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MEMORANDUM

DSW REGIONAL OFFICE OFFICIAL FILE COPY		
Date	Initial	Code
	AUG 16 2004	
8/25/04	ASL	G6000
		G6200
		G6214

TO: Jean Gray, Assistant Regional Manager for Power Marketing, Desert Southwest Customer Service Region, Western Area Power Administration

FROM: Robert S. Lynch 

DATE: August 13, 2004

SUBJECT: Comments on the June 30, 2004 proposed version of Section 12 of the Parker-Davis Project Firm Electric Service Contract Extension Amendments entitled "Review and Adjustment of Federal Power Allocation", forwarded with your memorandum of July 16, 2004

With this memorandum, I am submitted a "strike and add" version of your proposal for Section 12 showing the specific language that I believe needs to change in order to clarify intent and ensure that the provision is workable. You will note that these suggestions are just slightly different than the ones I put in my comments on the General Power Marketing Provisions (GPCP). On reflection, I believe a few of the editorial suggestions I made in those comments need not be considered here.

Having said that, let me briefly summarize the reasons for the suggested amendments in the attached "strike and add" version.

In subsection 12.1, I have suggested adding a reference to actions taken after execution of the amendment as being subject to the Administrator's determination. It is clear that subsection 12.2 operates prospectively. It should be clear that subsection 12.1

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does also. I have also altered the reference to preference law because it is an entitlement to preference not an actual preference that is, in fact, a contractor's "status" in this subsection. I would note that this provision does not work in any contract executed with a non-preference entity and thus, this exact language may not work in a different context, including a GPCP.

Subsection 12.3. I have deleted language in lines 2 and 4 that I believe make the provision vague and troublesome. I have inserted a trigger on line 3 that I believe helps make this notice provision clear and workable. I hope you agree.

In subsection 12.4, I have altered the notice mechanism for Western because the request for reconsideration to the Administrator is keyed to "receipt" of notice. Thus, the timeframe in the giving of the notice must also be keyed to that same event to make things work. I have also changed the timeframe so as to allow 60 days for a contractor to request reconsideration because additional time for preparation may bring out factors that allow matters like this to be resolved and benefit the process. Finally, I have noted that any final decision by the Administrator will include the effective date of that action.

I believe that all these changes clarify the provision and make it easier to understand and easier for your contractors to deal with it in the future. I also believe that these changes improve the potential administration of this provision and thus benefit Western as well.

I am still troubled by the inclusion of subsection 12.1 from the standpoint of its underpinning under legal authorities granted Western. I am in the process of preparing a memorandum about the status of Reclamation law on this subject and will send it to you as soon as I have it. The fact that I have attempted to clarify the language should not, in any event, indicate that I have abandoned my previously expressed concerns on this subject.

Thank you for the opportunity to comment again on this provision. Hopefully, we are drawing near to the time when we can complete this process.

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RSL:psr

cc: Mike Hacskaylo, Administrator
Tyler Carlson, Regional Manager
IEDA Presidents/Chairmen and Managers
Robert Walker, City of Needles
George M. Caan, Colorado River Commission of Nevada
Frank Barbera, Imperial Irrigation District
Orlando B. Foote, Esq.
Glenn O. Steiger, P.E., General Manager, IID Energy
Charles Reinhold, Electric Resource Strategies

REVIEW AND ADJUSTMENT OF FEDERAL POWER ALLOCATION
DSW March 31, 2004 version
Conformed to GPCP group version for customer review.
Rev. 6/30/2004 with RSL Rev. 8/13/2004

12. **Review and Adjustment of Federal Power Allocation:**

12.1 If the Administrator of Western determines that actions taken by the Contractor, after the date of execution of this Amendment, have abrogated the Contractor's status as an entity entitled to with preference under Reclamation Law to purchase Federal hydropower, then the Administrator may take appropriate action, which may include termination of this Contract.

12.2 Western's Administrator also reserves the right to adjust Western's firm electric service obligations under this Contract as he or she deems appropriate, if the Contractor's status, as of the date of execution of this Amendment, changes in a manner that results in a change in the beneficiaries of the preference allocation, including but not limited to: (1) merging with, acquiring, or being acquired by another entity; (2) creating a new entity from an existing one; (3) joining or withdrawing from a member-based power supply entity; (4) if the Contractor is a member-based power supply entity, losing one or more members; or (5) selling, leasing, or otherwise disposing of its, or a member's, electric distribution system.

12.3 The Contractor shall give Western written notice prior to implementing any changes ~~that may be covered by Section 12.2~~. Such notice shall be provided at least 120 days in advance of proposed implementation of any such change ~~or as soon as the Contractor becomes aware of the proposed change~~. Western will respond in writing within 90 days of receipt of such notice, indicating whether the Administrator intends to take action.

12.4 In any case in which the Administrator determines to take action because the Contractor's status will change or has changed in a manner addressed in subsections 12.1 and/or 12.2, Western will notify the Contractor in writing of the Administrator's intended action(s) and the reasons for taking the intended action(s), implementation of which shall be no earlier than 60 days from the Contractor's receipt of such notice ~~at least 30 days prior to implementation of such action~~. If the Contractor disagrees with the Administrator's determination, the Contractor may request reconsideration from the Administrator. Requests for reconsideration to the Administrator shall be made in writing, and must be received by the Administrator within ~~60~~30 days of the Contractor's receipt of the notice from the Administrator. The Administrator will provide the Contractor with written notice of Western's final decision within 30 days of receipt of the request for reconsideration, including the effective date thereof.