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**COLORADO RIVER COMMISSION**  
OF NEVADA

October 27, 2004

By Facsimile; Hardcopy to follow

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 September 27, 2004, version of proposed Section 12

Dear Jean:

Once again we appreciate you giving us an opportunity to comment on Western's latest revision of proposed Section 12, entitled "Review and Adjustment of Federal Power Allocation" and dated September 27, 2004. In this revision, Western has again considered its customers' comments and has incorporated many of their suggestions. We commend Western's policy and practice of open communication and listening carefully and thoughtfully to its customers' concerns.

It appears from recent letters posted on the Desert Southwest Region website that more attention needs to be focused on Section 12, including its legal underpinnings, before an executable version of the extension amendment can be offered. In its past comments on that section, CRC has strongly supported the call for a balance between Western's need for flexibility in these matters and the customers' need for contractual certainty. But in striking that balance, we have urged that any provision which allows for the reduction or elimination of a resource vital to the well-being of the people and economies served by Western's customers be narrowly and precisely drawn. Yes, compared to the original text of Section 12 offered by Western, we believe substantial progress has been made in this direction—and CRC said so in its last comments on the section. But despite that progress, the current language of proposed subsections 12.1 and 12.2 remains exceedingly broad and vague. We are told Western believes it does not have sufficient authority in law to handle the types of problems that have been cited to us as providing the impetus for that section. That puzzles us, because the cited problems, we understand, *were* resolved—apparently without the need for Western to seek additional authority from Congress, and obviously without recourse to a contractual provision like Section 12. Our continued unease, Jean, is that we are still very much uncertain as to what actions on our part may trigger proposed subsections 12.1 or 12.2, and as to what Western may or

may not do under them. In truth, were it not for our work on subsection 9.7, relating to power resales in Nevada, our unease would be enormously more troubling.

Because of that uncertainty, we indicated in our last comments that more needed to be done to safeguard the due process rights of the Contractors, and we are glad for the responsive revisions offered in the September 27 version and for your letter of October 5, 2004, in which Western assures the customers that “[a] Contractor’s right to seek judicial review of an Administrator’s decision is not waived and is not affected by either the language of Section 12.1 or Section 12.2.” We understand this point to be a major concern with many of the customers, as it is with us, and we believe considerable comfort and benefit to all of us could be achieved by placing this statement, or one substantially like it, in Section 12 itself. We would strongly urge Western to do that.

As you know, CRC promptly accepted Western’s invitation to the customers earlier this year “to discuss the consequences of a customer-proposed change prior to implementation” “in order to mitigate the uncertainty associated with implementing change.” The “change” we have discussed with you over the past few months is the same matter we raised in our public comments during the remarketing effort, namely, CRC’s renewal of its present contracts for the resale of Parker-Davis power to its customers in Nevada, which, as we pointed out, is required by Nevada law. We very much appreciate Western’s continued understanding and cooperation in helping us develop subsection 9.7, without which it would be deeply problematical for CRC to meet its statutory responsibilities in the face of the uncertainties raised by proposed Section 12.

The last version we have of the full contract extension amendment is labeled “PROTOTYPE Revised 3/31/04.” On December 4, 2003, CRC offered Western a redline version of Amendment No. 1 as it would apply specifically to its contract, No. 87-BCA-10086. One of the things this redline illustrated was that the numbering of sections within CRC’s specific contract differed in places from the numbering assumed by the prototype. We anticipate other such minor adjustments may need to be made to ensure an appropriate fit. I think you would agree, Jean, that apart from the current concern with Section 12 and our subsection 9.7, we need to carefully proof the complete text of the extension amendment as applied to our specific contract before an executable version is offered.

We note that there appears to be some misunderstanding about how the “payment shift” provided for in Section 6 of Amendment No. 1 relates to certain statements Western has made elsewhere concerning *mandatory* advance funding for *existing* Parker-Davis customers. CRC’s understanding is as follows. Section 6 of Amendment No. 1 represents a one-time, voluntary “payment shift” for power deliveries. With regard to advance funding for OM&R of project generation facilities, Western intends to meet its obligations under the present Advancement of Funds Contract (No. 98-DSR-10870) and we are prepared in good faith to discuss needed amendments to that contract with all its parties. Also, Western’s Administrator has recently assured the customers that the general power contract provisions will not contain a provision mandating

advance funding. CRC supports voluntary advance funding provided in contracts dealing with the particular facilities in question. If our understandings are in any way incorrect, please let us know.

Once again, we thank you, Jean, for so fully involving us in the preparation of the Parker-Davis Project Contract Extension Amendment. We appreciate the Administrator's assurance in his letter of October 19, 2004, that Tyler and his staff will continue to work with the customers to resolve their issues, and Tyler's recent communication in which he held open his willingness to continue to meet with the Parker-Davis customers to that end. CRC agrees it would be productive to schedule a meeting on Section 12 and the extension amendment after the present comments are due and published on your website, and we all have had a reasonable chance to consider them.

Sincerely,



George M. Caan  
Executive Director

GMC/GAL

Cc: Tyler Carlson  
Michael S. HacsKaylo  
FES Contractors (by E-mail)