

Meeting Notes
October 18, 2004, Customer Meeting
Western Area Power Administration
Lakewood, Colorado

At the request of several customers, Western Area Power Administration hosted a meeting at its office in Lakewood, Colorado, on October 18, 2004, at 1:00 p.m.

Attendees, in alphabetical order, were: Don Allen (Duncan & Allen), Stan Ashby, (Roosevelt Irrigation District), Tyler Carlson (Western), Jim Downing (Electrical District No. 8 and McMullen Valley Water Conservation and Drainage District), Bob Fullerton (Western), Mike Hacskaylo (Western), Doug Harness (Western), Liova Juarez (Western), R.D. Justice (Electrical District No. 7), Jay Moyes (Moyes Storey Ltd.), Ken Saline (K.R. Saline & Associates), Deborah Sliz (Morgan Meguire LLC), Jim Sweeney (Maricopa Water District), and Grant Ward (Electrical Districts 3 and 4). A copy of the attendance list is attached as Exhibit A.

Western opened the meeting by greeting the customers, their attorneys, consultant and lobbyist. A Western representative explained that Western representatives were present to listen and answer questions and that the comment period on section 12 of the Parker-Davis Project (PDP) contract was open through October 27, 2004. No decision had been made on when the PDP Firm Electric Service Contract Amendments would be made available for execution. A Western representative stated that notes of the meeting would be posted on the Desert Southwest Region's website.

The customers explained that they wanted to express their concern to Western on two issues: the *Review and Adjustment of Federal Power Allocations* contract language (section 12 of the draft PDP Firm Electric Service Contract and provision X of the draft General Power Contract Provisions (GPCPs)) and advancement of funds.

A customer representative explained that there was a fundamental disagreement among PDP customers on the timing of a meeting with Western. Some favored waiting until after Western made its decision on the two issues, others favored a meeting prior to the decision. A Western representative replied that this was not an issue for Western, that we were pleased to meet with customers.

A customer representative explained that they contacted their Congressional delegation because they had no sense of the timing of the Western decision and were concerned that their views would not be heard. A Western representative replied that Western never had any objection to a customer contacting members of Congress. Further, no decision would be made until after the close of the comment period on October 27, 2004, and full and fair consideration of comments.

Section 12 of the PDP Contract and Provision X of the GPCPs

A customer representative explained that they had met with many PDP customers over the course of the last few weeks and were representing a substantial contingent of PDP customers that were concerned about both GPCP provision X and section 12 language.

A customer representative explained that the issue was not process or a demand for a *Federal Register* process with regard to the GPCPs. Rather, there was a fundamental and deep concern by certain customers that section 12 and provision X were overreaching, unilateral, not businesslike, and exceeded the authority of Western's Administrator. The customers believe Western was able to handle issues of changes in allocations and preference status in the past without such contract language, so why did Western want this new language? A Western representative explained that Western wanted this language to deal with issues which might arise in the future, citing experience with the Navopache allocation when Tri-State G&T acquired Plains G&T, and more recently when some members of Central Montana G&T split and formed Southern Montana G&T. Western's sole purpose was to craft contract language allowing Western to take necessary administrative steps to preserve the integrity of the power marketing plan and the allocation to preference customers under Reclamation law. This issue is Western-wide and not specific to the Desert Southwest Region.

A customer representative explained that the contract provisions at issue provided no criteria for decision making; that the language created a negative implication that Western could make the decision and the customer would be forced to agree with it; and that a court would draw a negative implication that Western was correct. A customer representative explained that the contract language did not take the real world into account. A customer representative explained that a banker would read the contract and not loan money for agricultural operations because Western could change the allocation to the customer. A customer representative explained that this was government intrusion into local decision making, that a district should be free to make its own decisions about its structure. Another customer representative expressed concerns that this language would encourage "bounty hunters" who would try to undermine existing allocations. A customer representative explained that this language could not be "wordsmithed" to make it right. A customer representative explained that certain customer arrangements would not stand up to scrutiny under this contract language. The wisdom or risk of asking Congress for additional authority for Western to enforce the preference clause was discussed among customers, with no consensus.

Advancement of Funds Language

A customer representative presented a handout describing what the customer considered as the six types of PDP advance funding. A copy of the handout is attached as Exhibit B. The customer representative said Western did not ask for comments on the PDP advance funding in the *Federal Register* on the proposed PDP marketing plan, and therefore any claim that the PDP advance funding had been agreed to in the rulemaking process and could not be changed was wrong. The customer representative further asserted that

Western was “high-handed” and engaged in “sharp lawyering” on this issue and this was really disturbing. A customer representative explained that voluntary advance funding was acceptable and worked well.

Conclusion

After a break, a Western representative explained that Western had no interest in involving itself in internal customer issues through application of section 12 and provision X. Western’s sole purpose was to craft contract language allowing Western to take necessary administrative steps to preserve the integrity of the power marketing plan and the allocation to preference customers under Reclamation law.

A Western representative said that Western would carefully consider the customer concerns expressed at the meeting on section 12 and provision X. Western encouraged the customers to submit their comments to Western by October 27, 2004, as indicated in the October 5, 2004, letter to PDP customers. Due to the comments, and as indicated in that letter, Western will not send the PDP Firm Electric Service Contract Extension Amendment to customers for execution until these issues were dealt with. Western’s goal is not to reach complete agreement and make everyone happy. Rather, the contract extensions will be sent out when reasonable people agree with the resolution of the issues.

A Western representative explained that Western had communicated to its customers that it had withdrawn the advance funding provision from the draft GPCPs, and such a provision would not be included in Western’s draft Open Access Transmission Tariff revisions.

A Western representative explained that Western could not respond at this time to the PDP advance funding analysis (Exhibit B) presented at this meeting by a customer representative. Western would do so, and would increase its communication efforts to ensure that PDP customers had a thorough understanding of the advance funding program. Western would make revisions to the PDP advance funding language if warranted.

Several customer representatives stated that section 12 “needed to go away,” that advance funding should be taken off the table. A customer representative stated that section 12 could create an illusory contract. A customer representative stated that no one really wants this language, so is there a need for this?

The meeting ended at 3:25 p.m.

October 18, 2004
 Customer Meeting
 Western Area Power Administration
 Lakewood, Colorado

Name	Representing	Telephone No.
Mike Hauckamb	Western	720 962 7077
Doug Harness	Western	720-962-7020
Bob Fullerton	Western	720/962-7079
Deborah Sliz	Morgan McGuire	202-661-6192
Tyler CARLSON	WESTERN	602-352-2453
Jim Sweeney	Maecopa Water District	623-546-8266
JIM ROWALING	EDB & MVW EOD	928-859-3647
Grant Ward	ED3/ED4	520-424-3344
R.D. JUSTICE	ED 7	623-935-6253
Stan Ashby	RIO	623-386-2046
JAY MOYES	Moyes Stovey Ltd	602-604-2106
Ken Saline	K. R. Saline & Associates	480-610-8741
LIOVA JUAREZ	WESTERN	720-962-7010
DON ALLEN	(FOR VISITING DISTRICTS) JUNCAN + ALLEN	202-289-8400

Categories of Advance Funding Addressed By Western Area Power Administration

NAME	DESCRIPTION
Type 1 – Original/1995 - 1996 ^{1/}	Western's and Reclamation's <i>original</i> , voluntary P-D advance funding mechanism for funding operation, maintenance and capital improvements of the Parker-Davis generation facilities
Type 2 – Current/1998 ^{2/}	Voluntary <i>current</i> advance funding, commenced in 1998 under joint Reclamation/Western agreements for expenditures of Western and Reclamation relating to operation, maintenance and capital improvements of the Parker-Davis generation facilities
Type 3 – Proposed Existing Customer/Going Forward	Mandatory continued advance funding by existing P-D customers
Type 4(a) – Proposed New Customer/Catch-up	Mandatory catch-up advance funding for new P-D customers with a new PD power allocation, to equalize their responsibility for past and current advance funding
Type 4(b) – Proposed New Customer/Going Forward	Mandatory advance funding by new P-D customers with a new P-D power allocation
Type 5 – Proposed GPCP ^{3/}	Mandatory advance funding for virtually any activity or purpose (including generation and transmission) Western decides, with no outside oversight, as proposed in Western's Proposed General Power Contract Provisions (GPCP)
Type 6 – Proposed Prepayment	Mandatory one-time, one or two month prepayment by customers of a power bill, to enhance Western's working capital

^{1/} According to the 1998 AOF Agreement, these earlier agreements, entered into sometime in 1995 or 1996, included USBR Contract No. 6-CU-30-P1140 (also identified as Western Contract No. 96-DSR-10752), USBR Contract No. 6-CU-30-P1137 (also identified as Western Contract No. 96-DSR-10726) and, effective October 1, 1997, USBR Letter Agreement No. 8-CU-30-P1145 (also identified as Western Letter Agreement No. 97-DSR-10821)

^{2/} Advancement of Funds Contract for Parker-Davis Project Generation Facilities, among United States Department of the Interior Bureau of Reclamation (Contract No. 8-CU-30-P1148), United States Department of Energy Western Area power Administration (Contract No. 98-DSR-10870) and Certain Parker-Davis Firm Electric Service Contractors (AOF Agreement)

^{3/} See Section 13.5 of the Proposed GPCP Revisions, available at <http://www.wapa.gov/dsw/pwrmt/GPCP/GPCP.htm>.

Federal Register Notices Have Not “Locked In” Any Parker Davis Advance Funding Issues

FEDERAL REGISTER NOTICE	TYPE OF ADVANCE FUNDING ADDRESSED	RELEVANT TEXT IN FEDERAL REGISTER	RESULT
“Notice of proposal,” 67 <i>Federal Register</i> 51580 at 51581 (August 8, 2002)	Type 4(a) – Proposed New Customer/Catch-up	“As provided in the current P–DP Advancement of Funds contract, new customers will be required to reimburse existing customers for <i>undepreciated replacement advances</i> , to the extent existing customers’ allocations are reduced as a result of creating the resource pool.” (Emphasis supplied)	Proposes making only Type 4(b) advance funding mandatory. a
	Type 4(b) – Proposed New Customer/Going Forward	“ New customers who receive an allocation will also be required to participate in advance funding of Western’s and the Bureau of Reclamation’s <i>operation and maintenance expenses</i> .” (Emphasis supplied)	Proposes making only Type 4(a) advance funding mandatory. b
	Comment limitation (Limitation repeated at Customer Comment Forums)	Western is “... seeking comments regarding [1] the applicability of the PMI to P-DP, [2] the percentage of resources to be extended to existing customers, and [3] the size of the proposed resource pool.”	Western told customers it would not entertain comments on <i>any</i> type of advance funding proposal
“Notice of decision,” 68 <i>Fed. Reg.</i> 23709 at 23712 (May 5, 2003)	Type 3 – Proposed Existing Customer/Going Forward, plus Type 4 (a) and Type 4 (b)	“ <i>Background:</i> In the August 8, 2002, FRN (67 FR 51580), Western proposed that customers who receive an allocation will also be required to participate in advance funding of Western’s and the Bureau of Reclamation’s operation and maintenance expenses. “ <i>Comments and Discussion:</i> Western received no comments on this requirement, so advance funding will be included as a requirement in the [not <i>new</i>] contracts .” (Emphasis supplied)	1. Misrepresents contents of August 2002 Notice. 2. Fails to justify <i>any</i> decision on <i>any</i> type of advance funding. 2. Erroneously “ <i>decides</i> ” that Type 3 advance funding will be mandatory.

Apparently outstanding issues:

- Scope of advance funding
 - O&M only
 - Generation
 - Generation and transmission
 - New construction
 - Generator replacement
 - New transmission
- Conversion of advance funding from a voluntary to a mandatory program
- Standardization of advance funding as proposed in GPCP, or leaving advance funding to individual bilateral contract negotiations
- Possible inequities in catch-up payments
- Clearing up the notion that certain aspects of Parker-Davis advance funding are “locked down” and the implication that they therefore can not be addressed
- Erasing implication that the debate over advance funding because will somehow trigger a reopening of the Parker-Davis post 2008 allocations
- Clarification whether advance funding is “off the table” as far as GPCP is concerned