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COLORADO RIVER COMMISSION
OF NEVADA

February 9, 2004

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

Re: Comments on Prototype Revision 2 of Amendment No. 1 to the Parker-Davis Project firm electric service contracts.

Dear Jean:

Prototype Revision 2, dated January 16, 2004 ("PR2"), together with the assurances Western gave at the customers' meeting of that date, appears to have resolved all but one of the major issues raised by proposed Amendment No. 1 to the Parker-Davis Project firm electric service contracts (the "Contract Amendment"). The outstanding issue concerns section 12 of the Contract Amendment, which seeks to add a new provision to the original contract, entitled "Transfer of Interest in Contract" ("TOIC"). As you know, the versions of this provision in prototype revisions 1 and 2, as well as language hastily floated at the customers' meeting, generated grave concern among the contractors.

In our previous comments we have emphasized the enormous importance of the federal hydropower allocation to Western's customers, including the State of Nevada; and it is well understood that much of the value of this resource lies in its reliability. Power users, as well as lending agencies and bond trustees, cannot count on this resource, as indeed they must, if its allocation is subject to challenge upon the occurrence of a potentially unlimited and unknowable universe of events, as it would be under proposed section 12. For this reason, any provision of the contract that allows for a reduction or elimination of all or a portion of the contractor's allocation—whether called an "adjustment" or a "conformance"—must be clearly warranted by some problem *applicable to the particular contractor* and drafted with precision and clarity to address the specific problem. The PR2 version of section 12 fails to do this.

First, we have yet to hear an explanation of why section 12 is needed in all contracts when it appears that Western is trying to address specific problems related to a very small number of contractors. Certainly, CRC's customers, commissioners and others vitally interested in Nevada's share of federal hydropower resources will want a clear, well-articulated and persuasive justification

for placing such a destabilizing provision in Western's contract with the State of Nevada. If there is a problem related to Nevada that this provision seeks to address, that problem should be fully made known to us and resolved through immediate and thorough discussions at all appropriate levels of Western, and not through a generalized provision that unnecessarily threatens everyone's allocation.

Second, whatever the purpose of section 12, the language proposed by Western is extremely vague and open-ended. Changing "adjust" to "conform" or adding the word "reasonably" does not alter the basic thrust of the provision, which is the possible disentanglement of a contractor of all or a portion of its allocation triggered by an *open-ended* class of events. In fact, in the PR2 version, the class of triggering events is actually unspecified. We are left to guess what conditions 1 through 5 are parts or examples of. We know they are parts or examples of something because they are introduced by the phrase "including, but not limited to." Are they examples of changes in the contractor's organizational structure? "Organization member status," as one of your slides suggests? Or generally changes in the contractor's legal status? Whatever the class or universe of events intended, the phrase "including, but not limited to" provides unlimited and unknown triggers for possible disentanglement which the contractors cannot predict, plan for or avoid. Moreover, there is no mention of what "conforming" might involve; no mention of any protective process such as there is for withdrawable power. This vague and open-ended approach to disentanglement, that could be made to reach well beyond legitimate federal interests, makes what is supposed to be a firm resource uncertain at best and fraught with contention and possible litigation at worst. This is untenable and unfair, and Nevada cannot support it.

As you know, CRC and many of the contractors involved in the January 16 meeting worked in a spirit of accommodation and compromise to develop the language of a TOIC provision which we could support in place of the CRSP version, assuming a TOIC provision is necessary in our Contract Amendments in the first place. We believe a substantial consensus has formed around the following language:

In addition to the provisions of Section 37 of the General Power Contract Provisions and notwithstanding any other provision of the contract to the contrary, Western's Administrator reserves the right to reexamine and adjust Western's firm electric service obligations under this contract as the Administrator deems reasonably appropriate, if, where applicable, the Contractor's contractual obligation to supply electricity to a preference entity or preference entities after execution of this Contract Amendment is materially diminished as a result of a change in the Contractor's status by reason of: (1) the Contractor's merger with another organization, (2) its acquisition of or being acquired by another organization, (3) its creating a new organizational entity from an existing one, (4) joining or withdrawing from or contractually restructuring its membership in a membership-based power supply organization, or (5) if the Contractor is a membership-based power supply entity (such as a generation and transmission cooperative), terminating its contractual relationship with one or more members from its membership organization resulting

in a significant reduction in remaining load measured against the criteria used by the Administrator in approving the Contractor's allocation.

This language circumscribes a defined universe of specific "triggers" that are known from the start and, thus, can be planned for or avoided. We are not left to wondering what other triggers of disentitlement might be made to jeopardize our power allocations. We believe this language fully addresses the particular problems Western has described to us as necessitating a TOIC provision, without unduly exposing the contractors' allocations to uncertainty or the severe risk of disentitlement. And, unlike the prototype versions, this version appears to enjoy substantial acceptance among the P-DP contractors. For its part, Nevada can support this language.

If Western cannot accept this "consensus version" of the TOIC provision, then Nevada renews its call for the CRSP version, again assuming a TOIC provision is shown to be necessary in its Contract Amendment in the first place. We have explained the substantial problems we have with the prototype versions that make them unacceptable to Nevada. We have heard no explanation—not even from Western—as to why the CRSP version would not work in the Parker-Davis Contract Amendments. If the specific problems of a particular customer require a more tailored treatment of the TOIC provision, then the necessary customized version of the provision should be placed in *that* customer's contract, not in Nevada's. The CRSP version has been sanctioned by Western and accepted by the CRSP customers. Some experience with it has been gained in the several years it has been in use, and its adoption across projects would offer consistency in interpretation and results. Moreover, we believe it is favored overwhelmingly by Western's Parker-Davis customers—if the consensus version cannot be offered to us. We ask Western to give the consensus version its most careful and favorable consideration and to resolve this one remaining issue within the same framework of customer discussion and consensus that has served your remarketing process so successfully.

Sincerely,



George M. Caan
Executive Director

GMC/GAL

Cc: Tyler Carlson
Tony Montoya
FES Contractors (by E-mail)