated or, at Southwestern's sole option, suspended, until the Customer completes the changes in its facilities which Southwestern, in its sole judgment, deems necessary for reliable service to the Customer under the aforesaid provisions.
- (d) Southwestern shall notify the Customer of the specific sections or articles of the Contract which are to be terminated or suspended pursuant to Section 6(c) of this Provision C.
- (e) The provisions of this Contract which are not specifically terminated or suspended pursuant to Section 6(d) of this Provision C shall not in any way be affected and shall remain in full force and effect except insofar as the services provided pursuant to the

terminated or suspended provisions which are reflected in other provisions of this Contract will also be terminated or suspended.

- (f) Termination or suspension of specific provisions of this Contract pursuant to Section 6(c) of this Provision C shall be without penalty to either of the parties hereto, except that the rights of the parties hereto, if any, which accrued prior to the date of such termination or suspension shall be and hereby are preserved.

- 7. **Limitation on Rights of Entry.** Southwestern reserves the right, upon notice to the Customer, to revoke or cancel the rights of entry granted under this Contract with regard to any particular representative of the Customer, if, in the sole judgment of Southwestern, such revocation or cancellation is required in the interest of national security.
- 8. **Assistance by Contracting Parties.** If assistance in maintenance and utilization of their respective systems is rendered by Southwestern and/or the Customer, the following terms and conditions shall apply:
  - (a) If, in the maintenance or utilization of their respective transmission systems and related facilities for the purpose of this Contract, it becomes necessary by reason of any emergency or extraordinary condition for Southwestern or the Customer to request the other to furnish personnel, materials, tools, and equipment for the maintenance or modification of, or other work on, such transmission systems and related facilities to insure continuity of power and energy deliveries, the party requested shall cooperate with the other and render such assistance as the party requested may determine to be available.
  - (b) The party making such request, upon receipt of properly itemized bills, shall reimburse the party rendering such assistance, including overhead and administrative and general expenses. The Customer and Southwestern agree to account for any incurred costs under a Work Order accounting procedure and in accordance with the Uniform System of Accounts prescribed for public utilities by the Federal Energy Regulatory Commission. Billing statements rendered by the Customer and Southwestern for such reimbursement shall be due 20 days from the date thereof.
  - (c) No laborer or mechanic in the employ of the Customer, or its agents and contractors, for any of the work contemplated by this Section 8 shall be required or permitted to work in excess of 40 hours in any workweek except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this Section 8.
  - (d) The wages of each laborer or mechanic employed by the Customer, or its agents and contractors, in the performance of any of the work contemplated by this Section 8 shall be computed on the basis of a standard workweek of 40 hours, and work performed in excess of such standard workweek may be permitted only upon the condition that each laborer or mechanic receives compensation at a rate not less than 1.5 times that worker's basic rate of pay for all hours worked in excess of 40 hours in any such workweek.
  - (e) For each violation of this Section 8, the Customer, or its agents and contractors, will be liable to the employee for his unpaid wages and, in addition, a penalty shall be imposed upon the Customer in the amount of ten dollars (\$10) for each laborer or mechanic for each calendar day in which such laborer or mechanic is required or permitted to work in excess of the standard workweek of 40 hours upon said work without receiving compensation computed in accordance with this Section 8, and all

penalties thus imposed shall be withheld for the use and benefit of the Government; Provided, That this Section 8 is subject to the provisions of the Contract Work Hours and Safety Standards Act of 1962 (Public Law 87-581, 76 Stat. 357-360), as amended; Provided Further, That if, from time to time, there is a conflict or inconsistency between the terms and conditions hereinbefore set forth and the provisions of any contract between the Customer and a labor union, the provisions of the labor union contract shall prevail if determined to be in compliance with then-applicable statutes and regulations issued thereunder.