

**IRRIGATION & ELECTRICAL DISTRICTS  
ASSOCIATION OF ARIZONA**

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January 11, 2013

Via email: [post2017BCP@wapa.gov](mailto:post2017BCP@wapa.gov)

Darrick Moe  
Desert Southwest Regional Manager  
Western Arizona Power Administration  
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RE: Written comments on the Proposed Post-2017 Resource Pool Marketing Criteria for the Boulder Canyon Project, 77 Fed. Reg. 65681, et. seq. (October 30, 2012)

Dear Darrick,

These written comments are being submitted by the Irrigation Electrical Districts Association of Arizona (IEDA) and its members and associate members. IEDA members and associate members account for almost 89% of the Hoover power allocated by the Arizona Power Authority (APA) under contracts that expire on Oct. 30, 2017. Our members and associate members were in the forefront of lobbying for the Hoover Allocation Act of 2011 and are vitally interested in the post-2017 allocation of Hoover resources, both by Western and by the Arizona Power Authority Commission.

These written comments supplement our comments at the public information forum and our testimony at the public comment forum in this process.

IEDA is greatly concerned that the criteria formation process conducted to date will end up in time-consuming and expensive litigation brought by entities that believe that the criteria provide impediments to their successful application for allocations of Hoover power from Western. If the proposed criteria end up substantially unchanged, we believe that such litigation is a virtual certainty. In that regard, we mentioned at the public comment forum and will repeat here that we believe that Western will be well served, and the overall allocation process will be well served, by the development of a more complete record on critical issues that have been brought to Western's attention.

Western is operating on a very tight time frame of less than 24 months to complete this allocation process. How Western complies with that timeline also affects how the Arizona Power Authority Commission can function in its separate process for allocating Hoover power in Arizona. Significant delays in either the federal or state administrative processes do not work in favor of rationale and thoughtful decision making.

With these thoughts in mind, we wish to repeat the concerns we voiced at the public comment forum in hope that these issues will be clearly addressed when Western finalizes its criteria.

First, we have some idea what the term “independently governed and financed” means with regard to municipal water utilities. We understand Western’s explanation to mean that the utility function would be independently financed by fees in what is commonly referred to as an enterprise fund. We do not understand what the independently governed standard means. Is it a separate board of directors? Does a city or town water department headed by a director answering to the city or town council qualify?

In your discussion of what happens when someone is allocated less than a whole megawatt or a partial megawatt above a whole megawatt, you have not really clarified what such an allottee must do in order to be successful in actually acquiring the resource. In the comments we have seen, it would appear that, in either situation but especially in the less than one megawatt situation, such an applicant receiving this sort of partial megawatt allocation would have to enter into some sort of agreement with another allottee in order that the resource be schedulable. Do applicants have to anticipate this situation and tell you how they are going to handle it? Is this an action that comes after allocation but before contracting?

Western has also stated that the administrative costs it may be burdened with in dealing with less than one whole megawatt or more than one whole megawatt allocations will be subsumed into general administrative costs and spread over the entire allocation base. Why would other allottees be required to subsidize a cost that can be allocated directly to a particular allottee? Is this subsidy going to reach across all Hoover contractors? Only those acquiring Schedule D resources? Only D-1?

The term new allottees is not defined in the 2011 Act. The Act does say that the new resource, Hoover D, is intended to go to new allottees which are entities that are not named in the legislation. Arizona Power Authority customers are not named in the legislation. Western also says that the purpose of the Hoover D is to expand the customer base. If current APA customers or any of them do not receive a post-2017 allocation from the APA, and others do, then the customer base will be expanded through allocation of the Hoover A and Hoover B resources by the Authority before it even gets to Hoover D-2. In such an event, the existing APA contractor will be left out in the cold. Why should this situation be able to occur? Why shouldn’t current APA customers be treated as potential new allottees because they have no assurance that anything allocated to the Authority will come their way? This situation is peculiar to Arizona, but is obviously of great concern to the current APA customers. Some further explanation on how Western intends to proceed clearly would be helpful.

At the public comment forum, we also suggested that if current APA customers applied for Hoover D-1, Western could allocate to those customers on a withdrawal basis. If the result of the APA process was that these customers received allocations of Hoover A or Hoover B, Western could consider whether all or a portion of the Hoover D allocation these customers received should be withdrawn. We would appreciate it if Western would address this issue given the fact that both the Colorado River Storage Project and the Parker-Davis Project power allocations utilize this mechanism.

Next, we would ask you to address the authority for allottees to join together and the nature of their ability to do so in terms of the type of entity that would have to be utilized. The 2011 Act refers back to section 5 of the Boulder Canyon Project Act as to the types of entities that may apply for allocations. Section 5 lists them as States, municipal corporations, political subdivisions and private corporations. It would seem that an entity created as an umbrella, especially where needed to aggregate partial megawatt allocations, would have to fall into a category such as a municipal corporation or some other type of political subdivision or private corporation. Once past the preference to the States, the law appears not to state a preference of a municipal corporation over a political subdivision of another type, or private corporation, or for that matter, any hierarchy whatsoever. The Western FRN contains a priority starting with Indian tribes. This seems simple enough on its face, but what happens when Indian tribal allottees end up with partial megawatts and need to create an entity to deal with scheduling and transmission? That entity would obviously not be another Indian tribe. It would be a corporation of a municipal nature or some other political subdivision or a private corporation or other similar private business entity. Would that entity then lose its priority because it was not an Indian tribe? If there is an aggregating entity, is its priority established by the nature of its members, or its own nature? If the separate entity put together for aggregation purposes turns out to function as a joint action agency, that is, to be a wholesale entity whose members provide retail service, is such an entity qualified for an allocation? Does a pooling entity qualify?

Western's responses included one that alluded to legislative history of the 2011 Act and to its language as authority for allowing Western to propose the preferences for marketing stated in the FRN. As we pointed out at the public comment forum, one resorts to studying legislative history of a statute, its meaning is not discernible from its specific language. That is the standard used by courts in interpreting statutes. Thus, Western is either relying on legislative history because the statute language is ambiguous or is relying on specific statutory language which is not ambiguous. Which is it? Since the 1939 Reclamation Project Act, by its own terms, does not apply here, is there other Reclamation law that does apply other than the 1928 Act, the 1940 Act, the 1984 Act and the 2011 Act?

We also commented at the public comment forum that the one year history requirement would adversely affect agriculture in Arizona because of the difference in weather between 2011 and 2012. We don't know, but we suggest that other potential allottees may have similar difficulties of a different nature concerning the one year history. We suggested at the time that, recognizing the Paperwork Reduction Act form approval Western had completed, Western could also allow potential allottees to provide a broader range of history than just one year at their election. It would not be a requirement, but it would be acceptable. We hope you will address the use of such a mechanism in your final criteria.

Finally, we are still puzzled by the differing standards of “ready, willing and able,” which contemplate being able to contract for a path of delivery of the resource and the requirement for a distribution system which obviously means one owned, leased, or otherwise controlled by the applicant. We are further confused by the differing timelines. Others have objected to the distribution system standard. If Western decides to retain that requirement, it should further explain the interplay between these two standards and their application in two different time frames. There will be enough confusion in this process without adding this to the list.

Thank you for the opportunity to comment on this important process. We look forward to working with Western as it develops its final criteria and begins the process of entertaining applications for allocations.

Sincerely,

/s/

Robert S. Lynch  
Counsel and Assistant Secretary/Treasurer

cc: Anita Decker, Acting Administrator  
Darrick Moe, Regional Director  
Robert S. Lynch