

Agenda Number 6.e.

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MEETING DATE: September 7, 2017

AGENDA ITEM: Consideration of Action to Approve the Hoover Dynamic Signal Management/Ancillary Services Agreement between Arizona Electric Power Cooperative (AEPCO) and CAWCD

RECOMMENDATION:

Staff recommends that the Board of Directors approve the Hoover Dynamic Signal Management/Ancillary Services Agreement (Dynamic Signal Agreement) between Arizona Electric Power Cooperative (AEPCO) and CAWCD.

FINANCIAL IMPLICATIONS: None

Additional budget spending authority requested: \$0

LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:

- 2016 CAWCD Strategic Plan
 - Project Reliability: Effectively Operate and Maintain CAP Assets

PREVIOUS BOARD ACTION/ACTIVITY: None

ISSUE SUMMARY/DESCRIPTION:

The Dynamic Signal Agreement fulfills an Arizona Power Authority (APA) requirement for post-2017 Hoover Allocations for Scheduling Entities to have agreements with the APA Contractors for use of the Hoover dynamic signal. AEPCO is CAWCD's designated Scheduling Entity for our Hoover allocation and will continue to use the Hoover dynamic signal on behalf of CAWCD. The Dynamic Signal Agreement will eliminate the need for a separate payment to SRP and credit from APA that are required under the existing dynamic signal arrangements.

This Dynamic Signal Agreement does not modify and is subordinate to the existing Trading and Scheduling Services Agreement between AEPCO and CAWCD. There are no new tasks or services being provided under the Dynamic Signal Agreement.

SUGGESTED MOTION:

I move that the Board of Directors approve the Hoover Dynamic Signal Management/Ancillary Services Agreement between Arizona Electric Power Cooperative and Central Arizona Water Conservation District and authorize the General Manager, or his Designee, to execute the agreement in substantially the form in which it was presented today.

Attachment.

AGREEMENT
BETWEEN
CENTRAL ARIZONA WATER CONSERVATION DISTRICT
AND
ARIZONA ELECTRIC POWER COOPERATIVE, INC.
FOR
HOOVER DYNAMIC SIGNAL MANAGEMENT/ANCILLARY SERVICES

1. INTRODUCTION:

This Dynamic Signal Management/Ancillary Services Agreement (“Agreement”) is made this _____ day of _____ 2017, by and between Central Arizona Water Conservation District (“Customer”), a multi-county water conservation district and political subdivision of the State of Arizona organized pursuant to and existing under the laws of the State of Arizona, and Arizona Electric Power Cooperative, Inc. (“AEPCO”), a non-profit cooperative corporation organized and existing under the generation and transmission electric cooperative laws of the State of Arizona. Customer and AEPCO are also hereinafter referred to individually as “Party” or collectively as “Parties”.

2. EXPLANATORY RECITALS:

- 2.1 AEPCO provides electric capacity and energy to six distribution cooperatives that comprise its Class A Members, and AEPCO and its Arizona Class A Members operate their electric systems within the Balancing Authority Area (as hereinafter defined) of the Western Area Power Administration’s Desert Southwest Region (“WALC”);
- 2.2 AEPCO provides scheduling, trading and other services to other customers and Class D Members;
- 2.3 AEPCO is the Transmission Provider for its Class A Members and other customers, and operates its transmission system and controls the AEPCO generation as a metered subsystem within the Balancing Authority Area of WALC.

- 2.4 The Customer and AEPSCO are parties to a Trading, Scheduling, Imbalance and Interchange Services Agreement, dated April 21, 2011, as it has been updated and amended (“Scheduling Agreement”).
- 2.5 Section 5(e) of the Power Sales Contract between the APA and Customer, dated September 16, 2016 (“Customer’s Hoover PSC”) provides that each APA Customer “shall have the right to a pro-rata share of available Ancillary Services, based upon the Customer’s Allocation...”, the “Customer may access such Ancillary Services through the use of a dynamic signal”, and “any Agreement related to use of Ancillary Services...of a dynamic signal will be subject to review by the Authority, which approval shall not be unreasonably withheld.”
- 2.6 Section 5(h) of the Customer’s Hoover PSC provides that the Customer, through use of a dynamic signal, shall have the right on a pro-rata basis to Loaded Synchronized Generation, Operating Reserves – Spinning, and Operating Reserves – Supplemental, the sum of which shall not exceed the portion of the Customer’s Allocation of Hoover Capacity that is available.”
- 2.7 Customer and AEPSCO have entered into the Scheduling Agreement, which includes trading and scheduling services, and the Parties desire to enter into this Agreement, which allows AEPSCO the use of Customer’s pro-rata share of the Hoover dynamic signal as provided for in Customer’s Hoover PSC.
- 2.8 This Agreement will provide portions of the services necessary for Customer to manage its loads and resources for the term of this Agreement.

3. **AGREEMENT:** The Parties agree that the foregoing Explanatory Recitals reflect their common understanding, and further agree to the terms and conditions set forth hereinafter:

4. **EFFECTIVE DATE AND TERM:**

- 4.1 This Agreement will become effective and binding on October 1, 2017, and shall continue in effect through the earlier of: (i) the date of termination of the Scheduling Agreement; (ii) the date this Agreement is terminated pursuant to Section 4.2; or, (iii) 11:59 p.m. Arizona time on September 30, 2067.

- 4.2 Either Party may terminate this Agreement for any reason, by giving the other Party no less than two years prior written notice of such termination.
- 4.3 All obligations pursuant to this Agreement incurred prior to its termination shall be preserved until satisfied.

5. DEFINITIONS: For purposes of this Agreement, capitalized terms shall have the meaning set forth in this Section, whether used in the singular or plural:

- 5.1 Ancillary Services means those services defined in the Western Area Power Administration (WAPA) Open Access Transmission Tariff (OATT), as revised, that are necessary to support the transmission of capacity and energy from Customer's Hoover resource delivery point to Customer's load, while maintaining reliable operation of a Transmission Provider's transmission system in accordance with good utility practices.
- 5.2 AEPCO Metered Sub-system means the area within the Balancing Authority Area of WALC for which AEPCO is responsible to maintain a balance between AEPCO and other third party loads and resources under parameters agreed to between WALC and AEPCO, as in effect from time to time.
- 5.3 Balancing Area or BA means the entity responsible for maintaining scheduled interchange and electric system frequency in its Balancing Authority Area.
- 5.4 Customer Hoover Energy means the allocated Hoover energy awarded to Customer pursuant to Attachment 1 to its executed APA Power Sales Contract, dated September 16, 2016, which exhibit is attached to this Agreement as **Attachment A**.
- 5.5 Customer Hoover Capacity means the allocated Hoover capacity awarded to Customer pursuant to Attachment 1 to its executed APA Power Sales Contract, dated September 16, 2016, which exhibit is attached to this Agreement as **Attachment A**.
- 5.6 Customer Load means all capacity and energy requirements necessary to serve Customer's full energy needs.
- 5.7 Customer Resources means all capacity and energy resources available to Customer to fulfill Customer's Load requirements.

6. **DYNAMIC SIGNAL MANAGEMENT / ANCILLARY SERVICES:** AEPCO shall have the right to use Customer's pro-rata share of the Hoover dynamic signal as follows:

6.1 AEPCO shall manage the scheduling of Customer Load and Customer Resources and AEPCO loads and resources on an hourly basis to assure that requirements for Ancillary Services, as defined by the WAPA OATT are met. The Parties will jointly prepare, authorize and revise as needed through mutual consent, procedures by which the Parties will cooperate in the use of Customer Resources and AEPCO resources to efficiently meet their joint ancillary services requirements. Such procedures shall include, but not be limited to: (i) developing metering and scheduling instructions to optimize the joint use of Customer's Hoover capacity; (ii) use of Customer's Resources and AEPCO resources to over-generate with respect to Customer's Load and AEPCO loads when the WALC BA requires excess resources in the AEPCO Metered Sub-System; (iii) use of AEPCO generation to under-generate with respect to Customer Load and AEPCO loads when WALC BA requires deficient resources in the AEPCO Metered Sub-system; and (iv) complying with Hoover energy limitations.

6.2 **AEPCO Ancillary Service Responsibilities.** AEPCO and Customer agree that AEPCO may utilize AEPCO and Customer Hoover Capacity or equivalent to meet AEPCO's ancillary services requirements for the AEPCO Metered Sub-system. AEPCO will coordinate with the APA regarding Hoover monthly energy schedules.

6.3 **Customer Ancillary Services Responsibilities.** Customer shall self-provide generation related ancillary services through the term of this Agreement. Customer represents it has the ability, as described in section 2.5 of this Agreement, to use its pro-rata share of its Hoover dynamic signal to self-provide these services. Customer will endeavor to obtain approval from the APA to establish AEPCO as its agent and scheduling entity for the Customer Hoover Capacity and Energy and use of the Hoover dynamic signal. The Parties agree that this provision by Customer of its pro-rata share of the Hoover dynamic signal to AEPCO serves as

self-provision of ancillary services only as it relates to Customer's pro-rata share of the Customer Hoover Capacity as provided for in Customer's Hoover PSC.

7. **COMPENSATION FOR SERVICES:** AEPCO and Customer agree the following provisions represent reasonable and fair exchange for services as described in this Agreement and no further compensation is due to either Party:

7.1 Customer shall designate AEPCO, at no cost, as its agent for use of its pro-rata share of the Hoover dynamic signal under Customer's Hoover PSC.

7.2 AEPCO shall use Customer's pro-rata share of the Hoover dynamic signal to allow Customer to self-provide ancillary services for all or any portion of Customer's Resource ancillary services obligation required by AEPCO up to the pro rata share of the Hoover dynamic schedule available to AEPCO.

7.3 Customer shall allow AEPCO to use Customer Hoover Capacity for the overall efficient operations of the AEPCO Metered Sub-system.

7.4 AEPCO shall not charge Customer ancillary service charges for Customer's ancillary services obligation required by AEPCO up to the amount of the pro rata share of the Hoover dynamic schedule available to AEPCO as provided for in Section 7.2.

8. **DISPUTE RESOLUTION:** Should any material dispute arise between the Parties concerning a transaction pursuant to this Agreement, or the duties or obligations of the Parties under this Agreement, or the implementation or interpretation of this Agreement, each Party agrees to notify the other Party of the dispute in writing within fifteen (15) days of the initial dispute. The Parties agree to mutually work towards a resolution of the dispute within fifteen (15) day of the delivery of the notice of dispute. If the Parties are unable to reach a mutually agreeable resolution of the dispute, the dispute will be elevated to each Parties designated senior executive as identified below. Such executives shall work towards a mutually agreeable resolution of the dispute within ten (10) calendar days. Any resolution reached by the Parties senior executives shall be deemed binding on both Parties. In the event the senior executives cannot reach a mutually agreeable resolution, each Party may pursue any remedies made available to them by law.

- 8.1 AEPCO's designated senior executive shall be the Senior Vice President and Chief Operating Officer of AEPCO.
- 8.2 Customer's designated senior executive shall be the CAWCD General Manager.
- 8.3 Either Party may change its designated senior executive by providing thirty (30) days written notice to the other Party.

9. **CONFIDENTIALITY:** The Parties acknowledge that during the course of this Agreement, AEPCO may have access to Confidential Information of Customer and Customer may have access to Confidential Information of AEPCO. The Parties agree to take appropriate measures to protect the Confidential Information and prevent its disclosure.

9.1 For purposes of this Agreement, "Confidential Information" means any and all information that is not generally known by others with whom AEPCO or Customer does or plans to conduct business. Confidential Information includes without limitation such information, whether written or oral, related to: (i) development, research, testing, system operations, and production activities; (ii) all products invented, researched, developed, planned, tested, manufactured, sold, licensed, leased, or otherwise distributed, or put into use by either Party, together with all services provided or planned by either Party during the term of this Agreement; (iii) costs, sources of supply, strategic plans, resource plans, and capacity; (iv) pricing, cost of service, methods of allocation; (v) the identity and special needs of the customers and other organizations with whom either Party has business relationships and the nature of those relationships; (vi) sales contracts and their terms and conditions; and (vii) any marketing studies, surveys, plans, and projections. Confidential Information also includes such information that either Party receives as or has received as confidential, belonging to those with whom a Party conducts business, and, except to the extent disclosed by the other Party on a non-confidential basis, any intellectual property.

9.2 The receiving Party ("Recipient") may use Confidential Information of the disclosing Party ("Owner") only for in connection with the purposes of this Agreement and shall protect such Confidential Information from disclosure to

others, using the same degree of care used to protect its own proprietary information of like importance, but in any case using no less than a reasonable degree of care. Recipient may disclose Confidential Information received hereunder to (i) to its affiliates who agree, in advance, in writing, to be bound by this Agreement, and (ii) to its employees and consultants, and its affiliates' employees and consultants, who, in all such cases, have a need to know for the purposes of this Agreement, and who are bound to protect the received Confidential Information from unauthorized use and disclosure.

9.3 The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that:

- (a) is in the possession or control of Recipient prior to its receipt from Owner pursuant to this Agreement;
- (b) is or becomes publicly known, through no wrongful act of Recipient;
- (c) is received by Recipient from a third party free to disclose it without obligation to Owner;
- (d) is developed independently by Recipient; or
- (e) is lawfully required to be disclosed to any governmental agency or is otherwise required to be disclosed by law; provided, however, that the Recipient shall notify Owner, as soon as reasonably practical, of any order or request to disclose Confidential Information, or that such an order is being sought, or request has been made, so that the Owner may have an opportunity to take appropriate action to maintain confidential handling of such information.

9.4 AEPCO understands that, as a political subdivision of the State of Arizona, Customer may be subject to certain disclosure requirements under the Arizona public records law (A.R.S. §39-101, *et seq.*)

9.5 AEPCO and Customer agree that AEPCO may provide a copy of this Agreement to the APA.

10. NOTICES: Any notice, demand, or request required by this Agreement to be in writing shall be considered properly given when delivered in person, or sent by either registered or certified mail, electronic delivery with acknowledged receipt, postage prepaid, or prepaid common courier addressed to each Party at the address listed below. The initial addresses listed below may be changed by thirty (30) days advance written notice to the other Party.

For Customer:

Attention: General Manager
Central Arizona Water Conservation District
P.O. Box 43020
Phoenix, AZ 85080-3020
[Street address: 23636 N. 7th St.
Phoenix, AZ 85024]

For AEPCO:

Jon Martell
Executive Director of Energy Services
1000 S. Hwy. 80 / P.O. Box 670
Benson, AZ 85602

11. THIRD PARTY BENEFICIARY: Unless expressly provided in this Agreement, nothing herein is intended or shall be construed to confer any benefit upon a third party.

12. GOVERNING LAW AND VENUE; NO JURY TRIAL: This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona, without giving effect to its conflicts of law principles. Venue for any dispute arising hereunder shall be in a state or federal court of competent jurisdiction located in Maricopa or Pima County, Arizona. Each of the Parties waives to the fullest extent permitted by law any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Agreement or

arising from any relationship existing in connection with this Agreement and agrees that any such action or proceeding shall be tried before a court and not before a jury.

13. ASSIGNMENT: A Party shall not transfer or assign or otherwise dispose of all or any part of its rights or interests under this Agreement without the prior written approval of the other Party.

14. COMPLIANCE WITH ARIZONA EMPLOYERS SANCTIONS LAW: Pursuant to Arizona Revised Statutes (“ARS”) Section 41-4401, Contractor AEPCO shall comply with and ensure that each subcontractor involved in AEPCO’s performance under this Agreement complies with the federal immigration laws and regulations that relate to their employees and the provisions of ARS Section 23-214, subsection A. AEPCO agrees that it shall comply and ensure that each subcontractor complies with all of the following provisions:

- 14.1 AEPCO and each and every subcontractor warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with ARS Section 23-214, subsection A.
- 14.2 A breach of a warranty under this Section shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement.
- 14.3 CAWCD retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Agreement to ensure that Contractor or any subcontractor is complying with the warranty under this section.
- 14.4 AEPCO will cooperate with CAWCD to develop a process to verify the Contractor’s and subcontractors’ employment records to comply with this provision. CAWCD, at its sole discretion, will determine the method of verification. AEPCO shall comply and cooperate with any procedures established by CAWCD to conduct random verification of the employment records of Contractor and any subcontractor to ensure that the Contractor and subcontractors are complying with their warranties. If Contractor or any of its subcontractors

employs any subcontractor(s) in performance of this Contract, Contractor shall notify CAWCD in writing and shall provide evidence of each subcontractor's agreement to the requirements of this Section by providing a certification satisfactory to CAWCD.

14.5 CAWCD shall not deem Contractor or any of its subcontractors in material breach of this Contract if Contractor or any affected subcontractor(s) establishes that it has complied with the E-verify program prescribed by sections 274a and 274b of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by ARS Section 23-214, subsection A.

14.6 All costs necessary to verify compliance with this Section are the responsibility of the Contractor.

14.7 For the purposes of this Section: (1) "E-verify program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs. (2) "Services" means the furnishing of labor time or effort in this state by a Contractor or Subcontractor.

15. EXECUTION BY COUNTERPARTS: This Agreement may be executed in several counterparts, including by facsimile signature, each of which will be deemed to be an original and all of which, when taken together, will constitute a single agreement.

16. SCHEDULING AGREEMENT CONTROLS: Nothing in this Agreement is intended to modify the terms of the Scheduling Agreement. In the event of a conflict between this Agreement and the Scheduling Agreement (as that agreement now exists or may be amended in the future), the terms of the Scheduling Agreement shall control. In the event that this Agreement is silent on an issue that is addressed in the Scheduling Agreement, the terms of the Scheduling Agreement shall control.

17. AMENDMENTS AND MODIFICATIONS: This Agreement may not be amended or modified by either Party except by subsequent mutual written agreement duly executed by the Parties.

18. AUTHORITY TO EXECUTE: Each individual signing this Agreement certifies that the Party represented has duly authorized such individual to execute this Agreement and that it binds and obligates such Party.

19. SIGNATURES: The Parties have caused this Hoover Dynamic Signal Management / Ancillary Services Agreement to be executed by the duly authorized officials.

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

1000 S. Highway 80

P.O. Box 670

Benson, AZ 85602

By: _____

Title: Executive Vice President and Chief Executive Officer

Date: _____

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

P.O. Box 43020

Phoenix, AZ 85080-3020

By: _____

Title: _____

Date: _____

Attachment A