June 30, 2015

Via email post2017process@powerauthority.org
Attention: Robert Johnson
Arizona Power Authority
1810 West Adams Street
Phoenix, Arizona 85007-2697

RE: SRP written comments to consultants preliminary proposal for Hoover Power Marketing Post-2017 before the APA commissioners

The Spirit and Intent of the Hoover Power Plant Act of 2011

The Hoover Power Plant Act of 2011 (the "Act") was developed pursuant to multi-year negotiations among users of Hoover capacity and energy in Arizona, California and Nevada, including both the APA and representatives of the APA existing Hoover customers.

Following lengthy negotiations, existing Hoover customers agreed that the total capacity to be allocated in the post-2017 Hoover contracts should be increased from 1951 MW to 2074 MW. This was intended to reflect additional "up-rating" of the capacity not allocated in 1984. The new total capacity is commonly referred to as the "up-rated energy." The existing Hoover customers further agreed that a new pool of capacity and energy (Schedule D) should be created for allocation to entities not currently receiving Schedule A or B capacity and energy, by reducing the 2074 MW of capacity and associated energy that might otherwise have been available to existing Hoover customers by 5%.

This 5% reduction created both Federal and State pools of Hoover power available for new customers. Schedule D totals 103,700 kW of capacity and 226,352 MWh of energy. Of that amount, the APA has 11,510 kW of capacity and 25,113 MWh or energy available for new "qualified and eligible" customers.

The existing customers provided their political support for passage of the Act based on this understanding.

Intent of 2011 Congress

SRP recognizes that when interpreting statutes the first responsibility of any court is to try to implement the intent of Congress or the Legislature (in this matter that would be the intent of Congress). The courts do this by looking first and only at the language of the act at issue. If the act is plain and answers the statutory question before the court, then that is the end of the matter. If the act is not plain then, and only then, is the court (or adjudicating body, in this case APA) permitted to look elsewhere to determine the intent of Congress.

Any formal report of the committee recommending the bill ("Report"), that being the Committee on Natural Resources (the "Committee") in the case of the Act, is the first document that the APA should look to if there is a question about the intent of Congress. If this Report does not resolve the matter, then the APA can look to other resources, and in particular, the statements of the Committee members, particularly the sponsors.

SRP believes that the Committee Report resolves the issue as to whether the 5% "haircut" was all that Congress mandated be given up by the Schedule A and B power users. The answer is "yes, that was all that was mandated, and no more." SRP's view is supported below and by reference to the Report, a copy of which is attached for your reference, and by the recollections those in SRP's management who were involved in the process.

The Report, on page 2, in the third full paragraph, states that the Act mandates that Schedule A and B power users "give up five percent of [their] Hoover power resource[s]." In the final paragraph on page 2 the Report also notes that the Act "reduces the Schedule A summer energy and winter firm energy by 5% of the amount to be provided after October 1, 2017, to the existing Schedule A contractors." (Emphasis added.) This appears to completely answer the question of whether the existing contractors can be compelled to give up any more of their existing allocations under the provisions of the Act. Clearly the Act does not compel this result.

Further support can be found in the Report's explanation as to what happens if any Schedule D firm energy is not allocated. As noted in the third paragraph on page 3, "any unallocated firm energy will be returned in the same proportion to the contractors in Schedule A and B." This clearly contemplates that the proportion remaining to the existing Schedule A and B power users will remain unchanged.

SRP was deeply involved in the process which lead to the enactment of the 2011 Act. As such, SRP can state that its interpretation clearly reflects the understanding of the parties at the time the language of the Act was being developed, that is, the haircut imposed on the Schedule A and B power users was to be 5% of the up-rated energy and no more.

In supporting the federal legislation and renewal of 95% of APA's Hoover allocation, it was the expectation of the existing customers that they too would receive a 95% renewal. California's allocation goes to existing customers, less 5%. Nevada's allocation goes to existing customers, less 5%. Arizona customers supported Arizona's allocation with the intent of being treated the same as Nevada and California customers. This approach is consistent with the approach taken by Western in reallocating other preference resources such as the Loveland project (4% pool for new entrants and extension of contracts for 96% of power to existing customers), Salt Lake City Area Integrated Projects (7% pool for new entrants and extension of contracts for 93% of power

to existing customers) and Parker-Davis (7% pool for new entrants and extension of contracts for 93% of power to existing customers).

Therefore, SRP believes that Hoover allocations to new customers, even if they are "qualified and eligible" should be made only from the Schedule D resource pool that was created by the full cooperation and support of existing Hoover customers. An additional "haircut," however small and even if uniformly applied to all Schedule A customers, violates the language and the spirit of the Act and is not consistent with the intent of the existing customers when they lent their support to the passage of the Act. SRP supports and fully endorses renewals of existing Hoover A and Hoover B contract capacity and associated energy adjusted proportionately to recognize changes resulting from recognition of the "up-rated energy" and the Act as described above.

Revised Draft Plan and Draft Alternatives

On January 16, 2015, the Arizona Power Authority held a Consultants Workshop to discuss and take comments on the Revised Draft Plan and Draft Alternatives that were released via the APA website December 29, 2014 ("Revised Draft Plan"). SRP then supported, and continues to support Alternative 1 of the Revised Draft Plan.

The concept of renewals in the Post-2017 Hoover allocation process is sound and appropriate for a number of reasons:

- Existing Hoover customers have borne the burden of paying for the dam, generating facilities, uprates and maintenance and replacement for the facilities for the past 50 years;
- Existing Hoover customers voluntarily created a pool for new entrants consistent with other Western Area Power Administration project pools;
- In collaboration with the States of California and Nevada, existing Arizona Hoover customers working on the Hoover Power Plant Act of 2011 expected the same result - California's 2017 allocation goes to existing customers less 5%, Nevada's 2017 allocation goes to existing customers less 5%. Arizona's existing Hoover customers supported Arizona's allocation with the intent of being treated the same as California and Nevada; and
- New qualified and eligible customers have access to Schedule D power created at both the Federal (WAPA) level (69.17 MW), and the State level (11.51 MW), i.e. the APA in Arizona (which provides significant opportunity for new qualified and eligible customers without causing harm to existing Hoover customers).

In the current proposal, the APA essentially has arbitrarily chosen to create a new a pool based on the number of new applicants. This, in turn, resulted in the reduction of the existing customers allocations in an arbitrary amount so as to allocate something to all applicants. The criteria for

permitting “all comers” to share in this new pool is not stated. It appears that the intent of the APA was to attempt to make all new entrants happy at the expense of existing customers. If that was the criteria, it is both unsupported in the law and arbitrary.

Additional Comments:

- The existing customers have borne the burden of paying for the dam, the generating facilities, the uprates and the maintenance and replacement of the facilities for the past 50 years. It would be inequitable to deprive these customers of the resource they paid for.
- New allottees must be required to pay their pro rata share of the Authority’s Multi-Species Conservation Program (MSCP) contribution and the repayable advances for equipment at Hoover Dam paid for by the APA customers prior to October 1, 2017. These costs need to be quantified to ensure new allottees know the full financial cost associated with obtaining a Post-2017 Allocation.
- Existing customers willingly gave up 5% of the resource previously allocated to them in exchange for long-term resource stability and certainty. The hope was to avoid a contentious dispute over the reallocation process. A process without acrimony has significant value to all concerned. The proposed allocation unnecessarily reintroduces contention.