



David A. Fitzgerald
202-246-1356
dfitzgerald@schiffhardin.com

901 K STREET N.W.
SUITE 700
WASHINGTON, DC 20001
t 202.778.6400
f 202.778.6460
www.schiffhardin.com

November 8, 2012

Mr. Joseph Mulholland
Executive Director
Arizona Power Authority
1810 West Adams Street
Phoenix, Arizona 85007-2697

RE: Hoover Post 2017 Allocation

Dear Mr. Mulholland:

At the end of my presentation on behalf of the Arizona Cooperatives at the Commission sponsored conference on October 30, 2012, several questions were asked to clarify issues raised during my discussion of the Arizona Cooperatives' suggested allocation principles. In the interest of providing additional information for the benefit of a more complete discussion, I am writing to augment the answers provided during the post presentation questioning.

During the discussion after my formal presentation, a question was raised regarding the Arizona Cooperatives' potential interest in Hoover D power and in particular, the amount of power that will be marketed directly by the Western Area Power Administration ("Western"). I expressed an understanding that the receipt of Hoover D power either from Western or from the Authority would preclude receipt of power under schedules A and B. At that time, there was some question whether this understanding was consistent with the Hoover Power Allocation Act of 2011 ("HPAA").

In our review of the HPAA, we note that section 2(d) addresses the allocation of Schedule D power. In particular, section 2 (d)(2)(B) explicitly notes that 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 paragraph (1) (referred to in this section as 'new allottees') for delivery commencing October 1, 2017 pursuant to this subsection." Our reading of this passage suggests to us that any recipient of power under schedules A or B would be precluded from receiving power under Schedule D whether the power is marketed by either the Arizona Power Authority or Western. Based on this reading, we believe that an applicant may be able to receive power under the Hoover A and B schedules, but would be foreclosed from a combination of power delivered pursuant to the A, B and D schedules.

During the follow up discussion after my presentation, a question was also raised regarding our proposal for a technical conference. In particular, this inquiry focused on how our proposed technical conference would differ from the presentation process that the Authority has already undertaken this fall. To assist the Authority with the consideration of this concept, I have provided below some contours of a

Joseph Mulholland
November 8, 2012
Page 2

format and questions to ask that could help inform the development of allocation principles and the eventual development of contracts for the Hoover resource.

The concept of a technical conference is hardly unique and is frequently employed by the Federal Energy Regulatory Commission ("FERC") as a device to determine the technical dimensions of a jurisdictional matter in order to develop a more appropriately tailored policy. Following this approach, FERC develops an understanding of the technical dimensions of an issue so that a policy position under development captures the full range of engineering and technical possibilities. However, while a technical conference is a valuable tool, FERC always retains the ultimate discretion on how to shape a policy directive.

For the Authority, we would envision a process that relies upon an independent third party who would preside over a conference that would last no more than two days. The administration of the technical conference by an independent third party would provide the Authority with a neutral coordinator who would be tasked with seeking the answers to several questions that would be developed in advance of the conference. Depending upon the scope of the engagement, the independent third party could also be tasked with developing a report to the Authority on his or her findings.

There are several key questions that would merit examination in a technical conference. Below, we have noted several concepts that would be topical and timely to examine as the Authority moves forward with developing allocation principles. The following list is suggestive and by no means exhaustive of the topics worth discussion during a potential technical conference:

1. Are there seasonal differences in load for potential applicants of Hoover power;
2. Are there variances in use of Hoover power on a daily or weekly basis;
3. What ancillary services or supplemental generation resources are needed to support use of Hoover power;
4. Do customers self-supply ancillary services using Hoover power;
5. Are there market alternatives available to replace Hoover power if unavailable;
6. Are there transmission constraints that may impede the delivery of Hoover power to proposed delivery points;
7. Are there alternative transmission arrangements that can facilitate the delivery of Hoover power on a more cost effective basis;
8. Is there Hoover energy that is available but not fully utilized by a recipient due to load profiles;

Joseph Mulholland
November 8, 2012
Page 3

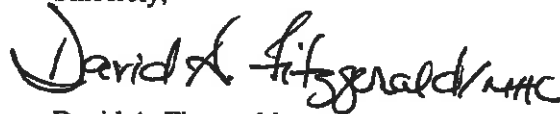
9. Are there scheduling practices that can be used to utilize all Hoover power when available without needing to rely on banking arrangements; and
10. What are the technologies and software improvements that are currently available that can facilitate the delivery of Hoover power.

It is also important to highlight issues that would not be appropriate for discussion in a technical conference, lest these issues become a distraction. In particular, it would be appropriate to exclude any discussion of the legal standards that the Authority may apply in deciding an allocation. Indeed, there may be some regulatory or statutory restrictions that could diminish the potential of a methodology to allocate the Hoover resource. However, the resolution of questions of law should remain firmly within the purview of the Authority during the allocation process.

As noted in the discussion following my presentation, the Arizona Cooperatives encourage the Authority to convene a technical conference to fulfill its obligation to dispose of the Hoover resource in the most widespread manner as possible. While there may be alternative options available to the Authority to ascertain the answers to some of the questions raised above, the collective and often collaborative process of a technical conference can often facilitate a common understanding of a policy objective by all potential stakeholders.

If I may provide any additional information regarding these topics or the presentation made on behalf of the Arizona Cooperatives last week, please do not hesitate to call.

Sincerely,



David A. Fitzgerald

cc: Patrick Ledger
Creden Huber
Vin Nitido
Tyler Carlson
Chuck Moore