

# ARIZONA TRIBAL ENERGY ASSOCIATION

Sent Via E-mail to [warren@wapa.gov](mailto:warren@wapa.gov) and [loftinc@wapa.gov](mailto:loftinc@wapa.gov)

July 23, 2009

Brad Warren and Carol Loftin  
CRSP Management Center  
Western Area Power Administration  
P.O. Box 11606  
Salt Lake City, UT 84147-0606

## **RE: CRSP Step 2 Rate Increase**

Dear Mr. Warren and Ms. Loftin:

The Arizona Tribal Energy Association (ATEA) submits the following comments in relation to the CRSP rate increase scheduled to take effect October 1, 2009. These comments are submitted pursuant to Western's express allowance for the same by July 24, 2009 as stated at its June 25, 2009 customer meeting in Salt Lake City. ATEA currently includes the Tohono O'odham Utility Authority (TOUA), the Gila River Indian Community Utility Authority (GRICUA), Ak-Chin Energy Services (ACES), Aha Macav Power Service and the Yavapai-Apache Nation.

ATEA submitted formal comments at the first stage of the CRSP rate increase specifically disputing the continued inclusion of apportionment costs for unapproved or unidentified projects in the rate base but Western nevertheless included these charges in its rate submitted to FERC for approval. As a result, ATEA hereby again disputes this segment of the CRSP rate and is submitting this renewed statement of objection to the inclusion of these charges in the rate.

On June 19, 2009 FERC approved only those rates filed by Western in this matter, and certified by the Administrator, that represent the "lowest possible" charges to customers. It is ATEA's position that the currently approved rate does not meet that requirement as Western is only authorized to implement a rate increase that is justified by current hydrological, operating and power market projections. ATEA considers this to be the extent of Western's allowed speculation within the rate; as such, apportionment expenses for projects not formally approved or identified fall outside these parameters and should be excluded.

Such a rate basis is consistent with the provisions of the "Agreement on Colorado River Storage Project Power Repayment Studies" entered into by the Bureau of Reclamation and Western in 1983. The relevant portion of that Agreement specifically states that while projects in an "indefinite status" can be included as long as they do not "control" the rate:

"Participating projects or separable features thereof shall not be included in the rate setting years of the power repayment study unless a definite plan report is prepared, water rights are substantially acquired, environmental clearances are obtained and repayment contracts with water users are signed." [See Agreement, Paragraph 1].

The paragraph continues by noting that exceptions to this restriction can be made only for Indian projects, the Animas-La Plata project and where Congress has appropriated construction funds. This verbiage is consistent with FERC's requirement that Western not include project costs in any rate base for which Western cannot make a "good faith showing of a reasonable expectation that a project or separable feature thereof would be constructed." [See Agreement introduction.]

While it is ATEA's understanding that, pursuant to this Agreement, Western discontinued its practice of recovering for named projects not corresponding to these criteria, Western nevertheless continued thereafter to recover sums through customer rates for apportionment revenues without regard to any project authorization, identification or even conception. As a result of this practice, the total projected recovery from CRSP customers will exceed legitimate, authorized project repayment and expense obligations by an enormous margin.

ATEA does not consider this current "apportionment" segment of the proposed rate to be required by law, considers the practice contrary to the 1983 Agreement as such recovery is even less specific than including named projects lacking authorization and also considers it contrary to the public interest to require CRSP customers to pay into the Basin Fund any amounts not expressly required by the CRSP Act or other governing authority. ATEA disputes that the CRSP Act or other authority requires Western to so recover in the absence of a/any specified project/s, asserting that when the statute was enacted, Congress understood that funds generated through such a methodology were directly associated with specific projects or at least that the funds could be understood in relation to envisioned agricultural irrigation project development goals of the Basin states. As no projects can now be so associated and no new project proposals are anticipated or identified, funds generated through the current rate will not be applied to any statutorily authorized purpose; ATEA argues that they are therefore contrary to the intent of Congress in enacting the CRSP Act and cause the proposed rate to violate the "lowest possible" requirement.

Finally, ATEA asserts that this particular rate was enacted in violation of relevant public notice and comment requirements as the second step of the rate was not yet identified when Western filed for FERC approval and the second segment increase was also still

unknown when FERC issued the same. And although Western held a customer meeting at its Salt Lake City office on June 25, 2009, Western staff opened that meeting with an express disclaimer that it would only represent an informational discussion of the proposed rate and as such would not be part of any formal public process; while ATEA acknowledges that this meeting took place after FERC's June 19 action approving the rate, ATEA asserts that this only introduced additional procedural error since it was not possible for Western's Administrator to certify or for FERC to review and approve the second step as the "lowest possible rate" when none had yet been identified at the time the approval was extended.

Thank you for your attention to these remarks.

Sincerely,

*Leonard Gold*

Leonard Gold  
President