

Central Utah Project

Guidelines for Hydropower Development under a Lease of Power Privilege

June 15, 2007

Subject: Lease of Power Privilege

Purpose: Establishes direction for non-Federal hydropower development under a lease of power privilege at Central Utah Project (CUP) facilities under the jurisdiction of the Department of the Interior (Interior).

1. Introduction

A Lease of Power Privilege (Lease) is a contractual right given to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes (including project power). A Lease is an alternative to Federal power development and is used where Reclamation has authority to develop power on any or all features of a Federal project. On the CUP, this authority has been delegated to the Central Utah Project Completion Act (CUPCA) Office of Interior. The Town Sites and Power Development Act of 1906 authorizes the Secretary of the Interior to lease surplus power or power privileges. The Reclamation Project Act of 1939 extended the contract term to a maximum of 40 years for the sale of power or lease of power privileges, giving preference to municipalities and other public corporations or agencies, and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof.

2. Jurisdiction for Hydropower Development

Interior would have jurisdiction for non-federal hydropower development on CUP facilities under the purview of the CUPCA, consistent with project purposes as defined by CUPCA. Where the CUPCA Office elects to pursue hydropower at a site for project power, then the opportunity for development of hydropower under a Lease may be limited.

Requests to develop hydropower at CUP facilities under a Lease must be processed under the November 6, 1992, Memorandum of Understanding (MOU) between Reclamation and the Federal Energy Regulatory Commission (FERC) (see attachment). Consistent with the terms contained in the MOU and prior to initiating a Lease process, Interior will coordinate with FERC.

Requests to develop hydropower at CUP facilities must be consistent with CUPCA, Reclamation Law, environmental legislation, and other applicable legislation. Existing contracts and documents pertaining to the CUP, including the 2004 Definite Plan Report (DPR), must be reviewed to determine if there are any conditions that might preclude power development or affect the feasibility of a proposed hydropower project. Interior

will not consider Lease requests or proposals that would impair the construction, operation and maintenance (O&M), or future development of the CUP (including the development of project power). Prior to leasing, Interior will consult with Reclamation and Western Area Power Administration (Western) on the proposed hydropower development.

3. Lease of Power Privilege Factors

For hydropower development on CUP facilities under a Lease, the following major factors should be addressed. Other factors may be added depending on the nature of the hydroelectric power proposal.

a. Representation – In any work involving a Lease on CUP facilities, the United States is represented by Interior. The CUP sponsor and O&M entity is the Central Utah Water Conservancy District (CUWCD). Under circumstances where the CUWCD is not a participant in the hydropower development, coordination with CUWCD is required as CUWCD will be a party to all Lease contracts.

b. Water Delivery Priority – All powerplant operations must be consistent with operations of the CUP. Use of CUP water diverted out of the Colorado River Basin for power purposes shall be incidental to the use of CUP water for project purposes. In other words, Interior or the CUWCD will not alter deliveries of water for the sole purpose of hydropower generation.

c. Lease of Power Payments to the United States

i. Features with Power Repayment Allocation – The Lessee will be expected to bear an appropriate share of the full cost of CUP facilities that provide for delivery of water to the hydropower development. In the 2004 DPR, Interior applied a marketability concept to the allocation of costs to power. Under this concept, the allocation to power was capped at an amount equal to the expected net revenue from power, thereby ensuring the feasibility of power. The amount in excess of the cap was then allocated to the other project purposes. Under this approach, CUWCD and Interior agreed to absorb additional costs in order to ensure power's feasibility.

Because potential lessees have no mechanism for repaying the amount in excess of the cap, where power is developed under a Lease on a project feature where Interior planning documents have identified Federal hydropower development as an authorized project purpose and project costs have been allocated to power, the Lessee shall assume responsibility for the full costs allocated to power (without the benefit of the marketability concept) as its Lease payment to the United States.

ii. Features without Power Repayment Obligation – If a Lease is awarded for power generation using features on which Interior planning documents have not identified Federal hydropower development as a project purpose, no project costs will have been allocated to power. At these sites where there is no cost allocation to

power, the Lessee must pay an equitable amount for the use of the CUP facility as negotiated in the Lease.

All Lease payments paid by the Lessee to the United States shall be deposited in the Upper Colorado River Basin Fund.

d. Operation and Maintenance of CUP Facilities – The structural and operational integrity of existing CUP facilities must not be impaired by construction, operation, or maintenance of the powerplant and/or transmission facilities. Powerplant and transmission facilities construction and operation must not interfere with existing operations, jeopardize existing water rights, water quality, or create any safety problems. The Lessee will be expected to share in the cost of operation, maintenance, replacement, and security of any existing Federal facilities that benefit the Lessee’s power facility.

e. Security – The security of the CUP facilities must not be compromised by investigation, construction, operation, or maintenance of the powerplant and transmission facilities. Physical security of existing facilities shall be maintained by Reclamation, or its designee, during O&M activities. The Lessee shall not interfere with Reclamation security activities and will be subject to search and background checks, as deemed necessary by Reclamation, to maintain the physical security of Reclamation facilities. The Lessee will be responsible for any incremental security costs incurred by Reclamation as a result of the Lessee’s hydropower development. The Lessee shall be required to have security practices commensurate with Reclamation security practices.

f. Access – Access to the existing CUP facilities for regular O&M as well as emergency operation and repair must be maintained during construction and operation of the powerplant and transmission facilities.

g. Environmental Commitments – The investigations, planning, and O&M of powerplant and transmission facilities must not impair the ability of Interior or CUWCD to meet its environmental commitments under existing environmental documents and must be in compliance with any and all environmental legislation (including the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Clean Water Act, etc.

h. Water Rights – Neither the Lease nor the construction and operation of the Lease powerplant and associated facilities may require any change in the ownership, use, place of use, degree of consumptive use or any other aspect of existing project water rights. The only exception is the addition of power generation as a non-consumptive project purpose.

i. Safety – The investigations, construction, and O&M of the Lease powerplant and transmission facilities should be planned and conducted in a safe manner. Further, the investigations, construction, and O&M of any Lease powerplant and transmission facilities shall not compromise the O&M of CUP facilities.

j. Review of Plans – The purpose of Interior’s review of designs, plans, and specifications for the proposed development and related materials will be to ensure the continued safe operation of CUP facilities, the integrity of CUP structures, and compliance with environmental commitments.

k. Design, Construction, O&M – The Lessee will be responsible for the design, construction, O&M of the powerplant facilities unless contracted otherwise.

l. Inspection – Interior will inspect powerplant and related facilities to the extent necessary to ensure the continued safe operation and structural integrity of CUP facilities and to ensure compliance with environmental commitments.

m. Denial of Lease – Interior may deny the issuance of a Lease at any time based on inadequate design information, unsatisfactory environmental impacts, detrimental impact to the CUP, or any other legitimate reason.

n. Expenses – The Lessee shall be responsible for all hydropower development, construction, operation, and maintenance costs. Interior shall receive advance payment for all costs of its activities related to the development, operation, and maintenance of the powerplant and transmission facilities as well as any related administrative costs. Details of the advance payment will be outlined in a contract between the United States and the Lessee.

o. Title - Title to CUP facilities will remain with the United States. Title to the proposed installed powerplant facilities is with the Lessee unless legislated or contracted otherwise. Title to any modifications to the Federal facility shall remain with the United States. The Lease shall include language giving the United States the first right to purchase or take over the Lease should the Lessee fail or need to sell the facilities to which they have title. Leases may not be transferred or facilities sold without written approval of Interior. It is likely that the development will be constructed on land owned by Reclamation. Land easements will be addressed in the Lease.

p. Power Marketing - Western will be given the first opportunity to purchase the generation from the facility developed under a Lease at a cost based rate. Such cost based rate may include a reasonable rate of return on investment to the Lessee. Prior to leasing the potential lessee must coordinate with Interior and Western to determine its interest in purchasing the power generated under the Lease.

4. Application, Selection, and Negotiating Process

The following paragraphs describe major steps associated with the development of hydroelectric powerplants under a Lease with Interior. These steps are generally in sequence but may require preparation well in advance to ensure completion in a timely manner. Additional requirements may be necessary, depending upon the nature and impacts of the proposed hydroelectric project. If CUWCD is involved with the hydropower development as a lessee, the following paragraphs would be modified as appropriate to accommodate their involvement. If Interior has received a request and, in

response, elected to initiate a Lease process, it will accept applications for Lease development only through an open, competitive, public process.

a. Interior will consider initiating the Lease process upon written request from a qualified entity. A qualified entity is any public or private organization with sufficient experience and resources to initiate and complete the investigation, planning, design, construction, and O&M of a Lease hydroelectric powerplant.

b. Interior will consult with Reclamation to determine if a process should be undertaken and for assistance to prepare a notice of intent initiating the process for accepting proposals.

c. If Interior determines a Lease process should be initiated, Interior will establish selection criteria and publish a notice of intent to accept proposals for a Lease through the Federal Register, local newspapers, and mailings to known interested parties. It is expected that proposals would include, but not be limited to, the following:

- Site characteristics and existing facilities;
- Land acquisition and easements;
- Hydraulics and hydrology;
- Water rights;
- Project features and design;
- Power production and transmission, including proposed wheeling arrangements;
- Project costs;
- Financial alternatives and energy costs;
- Power value and marketing;
- Benefit/cost evaluation (Reclamation B/C procedure not applicable);
- Environmental analysis suitable for Interior's use for NEPA compliance;
- Safety assessment;
- Project development plan and construction schedule; and
- Operation and maintenance plan.

d. Prior to receiving proposals, Interior will organize a multi-agency technical evaluation team and develop ranking criteria. Preference will be given to municipalities and other public corporations or agencies as provided in the Reclamation Act of 1939. After proposals are received, the evaluation team will evaluate and provide a recommendation to Interior of the best suited proposal for hydropower development.

e. In consultation with Reclamation and Western, Interior will select the best qualified applicant (Potential Lessee). Interior will notify the Potential Lessee and all other applicants of the decision.

f. The Potential Lessee must notify Interior when it is prepared to enter into negotiations for a Lease. Interior will determine a negotiation schedule, in consultation with the Potential Lessee, and will advertise the intent to hold public negotiations by notice through the Federal Register, local newspapers, and mailings to known interested parties.

g. Interior will establish a trust account by letter agreement with the Potential Lessee for the purpose covering Interior and Reclamation expenses associated with developing a Lease. The Potential Lessee must make an initial deposit to cover Interior and Reclamation expenses. Interior will monitor the account and will request additional deposits from the Potential Lessee as necessary.

h. The Potential Lessee will have up to 5 years from the date of written notification to have NEPA compliance completed by Interior, and enter into a Lease. The Lessee will then have up to 2 years from the date of execution of the lease to complete the designs and specifications and 1 additional year to begin construction. Such timeframes may be adjusted for just cause resulting from actions and/or circumstances that are beyond the control of the Lessee.

i. Interior, in consultation with the Potential Lessee, will prepare NEPA documentation, including final decision documents prior to executing the Lease. Such NEPA compliance must include:

- Compliance with ESA.
- Coordination of project planning with the U.S. Fish and Wildlife Service in compliance with the Fish and Wildlife Coordination Act.
- Cultural resources survey approval by Interior

j. The Lease will require compliance with an Environmental Commitment Plan and Environmental Commitment Checklist. After completion of NEPA compliance and the associated decision document and the negotiations are concluded, the parties will execute the Lease. The Potential Lessee is now considered the Lessee.

5. Development

a. Lessee must prepare technical specifications and drawings, Interior will review and comment. Proposed modifications to existing CUP facilities must be described in detail. Examples include changes in penstock transient pressures, risk of failure or flood, drainage, increased noise or heat, operator safety, effects on discharge capacity, etc. Structural changes must be shown in detail. Examples include new pipe alignments, flanging details, pressure ratings, thrust blocking plans, clearance problems, dewatering plans, venting requirement, concrete removal, etc. The need for electrical and hydraulic surge protection must be evaluated. The Lessee must conduct a Value Engineering study (with participation by Interior) and submit a report to Interior at the 30 percent design level.

b. Lessee must finalize technical specifications and drawings for submittal to Interior. Interior approves technical specifications and drawings to the extent necessary to ensure the structural and operational integrity of the Reclamation project.

c. Lessee must submit a certificate of liability insurance to Interior. Project size will determine the need for extended (property damage) coverage. Interior will determine the insurance, bonding limits, and other related requirements.

d. Lessee must submit a performance bond to Interior or evidence of equivalent security.

e. The Lessee, Interior, and construction contractor will hold a preconstruction meeting.

f. Lessee must obtain any and all required Federal, State, and local permits.

g. Interior will approve the start of construction by the Lessee, subject to approval of submittals required in the Lease. Lessee is then responsible for initiating the start of construction to the contractor.

h. Lessee must notify Interior of construction start date in advance of onsite construction and provide a copy of the construction schedule.

i. Lessee must prepare and submit an Operation and Maintenance Plan and an Emergency Preparedness Plan to Interior.

j. Lessee and Interior will conduct interim and final construction inspections to the extent necessary to ensure the integrity of the Reclamation project.

k. Lessee must submit a start-up testing plan to Interior. Interior may require the Lessee to perform additional testing to ensure the integrity of the CUP facility.

l. Contractor must conduct powerplant testing. Interior personnel will witness the testing.

m. Lessee must submit testing documentation and results to Interior. Interior will provide its approval which will be required on any and all results that are pertinent to the CUP facilities. Lessee must furnish as-built drawings to Interior.

n. Interior will give permission for commercial operation subject to acceptability of powerplant test results. Lessee must submit its first annual lease payment to Interior 1 year from date of approval for commercial operation. Interior will coordinate with the Lessee to update the CUP facilities' Standing Operating Procedures.