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July 1, 2015

Via Email post2017process@powerauthority.org
Arizona Power Authority
Attn: Post 2017 Allocation Process
1810 West Adams Street
Phoenix, Arizona 85007-2697

RE: Hoover Power Marketing Post-2017 Preliminary Proposal

Ladies/Gentlemen:

These comments are submitted on behalf of Electrical District Number Six, Electrical District Number Seven, Roosevelt Irrigation District, Buckeye Water Conservation and Drainage District, Maricopa Water District and Ocotillo Water Conservation District, addressing Arizona Power Authority's ("APA" or the "Authority") Hoover Power Marketing Post-2017 Preliminary Proposal dated June 15, 2015 (the "Preliminary Proposal"). We incorporate by this reference all comments and materials previously filed with APA regarding the post-2017 allocation of Hoover power.

We recognize that the allocation of APA's share of Hoover power is a difficult task and appreciate the hard work and transparency of the process. Clearly, APA is attempting to address many competing interests. Nevertheless, we are disappointed that APA is proposing a 6% reduction to the existing Hoover Schedule A customers. All other existing Hoover customers, including all of the existing California customers, all of the existing Nevada customers and all of APA's existing B customers (except CAP) are only receiving a 5% reduction. To carve out a handful of APA customers to take a larger reduction is inconsistent with the federal legislation and with the well-justified expectation that the voluntary creation of a significant new entrant pool (69 MW of D-1 and 11.5 MW of D-2) would be all that was asked of the existing customers.

It appears to us that APA did not give sufficient weight to the D-1 allocations given to non-Indian Arizona entities by Western Area Power Administration ("Western"). That amounts to 17,584 kW. New, non-Indian allottees in Arizona have a pool of D power that contains 29,084 kW, not merely the 11,500 kW that APA is considering. The "widest practical use" of Hoover

power can be achieved without deviating from the Hoover Power Act of 2011, and without significantly damaging CAP, by accounting for the significant allocations Arizona entities received from the D-1 allocation process.

We bring to your attention the following items that you should consider in order to strengthen the administrative record and ultimately have an allocation process that is defensible.

I. The Preliminary Proposal ignores the requirements of A.R.S. § 30-124(B) that power, "as nearly as *practical*, [] be disposed of in an *equable* manner so as to render the greatest public service and at levels calculated to encourage the widest *practical* use of electrical energy."

The Preliminary Proposal rephrases the edict of A.R.S. § 30-124(B) by claiming that the "state statutory mandate [is] to allocate power in a manner to render the greatest public service and to encourage widespread practical use." The statute actually provides that the Authority must, to the extent practical, dispose of power in an "equable" manner for the widest practical use. "Practical," as used twice in the statute, means useful. "Equable" means free from significant change. "Widest," as used in the statute, means a "great range or scope." Moreover, A.R.S. § 30-123(A) provides that the power must be used in an "economical" fashion, meaning avoiding waste.

Consequently, the statutory mandate is actually that the Authority allocates power:

- In a useful manner.
- Without causing significant change.
- To a great range or scope of eligible entities.
- Without causing waste of the power.

The Preliminary Proposal fails to meet these requirements in the following respects:

- The existing customers have already agreed that a 5% reduction from their existing allocations is "equable." But they continue to believe that anything greater than 5% is not "equable" to the Hoover A customers.
- "Practical" is used twice in the statutory mandate, and the existing record fails to establish that it is "practical" for entities without existing transmission paths or state mandated retail access to receive Hoover power. This is a significant shift from APA's historical interpretation of what constitutes "use" of Hoover power in Arizona. We need to ask ourselves whether allocating small amounts of Hoover power to a bunch of nonutility applicants and then allowing the power to be monetized through bill crediting is really "use."

The Preliminary Proposal identifies the goal of achieving "widespread" use. "Widespread" means spread or scattered over many people. "Widespread," as used in the Preliminary Proposal, has a different meaning than the term "widest," used in the statute. While the Preliminary Proposal achieves "wide" use of the resource, it fails to do so in a "practical" or "equable" manner, as required by statute. The Final Proposal needs to identify and explain how the allocations are "equable," "economical," and "practical," within the goal of the "widest practical use."

II. The eight (8) "new" districts should receive power from Schedule D, consistent with their applications.

The "new" districts proposed for Schedule A allocations should only receive an allocation from Schedule D. That is why the new entrant pool was created.

III. AEPCO is only eligible to receive power from Schedule D, as adjusted by filters accounting for the interstate service areas and overlapping service territories of its members.

AEPCO should not receive an allocation of Schedule B power. AEPCO is wholly-owned by its member cooperatives, most of which received a Schedule D-1 allocation from Western. Both Western and APA have concluded that the Hoover Power Allocation Act of 2011 precludes any entity receiving Schedule A or Schedule B power from being considered a "new allottee" eligible for Schedule D power. If AEPCO receives Schedule B power, its member co-ops and APA will not be allowed to receive the 8,076 kW D-1 allocation given to AEPCO's member co-ops.

The entities on behalf of which AEPCO filed are Graham County Electric Cooperative, Mohave Electric Cooperative, Navopache Electric Cooperative, Sulphur Springs Valley Electric Cooperative and Trico Electric Cooperative. Those entities received the following allocations of Hoover D-1 from Western:

Graham	312 kW
Mohave	1,145 kW
Navopache	888 kW
Sulphur	2,731 kW
Trico	3,000 kW
TOTAL	**8,076 kW**

Anyone with Schedule A or B power is not a "new entrant" and is not eligible for Schedule D power. Either AEPCO, on behalf of the above-listed co-ops, is ineligible for Schedule B power, or the above-listed co-ops are not eligible for Schedule D power. They cannot be eligible for both.

In addition, any allocation to AEPCO should be adjusted to account for the interstate service areas of its members (Anza Electric Cooperative and Duncan Valley Electric Cooperative)

and for the load of the overlapping service territories of its members that received an allocation of D-1 from WAPA. *See e.g.* A.R.S. § 45-1708(B); Preliminary Proposal at p. 16.

Furthermore, Franklin Irrigation District, Gila Valley Irrigation District, Mohave Valley Irrigation and Drainage District and St. David Irrigation District (all of which have proposed allocations of Schedule A power) are served by AEPCO member cooperatives. The overlapping service territories should be accounted for, and an appropriate adjustment made to any allocation AEPCO receives. *See e.g.* Preliminary Proposal at p. 16.

The best approach is to move AEPCO into the D-2 pool.

The "greatest public service" is achieved by keeping CAP whole, thereby preventing water-rate increases. One method to keep CAP whole is to return the proposed AEPCO Schedule B allocation to CAP, and allocate D-2 Power to AEPCO.

IV. The Preliminary Proposal allocates power to other ineligible entities.

The City of Mesa cannot legally receive an allocation of Schedule B and Schedule D-2. The City of Mesa (with a proposed Schedule B allocation) and the City of Mesa Water Resources Department (with a proposed Schedule D-2 allocation) are legally the same entity. It can receive B or D, but not both.

Similarly, the City of Page cannot legally receive an allocation of Schedule B and Schedule D-2. The "Page Own System & Operating (Muni)" (with a proposed Schedule B allocation) and the "Water Utility for City of Page" (with a proposed Schedule D-2 allocation) are legally the same entity. It can receive B or D, but not both.

If the Preliminary Proposal does not address these issues, then the next allocation process will have all applicants creating multiple layers of entities to seek power, thereby creating an administrative nightmare, and an unmanageable process, for the Authority. It is in the interest of all involved, and legally required, that Page and Mesa not be awarded two separate allocations by merely applying under two separate names.

There is no reason that Northern Arizona University should receive an allocation of any APA Hoover power. NAU does not meet the definition of a "qualified purchaser" in Title 30 (A.R.S. § 30-101.10). It is not a "district," "municipality," nor "public utility" for purposes of Title 45 (A.R.S. § 45-1702). It is simply not eligible for an allocation of Hoover power under state law. The existing administrative record provides no legal basis or rationale establishing that NAU is eligible.

V. Fix the math.

The Preliminary Proposal contains numerous math errors. That needs to be fixed.

RYLEY CARLOCK & APPLEWHITE
Attorneys

VI. Post-Allocation issues framed by the Preliminary Proposal.

The Preliminary Proposal also seeks comment on certain post-allocation matters. We offer the following comments on those issues.

The Preliminary Proposal contains two options for how to reallocate power in the event that an entity receiving a Schedule D allocation declines the allocation. We support allocating that Schedule D power to "new" districts, instead of allocating Schedule A power to "new" districts. It seems likely that APA also may have some of the "new" districts decline their proposed Schedule A allocations. If this occurs, the Schedule A power should be proportionally returned to the existing Schedule A customers. The Preliminary Proposal is silent on this issue.

The Preliminary Proposal states that APA will not require an entity holding a Power Purchase Certificate dated September 15, 1986, and including a termination provision, to reapply for a Power Purchase Certificate. Not all Power Purchase Certificates may be dated the same. Some have been amended and have a later date. We suggest revising that sentence in the Preliminary Proposal to delete the date and simply refer to "existing Power Purchase Certificates."

The Preliminary Proposal also discusses the payment by new allottees for their share of repayable advances and costs incurred by APA in this post-2017 allocation process. We strongly support such an approach, as it prevents "new" customers from getting a windfall at the expense of existing customers. When such payments are made, they should be remitted to the existing customers who paid for those advances and costs, possibly in the form of a bill-credit. It would be inappropriate to use those funds for the suggested alternative in the Preliminary Proposal to reduce the rates to all post-2017 customers.

Finally, we are supportive of and agree with the comments submitted by SRP, CAP, IEDA, Ken Saline and Jeff Woner.

It is in our interest that the Authority ultimately selects an allocation which is legally defensible, consistent with past practices, and comports with the applications and expectations of the "legacy" and "new" customers of the Authority. Thank you for this opportunity to comment.

Very truly yours,

Sheryl A. Sweeney

c:

R. D. Justice	Jeff Woner
Glen Vortherms	Ken Saline
Jim Sweeney	Dennis Delaney
Bill Van Allen	Ed Gerak
Jim Wales	Donovan Neese