

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
PHOENIX, ARIZONA

BOULDER CANYON PROJECT
POST-2017 REMARKETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
December 3, 2009
1:05 p.m.

REPORTED BY: CHRISTINE JOHNSON, RPR
Certified Reporter #50383

PREPARED FOR:
WESTERN AREA POWER ADMINISTRATION

BRUSH & TERRELL
Court Reporters
26712 N. 90th Lane
Peoria, Arizona 85383
(623) 506-8046

CHRISTINE JOHNSON, RPR
Brush & Terrell Court Reporters
(623) 561-8046

1 MR. HARNESS: On the record, please. Thanks,
2 everybody. It quieted down so nicely. I didn't have to say
3 a word. Thanks for that. Anyway, good afternoon,
4 everybody. Welcome to today's Public Information Forum. My
5 name is Doug Harness. I'm an attorney with Western Area
6 Power Administration and our Corporate Services Offices in
7 Lakewood, and I'm here representing the Desert Southwest
8 Region for today's Forum.

9 This Public Information Forum has been scheduled
10 for Western to present information on and to allow you to
11 ask questions about the proposed application of the Power
12 Marketing Initiative of Western's Energy Planning and
13 Management Program to Boulder Canyon Project firm electric
14 service commitments beyond September 30th, 2017 when current
15 BCP contracts expire.

16 Please keep in mind that all issues raised today
17 should be relevant to this proposal. Please wait to ask any
18 questions until after our formal presentation has been
19 completed.

20 Entities interested in commenting on this proposed
21 action should submit written comments to Mr. Darrick Moe,
22 Regional Manager, Desert Southwest Region, Western Area
23 Power Administration, P.O. Box 6457, Phoenix, Arizona, Zip
24 85005-6457. You may also fax comments to Western at area
25 code (602) 352-2490 or e-mail them to post2017bcp@wapa.gov.

CHRISTINE JOHNSON, RPR
Brush & Terrell Court Reporters
(623) 561-8046

1 Western will accept written comments received on or before
2 January 29th, 2010. Western reserves the right not to
3 consider any comments received after this date.

4 A verbatim transcript of today's Forum is being
5 prepared by our court reporter. Everything said while we're
6 in session today, together with all exhibits, will be part
7 of the official record. The transcript of today's Forum
8 will be available for review online at
9 www.wapa.gov/dsw/pwrmtk under the "Boulder Canyon Project
10 Remarketing Effort" link. The transcript and the complete
11 record of this Public Process will also be available here at
12 Western's Desert Southwest Regional Office and Western's
13 Corporate Services Office.

14 Additionally, a copy of the transcript can be
15 obtained from the court reporter upon payment of a required
16 fee. And you can contact the court reporter. Certainly, we
17 can give you the information if you'd like to get a copy of
18 the transcript that way.

19 In addition to the Public Information Forums,
20 which today is the last of those, Western will hold three
21 Public Comment Forums. These Forums will be January 19th,
22 2010 in Las Vegas, January 20th in Phoenix and January 21st
23 in Ontario. Comments made at those Forums will be recorded
24 -- will be recorded by a court reporter, and will also
25 become part of the official record of this public process.

CHRISTINE JOHNSON, RPR
Brush & Terrell Court Reporters
(623) 561-8046

1 Any questions we're unable to answer this
2 afternoon, we'll answer in writing for you. And so with
3 that, I will turn the Forum over to Mike Simonton, who is
4 the Project Manager for this effort.

5 MR. SIMONTON: Hello, everyone. Like Doug
6 mentioned, my name is Mike Simonton. I'm the Project
7 Manager here at Western for this effort. Today's
8 presentation will focus on these topics. We'll give a brief
9 overview of the Western Area Power Administration, the
10 Energy Planning and Management Program. We'll discuss the
11 Federal Register Notice dated November 20th, 2009. We'll
12 take a closer look at the Public Comment Forums, as well as
13 the Boulder Canyon Project Remarketing Milestones. And
14 finally we'll finish up with some points of contact.

15 Western is a Power Marketing Administration that
16 markets and delivers reliable, cost-based hydroelectric
17 power and related services.

18 As you can see from the depiction, it's a pretty
19 geographically diverse footprint that covers 15 western
20 states, covers 17,000 transmission line miles, 302
21 substations and approximately 665 customers.

22 If we take a closer look at the DSW Region in
23 Phoenix, we have power and transmission marketed on a
24 project-by-project basis. The projects include Boulder
25 Canyon, Parker-Davis, Colorado River Storage Project

1 Southern Division and the Pacific Northwest/Southwest
2 Intertie. The DSW Region markets approximately 2,500
3 megawatts of capacity.

4 (Whereupon, Amy Mignella joins the meeting via
5 telephone.)

6 MR. SIMONTON: Hello, Amy. Can you hear us?

7 MS. MIGNELLA: Yes, sorry to be calling in late.

8 MR. SIMONTON: It's okay. We just started the
9 presentation.

10 It also entails 3,100 transmission line miles, as
11 well as servicing more than 60 customers. Here is a
12 depiction of the Boulder Canyon Project marketing area,
13 which coincides with the DSW service territory.

14 Western marketed the Boulder Canyon Project in
15 1987 in accordance with the Hoover Power Plant Act of 1984
16 and the Conformed General Consolidated Power Marketing
17 Criteria or Regulations for Boulder City Area Projects.

18 The current allocations consists of
19 1,951 megawatts of contingent capacity and just over
20 four-and-a-half million megawatt hours of firm energy. This
21 has been allocated to 15 contractors and the current
22 contracts expire September 30th, 2017.

23 To take a closer look at the Energy Planning and
24 Management Program, this program took effect October of
25 1995. It has two main components, which consist of

1 Integrated Resource Planning and the Power Marketing
2 Initiative. More importantly for this project is the Power
3 Marketing Initiative, which we'll take a closer look at.

4 The Power Marketing Initiative entails the
5 extension of a major portion of resource allocations to
6 existing contractors. It also entails the establishment of
7 a resource pool and the utilization of that resource pool
8 for new contractors.

9 "The PMI establishes a framework for extending a
10 major portion of the power currently under contract with
11 existing customers." It is applicable on a
12 project-by-project basis. Relative to the Boulder Canyon
13 Project, Western has historically stated that we will,
14 "evaluate the applicability of the PMI on the Boulder Canyon
15 Project and the Parker-Davis Project no sooner than 10 years
16 before existing contracts expire." Western's also stated
17 that, "no decision to apply the EPAMP" -- I'm sorry -- "no
18 decision to apply the PMI will take place until an
19 appropriate public process takes place."

20 Based upon DSW's assessment, the application of
21 the PMI to Boulder Canyon would provide the following
22 benefits: Existing contractors would retain resource
23 assurance resulting in greater stability in resource
24 planning. The potential would exist for new preference
25 power customers to attain an allocation of the Boulder

1 Canyon Project, as well as Western would fulfill its
2 responsibility to market federal generation based on most
3 widespread use principles.

4 (Whereupon, Jim Sweeney, joined the meeting via
5 telephone.)

6 MR. SIMONTON: Hello, Jim. This is Mike Simonton.
7 We're about in the middle of our presentation. Can you hear
8 me okay?

9 MR. SWEENEY: Sure can, Mike. Thanks a lot.

10 MR. SIMONTON: All right. Thank you. If we take
11 a closer look at the Federal Register Notice that was
12 recently published, this FRN proposes to apply the PMI to
13 the Boulder Canyon Project, as well as extend 95 percent of
14 the marketable resource to existing contractors. It
15 proposes to extend the contracts for 30 years, which would
16 commence on October 1st, 2017 and extend through
17 September 30th, 2047.

18 It entails reserving 5 percent of marketable
19 energy and 4.5 percent of marketable capacity for a resource
20 pool. This proposal contains no additional incremental
21 resource pools for the next 30 years.

22 To take a closer look at the 5 percent resource
23 pool, Western finds that this is comparable to resource pool
24 percentages of other Western projects. It is consistent
25 with the PMI to extend a "major portion" of power under

1 contract. It is also consistent with the PMI to reserve a
2 "modest percentage" for a resource pool.

3 Overall, if we take a look at the numbers, this
4 proposal would entail a marketable resource of
5 2,044 megawatts of contingent capacity. It would also
6 entail just over 4.1 million megawatt hours of annual firm
7 energy. This value was originated in consultation with the
8 Bureau of Reclamation based on the most recent hydrologic
9 studies.

10 The proposed resource pool would consist of
11 93 megawatts of contingent capacity and 205,800 megawatt
12 hours of annual firm energy. The proposed resource retained
13 by existing contractors would consist of 1,951 megawatts of
14 contingent capacity, which happens to be their existing
15 contracted capacity today. This would be married up with
16 just over 3.9 million megawatt hours of annual firm energy.

17 The Public Comment Forums that we have currently
18 scheduled are January 19th, 2010 in Las Vegas, January 20th,
19 2010 in Phoenix, January 21st, 2010 in Ontario. All written
20 comments are due to Western by January 29th, 2010 and after
21 this time, Western will evaluate the comments. After the
22 comments have been evaluated, Western shall publish a final
23 decision on the EPAMP PMI in the Federal Register.

24 If we take a look at the milestones, in
25 January 2010, as we have mentioned, we are to conduct Public

CHRISTINE JOHNSON, RPR
Brush & Terrell Court Reporters
(623) 561-8046

1 Comment Forums. In the summer of 2010, we anticipate that
2 we will publish a final EPAMP PMI decision in the Federal
3 Register. By spring of 2011, we hope to finalize
4 remarketing criteria. And by the summer of 2012, final
5 allocations are defined. The intent is that by spring of
6 2013, all contracts, new and old, would be executed.

7 All written comments can be submitted to
8 Mr. Darrick Moe at the provided -- at the information
9 provided here. If you have further questions or comments,
10 you can contact myself or Ms. Debbie Emler at the
11 information provided here. And again, as Doug mentioned,
12 all this information, as well as the transcripts will be
13 posted to the Western website relative to the Boulder Canyon
14 Remarketing Effort.

15 That concludes the slide show today.

16 MR. HARNESS: Thanks, Mike. Somebody on the
17 phone, Amy, I think it may be you we're the getting quite a
18 bit of noise from. Is it possible maybe to mute, please.

19 MS. MIGNELLA: I'm sorry, was that directed to me?

20 MR. HARNESS: I think maybe -- somebody we're
21 getting quite a bit of noise from, and it seemed like it
22 came on after you came on, Amy.

23 MS. MIGNELLA: Let me try to fix that. Sorry.
24 Thank you.

25 MR. HARNESS: You're the logical suspect. Thank

1 you. Okay. Well, we're now going to open the Forum for
2 questions and we would ask after you've been recognized --
3 well, a few things. One, if you would, please, state your
4 name and if you would, who you represent and spell it for
5 the court reporter. And also if you would, please, try to
6 speak up so those on the phone can hear you.

7 So with that, we will start in the room first. So
8 does anybody have any questions?

9 MS. SWEENEY: Sheryl Sweeney with Riley, Carlock &
10 Applewhite. I'll give you my card.

11 Can you tell me how Western arrived at the
12 2,044 megawatts of contingent capacity?

13 MR. SIMONTON: The 2,044 is a -- we've deemed to
14 be or proposed to be the marketable capacity after reserving
15 30 megawatts for project integration use.

16 MS. SWEENEY: Thank you.

17 MR. HARNESS: Oh, I'm sorry, yes?

18 MR. DANOS: My name is Val Danos. I'm with the
19 Arizona Municipal Water Users Association. See, I followed
20 the instructions unlike Cheryl, who is a lawyer. I think
21 you answered my question, but I'd like some clarification.

22 On the sixth page under the "Current Allocations,"
23 there's 4.5 million acres -- million -- excuse me,
24 4.5 million megawatt hours of firm energy currently
25 allocated, and then the resource that you're going to

1 allocate is 4.1 million megawatt hours of firm energy.

2 Is that the result of the Bureau's studies and the
3 hydrology they use?

4 MR. SIMONTON: That's correct. That's after
5 reviewing the most recent hydrologic studies in consultation
6 with Reclamation.

7 MR. DANOS: Do you know if Reclamation used the
8 most recent operating criteria, if you will, for
9 equalization and the rest of the operating criteria between
10 Glen Canyon and Hoover in that effort?

11 MR. SIMONTON: Yeah, we've been told that we've
12 gotten the most recent figures, as well as operational
13 criteria put into those study numbers.

14 MR. HARNESS: Joe?

15 MR. MULHOLLAND: My name is Joe Mulholland with
16 Arizona Power Authority. I have a follow-up question to
17 Val's question. If that is the criteria that you've
18 established, are you going to make available the study, the
19 records so that we could examine that?

20 MR. SIMONTON: Actually, I think the records
21 already -- the study's already available, the Reclamation
22 study, and I think we've got some Reclamation staff that can
23 clarify. They run it every January and every August and, I
24 believe, that's available to any interested party.

25 But, yeah, whatever specifics or questions you

1 might have, we will be more than happy to respond to in
2 written form.

3 MR. MULHOLLAND: Great. Thank you.

4 MR. GOLD: Leonard Gold with Ak-Chin Energy
5 Services. I just have a question on this map. Can you
6 provide for us a list of the tribal entities that would fall
7 into the Boulder Canyon marketing area for us, a list of
8 those?

9 MR. SIMONTON: We could definitely give it our
10 best shot, yes.

11 MR. GOLD: Okay.

12 MS. MARTORANA: Karlene Martorana with
13 Robert Lynch & Associates. I'm wondering what type of legal
14 analysis has been done on whether Western has to give the
15 power to APA or just to the State? Does that make sense?

16 It's my understanding that in the original Boulder
17 Canyon Project, it was a question of whether or not the
18 power goes directly to the State, and I'm not sure if that
19 question has ever been answered.

20 MR. HARNESS: Well, we have looked at this issue
21 and, you know, from our viewpoint, the Arizona Power
22 Authority is the entity that's been designated by the State
23 of Arizona to receive the allocation for the State of
24 Arizona and historically, obviously, that's been the case.

25 One of the things that we have asked for comments

1 on is with the creation of the resource pool should -- you
2 know, should any additional allocations in the State also go
3 to APA or should they be separately allocated by Western.
4 So that's one of the things we've asked for comments on.

5 Yes, Joe?

6 MR. MULHOLLAND: I have another question. My name
7 is Joe Mulholland with Arizona Power Authority, I'm sorry.
8 The marketable energy -- annual firm energy, the 4,116,000
9 gigawatt hours, there will be times when the energy is above
10 that and that excess energy will be marketed in the same way
11 that it is marketed now and excess energy is available or
12 will -- that's something else you're asking for comments on?

13 MR. SIMONTON: Yeah, at this point, that's not
14 something that's been defined. It's something that we've
15 asked for comments on in the FRN. So, yeah, we're asking
16 for comments on proposed excess methodologies.

17 MR. HARNESS: Doug?

18 MR. FANT: I'm Doug Fant, F-A-N-T, with the
19 Arizona Power Authority. Just one legal question. Is EPAMP
20 the primary justification for the proposed allocation or the
21 exclusive justification for the proposed allocation?

22 MR. HARNESS: I'm sorry, by
23 "proposed allocation" you mean what we're prosing in here?

24 MR. FANT: Proposed process, I'm sorry, proposed
25 process.

1 MR. HARNESS: Well, what -- we're proposing this
2 under -- under EPAMP basically under the Power Marketing
3 Initiative. I mean, in a more general sense, obviously,
4 Western has the authority to market, you know, the power
5 from this project, but this particular instance we're
6 proposing applying EPAMP to it, and the PMI.

7 Leonard?

8 MR. GOLD: Leonard Gold with Ak-Chin Energy
9 Services. Just out of curiosity, how are you going to
10 handle preference customers? You said you're going to renew
11 existing contractors regardless of whether or not they're
12 preference customers?

13 MR. HARNESS: That's the proposal is to renew all
14 existing contracts.

15 MR. GOLD: Not being a lawyer, is that legally
16 acceptable?

17 MR. HARNESS: We believe it is, yes.

18 MR. GOLD: Okay.

19 MR. IJAMS: Gary Ijams, I-J-A-M-S, Central Arizona
20 Project. I guess, Doug, to clarify a little bit, in terms
21 of the FRN talks about Western seeks comments regarding CRC
22 and APA's role in Western's allocation process and
23 principally, I think I heard you say -- this is for
24 clarification -- that it's about the excess resource pool.
25 Is that -- or is it more general than that?

1 MR. HARNESS: No, that's the gist of it. I mean,
2 you know, what we're proposing is to extend the existing
3 contracts and our current contracts for the two states or
4 with those two entities. So the proposal would be to extend
5 those contracts with those entities.

6 So then, you know, it's just that what's now in
7 the resource pool, which we would additionally allocate,
8 that's what we're seeking comments on.

9 MS. MARTORANA: Karlene Martorana again. I'm just
10 wondering by bringing up the issue of the Boulder Canyon
11 Project, you know, over the EPAMP, are you expecting a legal
12 response or a political response, or are you seeking one
13 out?

14 MR. HARNESS: We're not -- I can answer the second
15 part. We're not seeking anything at this point. As far as
16 what we expect, I'm not sure -- I'm not sure we know what to
17 expect. I'm not really sure how to answer that, to be
18 honest with you.

19 You know, I will say this much, in seriousness,
20 obviously, historically, the resource has been allocated
21 through the law. Whether or not that's going to happen in
22 this case, we don't know. But it's our obligation to market
23 this and we've initiated this process, and we'll continue to
24 do that until and unless, you know, that authority is taken
25 away from us.

1 Any other questions in the room? Oh yes, sir?

2 MR. RAMIREZ: Les, L-E-S, Ramirez, R-A-M-I-R-E-Z.
3 I represent the Augustine Band of Cahuilla Indians,
4 C-A-H-U-I-L-L-A. My question is: How did you come up with
5 the resource pool? What was the -- what was the -- what's
6 your factual basis for setting the resource pool?

7 MR. HARNESS: At the 5 percent?

8 MR. RAMIREZ: Yeah.

9 MR. SIMONTON: The 5 percent, like we mentioned in
10 the slides, we found that that was comparable with other
11 Western projects. We found it had a minimal impact on
12 existing contractors, and we felt like it was a substantial
13 resource pool to be allocated to new customers.

14 MR. RAMIREZ: My understanding -- follow-up
15 question -- my understanding is that in other situations
16 such as Parker-Davis and Colorado River Storage Project that
17 resource pool was 7 percent.

18 MR. SIMONTON: Right, which we believe to be
19 comparable in percentage wise. We actually -- if you recall,
20 this is a -- this 5 percent, even though it is comparable,
21 does result in a much larger megawatt value of allocation to
22 be presented.

23 MR. RAMIREZ: Sorry to keep pressing this point,
24 but seems to me that it's only larger in volume because you
25 have a much larger -- it's only larger in volume because the

1 Boulder Canyon Project is much larger than the other two
2 projects. It would seem to me to remain consistent, which I
3 think is your stated reasoning.

4 MR. SIMONTON: Just to be clear, I think our
5 stated reasoning was that it was comparable, not consistent.
6 We found comparable was sufficient in this example.

7 MR. RAMIREZ: How does that avoid an
8 Administrative Procedure Act violation for being arbitrary
9 and capricious?

10 MR. SIMONTON: This is a proposal. So we welcome
11 your comments. And the 5 percent I wouldn't say is a final.
12 That's why we're proposing it. We look forward to seeing
13 your comments on it.

14 MR. RAMIREZ: Thank you.

15 MR. HARNESS: Does anybody on the phone have any
16 questions?

17 MS. MIGNELLA: No, not at this --

18 MR. HARNESS: Any other questions in the room?
19 Yes, sir?

20 MR. McMULLEN: I apologize for being here late.
21 I'm Patrick McMullen from the Intertribal Council of
22 Arizona. And I was wondering if -- you might have already
23 talked about it -- but the definition of the federal
24 allocation in terms of the allocation that is going to be
25 designated for tribes. You know, tribes are, at least

1 initially, were included in the federal allocation, which
2 included potentially military installations.

3 MR. SIMONTON: I believe it's the -- originally in
4 the legislation I think was public bodies I think was the
5 terminology used.

6 MR. McMULLEN: I'm sorry?

7 MR. SIMONTON: I believe the terminology in the 28
8 Act was public bodies.

9 MR. McMULLEN: Public bodies?

10 MR. SIMONTON: I believe so. I'd have to go back
11 and look. Can you clarify the question a little, please?

12 MR. McMULLEN: Yes. In our just earlier
13 discussions as this was moving forward, there was -- of the
14 tribal utility entities within the Boulder marketing area,
15 the amount that was going to be allocated or considered for
16 the tribes was going to be in a category that defined it as
17 federal entities.

18 MR. SIMONTON: Just a point of clarification,
19 right now we're proposing a resource pool, and we've not set
20 aside something of that resource pool for any particular
21 group of customers.

22 MR. McMULLEN: How are the federal entities, the
23 military installations being dealt with?

24 MR. SIMONTON: At this point in time, we have not
25 proposed any criteria, and that's something that we will

1 hope to do down the road after we define the resource pool.

2 MR. McMULLEN: Well, will the tribes in the
3 Boulder marketing area be lumped together with the federal
4 facilities, or do you see them being separated out?

5 MR. SIMONTON: At this point in time, I don't
6 think we have a -- I don't think we've studied that enough
7 or received public comment on that topic to know. I think
8 that's something that will be determined after this resource
9 pool is defined and we start seeking comment on criteria.

10 MR. McMULLEN: Okay. When do you anticipate that
11 being defined?

12 MR. HARNESS: Well, it would be -- there is a
13 multistep process here. Yeah, let's get this slide up here.
14 This step is just to determine whether or not we're going to
15 create a resource pool. And that's what, you know,
16 primarily, and that's what we've come out and asked for
17 comments on.

18 If the decision is made to do that, then the --
19 then another step will be, "Okay. How are we going to
20 allocate that resource pool? Who is going to be eligible
21 for that? Who is interested in that?" But that's down the
22 road. So we're not really dealing with that at this
23 juncture.

24 MR. McMULLEN: Thank you.

25 MR. HARNESS: Sure. Any questions anywhere?

1 (No response.)

2 MR. HARNESS: All right. Well, I don't see
3 anybody else or hear anybody else. So we'll wrap things up
4 here. We want to thank you all for attending today. We
5 would ask those of you in the room if you haven't already
6 done so, to please sign the attendance rosters out by the
7 door so we have an accurate attendance, and I think we've
8 got everybody who is on the phone. I believe it was
9 Charlie, Jim and Amy; is that right? Anybody else we
10 missed? Well, whoever that was --

11 MR. McMULLEN: Take that as a "yes."

12 MR. HARNESS: Okay. Well, thank you all very much
13 for attending. We appreciate it, and we'll go off the
14 record. Thank you.

15 (Whereupon, the deposition proceedings terminated
16 at 1:34 p.m.)

17 * * * * *

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, CHRISTINE JOHNSON, having been first duly sworn and appointed as Official Court Reporter herein, do hereby certify that the foregoing pages numbered from 2 to 21, inclusive, constitute a full, true and accurate transcript of all the proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 7th day of December, 2009.

Christine Johnson, RPR
Certified Court Reporter No. 50383

CHRISTINE JOHNSON, RPR
Brush & Terrell Court Reporters
(623) 561-8046

