



AUGUSTINE BAND OF CAHUILLA INDIANS

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Tribal Chairperson: MaryAnn Green

Sent by e-mail to Post 2017BCP@wapa.gov

Mr. Darrick Moe
Western Area Power Administration
Desert Southwest Regional Manager
P.O. Box 6457
Phoenix, AZ 85005-6457

Re: Comments of the Augustine Band of Cahuilla Indians to the Federal Register Notice of October 30, 2012 Regarding Western Area Power Administration's Proposed Marketing Criteria – Post 2017 Boulder Canyon Project Resource Pool.

Dear Mr. Moe:

On behalf of the Augustine Band of Cahuilla Indians ("Tribe") I am submitting these comments in response to the Western Area Power Administration's ("Western") call for the same in its Federal Register Notice dated October 30, 2012 relating to electrical power marketing criteria for Post-2017 allocations (the "Marketing Criteria") from the Boulder Canyon Project ("BCP").

The Tribe appreciates Western's commitment to Indian tribal access to this important power resource, as well as the assistance and professionalism of Western's leadership, staff and representatives in regard to the public outreach process for the Post-2017 allocation of BCP power. These comments first address the Tribe's support for certain elements of the Marketing Criteria and then express our comments, questions, and concerns related to other elements of the Marketing Criteria as currently proposed.

I. Tribal Priority.

The Tribe supports Western's proposal to assign Indian tribes a first priority in the allocation sequence in the Marketing Criteria. Like many tribes in the BCP marketing area, the Augustine Band has never before been afforded the right to obtain electrical power from a federally managed hydropower project. Access to such resources is very valuable to us, as it will enable our Tribe and other tribes to meet the power needs of our tribal members and to maintain and grow our economies, improve government services, and enhance employment and the welfare of our members and of our employees many of whom come from neighboring non-Indian communities.

The Tribe also notes that Indian tribal priority is entirely consistent with documented Congressional intent contained in Congressional Reports and the Hoover Power Allocation Act of 2012.¹

2. Utility Status.

The Tribe also supports Western's application of its historic policy to allocate power from BCP to Indian tribes without regard to utility status. This is entirely consistent with Western's previous allocation of power from other projects within its management and regulatory jurisdiction,² and is fair and reasonable since most prospective new Indian tribal customers do not have existing utility status. To require Indian tribes to establish utility status before contracting for BCP power would create a huge impediment and add significant unnecessary expense to those tribes especially when nothing in the legislation or legislative record requires utility status for Indian tribes which have never received power from a federally-managed project.

3. Prohibition of Allocations of Less than 1 MW Without Aggregation.

The Marketing Criteria's setting of minimum allocations for new users at 1MW is confusing. The Tribe reads that criterion as requiring that all new user allocations must be at least 1 MW if not aggregated with other "partnered" new user allocations that collectively amount to at least 1MW. The Tribe is not aware of any justification from Western regarding setting such a minimum except for a general reference to convenience for Western in administering the provision of power. The minimum allocation requirement seems to penalize the smallest new customers, a group that is primarily made up of small tribes in the BCP service area.

In addition, the aggregation concept is vague and may be unworkable. Does western anticipate that tribes form a "collective" to meet the aggregated minimum? The Marketing Criteria are not specific regarding the consequences to good-faith aggregators should one or more of the "partners" default on their contract obligations to Western. Would the other non-defaulting "partners" lose their portions of the allocation?

Instead, the Tribe believes that Western has experience and already deals with smaller than 1 MW deliveries through its existing operating protocols with its current contractors. It is our understanding that BCP power is comprised of contingent capacity and associated power. In such cases, when there is a contract for a specified amount of power but water storage or other conditions prevent the generation and delivery of the full amount of contracted power, it is likely that the contractor/customer will receive less than the power for which they contracted. Western deals with those situations operationally through its "rounding" process. Could not that same or a similar operational protocol be established to deal with small Indian tribal contracts of less than 1 MW?

4. Public Process.

¹ See, e.g., respectively, House Report 112-159(1), July 20, 2011; Pub. L. 112-72.

² See, e.g., power allocations to Indian tribes from the Colorado River Storage Project.

The Federal Register Notice announcing the Marketing Criteria states that Western anticipates reviewing all comments and issuing final marketing criteria in a one-step process, citing the impending expiration of existing power contracts. However, it is likely that the comments provided under the October 30, 2012 Federal Register Notice will lead to new or additional revisions to the existing Marketing Criteria. Accordingly, such new criteria or revisions would constitute new agency action that should be subject to a supplemental opportunity to address them before final Marketing Criteria are issued.

The Augustine Band of Cahuilla Indians appreciates the opportunity to submit these comments in furtherance of its desire to obtain some portion of hydroelectric power generated through the Boulder Canyon Project.

Sincerely,



Mary Ann Green

Mary Ann Green
Tribal Chairperson

