



Terry Rambler
Chairman

SAN CARLOS APACHE TRIBE

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Tao Etpison
Vice-Chairman

July 10, 2023

Via E-Mail and U.S. Postal Service

Rebecca Johnson
Transmission and Power Markets Advisor
Western Area Power Administration
12155 West Alameda Parkway
Lakewood, Colorado 80228-8213
SPP-Comments@wapa.gov

RE: WAPA Southwest Power Pool RTO Participation Comments

Dear Ms. Johnson,

On behalf of the over 17,000 members of the San Carlos Apache Tribe (“Tribe”), thank you for this opportunity to comment on the Western Area Power Administration (“WAPA”) proposal to pursue final negotiations regarding transmission owning membership in the Southwest Power Pool (“SPP”) Regional Transmission Organization (“RTO”).

The Tribe is a customer of WAPA’s Colorado River Storage Project Management Center (“CRSP”). As the Tribe is located in Arizona, we are not within the Southwest Power Pool’s footprint. The Tribe is not opposed to WAPA’s participation in the SPP for those customers who are within the SPP footprint, such as participation by the Rocky Mountain Region or the Upper Great Plains Region. We are also not opposed to a reasonable plan for CRSP customers within the SPP footprint to participate in SPP.

However, we are concerned that full participation by CRSP in the SPP will impair the Tribe’s ability to fully develop solar electric power through its subsidiary enterprise, the San Carlos Apache Telecommunications & Utilities, Inc. We are also concerned participation will

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add uncertainties to the cost of federal hydropower and transmission and our ability to have cost-based access to our contracted capacity and energy.

Use of our full WAPA power hydropower allocation, including contractual rights, flexible scheduling of our allocation, and transmission of the power to our Reservation loads, will be key to our ability to assure low-cost electric services to our future customers. This is not assured under the current proposal.

To our knowledge, WAPA has not completed any studies nor does WAPA have a comprehensive plan for assuring resource adequacy and the benefits of the hydropower system to customers not in the SPP footprint. Current statements that WAPA will preserve the value of hydropower “as much as possible” and that “successful” negotiations will be required before joining (without defining “successful”) indicate that more work is needed before pursuing final negotiations for CRSP participation in the SPP.

The Public Notice specifically declares that “[s]ection 1232(b) of the Energy Policy Act of 2005 authorizes the appropriate Federal regulatory authority to enter into a contract, agreement, or other arrangement transferring control and use of all or part of the transmission system of a Federal utility to a Transmission Organization (42 U.S.C. 16431(b)).” No other legal authority is referenced or cited for the proposed action. The plain language of Section 1232 speaks to the authority of WAPA to transfer control of all or part of the transmission system but is silent with regard to the ability to transfer generation assets or output from those assets. We therefore do not have citations showing that WAPA has the legal authority to allow the SPP to essentially control the generation resource or outputs.

We consider our allocation of federal hydropower and our hydropower resources (including our share of the generation and transmission systems) to be a trust resource under the DOE definitions.¹ The San Carlos Apache Reservation along with many of our best agricultural lands were flooded with the construction of the Coolidge Dam. These tribal resources were taken to build federal infrastructure to benefit the entire Western United States.

The Tribe’s right to power is also set forth in the Act of March 7, 1928 (45 Stat. 210-212), as amended, which reserved “power for agency and school purposes and for pumping irrigation by Indians on the San Carlos Reservation at a cost not exceeding 2 mils per kilowatt hour delivered at the switchboard at the Coolidge Dam.” This provision was reinforced by the San Carlos Indian Irrigation Project Divestiture Act of 1991 (“1991 Act”), whereby Congress noted the “existing obligation” to provide SCAT “power at the rate of 2 mils per kilowatt hour

¹ See DOE Order 144.1, <https://www.energy.gov/em/articles/doe-order-1441-department-energy-american-indian-tribal-government-interactions-and#:~:text=DOE%20Order%20144.1%20provides%20direction%20to%20all%20Departmental,treaty%20and%20other%20federally%20recognized%20and%20reserved%20rights>.

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for irrigation pumping and agency and school purposes pursuant to the Act of March 8, 1928.”
P.L. 102-231, 105 Stat. 1722 §10 (9)(c) (1991).

Our allocation of federal hydropower is therefore an important part of our participation in the benefit of the federal hydropower resource. These resources must be protected by WAPA, as our federal trustee, on behalf of the Tribe. Any potential threat to these trust resources by federal action requires meaningful government-to-government consultation which we formally request should WAPA continue forward with its participation in the SPP.

In the Tribe’s view, meaningful government-to-government consultation can occur only at a duly convened meeting of the San Carlos Council, the Tribe’s governing body. The Council meets on the first Tuesday of every month. If you wish to consult with the Tribe on this matter, please contact the Council’s Secretary, Santana Dillon, at (928) 961-1849, or via e-mail at santana.dillon@scat-nsn.gov, to be added to the Council’s agenda.

As we say in our Apache language, Ahi’yi’é (thank you) in advance for your review and consideration of this comment and our request for consultation.

Sincerely,

SAN CARLOS APACHE TRIBE



Terry Rambler
Chairman

Cc: Tao Etpison, Vice Chairman
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