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IN THE UNITED STATES DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
ONTARIO, CALIFORNIA

BOULDER CANYON PROJECT POST-2017 REMARKETING
PROPOSED MARKETING CRITERIA
PUBLIC COMMENT FORUM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Ontario, California
December 19, 2012
10:00 a.m.

REPORTED BY: CHRISTINE JOHNSON, RPR
Certified Reporter #50383

PREPARED FOR: BRUSH & TERRELL
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1 Be it remembered that heretofore on December 19,
2 2012, commencing at 10:00 a.m., at the Doubletree Hotel
3 Conference Room, Ontario, California, the following
4 proceedings were had, to wit:

5

6

7	OPENING REMARKS	Page
8	BY MR. DOUG HARNESS	3

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11 COMMENTS BY:

12	DENHAM, Dan	5
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13	LYN, Fred	6
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14	CLARY, Don	7
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15	SHORT, Kevin	8
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16	NELSON, Jessica	11
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17	FITZGERALD, David	14
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1 MR. HARNESS: Well, let's go on the record,
2 please. Good morning, everybody. Welcome to today's Public
3 Comment Forum. Can everybody hear me okay first? I'm going
4 to not use this microphone, if at all possible.

5 My name is Doug Harness and I'm an attorney with
6 the Western Area Power Administration Corporate Services
7 Office in Lakewood, Colorado and will be moderating today's
8 Forum.

9 This Public Comment Forum has been scheduled to
10 give interested parties the opportunity to make oral
11 presentations or submit written comments for the record on
12 the marketing criteria proposed by Western to allocate
13 federal power from the resource pool identified as Schedule
14 B established by the Hoover Power Allocation Act of 2011 for
15 the Boulder Canyon Project.

16 The proposed criteria were published in a Federal
17 Register Notice on October 30th, 2012. In addition to
18 today's Forum and another one we'll be holding tomorrow in
19 Phoenix or actually Tempe, written comments may be submitted
20 by mail to Mr. Darrick Moe, Regional Manager of Western's
21 Desert Southwest Region, P.O. Box 6457, Phoenix, Arizona
22 85005-6457. You may also fax comments to Western at area
23 code (602) 605-2490 or e-mail them to post2017BCP@wapa.gov.
24 Western will accept written comments received on or before
25 January 11th, 2013. Western reserves the right not to

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1 consider any comments received after that date.

2 A verbatim transcript of today's Forum is being
3 prepared by or court reporter. Everything said while we are
4 in session today, together with all exhibits, will be part
5 of the official record. The transcript of today's Forum
6 will be available for review online at
7 www.wapa.gov/dsw/pwrmtk under the "Boulder Canyon Project
8 Remarketing Effort" link.

9 The transcript and complete record of this public
10 process will also be available at Western's Desert Southwest
11 Regional Office and Western's Corporate Services Office.
12 Additionally, a copy of the transcript will be available
13 upon payment of a fee to the court reporter, and the court
14 reporter's contact information is available upon request.

15 All -- excuse me, all comments made today should
16 be relevant to the proposed marketing criteria. Any
17 relevant materials to be introduced in the record should be
18 given to the court reporter and she'll assign it an exhibit
19 number.

20 After the close of the comment period, Western
21 representatives will review all of the information, comments
22 and exhibits that have been received with regard to the
23 proposed criteria. Western will then issue a decision in
24 the Federal Register. Comments made during this public
25 process will be discussed in this announcement.

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1 We'll open the floor for comments in just a
2 second. Before we do, I would ask that after you've been
3 recognized, if you would please state your name and any
4 organization that you represent and for the convenience of
5 the court reporter, please spell your last name. Also, if
6 you have a copy of your presentation or an extra copy,
7 please give it to the court reporter. Would you like people
8 to stand today? And so, also, please, if you would stand.

9 Finally, please keep in mind that Western has no
10 presentation this morning and will not be answering
11 questions. The sole purpose of this Forum is to take your
12 comments. So with that, the floor is now open. Who would
13 like to make a comment?

14 MR. DENHAM: Good afternoon. My name is Dan
15 Denham. For the record, that's spelled, D-E-N-H-A-M. I'm
16 here on behalf of the San Diego County Water Authority.
17 First, I'd like to thank Western for this opportunity to
18 provide comments in a public forum.

19 The Water Authority is not currently a Hoover
20 contractor; however, has been closely following the Hoover
21 Power Allocation Act of 2009 for quite some time and is
22 interested in the possibilities that this reallocation
23 brings to a potentially great number of new entities in
24 California.

25 The Water Authority believes that the Federal

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1 Register Notice appropriately defines this new set of
2 eligible entities and believes that in order to meet the
3 widespread use that was discussed weeks ago here in Ontario,
4 that Western should apply this standard broadly and consider
5 any party with an existing direct allocation of Western
6 marketed resources to be ineligible for a Schedule D
7 allocation.

8 In addition, the Water Authority believes that if
9 there is insufficient power available for interested and
10 eligible entities within a given tier, that Western should
11 give priority to parties that advance environmental
12 objectives.

13 Finally, the Water Authority's comfortable with
14 the requirements and time lines for the selected allottees.
15 And that concludes my public comments. Thanks.

16 MR. HARNESS: Thank you. More comments? Yes.

17 MR. LYN: Good morning. My name Fred Lyn, last
18 name spelled, L-N-Y. I'm here representing the City of
19 Rancho Cucamonga -- and do you need that spelled --
20 R-A-N-C-H-O, C-U-C-A-M-O-N-G-A. The City is located just
21 north of here in our current location here in Ontario and
22 has one of California's newer and smaller municipally-owned
23 electric utilities.

24 We began serving load in May of 2004 and annually
25 provide almost 70,000-megawatt hours of electricity. We

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1 appreciate the opportunity to provide comments on the
2 proposed marketing criteria. Our one comment is under
3 Section F of the Federal Register Notice. The City believes
4 that when Western is determining allocations, eligible
5 entities in the Boulder Canyon Project marketing area that
6 currently do not have a contract with Western for federal
7 power resources or are not a member of a parent entity that
8 has a contract with Western for federal power resources,
9 should be given priority over those entities that currently
10 have existing federal power resources.

11 The City believes that this approach would
12 continue to follow Western's tradition of marketing federal
13 power by facilitating the widespread use of its resources
14 and benefiting new entities that did not have the
15 opportunity to receive previous federal power allocations.

16 Being a smaller electric utility, our purchasing
17 power in the energy market is not as great as our larger
18 counterparts. Therefore, having a stable long-term resource
19 such as Hoover would greatly benefit our electric utility.

20 Thank you again for the opportunity to provide our
21 comments and we will be formally submitting our comments via
22 e-mail, and we look forward to working with Western in this
23 remarketing effort. Thank you.

24 MR. HARNESS: Thank you.

25 MR. CLARY: Hi, Don Clary. I'm an attorney

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1 representing the Pechanga Band Luiseno Indians. And I just
2 wanted to state that the tribe is interested in this process
3 and will participate in this process and we will be
4 providing written comments prior to the close of the comment
5 period. Thank you for this opportunity.

6 MR. HARNESS: Any more comments?

7 MR. SHORT: Good morning. Kevin Short, S-H-O-R-T,
8 represent Anza Electric Cooperative, and I'd like to thank
9 the Western Area Power Administration for the opportunity to
10 speak on the issue of proposed marketing criteria for the
11 Boulder Canyon Project resource pool.

12 I'm General Manager of Anza Electric Cooperative,
13 Incorporated located in the rural area of Southwest
14 Riverside County. Our cooperative serves approximately
15 5,000 meters, mostly residential, with over 700 miles of
16 energized line. Additionally, we serve three
17 federally-recognized Native American tribes wholly located
18 within our service territory.

19 We were first incorporated in 1951 under
20 guidelines originally developed by the Rural Electrification
21 Act of 1936. Our cooperative serves an
22 economically-challenged area. On average, 13 percent of our
23 members live below the poverty level, as evidenced by the
24 2010 American Community Survey derived from the United
25 States Census of that same year. We are currently

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1 experiencing double-digit unemployment with very little in
2 the way of electric development forecast in the foreseeable
3 future.

4 As a small member-owned electric utility, we are
5 unable to take advantage of the economies of scale in
6 purchasing equipment, supplies, financing, human resource
7 needs or electric power that other entity types enjoy.

8 On average, our cost of power purchased for our
9 membership in 2012 runs about \$7 per megawatt hour, with
10 projections into the future even higher. Project
11 allocations would mean a significant reduction in purchase
12 power costs for our members and contribute to our economic
13 health.

14 Additionally, we've been approached recently by
15 several companies seeking to install solar in our service
16 territory and the project allocations would allow us to
17 accommodate those requests with firm power backing.

18 Anza Electric relies on loan funds available
19 through Rural Utility Services, a division of the United
20 States Department of Agriculture. As a federal borrower,
21 project allocations would assist us in our financial
22 obligations to the United States Government and help ensure
23 our economic viability.

24 In addressing the marketing provisions of the
25 resource pool, we agree with the stipulation that new

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1 allottees should be ready, willing and able to receive power
2 from the project. This stipulation ensures that the
3 economic benefits derived from the project will be
4 immediately available to those allottees. However, we feel
5 that electric cooperatives should be on par with municipal
6 corporations and political subdivisions having electric
7 utility status when the priorities are considered by
8 Western.

9 As we've looked through the marketing policies
10 that Western has used to market preference power in the
11 past, there's been no distinction drawn between
12 municipalities and rural electric cooperatives as a class of
13 potential purchasers. However, the proposed marketing
14 criteria would rank municipals ahead of cooperatives.

15 Western has a tradition of treating cooperatives
16 and municipalities equally and without giving one class of
17 customers priority over another. We would encourage Western
18 to follow its long-standing tradition and revise the
19 marketing criteria.

20 In summary, the members of Anza Electric
21 Cooperative seek to become participants and partners with
22 Western in the Boulder Canyon Project. We're excited about
23 the prospect of the economic benefits to be realized by our
24 community and look forward to working with you towards these
25 goals. Thank you.

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1 MR. HARNESS: Thank you.

2 MS. NELSON: Good morning. Jessica Nelson, Golden
3 State Power Cooperative, N-E-L-S-O-N. I'm the General
4 Manager from Golden State Power Cooperative. It's a
5 statewide trade association for electric cooperatives in
6 California. Electric cooperatives are not as prevalent in
7 California as they are in the rest of the country. Only
8 three electric cooperatives are headquartered in our state
9 and cumulatively we serve approximately only 16,000
10 member/owners and comprise approximately .1 percent of the
11 state's energy load.

12 All three electric cooperatives that I represent
13 serve very rural areas of the state with Surprise Valley
14 Electrification and Plumas-Sierra Rural Electric Cooperative
15 in the northeast corner of the state and Anza Electric, whom
16 you just heard from, in the rural southwest region of
17 Riverside County.

18 Though the number of customers may be small, our
19 service territories are very large and we typically serve
20 less than six customers per mile of power line. Also,
21 according to the USDA the percent of population in poverty
22 in each of these counties ranges from 13 to 22 percent.
23 These disadvantageous geographic and demographic
24 characteristics are why electric cooperatives were created,
25 to provide at-cost service to rural areas that were deemed

1 "unprofitable" by investor-owned utilities.

2 The Power Marketing Administration shares this
3 important distinction of providing at-cost services to its
4 customers. As you well know, PMAs have responsibly marketed
5 federally-generated hydropower for decades through a
6 public/private partnership model that works extraordinarily
7 well. The federal power program is integral in keeping
8 electric -- excuse me -- electricity rates affordable and
9 reliable for customers of community-owned and consumer-owned
10 utilities across the state and across the country.

11 Western has a tradition of treating cooperatives
12 and municipalities equally and without giving one class of
13 customers priority over the other. Unfortunately, the
14 priority considerations that are proposed in the marketing
15 criteria place electric cooperatives third in line behind
16 municipal corporations instead of on equal footing with
17 them. This is inconsistent with past practice and
18 undermines the successful partnership that electric
19 cooperatives have forged with Western.

20 We strongly disagree with this and we encourage
21 Western to revise the marketing criteria to provide electric
22 cooperatives with equal consideration to that of
23 municipalities.

24 Plumas-Sierra Rural Electric Cooperative is
25 located in Western's Sierra Nevada Region and has received

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1 allocations since the 1960s. In fact, they just recently
2 allotted -- were allotted 1.8 percent of base resources in
3 the Sierra Nevada's 2015 resource pool allocations. Thus,
4 there is precedence to allocate resources to electric
5 cooperatives, in conjunction with the municipalities.

6 Golden State supports the proposed creation of
7 this Schedule D resource pool to allocate resources to new
8 allottees. Anza Electric Cooperative has never received --
9 has never received Boulder Canyon Project hydropower
10 allocations and would fit the criteria to be a new allottee.

11 Additionally, Anza Electric is grappling with the
12 barrage of overlapping and costly regulations that are
13 facing California utilities, especially cap-and-trade.
14 Small utilities have a difficult time obtaining
15 cost-effective renewal energy resources without the
16 advantage of economies of scale.

17 We urge you to consider the disproportionate
18 burden a small, nonprofit utility is subject to when
19 attempting to secure contracts for low-carbon resources and
20 to support their goals to transition in the most
21 cost-effective way.

22 In conclusion, Golden State Power urges
23 reconsideration of the prioritization for the proposed
24 marketing criteria to afford electric cooperatives equal
25 weight to that of municipal corporations in receiving these

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1 beneficial resource allocations. Thank you very much for
2 your time.

3 MR. HARNESS: Thank you.

4 MR. FITZGERALD: Good morning. I'm David
5 Fitzgerald, F-I-T-Z-G-E-R-A-L-D. I'm with the law firm of
6 Shiff Hardin that's in Washington, D.C., 901 K Street, Suite
7 700, 20001. I'm appearing on behalf of Arizona Electric
8 Cooperative this morning, which is also known as AEPCO.
9 AEPCO appreciates the opportunity to provide comments in
10 support of Anza in light of the ongoing power supply
11 relationship between Anza and AEPCO. To be clear for the
12 record, AEPCO is the all-requirements provider for Anza.

13 Therefore, AEPCO is keenly interested in
14 supporting Anza's potential application for D power as a new
15 entrant in California. As the comments of Mr. Short and
16 Ms. Nelson reveal, there is concern with the priority
17 criteria listed in Subsection E.

18 As noted by Mr. Short, the criteria -- priority
19 criteria represent a departure from the custom and practice
20 that we have seen Western deploy over several decades.

21 In fact, if we look at the legislation that
22 created the Schedule D power, it is clear that Congress
23 expected Western to use the criteria as a touchstone in the
24 allocation process.

25 Specifically, if we look at the criteria found at

1 49 Federal Register 50582, there is no distinction between
2 municipal utilities and rural electric cooperatives. The
3 criteria simply lists preference entities.

4 This then leads us to look further to find the
5 source of this newfound priority. We turned to the Hoover
6 Allocation Act of 2011 to see if Congress expressed any such
7 delineation. We could find none.

8 While it is true that the 2011 Act provides for
9 qualified tribes to be considered for an allocation, there
10 is no expression of Congressional intent that
11 federally-recognized tribes should be given priority ahead
12 of eligible preference entities.

13 In fact, the statutory language lists the tribes
14 second in the text after the reference to "eligible
15 entities" or, in other words, "traditional preference
16 customers."

17 Arguably, this means that tribes should be
18 afforded consideration after traditional preference
19 customers. However, this point or argument overlooks the
20 insertion of the word "or" between the traditional class of
21 preference customers and the tribes.

22 A more reasonable conclusion and interpretation of
23 the 2011 Act is that Congress intended for qualified,
24 recognized tribes to be treated on par with traditional
25 preference customers.

1 Indeed, if we closely examine the Act and compare
2 the proposed marketing criteria, it becomes clear that the
3 proposed marketing criteria is out of sync with the
4 statutory language and Congressional intent. This should be
5 changed in the final marketing criteria, and we urge that
6 revision.

7 Now, there is also value in revising the marketing
8 criteria to incorporate due consideration for the cost of
9 energy for the potential recipient of Hoover power. As both
10 Mr. Short and Ms. Nelson have noted, the cost of power for a
11 rural distribution cooperative can easily exceed the
12 prevailing regional costs because of the lack of density of
13 customers on the service line.

14 If we consider the relatively high costs of
15 delivered power and the poverty rates that Mr. Short and
16 Ms. Nelson have highlighted, it is clear that a Hoover
17 allocation could have a tremendous impact in lowering
18 electric energy costs for a distribution cooperative like
19 Anza.

20 This is not a foreign concept for the preference
21 program. Indeed, the concept of yardstick competition has
22 helped shape the preference program for many decades. We
23 would encourage that Western pay close attention to the
24 concept of yardstick competition in developing the final
25 criteria. By emphasizing the delivered cost of power as a

1 consideration in the evaluation of potential applicants,
2 Western will continue to subscribe to the theory of
3 yardstick competition.

4 We'll provide additional written comments by
5 January 11th and appreciate the opportunity to speak this
6 morning. Thank you.

7 MR. HARNESS: Thank you. Would anyone else like
8 to make any comments?

9 (Pause.)

10 MR. HARNESS: Well, seeing that no one else has
11 indicated a desire to make any comments, we'll prepare to go
12 off the record. But before we do, I want to thank you all
13 for coming today and certainly those of you that
14 participated and provided comments, we do appreciate that.

15 So we would also ask, if you haven't already done
16 so, to please sign the attendance roster that's at the back
17 of the room so that we have an accurate account of who
18 attended today.

19 So with that, again, thank you very much for
20 coming. We appreciate it. We'll close the Forum and by the
21 way, happy holidays, everybody. Thank you.

22 (Whereupon, the deposition proceedings terminated
23 at 11:29 a.m.)

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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 17, 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 27th day of December, 2012.

Christine Johnson, RPR
Certified Court Reporter No. 50383

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