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COLORADO RIVER COMMISSION
OF NEVADA

November 21, 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

Re: First Supplemental 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:

Attached is a "redline" version of Western's proposed Amendment No. 1 of the Parker-Davis Project ("P-DP") firm electric service ("FES") contracts ("Contract Extension" or "Contract Amendment"), illustrating revisions proposed by the Colorado River Commission of Nevada ("CRC") in its comments dated October 23, 2003. The redline is based on Western's October 6, 2003, proposed Amendment No. 1 of Contract No. 87-BCA-10086 between Western and the CRC. We thought it would be helpful at this point to offer a "generic" redline version, that is, one containing only revisions that might be of interest to the other firm electric service contractors. We will provide a redline specific to CRC before December 8, 2003. In the meantime, CRC hopes the attached "generic" redline will encourage further and broader discussion of the provisions of the proposed Contract Amendment and serve as a springboard for additional responses by Western. To this end, we ask that you make these comments and the attached redline available on the Desert Southwest Region website.

The attached redline version of the Contract Amendment modifies or expands on CRC's October 23, 2003, comments in the following respects:

1. **PROPOSED SUBSECTION 6.2.**

CRC agrees with Western's proposal for a two-month transition to prepayment for electric service as discussed at the customers' meeting on November 4, 2003, and that the appropriate transitory provision should appear within the amended section 6. The redline illustrates our understanding of how the transition would be accomplished in bills issued on September 1,

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<http://www.crc.nv.gov>

2004, and October 1, 2004.

2. PROPOSED SECTION 11.

Articles 20 through 30 (the "Facilities Provisions") of the General Power Contract Provisions ("GPCPs") by their terms appear to relate to "facilities, construction, and installation by the Contractor *pursuant to the contract.*" (Emphasis added.) Since the design, construction and installation of facilities are usually accomplished pursuant to contracts other than a power delivery contract, we feel the Facilities Provisions should be made inapplicable to the P-DP FES Contract. Western apparently agreed with this analysis when it expressly made those articles inapplicable in its amendment of the Salt Lake City Area Integrated Projects ("SLCA/IP") power delivery contract. See subsection 13.1 of Amendment No. 5, dated September 9, 1999.

Subsection 13.2 of Amendment No. 5 of the SLCA/IP power contracts also provided for complying with the notice requirements of Article 39 of the GPCPs through telecopy or facsimile transmission and, for certain communications between operating personnel, by way of e-mail. CRC proposes that a similar provision be added to the P-DP Contract Amendment.

3. PROPOSED SECTION 16.

According to the introductory sentence of Section 16, Western "may" provide excess energy, among other products and services, to the Contractor "as determined by Western." Subsection 16.1 reiterates that "Excess Energy . . . may be offered to the Contractor, at Western's discretion . . ." This permissive language is inconsistent with the requirement for a first offer of excess capacity and energy to the FES Contractors in subsection 11.14 of Western's P-DP Advancement of Funds Contract No. 98-DSR-10870 (the "Generation AOF Contract"). Subsection 11.14 provides that once Western has determined that excess capacity or energy is available, it "shall first offer that capacity or energy to those Firm Electric Service Contractors under the terms and conditions provided in those contracts." The provision in subsection 5.2 of the FES Contract that "[t]he Monthly Obligations may be increased from time to time at Western's discretion, if short-term conditions allow" cannot be construed to make Western's later promise of a right of first refusal in the Generation AOF Contract meaningless. Western did exercise its discretion under subsection 5.2 of the FES Contract when it agreed to the right of first offer in subsection 11.14 of the Generation AOF Contract. This is consistent with Western's position in its extension of the SLCA/IP power contracts in 1999, where Western agreed to a provision that closely tracks the language of subsection 11.14. See paragraph 5.1.5 of Amendment No. 5, dated September 9, 1999.

The right of first offer of excess capacity or energy is important to CRC's customers, and we understand that it is no less important to other FES Contractors. CRC proposes that Section 16 be revised, as illustrated in the redline, to clarify the right of first refusal to excess capacity or energy the FES Contractors already have.

4. NO EFFECT ON THE GENERATION AOF CONTRACT.

In its comments of October 23, 2003, CRC expressed concern that Amendment No. 1 of the FES Contracts should not be construed as somehow modifying the terms of the Generation AOF Contract, and we proposed adding a substantive provision in the Contract Amendment to that effect. You have repeatedly assured us on the record that it is not Western's intention to amend the Generation AOF Contract by implication or otherwise by way of the Contract Extension. We trust your assurance and withdraw our proposal for a "no effects" provision as unnecessary. CRC strongly agrees with Western's position that changes to the multi-lateral Generation AOF Contract should only be made directly and expressly in an amendment to that contract signed by all its Parties, and not indirectly or implicitly by way of individual amendments to the bi-lateral electric service contracts. CRC reiterates its willingness to join Western and the other parties of the Generation AOF Contract in conducting a thorough review of its provisions.

5. TERM OF THE CONTRACT AMENDMENT; EFFECTIVE DATES

In the attached redline, CRC has revised its proposed subsection 12.2 of the Contract Amendment, regarding the effective date of section 6. It appears that for most, if not all, FES Contractors, the "first day of the Federal fiscal year following the effective date of this Amendment" will be October 1, 2004. We propose that subsection 12.2 give October 1, 2004, as the effective date of section 6, with the exception that for purposes of issuing the transitory September 1, 2004, bill, the section operate as of September 1, 2004. Western can provide different effective dates for those entities executing after that date.

Thank you again, Jean, for continuing to make yourself available to discuss various aspects the Contract Amendment.

Sincerely,



George M. Caan
Executive Director

Attachment

GMC/GAL

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



**United States
Department of Energy**

**WESTERN AREA
POWER ADMINISTRATION**

**Desert Southwest
Regional Office**

CONTRACT

AMENDMENT NO. 1

TO

[INTERAGENCY AGREEMENT] CONTRACT NO. _____

BETWEEN

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Regional Office
Parker-Davis Project

AND

[CONTRACTOR]

FOR

ELECTRIC SERVICE

AMENDMENT NO. 1

TO

[INTERAGENCY AGREEMENT] CONTRACT NO. _____

BETWEEN

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Regional Office
Parker-Davis Project

AND

[CONTRACTOR]

FOR

ELECTRIC SERVICE

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- Deleted: (New Title: Advance . ¶ Funding, Payment, and Schedule of Rates)
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AMENDMENT NO. 1

TO

[INTERAGENCY AGREEMENT] CONTRACT NO. _____

BETWEEN

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Regional Office

AND

[CONTRACTOR]

FOR

ELECTRIC SERVICE

1. **PREAMBLE:** This Contract Amendment No. 1 ("Amendment") is made this ____ day of _____, 2004, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388); the Act of March 4, 1921 (41 Stat. 1404, 43 U.S.C. § 395), popularly referred to as the Contributed Funds Act; the Interior Department Appropriation Act for 1928, Act of January 12, 1927 (44 Stat. 934); the Reclamation Project Act of 1939, dated August 4, 1939 (53 Stat. 1187, 43 U.S.C. § 485); the Consolidated Parker Dam Power Project and Davis Dam Project Act, dated May 28, 1954 (68 Stat. 143); the Department of Energy Organization Act, Act of August 4, 1977 (91 Stat. 565, 42 U.S.C. § 7101); the Money and Finance Act, commonly referred to as the Economy Act, dated September 13, 1982 (Public Law 97-258); the Energy Policy Act of 1992, dated October 24, 1992 (Public Law 102-486); 31 U.S.C. § 1535, and acts amendatory or supplementary to the forgoing Acts, between the UNITED STATES OF AMERICA, Department of Energy, acting by and through the Western Area Power Administration ("Western"), and

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_____ (“Contractor”) as part of Contract No. _____ (“Original Contract”), as may be amended, pursuant to the same authorities as the Original Contract, and subject to all of the provisions of the Original Contract, except as herein amended, each of which may be referred to herein individually as “Party” and collectively as “Parties.”

2. **EXPLANATORY RECITALS:**

2.1 Western and Contractor entered into the Original Contract for the sale of long-term firm electric service, dated _____, pursuant to Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984; corrections, 50 FR 7823, February 26, 1985) and Final Allocation Criteria and Allocation of Capacity and Associated Energy from the Parker-Davis Project (52 FR 3833, July 29, 1987).

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2.2 Western adopted the Energy Planning and Management Program (“EPAMP”), effective November 20, 1995, which consisted of two components: 1) a requirement that all Parker-Davis Project (“PDP”) firm electric service contractors prepare integrated resource plans (“IRP”); and 2) a Power Marketing Initiative (“PMI”) under which Western may extend a portion of Federal resource commitments to its existing contractors.

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2.3 In the Federal Register Notice (67 FR 51580), dated August 8, 2002 (“FRN”), Western proposed application of the PMI to the PDP, and the public was given opportunities to discuss and comment on Western’s proposal.

2.4 After evaluating all comments received, Western announced, in the Federal Register (68 FR 23709), dated May 5, 2003 (“Final FRN”), its decision to extend contracts to PDP firm electric service contractors for twenty (20) years, beginning

October 1, 2008, and its decision to require advance payment for PDP firm electric service as provided in section 6 of this Amendment.

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2.5 The Parties now desire to implement the results of the Final FRN, for application of the EPAMP PMI, advance payment for PDP firm electric service as provided in section 6 of this Amendment, and to make conforming modifications, including extension of the Original Contract through September 30, 2028, as provided in this Amendment.

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2.6 Western desires to implement the provisions of this Amendment according to the effective dates set forth in Section 12 of this Amendment.

Deleted: upon execution by the Parties, except that modification of the current Contract Rate of Delivery (CROD), as set forth in Exhibit A-1, attached hereto, will not become effective until October 1, 2008, as provided for

3. **AGREEMENT:** In consideration of the foregoing recitals and the mutual covenants contained herein, the Parties agree to the provisions, terms and conditions set forth in this Amendment.

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4. **MODIFICATION OF SUBSECTION 3.1 OF THE ORIGINAL CONTRACT**

(“TERM OF CONTRACT”): Subsection 3.1 of the Original Contract is hereby amended to read as follows:

Deleted: amended to extend the term to September 30, 2028 by the deletion of the termination year “2008” and the substitution of the termination year “2028” therefore.

3.1 This Contract shall become effective on March 1, 1988, and, subject to prior termination as otherwise provided in this Contract, shall remain in effect until midnight, Mountain Standard Time, September 30, 2028.

5. **MODIFICATION OF SUBSECTIONS 5.1 AND 5.5 OF THE ORIGINAL CONTRACT (“WESTERN’S ENERGY AND CAPACITY OBLIGATIONS” AND “POINT(S) OF DELIVERY, VOLTAGE(S), AND LOSS ADJUSTMENTS,”**

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RESPECTIVELY.): Subsections 5.1 and 5.5 of the Original Contract are hereby amended to read as follows:

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5.1 Western’s Energy and Capacity Obligations: Western, pursuant to the

Deleted: Subsections 5.1.1 and 5.1.2 of Section 5 of the Original Contract are deleted in their entirety and replaced by the following:

terms and conditions set forth herein, and within the available capacity of substation and transmission facilities to deliver withdrawable and nonwithdrawable firm electric service at specifically designated point(s) of delivery, will furnish electric service to the Contractor up to the Contract Rate of Delivery and Monthly Energy obligations up to the Seasonal Energy obligations.

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5.1.1 The maximum aggregate rate of delivery for all points of delivery in any monthly billing period shall not exceed the CROD established for that season. The CROD will be available in any hour within the billing period. Western's seasonal CROD to the Contractor for withdrawable and nonwithdrawable firm capacity shall be as set forth in Exhibits A and A-1 hereto.

5.1.2 Western's Seasonal Energy: Obligations to the Contractor shall be equal to the product of the Contractor's CROD multiplied by 3,441 kWh per kW in the Summer Season and the product of the Contractor's CROD multiplied by 1,703 kWh per kW in the Winter Season and shall be as set forth in Exhibit A hereto. Except as otherwise agreed by the Parties in writing, the Contractor may not transfer energy from season to season.

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5.5 Point(s) of Delivery, Voltage(s), and Loss Adjustments: Electric service furnished to the Contractor will be delivered at the point(s) and voltage(s) set forth in Exhibit B attached hereto. Any transmission costs and associated losses incurred to deliver said electric service to the PDP point(s) of delivery described in Exhibit B shall be the responsibility of Western. Any transmission costs and associated losses incurred to deliver electric service beyond the PDP point(s) of delivery to the point(s) at which the facilities of the Contractor or the Contractor's transmission provider are connected to the facilities of Western shall be the responsibility of the Contractor. If Western determines

Deleted: 5.2 . Subsection 5.4 of Section 5 of the Original Contract is deleted in its entirety and replaced by the following:¶
"5.4

that additional facilities are necessary to deliver electric service beyond the PDP point(s) of delivery to the point at which the facilities of the Contractor or the Contractor's transmission provider are connected to the facilities of Western, the Contractor shall pay a monthly charge to Western for capacity reserved in such facilities as specified in an exhibit made a part of this Contract. Western may waive the monthly charge provided that the Contractor or the Contractor's transmission provider pays a monthly interconnection charge for the use of such facilities.

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6. **MODIFICATION OF SECTION 6 OF THE ORIGINAL CONTRACT**

("BILLINGS, PAYMENT, AND SCHEDULE OF RATES"): Section 6 of the Original Contract is hereby amended to read as follows:

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

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6.1 Except as provided in subsection 6.2, Western shall issue to the Contractor, in the month prior to the month the electric service is to be received (i.e., in advance of service), bills for electric service based on the capacity and energy shown in Exhibit A or Exhibit A-1, as the case may be. The Contractor shall pay for the 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.

Deleted: **Advance Funding:** 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 PDP electric service as determined by the rates process. The Contractor shall pay no more through advance funding than they otherwise would pay through rates.

6.2 The bill issued pursuant to subsection 6.1 on or about September 1, 2004, must include charges for electric service furnished during August 2004 and to be furnished during October 2004. The bill issued pursuant to subsection 6.1 on or about

Deleted: 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.¶
6.3 . The rate methodology, charges, and conditions of service, shall be as set forth in the current PDP Rate Schedule, attached hereto and made a part hereof, or any superseding rate schedule.¶
6.4 . Billing and payment terms and conditions to pay for firming excess energy shall be as set forth in a separate agreement, pursuant to Section 16 herein."

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October 1, 2004, must include charges for electric service furnished in September 2004 and to be furnished in November 2004.

6.3 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.

7. **MODIFICATION OF SECTION 10 OF THE ORIGINAL CONTRACT**

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(“CONSERVATION AND RENEWABLE ENERGY PROGRAM”): Section 10 of the Original Contract is hereby amended to read as follows:

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10. **INTEGRATED RESOURCE PLANS AND SMALL CUSTOMER PLANS:**

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10.1 The Contractor shall comply with the Integrated Resource Plan (“IRP”) or Small Customer Plan requirements, as applicable, in accordance with the Energy Planning and Management Program (“EPAMP”). EPAMP requires purchasers of Western’s electric power services to institute integrated resource planning, which is a planning process for new energy resources that evaluates the full range of energy conservation and energy efficiency alternatives.

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10.2 Western shall administer the IRP or Small Customer Plan requirements, as applicable, in accordance with the EPAMP.

10.3 Failure to comply with the IRP or Small Customer Plan requirements, after exhaustion of all appeals, will result in the application of penalties as specified in the EPAMP Federal Register Notice (65 FR 16801), dated March 30, 2000.

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10.4 In the event that Western, or any successor agency, shall promulgate changes to the IRP portion of the EPAMP following its initial adoption as published in the Federal Register at 60 FR 54151, dated October 20, 1995, the

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Contractor, by written notice to the Contracting Officer within ninety (90) days after the effective date of an EPAMP change, may elect to terminate this Contract. The termination shall be effective one (1) year from the date of receipt of the notice by Western.

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8. **MODIFICATION OF SECTION 11 OF THE ORIGINAL CONTRACT**

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(“GENERAL POWER CONTRACT PROVISIONS MADE PART OF CONTRACT”): Section 11 of the Original Contract is hereby amended to read as follows:

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11. **GENERAL POWER CONTRACT PROVISIONS MADE A PART OF CONTRACT:**

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11.1 The General Power Contract Provisions (“GPCPs”) effective July 10, 1998, attached hereto, are hereby made a part of this Contract the same as if they had been expressly set forth herein; provided, that Subarticle 13.1 and Articles 20 through 30 shall not be applicable hereto; and provided further, that if the Articles in the GPCPs are in conflict with this Contract, the provisions of this Contract shall control.

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11.2 In addition to the forms of notice specified in Article 39 of the GPCPs effective July 10, 1998, for purposes of complying with the notice requirements of this Contract, either the Contractor or Western may accomplish such notice by telecopy or facsimile transmission. Communications related to scheduling provided from and to operating personnel of either Party may be accomplished by electronic mail. Where telecopy, facsimile, or electronic mail is utilized, the sending Party shall keep a contemporaneous record of such communications.

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9. **MODIFICATION OF SECTION 12 OF THE ORIGINAL CONTRACT**

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(**“EXHIBITS MADE PART OF CONTRACT”**): Section 12 of the Original Contract

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is hereby amended to read as follows:

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12. **EXHIBITS MADE A PART OF CONTRACT:** Inasmuch as the

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Seasonal and Monthly Energy obligations, NERC Holidays, Off-Peak Hours, point(s) of delivery, point(s) of measurement, ownership of metering equipment, delivery and metering voltages and loss adjustments, and metering and associated responsibilities may change during the term of this Contract, they will be set forth in exhibits. Exhibits A, A-1, and B, as applicable, and others, which may be formulated or modified from time to time, are attached to this Contract and each is incorporated by reference as if fully set forth herein.

12.1 Contractor’s current Exhibit A, Monthly Delivery Obligations, shall remain in effect, and may be revised from time to time, through September 30, 2008.

12.2 Exhibit A-1, Monthly Delivery Obligations, shall become effective October 1, 2008, and shall remain in effect, and may be revised from time to time, through September 30, 2028.

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Deleted: attached hereto,

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10. **ADDITION OF A NEW SECTION 15 TO THE ORIGINAL CONTRACT**

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(**“REPLACEMENT ADVANCES RECONCILIATION SURCHARGE”**): The Original Contract is hereby amended by adding thereto a new section, designated section 15, to read as follows:

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15. **REPLACEMENT ADVANCES RECONCILIATION SURCHARGE:**

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Contractors that are Party to Western's Advancement of Funds Contract No. 98-DSR-10870 and have their contractual entitlement to capacity and associated energy from the

PDP reduced due to conditions set forth in Contract No. 98-DSR-10870, are entitled to receive payments for undepreciated replacement advances as provided in that contract. Contractors with new PDP allocations or an increased entitlement to receive electric service shall pay a replacement advances reconciliation surcharge ("Surcharge"), calculated by Western as provided in Contract No. 98-DSR-10870. Western shall submit bills for and the Contractor shall pay the Surcharge until the Surcharge obligation has been satisfied. The Contractor may remit annual payments over a period of up to five (5) years. Upon request by the Contractor and agreement by Western, the Contractor shall remit annual payments over a period of less than five (5) years. Interest will be applied on the Surcharge amount at the then current United States Treasury rate, as adjusted from time to time, on the Contractor's declining balance until paid. If the Contractor fails or refuses for any reason to pay the Surcharge, together with interest, within sixty (60) days after the date it is due, the Contractor's new PDP allocation or increased entitlement to receive electric service shall be withdrawn.

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11. ADDITION OF A NEW SECTION 16 TO THE ORIGINAL CONTRACT

("EXCESS ENERGY"): The Original Contract is hereby amended by adding thereto a new section, designated section 16, to read as follows:

16. EXCESS ENERGY: Except as provided in subsection 16.1, Western may provide to Contractor, upon Contractor's request, the following services, if and when available, as determined by Western.

16.1 Excess Energy: If Western determines that monthly hydrology projections or operational changes show energy in sufficient quantities to be made available above that allocated to the Contractor by this Contract ("Excess Energy"), Western shall first offer a prorata share of the Excess Energy to the Contractor under the

terms and conditions provided in this Contract. Excess Energy is short-term interruptible energy. If the Contractor elects to purchase Excess Energy, Western will schedule Excess Energy on a monthly basis, up to the Contractor's CROD as set forth in Exhibit A or Exhibit A-1 of this Contract, as the case may be. Western shall submit bills and the Contractor shall pay for Excess Energy in accordance with Section 6 and with the rate schedule for Wholesale Firm Power Service, as may be revised from time to time.

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16.2 Excess Energy Banking: Excess Energy banking may be offered at the sole discretion of Western. If Excess Energy banking is available, receipt of Excess Energy may be deferred to another time period during the Federal fiscal year. The Contractor shall pay for all additional costs incurred, as determined by Western, in order to defer receipt of Excess Energy to another time period. At the end of the Federal fiscal year, any unused Excess Energy that has not been scheduled to the Contractor shall revert to Western.

16.3 Firming Energy: The Contractor may request Western to firm up Excess Energy. All costs associated with firming Excess Energy will be paid in advance by the Contractor. Billing and payment terms and conditions for firming Excess Energy shall be agreed to in advance by both Parties. Western shall be under no obligation to make firming purchases if sufficient funds have not been made available in advance by the Contractor.

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12. TERM OF THE CONTRACT AMENDMENT NO. 1; EFFECTIVE DATES:

12.1 Term of Contract Amendment No. 1: Except as provided in this section, this Contract 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.

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12.2 Effective Date of Section 6: Except as provided in this subsection, section 6 of this Amendment shall become effective on October 1, 2004. For the purpose of issuing the bill for electric service required on or about September 1, 2004, section 6 of this Amendment shall operate as of September 1, 2004.

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

14. **ORIGINAL CONTRACT TO REMAIN IN EFFECT:** Except as expressly modified by this Contract Amendment No. 1, the Original Contract shall remain in full force and effect.

Deleted: , and this Amendment No. 1 shall be subject to all provisions of the Original Contract.

15. **AUTHORITY TO EXECUTE:** Each individual signing this Amendment certifies that the Party represented has duly authorized such individual to execute this Amendment that binds and obligates the Party.

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The Parties have caused this Amendment No. 1 to Contract No. _____ to be

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executed the date first written above.

DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION

By _____

Jean Gray

Title Assistant Regional Manager

for Power Marketing

Address Desert Southwest Regional Office

P.O. Box 6457

Phoenix, AZ 85005-6457

[CONTRACTOR]

By _____

Title _____

Address _____

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