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MEMORANDUM

TO: Arizona Power Authority Commissioners

FROM: Robert S. Lynch

DATE: August 7, 2012

SUBJECT: Issues, Information and Misinformation concerning the APA's Hoover Allocation Process

We have been reviewing the comments you have received to date on your current informal process and your upcoming formal process for allocating Arizona's share of Hoover Power post-2017. We are particularly concerned about some of the comments you have received about Commissioner Brophy's proposal to have the Commission begin the formal process with a qualitative policy statement. For that reason, we offer the following observations for your consideration.

The APA has not discriminated against co-ops

There are suggestions in some comments that electric cooperatives have been discriminated against in past APA allocation activities. That is not true. In the 1984-5 allocation process, the Arizona Electric Power Cooperative (AEPSCO), the generation and transmission cooperative (G&T), received an allocation of Hoover B. AEPSCO was at the time the all requirements supplier to all of Arizona's distribution co-ops. AEPSCO later voluntarily relinquished that allocation in favor of increased access to another federal hydropower resource. That move benefitted all of Arizona's distribution co-ops.

In the just-concluded federal legislative process, the Arizona cooperatives as a group were specifically invited into discussions. Their role as potential allottees for Arizona's direct allocation of Hoover Power for "new entrants" was actively and openly discussed. Rather than being discriminated against, these discussions specifically contemplated their return to the "Hoover family". This includes the opportunity to apply for the "new entrant" pool to be offered by the Western Area Power Administration (WAPA) pursuant to the 2011 Hoover Allocation Act.

The proposing of qualitative principles is neither premature nor inappropriate

After the prior allocations and contracting concluded, the Commission twice addressed its procedures, modifying them and adding specificity. One of those new specifics is the requirement that the Commission present a proposal at the first meeting following public notice of the formal

process. In short, the Commission has to have a proposal by that time. It cannot be prepared to do so without at least some consideration of what that proposal might contain before the notice and meeting clock begins to tick. Given the expected federal timetable and the serious "new entrant" issue, that time is now! Anything else would be irresponsible.

The statutory preference provision affecting Hoover A is no impediment to proceeding now

It has been suggested that the Commission must obtain load and resource data from applicants before deciding that its Hoover A allocation is insufficient to supply qualified applicants, triggering the statutory preference provision applicable to Hoover A. As we understand this element of the Brophy proposal, the Commission's required proposal would include a proposed application of the statutory preference. To do otherwise defies common sense.

The Commission's current Hoover A contractors have loads that dwarf the Commission's Hoover A allocation. Many of them are required to file federal reports which easily confirm that fact. Most or all of them have public record obligations to document their loads. In short, there already exists public record confirmation that these loads exceed the Commission's Hoover A allocation.

Moreover, it is reasonable to assume that at least these existing contractors will formally apply for Hoover A allocations once the formal process is initiated. The Commission has already requested and received sufficient informal expressions in that regard from current contractors whose loads exceed the amount of Hoover A available. These and other Commission Hoover A contractors actively supported the Commission and the other direct Hoover allottees in lobbying the federal legislation to a successful conclusion. This expenditure of their own time and resources is evidence of intent to formally apply at the appropriate time.

In sum, the Commission already has before it ample evidence to support a conclusion that its Hoover A allocation is insufficient to cover qualified applicant demand, thus triggering the statutory preference applicable to Hoover A. But the Commission's required proposal would not make that decision. It would propose application of the preference provision. In any event, currently available evidence is adequate support for proposing to apply the Hoover A statutory preference in the Commission's required proposal to be presented at the first formal meeting.

Other criticisms of the Brophy proposal go to its substance and are better reserved for comments on the Commission's required proposal

Other criticisms of the Brophy proposal go to allocation criteria, term and other substantive elements of the proposal. The lack of merit of these criticisms can be addressed now while the Commission is proceeding informally. We would be happy to do so if the Commission wishes, although others already have by supporting these elements of the Brophy proposal. However, our overriding concern is the process and its timetable. The Commission has a need to move this process forward and its consideration of the Brophy proposal is an appropriate and timely effort in fashioning the proposal it must offer early in the formal process.

The “new entrant” dilemma impels Commission action

The Commission’s existing customers are “caught between a rock and a hard place.” It seems very likely that WAPA will consider existing Commission contractors (and those of the Colorado River Commission of Nevada) as ineligible to apply for the Hoover pool WAPA will allocate to “new entrants” across the marketing area (i.e., Hoover D-1). Should deadlines in WAPA’s process pass while the Commission has not yet determined which entities will be Hoover A and B allottees, existing Commission customers could potentially be left out altogether. Legal battles over the concept of “new entrant” would most assuredly arise. However, the Commission can avoid this potential morass by designating its Hoover A and B allottees before federal applications close. Starting the formal process quickly is the best strategy do to so.

We appreciate the opportunity to provide these observations for your consideration.

RSL:psr

cc: Joe Mulholland, Executive Director, APA
Doug Fant, Legal Counsel, APA
IEDA Members