

HOOVER POWER ALLOCATION ACT OF 2011

Sec. 105. —(a)(1) ALLOCATION OF CONTRACTS FOR POWER - The Secretary of Energy shall offer (43 U.S.C. § 619a.):

(a) (1) (A) To each contractor for power generated at Hoover Dam a contract for delivery commencing October 1, 2017, of the specific amount of capacity and firm energy specified for that contractor in the following table:

SCHEDULE A**Long-term Schedule A contingent capacity and associated firm energy for offers of contracts to Boulder Canyon project contractors**

| Contractor | Contingent Capacity (kW) | Firm Energy (thousands of kWh) | | |
|--|--------------------------|--------------------------------|------------------|------------------|
| | | Summer | Winter | Total |
| Metropolitan Water District of Southern California | 249,948 | 859,163 | 368,212 | 1,227,375 |
| City of Los Angeles | 495,732 | 464,108 | 199,175 | 663,283 |
| Southern California Edison Company | 280,245 | 166,712 | 71,448 | 238,160 |
| City of Glendale | 18,178 | 45,028 | 19,297 | 64,325 |
| City of Pasadena | 11,108 | 38,622 | 16,553 | 55,175 |
| City of Burbank | 5,176 | 14,070 | 6,030 | 20,100 |
| Arizona Power Authority | 190,869 | 429,582 | 184,107 | 613,689 |
| Colorado River Commission of Nevada | 190,869 | 429,582 | 184,107 | 613,689 |
| United States, for Boulder City | 20,198 | 53,200 | 22,800 | 76,000 |
| Totals | 1,462,323 | 2,500,067 | 1,071,729 | 3,571,796 |

(B) To each existing contractor for power generated at Hoover Dam, a contract, for delivery commencing October 1, 2017, of the amount of contingent capacity and firm energy specified for that contractor in the following table:

HOOVER POWER ALLOCATION ACT OF 2011

SCHEDULE B**Long-term Schedule B contingent capacity and associated firm energy for offers of contracts to Boulder Canyon project contractors**

| Contractor | Contingent Capacity (kW) | Firm Energy (thousands of kWh) | | |
|-------------------|--------------------------|--------------------------------|---------|---------|
| | | Summer | Winter | Total |
| City of Glendale | 2,020 | 2,749 | 1,194 | 3,943 |
| City of Pasadena | 9,089 | 2,399 | 1,041 | 3,440 |
| City of Burbank | 15,149 | 3,604 | 1,566 | 5,170 |
| City of Anaheim | 40,396 | 34,442 | 14,958 | 49,400 |
| City of Azusa | 4,039 | 3,312 | 1,438 | 4,750 |
| City of Banning | 2,020 | 1,324 | 576 | 1,900 |
| City of Colton | 3,030 | 2,650 | 1,150 | 3,800 |
| City of Riverside | 30,296 | 25,831 | 11,219 | 37,050 |
| City of Vernon | 22,218 | 18,546 | 8,054 | 26,600 |
| Arizona | 189,860 | 140,600 | 60,800 | 201,400 |
| Nevada | 189,860 | 273,600 | 117,800 | 391,400 |
| Totals | 507,977 | 509,057 | 219,796 | 728,853 |

Provided, however, That in the case of Arizona and Nevada, such contracts shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada, respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon project: **Provided further,** That in the case of California, no such contract under this subparagraph (B) shall be offered to any purchaser who is offered a contract for capacity exceeding 20,000 kilowatts under subparagraph (A) of this paragraph.

(C) To the Arizona Power Authority and the Colorado River Commission of Nevada and to purchasers in the State of California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing October 1, 2017, of such energy generated at Hoover Dam as is available respectively to the States of Arizona, Nevada, and California in excess of 4,501.001 million kilowatthours in any year of operation (hereinafter called excess energy) in accordance with the following table:

HOOVER POWER ALLOCATION ACT OF 2011

SCHEDULE C

Excess Energy

| Priority of entitlement to excess | State |
|--|--|
| <p>FIRST: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: <i>Provided</i>, That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year's 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in an amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.</p> | <p>Arizona</p> |
| <p>SECOND: Meeting Hoover Dam contractual obligations under Schedule A of subsection (a)(1)(A), under Schedule B of subsection (a)(1)(B), and under Schedule D of subsection (a)(2), not exceeding 26 million kilowatthours in each year of operation.</p> | <p>Arizona, Nevada, and California</p> |
| <p>THIRD: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.</p> | <p>Arizona, Nevada, and California</p> |

- (a) (2) (A) The Secretary of Energy is authorized to and shall create from the apportioned allocation of contingent capacity and firm energy adjusted from the amounts authorized in this Act in 1984 to the amounts shown in Schedule A and Schedule B, as modified by the Hoover Power Allocation Act of 2011, a resource pool equal to 5 percent of the full rated capacity of 2,074,000 kilowatts, and associated firm energy, as shown in Schedule D (referred to in this section as 'Schedule D contingent capacity and firm energy');

HOOVER POWER ALLOCATION ACT OF 2011

SCHEDULE D**Long-term Schedule D resource pool of continued capacity and associated firm energy for new allottees**

| State | Contingent Capacity (kW) | Firm Energy (thousands of kWh) | | |
|---|--------------------------|--------------------------------|--------|---------|
| | | Summer | Winter | Total |
| New Entities Allocated by the Secretary of Energy | 69,170 | 105,637 | 45,376 | 151,013 |
| New Entities Allocated by State | | | | |
| Arizona | 11,510 | 17,580 | 7,533 | 25,113 |
| California | 11,510 | 17,580 | 7,533 | 25,113 |
| Nevada | 11,510 | 17,580 | 7,533 | 25,113 |
| Totals | 103,700 | 158,377 | 67,975 | 226,352 |

(B) The Secretary of Energy shall offer Schedule D contingency capacity and firm energy to entities not receiving contingent capacity and firm energy under subparagraphs (A) and (B) of paragraphs (1) (referred to in this section as 'new allottees') for delivery commencing October 1, 2017 pursuant to this subsection. In this subsection, the term 'the marketing area for the Boulder City Area Projects' shall have the same meaning as in appendix A of the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the Federal Register on December 28, 1984 (49 Federal Register 50582 et seq.) (referred to in this section as the 'Criteria').

(C) (i) Within 36 months of the date of enactment of the Hoover Power Allocation Act of 2011, the Secretary of Energy shall allocate through the Western Area Power Administration (referred to in this section as 'Western'), for delivery commencing October 1, 2017, for use in the marketing area for the Boulder City Area Projects 66.7 percent of the Schedule D contingent capacity and firm energy to new allottees that are located within the marketing area for the Boulder City Area Projects and that are—

(I) eligible to enter into contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d); or

(II) federally recognized Indian tribes.

HOOVER POWER ALLOCATION ACT OF 2011

- (C) (ii) In the case of Arizona and Nevada, Schedule D contingent capacity and firm energy for new allottees other than federally recognized Indian tribes shall be offered through the Arizona Power Authority and the Colorado River Commission of Nevada, respectively. Schedule D contingent capacity and firm energy allocated to federally recognized Indian tribes shall be contracted for directly with Western.
- (D) Within 1 year of the date of enactment of the Hoover Power Allocation Act of 2011, the Secretary of Energy also shall allocate, for delivery commencing October 1, 2017, for use in the marketing area for the Boulder City Area Projects 11.1 percent of the Schedule D contingent capacity and firm energy to each of —
- (i) the Arizona Power Authority for allocation to new allottees in the State of Arizona;
 - (ii) the Colorado River Commission of Nevada for allocation to new allottees in the State of Nevada; and
 - (iii) Western for allocation to new allottees within the State of California, provided that Western shall have 36 months to complete such allocation.
- (E) Each contract offered pursuant to this subsection shall include a provision requiring the new allottee to pay a proportionate share of its State's respective contribution (determined in accordance with each State's applicable funding agreement) to the cost of the Lower Colorado River Multi-Species Conservation Program (as defined in section 9401 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat.1327)), and to execute the Boulder Canyon Project Implementation Agreement Contract No. 95-PAO-10616 (referred to in this section as the 'Implementation Agreement').
- (F) Any of the 66.7 percent of Schedule D contingent capacity and firm energy that is to be allocated by Western that is not allocated and placed under contract by October 1, 2017, shall be returned to those contractors shown in Schedule A and Schedule B in the same proportion as those contractors' allocations of Schedule A and Schedule B contingent capacity and firm energy. Any of the 33.3 percent of Schedule D contingent capacity and firm energy that is to be distributed within the States of Arizona, Nevada, and California that is not allocated and placed under contract by October 1, 2017, shall be returned to the Schedule A and Schedule B contractors within the State in which the Schedule D contingent capacity and firm energy were to be distributed, in the same proportion as those contractors' allocations of Schedule A and Schedule B contingent capacity and firm energy.'

HOOVER POWER ALLOCATION ACT OF 2011

- (3) The total obligation of the Secretary of Energy to deliver firm energy pursuant to paragraphs (1)(A), (1)(B), and (2); and is 4,527.001 million kilowatthours in each year of operation. To the extent that the actual generation at Hoover Powerplant in each year of operation (less deliveries thereof to Arizona required by its first priority under Schedule C of section 105(a) (1)(c) whenever actual generation in each year of operation is in excess of 4,501.001 million kilowatthours) is less than 4,527.001 million kilowatthours, such deficiency shall be borne by the holders of contracts under said Schedules A, B and D in the ratio that the sum of the quantities of firm energy to which each contractor is entitled pursuant to said schedules bears to 4,527.001 million kilowatthours. At the request of each such contractor, the Secretary of Energy will purchase energy to meet that contractor's deficiency at such contractor's expense.
- (4) Subdivision C of the Conformed Criteria shall be deemed to have been modified to conform to this section, as modified by the Hoover Power Allocation Act of 2011. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of the regulations to such modifications.
- (5) Each contract offered under subsection (a) (1) of this section shall:
- (A) in accordance with section 5(a) of the Boulder Canyon Project Act (43 U.S.C. 617d(a)), expire September 30, 2067;
 - (B) not restrict use to which the capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California: *Provided*, That to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California shall allocate such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water;
 - (C) conform to the applicable provisions of subdivision E of the Criteria, commencing at 48 Federal Register 20881, modified as provided in this section. To the extent that said provisions of the Criteria, as so modified, are applicable to contracts entered into under this section, those provisions are hereby ratified;
 - (D) authorize and require Western to collect from new allottees a pro rata share of Hoover Dam repayable advances paid for by contractors prior to October 1, 2017, and remit such amounts to the contractors that paid such advances in proportion to the amounts paid by such contractors as specified in section 6.4 of the Implementation Agreement;

HOOVER POWER ALLOCATION ACT OF 2011

- (F) permit transactions with an independent system operator; and contain the same material terms included in section 5.6 of those long-term contracts for purchases from the Hoover Power Plant that were made in accordance with this Act and are in existence on the date of enactment of the Hoover Power Allocations Act of 2011.
- (b) EXISTING RIGHTS. - Nothing in the Criteria shall be construed to prejudice any rights conferred by the Boulder Canyon Project Act (43 U.S.C. § 617t), as amended and supplemented, on the holder of a contract described in subsection (a) of this section not in default thereunder on September 30, 2067.
- (c) OFFER OF CONTRACT TO OTHER ENTITIES. - If any existing contractor fails to accept an offered contract, the Secretary of Energy shall offer the contingent capacity and firm energy thus available first to other entities in the same State listed in Schedule A and Schedule B, second to other entities listed in Schedule A and Schedule B, third to other entities in the same State which receive contingent capacity and firm energy under subsection (a)(2) of this section, and last to other entities which receive contingent capacity and firm energy under subsection (a)(2) of this section.
- (d) WATER AVAILABILITY. - Except with respect to energy purchased at the request of an allottee pursuant to subsection (a)(3), the obligation of the Secretary of Energy to deliver contingent capacity and firm energy pursuant to contracts entered into pursuant to this section shall be subject to availability of the water needed to produce such contingent capacity and firm energy. In the event that water is not available to produce the contingent capacity and firm energy set forth in Schedule A, Schedule B, and Schedule D, the Secretary of Energy shall adjust the contingent capacity and firm energy offered under those Schedules in the same proportion as those contractors' allocations of Schedule A, Schedule B, and Schedule D contingent capacity and firm energy bears to the full rated contingent capacity and firm energy obligations.
- (e) CONTINUED CONGRESSIONAL OVERSIGHT. - The provisions of this section constitute an exercise by the Congress of the right reserved by it in section 5(b) of the Boulder Canyon Project Act, as amended and supplemented, to prescribe terms and conditions for contracts for electrical energy generated at Hoover Dam. This section constitutes the exclusive method for disposing of capacity and energy from Hoover Dam for the period beginning October 1, 2017, and ending September 30, 2067.

HOOVER POWER ALLOCATION ACT OF 2011

- (f) (1) COURT CHALLENGES. - Notwithstanding any other provision of law, any claim that the provisions of subsection (a) of this section violates any rights to capacity or energy from the Boulder Canyon project is barred unless the complaint is filed within one year after the date of enactment of the Hoover Power Allocation Act of 2011 in the United States Claims Court which shall have exclusive jurisdiction over this action. Any claim that actions taken by any administrative agency of the United States violates any right under this title or the Boulder Canyon Project Act (43 U.S.C. § 617t) or the Boulder Canyon Project Adjustment Act (43 U.S.C. 618o) is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one year after final refusal of such agency to correct the action complained of.
- (f) (2) Any contract entered into pursuant to section 105 or section 107 of this Act shall contain provisions by which any dispute or disagreement as to interpretation or performance of the provisions of this title or of applicable regulations or of the contract may be determined by arbitration or court proceedings. The Secretary of Energy or the Secretary of the Interior, as the case may be, if authorized to act for the United States in such arbitration or court proceedings and, except as provided in paragraph (1) of this subsection, jurisdiction is conferred upon any district court of the United States of proper venue to determine the dispute.
- (g) REAFFIRMATION OF CONGRESSIONAL DECLARATION OF PURPOSE. - It is the purpose of this Act to ensure that the rights of contractors for capacity and energy from the Boulder Canyon project for the period beginning October 1, 2017, and ending September 30, 2067, will vest with certainty and finality.