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**COLORADO RIVER COMMISSION
OF NEVADA**

October 23, 2003

Ms. Jean Gray
Assistant Regional Manager for Power Marketing
Western Area Power Administration
Desert Southwest Customer Service Region
P.O. Box 6457
Phoenix, Arizona 85005-6457

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Date	Initial	Code
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Re: Request for meeting between Western and the Parker-Davis Project Firm Electric Service Customers and Comments on Amendment No. 1 to Contract No. 87-BCA-10086 between Western and the Colorado River Commission of Nevada for Electric Service from the Parker-Davis Project

Dear Jean:

The several telephone discussions Malvin Ware and Gerald López of my staff have had with you since the customers' meeting on October 1, 2003, have greatly helped us understand Western's intentions with regard to Amendment No. 1, dated October 6, 2003, (the "Contract Extension" or "Contract Amendment") to Contract No. 87-BCA-10086 (the "P-DP Electric Service Contract") between Western and the Colorado River Commission of Nevada ("CRC") for electric service from the Parker-Davis Project ("P-DP"). We believe it would be extremely useful for you to share this same information in a meeting with the other Firm Electric Service ("FES") Customers as a group, perhaps in the context of a discussion of CRC's comments and other early comments on the Contract Amendment. We would urge that the morning of November 3rd or 4th, 2003, be set aside for this purpose, if your schedule can at all accommodate it. We would ask also that this letter and any other comment letters received between now and then be posted on your website. CRC sincerely appreciates Western's willingness to discuss the terms and conditions of the Contract Extension with us and address the concerns we have with the initial proposed language.

The following numbered paragraphs contain the CRC's comments on Western's proposed language for the Contract Amendment. We wish to take this opportunity to again commend Western's decision to extend the long-term, firm power contracts of the P-DP by application of the Power Marketing Initiative of the Energy Planning and Management Program.

We are also glad for the helpful assistance you have given us in clarifying Western's intent in the proposed language of the Contract Extension. The concerns detailed below have largely to do

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with the need to make the Contract Extension more accurately and precisely express that intent as you have helped us understand it. For convenience, we will treat first those sections of the Contract Extension that raise the most acute substantive concerns.

1. **PROPOSED SUBSECTION 6.1.**

a. Our main difficulty with this subsection centers on its highly ambiguous language. It provides for “advance funding” in just three sentences:

The Contractor shall advance funds to Western. Such advance funds shall be available for expenditure to pay for Western and Bureau of Reclamation costs associated with P-DP electric service as determined by the rates process. The Contractor shall pay no more through advance funding than they [sic] otherwise would pay through rates.

b. (1) The three sentences do not tell us that by “advance funding” Western intends in the Contract Extension only prepayment for electric service, as you have told us. Standing alone, the term is ambiguous because advance funding can take a range of forms from a relatively simple prepayment for electric service to the highly complex arrangements established in our October 1, 1998, Generation Advancement of Funds Contract with Reclamation and Western (the “Generation AOF Contract”).

(2) We are told that “costs” “as determined by the rates process” covers all P-DP costs—both transmission- and generation-related. But, as you know, many FES Contractors, including CRC, already fund generation-related expenses, including capital projects, in advance of the rates process through the Generation AOF Contract, which provides specific mechanisms and detailed procedures for that advance funding. The proposed language of subsection 6.1 says nothing about the Generation AOF Contract. That silence, coupled with the ambiguity of the proposed language, would promote the notion that we are in effect amending the Generation AOF Contract, not only by way of the Contract Extension but also by as yet unseen metering and scheduling instructions.

(3) As you also know, many FES Contractors, again including CRC, have concerns about the potential impacts on rates of particular policies of the Federal Energy Regulatory Commission regarding the inclusion of certain future capital transmission projects in the Parker-Davis System. We do not wish to appear to have agreed with those FERC policies by signing on to broad “costs” language here that is unnecessary to put prepayment for electric service in place.

(4) Finally, if prepayment for electric service is all that is intended by the proposed language of subsection 6.1, why the sentence about the Contractor paying no more through advance funding than he otherwise would pay through rates? The concept behind the sentence presupposes advance funding that is *not* based on rates and that at some point needs to be “trued up”

to rates, as in the Generation AOF Contract.

c. It was suggested at the October 1, 2003, meeting, that the sparse language of subsection 6.1 could be fleshed out in the metering and scheduling instructions (“MSI”) provided by section 13 of the P-DP Electric Service Contract. We believe this approach is inappropriate and unnecessary. CRC and its customers need to have a clear understanding of the important terms and conditions that will affect Western’s delivery of their vital power resources, particularly terms of payment—when CRC goes into the Contract Extension, not afterwards when an MSI is issued. . As you know, under subsection 13.3 of the P-DP Electric Service Contract, an MSI could be a unilateral document, and, certainly in the context of advance funding, the “devil *is* in the details.” Fortunately, as we show in paragraph 3 below, the Contract Extension can easily be made to describe a prepayment for electric service with considerable precision; there is no need to depend on an MSI when Western’s intention can be made clear in the first place.

d. We agree that many aspects of the Generation AOF Contract need a thorough review, and CRC is willing to join with Western and the other parties of that contract in such a review. Also, many of the FES Contractors want to discuss with Western their concerns, mentioned above, about FERC’s policies regarding the inclusion of certain future capital transmission projects in the Parker-Davis System. We strongly believe these discussions can and should take place on a parallel but *separate* track from the development of the Contract Extension. It is clearly in Western’s and the FES Contractors’ interest to complete the contract extensions at the earliest possible time. Our focus now should be to make the Contract Extension say exactly and only what is intended.

e. You have explained that the proposed language of subsection 6.1 is intended only to bring about a shift from the present payment for electric service in the month following the month it is furnished to payment in the month prior to the month of service (the “Payment Shift”). A similar payment shift is illustrated by the Advancement Of Funds for Transmission Services Agreement (No. 02-DSR-11382) between Western and the Arizona Power Authority (the “APA AOF Agreement”). In the APA AOF Agreement, the transitory monthly payment that accomplished the payment shift involved two month’s worth of charges: charges for service furnished and for service being furnished, so that under that agreement subsequent monthly invoices are for service being furnished. You have explained that for the Contract Extension Western contemplates a transitory monthly payment involving three months worth of charges: charges for service furnished, for service being furnished and for service to be furnished. CRC could support a Payment Shift, as described in subparagraph (f) below, that commences at the beginning of the federal fiscal year. Starting then would help dovetail the prepayment with advance funding under the Generation AOF Contract, which is based on the federal fiscal year.

f. To effect the Payment Shift by October 1, 2004, for example, we would pay Western in October 2004 for electric service furnished in September and for electric service to be

furnished in the months of October and November. Thus, in November 2004, we would be prepaying for service to be furnished in December, and similarly for each month thereafter. We expect we would continue to receive the credit for advance funding under the Generation AOF Contract as presently provided. Just as in subsection 6.2 of the APA AOF Agreement, the Contract Extension should provide for the transitional first prepayment. (Please see paragraph 6(e) below.)

2. PROPOSED SUBSECTIONS 6.2 AND 6.4

a. Proposed subsection 6.2 provides that “Western shall bill and, the Contractor shall advance funds sufficient to pay for electric service a minimum of ten (10) days prior to the month in which service is to be provided.” Subarticle 13.3 of the latest (July 10, 1998) General Power Contract Provisions (“GPCPs”) presently state in part:

Payments are due and payable by the Contractor before the close of business on the twentieth (20th) calendar day after the date of issuance of each bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday.

We believe the subsection and the subarticle are incompatible, and section 11 of the P-DP Electric Service Contract, as amended by the proposed Contract Extension, provides that the subsection would control over the subarticle. Thus, bill issuance is being de-coupled from bill payment, and the effect is to remove our contract right to a minimum number of days in which to respond to a bill. As a state agency, CRC needs, first of all, an invoice to trigger the state’s bill payment process, and that process requires a minimum of 10 days in which to pay the invoice. Western has not provided a reason for the “minimum of ten (10) days prior to the month” as opposed to billing on the first (which could always be done if the contractor’s allocation and rate schedule is used) and collecting pursuant to subarticle 13.3 of the GPCPs.

b. Proposed subsection 6.4, which provides for setting forth certain billing and payment terms and conditions in a separate agreement, addresses only “firming excess energy” as provided in section 16 of the P-DP Electric Service Contract. We understand the reason for this different treatment lies in the fact that the charge for firming excess energy is known only “after the fact.” Since section 16 also addresses “excess energy” and “excess energy banking” and charges for these products and services are also known only after the fact, they, too, should be included in the proposed language.

3. RECOMMENDED REVISIONS TO SECTION 6

For the reasons given above, section 6 of the Contract Extension should be revised in its entirety to read as follows:

“6. BILLINGS, PAYMENT, AND SCHEDULE OF RATES:

6.1 Except as provided in this subsection, each month, Western shall issue to the Contractor bills based on the capacity and energy shown in Exhibit A or Exhibit A-1, as the case may be, in the month prior to the month the electric service is to be received, and the Contractor shall pay for electric service in accordance with Article 13 of the General Power Contract Provisions attached hereto, provided, however, subarticle 13.1 shall not apply. The rates, calculated charges, and conditions shall be as set forth in the current PD-F Rate Schedule, attached hereto and made a part hereof, or any superseding rate schedule(s) promulgated pursuant to Article 11 of the General Power Contract Provisions.

6.2 Billing and payment terms and conditions to pay for excess energy, excess energy banking and firming excess energy as provided in Section 16 shall be set forth in a separate agreement.”

4. **PROPOSED NEW SECTION 15**

a. CRC commends Western for following through on its commitment in subsection 15.7 of the Generation AOF Contract to establish an enforceable surcharge adequate to make all Replacement Advances reconciliation payments as provided in that contract. Our main concern here is that some of the proposed language could be construed as modifying section 15 of the Generation AOF Contract. Under that contract, CRC is entitled to receive those reconciliation payments. The first sentence acknowledges that entitlement, but we should make clear that the entitlement is “as provided in the Generation AOF Contract.”

b. The second sentence requires a replacement advances reconciliation surcharge “as determined by Western.” That language could be construed as permitting a different result than is required under subsection 15.7 of the Generation AOF Contract. In that subsection, Western agreed to impose a surcharge calculated in the manner specifically provided by the Generation AOF Contract. If that manner of calculation needs review, then that review should occur as discussed in paragraph 1(d) above and in the following paragraph.

5. **NEW SECTION 13 OF THE CONTRACT EXTENSION**

We understand Western’s position that certain aspects of the Generation AOF Contract need review and possible modification. As indicated above, CRC is quite willing to join Western and the other parties of the Generation AOF Contract to conduct such a review on a parallel but *separate* track with development of the Contract Extension. We welcome your clarification that it is not Western’s intention to try to amend the Generation AOF Contract by way of the Contract

Extension. Clearly, the Generation AOF Contract needs to be amended by a writing signed by all of its parties and not by the individual contract extensions. It is important to us that the Contract Extension not be construed as somehow modifying the terms of the Generation AOF Contract. To prevent that possibility, we need a substantive statement in the Contract Extension to that effect. Thus, we request that the Contract Extension contain a new section, designated section 13 (present sections 14 and 15 would be renumbered), to read as follows:

“13. Nothing in this Amendment No. 1 to Contract No. 87-BCA-10086 shall be construed as modifying any of the provisions of Western’s Advancement of Funds Contract No. 98-DSR-10870.”

6. OTHER PROVISIONS OF THE CONTRACT EXTENSION

a. PREAMBLE.

In 2001, the statutory name of CRC became “Colorado River Commission of Nevada.” The additional “of Nevada” should be included in CRC’s name in the Contract Extension and other Western documents referring to our agency. We have also placed a comma between “Act” and “dated” in the reference to the Consolidated Parker Dam Power Project and Davis Dam Project Act.

b. EXPLANATORY RECITALS.

(1) In subsection 2.4, the phrase “advance funding to pay for Western and Bureau of Reclamation costs associated with PDP firm electric service” should be revised, for the reasons discussed in paragraph 1 above, to more simply and precisely refer to “prepayment for PDP firm electric service as provided in section 6.”

(2) In subsection 2.5, the phrase “advance funding” should similarly be revised to read “prepayment for PDP firm electric service.”

(3) In subsection 2.6, the internal reference to “Section 8 of this Amendment” should be revised to refer to Section 9. There is no section 8 in the October 6, 2003, draft of the Contract Extension, so section 9 and onward need to be renumbered.

c. AMENDMENT OF SUBSECTION 3.1

The full text of the subsection should be set out with the changed year.

d. **AMENDMENT OF SUBSECTIONS 5.1 AND 5.5**

The entire text of subsection 5.1 should be given. Also, the reference to the second subsection being amended should be "5.5" and not "5.4."

e. **TERM OF THE CONTRACT AMENDMENT; EFFECTIVE DATES**

This provision should be expanded to provide effective dates for amended section 6 of the P-DP Electric Service Contract and for Exhibit A-1, and also provide for the transitory billing that effects the Payment Shift. The section could be divided into three subsections to read as follows:

"12.1 Term of Amendment: Except as provided in this section, this Amendment No. 1 shall become effective on the date it is executed by both Parties, and shall remain in effect and terminate concurrently with termination of the Original Contract, as amended.

12.2 Effective Date of Section 6: Section 6 of this Contract Amendment shall become effective on the first day of the Federal fiscal year following the effective date of this Contract Amendment. The first bill issued under subsection 6.1 of the Original Contract, as amended by this Contract Amendment, must include charges for electric service provided during the months of September, October and November.

12.3 Effective Date of Exhibit A-1: Exhibit A-1 shall become effective on October 1, 2008."

f. **EXHIBIT A-1**

The kilowatts shown for points of delivery in paragraphs 2.2.1 and 2.2.2 are erroneous. We will furnish the corrected numbers in a redline version of the Contract Extension that we would like to provide following our meeting in early November.

Sincerely,



George M. Caan
Executive Director

xc: Tyler Carlson, Tony Montoya-WAPA
FES Contractors (by E-mail)