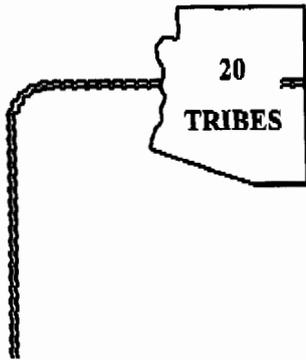


REC-2012-008414



INTER TRIBAL COUNCIL of ARIZONA

September 25, 2012

- MEMBER TRIBES**
 AK-CHIN INDIAN COMMUNITY
 COCOPAH TRIBE
 COLORADO RIVER INDIAN TRIBES
 FORT McDOWELL YAVAPAI NATION
 FORT MOJAVE TRIBE
 GILA RIVER INDIAN COMMUNITY
 HAVASUPAI TRIBE
 HOPI TRIBE
 HUALAPAI TRIBE
 KAIKAB-PAIUTE TRIBE
 PASCUA YAQUI TRIBE
 PUEBLO OF ZUNI
 QUECHAN TRIBE
 SALT RIVER PIMA-MARICOPA
 INDIAN COMMUNITY
 SAN CARLOS APACHE TRIBE
 TOHONO O'ODHAM NATION
 TONTO APACHE TRIBE
 WHITE MOUNTAIN APACHE TRIBE
 YAVAPAI APACHE NATION
 YAVAPAI PRESCOTT INDIAN TRIBE

Secretary of Energy Chu
 U.S. Department of Energy
 1000 Independence Ave., SW
 Washington, DC 20585

Dear Mr. Secretary:

Member tribes of the Inter Tribal Council of Arizona (ITCA) have participated in several Government-to-Government consultation meetings with representatives of the Desert Southwest Office of the Western Area Power Administration (WAPA), regarding the upcoming reallocation of Boulder Canyon Project (BCP or Hoover) power. At these meetings, WAPA provided its thoughts on the remarketing of BCP power as did ITCA and member tribes attending. At the initial meeting, WAPA made it clear that it had not reached any decisions on remarketing guidelines and processes. Yet at the last meeting, WAPA indicated that it was going to proceed with the guidelines and processes it had first outlined to the tribes, indicating that it had in fact reached a determination. ITCA and its member tribes believe that WAPA's approach is discriminatory and will penalize tribes. WAPA is in the process of issuing a Federal Register Notice (FRN) setting out these guidelines and processes. ITCA and its member tribes hereby urge the Secretary of the Department of Energy to delay the issuance of the FRN until WAPA and Tribes can develop more reasonable guidelines and processes that will treat Tribes fairly.

Tribes have the following concerns and comments with respect to WAPA's allocation of BCP power to new customers in the wake of the Hoover Power Allocation Act of 2011 ("Act").

- A. Based upon information presented at WAPA's last public Hoover informational meeting on June 19, 2012, and also from the Hoover tribal consultation meeting held on August 28, 2012, WAPA appears to be proposing concurrent allocation/application submission and criteria, public comment. Tribes object to such a schedule because only finalized criteria can fairly dictate the data WAPA will utilize for allocation purposes. In the absence of finalized and publicly disclosed criteria, tribal applicants will be left to guess as to the significance of the data they submit and WAPA will be able to utilize applicant data to justify after the fact, any final criteria it establishes. Even in the absence of any purposeful use for this approach, WAPA will not be able to show that data submitted prior to

- B. publishing final allocation criteria has not at least indirectly influenced allocation outcomes.

In the Colorado River Storage Project (CRSP) process WAPA only called for allocation applications after the criteria were finalized following a public comment process. Such a procedure is also appropriate in this instance due to the aspects of the allocation process, as outlined in this letter, that have not yet been addressed through sufficient tribal input.

Finally, WAPA has noted no compelling reason for combining allocation applications and allocation criteria, nor has it provided any assurance, or even any outline, of how it will protect new customer interests from unfair treatment by combining the two actions into a single step.

- C. WAPA has stated it will restrict new customer allocations to whole Megawatt quantities. While Tribes recognize the imposition of this restriction in the last Parker David Project reallocation, tribal interests also note that summer and winter schedules for each of those power recipients can be in fractional Megawatts. Tribes have raised the objection previously, and do so here again, that there is no compelling need for WAPA to impose such a requirement with respect to Hoover power, and that doing so will likely unavoidably and disproportionately, if not entirely, burden new tribal customers with smaller total electric loads. WAPA has failed to justify its decision and accordingly fractional Megawatt allocations must be allowed for this project process.

- D. WAPA's statements at the August 28, 2012, Phoenix, Arizona, tribal consultation meeting suggest a process that is additionally discriminatory to Tribes. There WAPA expressed its intent to require Tribes to aggregate load into a single application in order to avoid any load threshold (whole Megawatt). This approach contradicts any categorical contracting allowance in existence for federal power allocation purposes; it also discriminates against potential new tribal customers with small loads. The Act provides for allocations to "federally recognized Indian tribes" and WAPA has stated that it will offer allocations to "Native American tribes." Aggregated entities do not fall within either definition as they would lack any "tribal" recognition under Federal law; they also could not assume any alternate legal form within Section 5 of the Boulder Canyon Project Act.

- E. WAPA has also informed Tribes that it will discriminate against Tribes that have other federal hydropower contracts by reducing the share of Hoover power they receive on that basis. In response to WAPA's proposal to consider other federal power resources held by new tribal applicants, ITCA notes that existing customers receiving a renewal of Hoover power pursuant to the Act are not discriminated against in any manner as a result of other federal hydropower resource rights they may hold. Furthermore, in the absence of express language in the Act imposing such a penalty on new tribal customers, WAPA has no basis to so act in its proposed new customer allocation criteria.

It appears that WAPA's reliance on its discriminatory approach is based on WAPA's Energy Planning and Management Program ("EPAMP"). ITCA further notes that no application of EPAMP has been announced by WAPA with respect to the share of power available to new

Hoover customers; indeed, such a proposal would require a new round of public comment, an action not projected by WAPA with respect to new Hoover allocations. Instead, WAPA has repeatedly acknowledged that allocations are being made on a statutorily-dictated basis.

As WAPA appears to draw from EPAMP with no alternate justification for doing so, ITCA has examined the program parameters for their application to the Hoover process. The October 20, 1995 announcement of EPAMP by WAPA provides that Federal power resources be reallocated on the basis of "meet[ing] a fair share of the needs of potential new customers within the marketing area."

WAPA further states in that notice that:

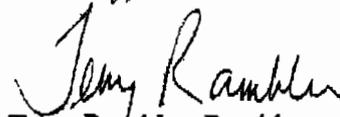
"Due to significant expressions of interest by Native Americans, WAPA has increased the size of the initial resource pool for those projects initially subject to the PMI [Power Marketing Initiative segment of EPAMP]."

This clearly establishes that if WAPA is to allocate Hoover on any apparent parallel to EPAMP it must prioritize Native American interests above those of other new customers in this initial allocation instance.

Thank you for your attention to these comments as affordable electric energy is of vital importance to the future of tribal economies. Tribes have been denied access to Hoover power since the Project's inception. It would only further this injustice to allow the Hoover allocation process to be conducted by WAPA against tribal interests as currently designed. ITCA requests that the FRN be delayed to allow for additional consultation with Tribes.

To that end, ITCA desires further dialogue with you on this matter. Please contact John Lewis, Executive Director, or Patrick McMullen, Community Development Director at (602) 258-4822, or email at john.lewis@itcaonline.com, or patrick.mcmullen@itcaonline.com, so that we may continue this discussion. I very much look forward to the next step of direct communication on this issue of paramount importance.

Sincerely,



Terry Rambler, President
Inter Tribal Council of Arizona
Chairman, San Carlos Apache Tribe

cc:

Anita Decker, Acting Administrator, WAPA Area Power Administrator
Honorable Senator McCain
Honorable Senator Kyl
Honorable Congressman Pastor
Honorable Congressman Grijalva