



# Arizona Power Authority

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A-596

Hand Delivered

Charles S. Pierson, Esq.  
Assistant to the Attorney General  
Office of the Attorney General  
1275 W. Washington  
Phoenix, Arizona 85007-2997

Re: Arizona Power Authority Rules Revision

Dear Mr. Pierson:

For certification by the office of the Attorney General,  
I am delivering to you:

A. Three copies of the required Concise  
Explanatory Statement.

B. Three copies of Rules as adopted by the  
Commission, with the revisions reflected in the Concise  
Explanatory Statement.

Please advise me when the certification process has been  
completed.

I appreciate your assistance and that of other staff  
members in finalizing the rule-making procedures.

Very sincerely,

JAMES P. BARTLETT  
Legal Counsel

JPB/jb  
Enc.

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CONCISE EXPLANATORY STATEMENT

TITLE 30, ARIZONA REVISED STATUTES

POWER

CHAPTER I ARIZONA POWER AUTHORITY

ARTICLE 2, POWER AND DUTIES OF AUTHORITY  
AND ARTICLE 4, HEARINGS AND APPEALS

RULES R12-14-101 to R12-14-607, inclusive.

Pursuant to A.R.S. § 41-1027, the Administrator of the Arizona Power Authority ("Administrator") submits this Concise Explanatory Statement in support of the adoption of Rules R12-14-101 to R12-14-607, inclusive. The Rules are a total revision of the Authority's previous Rules R12-14-101 to R12-14-613, inclusive, and relate, in general, to the availability of electric power under the jurisdiction of the Authority and the disposition and administration of that power. The new Rules also modernize the Authority's Practice and Procedures governing administrative and quasi-judicial hearings before the Authority Commission.

The Rules, were adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 1992. The Rules, as corrected and modified to reflect the contents of this Concise Explanatory Statement, are enclosed.

I. Reasons for Adopting the Rules.

A.R.S. § 30-124(D) provides that the Authority may fix and prescribe the terms and conditions of the electric sales contracts and services concerning electric power which falls within the jurisdiction of the Authority and adopt such rules and regulations as the Authority finds necessary or convenient respecting electric services and disposition of electric power.

A.R.S. § 30-171(A) provides that the Authority may adopt necessary rules of practice and procedure governing hearings.

These Rules are intended to implement the statutory authorizations.

The Authority is a State agency which receives and markets Arizona's share of hydro-electric power produced at Hoover Dam. The Authority is repealing its old Rules and adopting a new set of Rules to reflect the dynamic changes which have occurred over the years in the marketing and distribution of federally-generated electricity. In the new Rules, the Authority has attempted to retain the intent and many of the concepts of the old Rules and at the same time modernize and clarify the manner in which eligible entities may apply for and obtain a supply of electric power from the Authority. The new Rules also update the Authority's operating procedures and the manner in which power under the jurisdiction of the Authority is administered. In addition, the new Rules modernize the Authority's practices and procedures which govern administrative and quasi-judicial hearings before the five-member Authority Commission.

The following is a brief description of each Rule:

#### ARTICLE I. GENERAL

R12-14-101 contains the definitions of terms used throughout the Rules. Terms which are defined in the Authority's enabling legislation retain the meaning as stated therein.

#### ARTICLE II. AVAILABILITY OF POWER; APPLICATION FOR ELECTRIC SERVICE; POWER PURCHASE CERTIFICATES

R12-14-201 describes the public process whereby eligible entities may obtain a supply of Long-Term electric power from the Authority and indicates the manner in which power shall be allocated.

R12-14-202 provides that an Application for Electric Service must be filed if an entity wishes to purchase power from the Authority.

R12-14-203 describes the procedure to obtain the statutorily-required Power Purchase Certificate if an entity desires to purchase power pursuant to A.R.S. Title 30. (Note: The Authority markets power both under A.R.S. Title 30 and under Title 45 -- different eligibility requirements are contained in the two statutory sections. For example, a Power Purchase Certificate is required under Title 30, but there is no similar requirement under Title 45.)

### ARTICLE III. SERVICE TO PURCHASERS

R12-14-301 sets forth the Authority's responsibility to contract for and deliver electric power to eligible entities, including cooperation with customers to insure an adequate electric supply and the prediction of future services required by customers.

R12-14-302 requires power purchasers to cooperate with the Authority and to disclose a plan for the use and administration of power purchased from the Authority.

### ARTICLE IV. ADMINISTRATION OF POWER

R12-14-401 describes the limitations upon the sale, use, transfer and assignment of power and the manner in which the power is administered by the Authority subject to the terms and conditions of applicable Power Sales Contracts.

R12-14-402 allows a power purchaser to change its electric service from one Point of Delivery to one or more other Points of Delivery unless prohibited by law, regulation or contract.

R12-14-403 permits the Authority to approve Wheeling Agreements (as defined in the Rules) and operating agreements among various purchasers so long as the arrangements do not disrupt established electric service, operations, practices, etc.

R12-14-404 enables the Authority to negotiate and enter into contracts with qualified entities for the disposition of Short-Term Power (i.e. a supply of power made available by or through the Authority for a period of 366 consecutive days, or less; power other than Short-Term Power is "Long-Term Power" to which the bulk of the Rules apply.)

R12-14-405 allows entities to petition the Authority for information, aid, advice and assistance regarding any matters within the jurisdiction of the Authority and gives the Authority's staff and its consultants power to make preliminary studies, surveys and investigations with respect to requested cooperative action.

### ARTICLE V. RECORDS

R12-14-501 requires customers to file with the Authority, upon request, copies of the customer's contracts or other records relating to power purchased from the Authority.

ARTICLE VI. RULES OF PRACTICE AND PROCEDURE

R12-14-601 sets forth the general procedural Rules governing hearings before the Commission and adopts the provisions of the Arizona Administrative Procedure Act (A.R.S. § 41-1001, et seq.) unless otherwise required by law. The Rule authorizes the Commission to designate a member of the Commission, a member of the Authority staff or another individual to act as a Hearing Officer in any Commission proceedings. The Rule also authorizes the staff of the Authority to participate as a party in any proceeding.

R12-14-602 covers the content, style and filing requirements for pleadings, motions and other documents allowed or directed to be filed with the Authority.

R12-14-603 relates to the conduct of proceedings before the Commission, specifies the Secretary's function as Clerk and directs the Authority's legal counsel to participate on behalf of the Authority and the Commission.

R12-14-604 relates to the manner in which multiple claims will be handled.

R12-14-605 governs rehearings and appeals from any decision by the Commission, including time requirements for filing.

R12-14-606 deals with oral arguments on rehearing.

R12-14-607 permits the Commission to hold informal conferences relating to any subject matter within the jurisdiction of the Authority.

II. Changes Between Text of Proposed Rules and Text of Rules as Finally Adopted.

Prior to adoption of the Rules, an Errata Sheet was publicly circulated. The corrections indicated by the Errata Sheet were in place at the time of adoption of the Rules.

A copy of the Errata Sheet is attached for reference. (See following page)

COMMENTS BY THE OFFICE OF THE ATTORNEY GENERAL

R12-14-101.

COMMENT:

The terms "A.R.S.", "Authority", "Commission",

"Operating Unit", and "Power" are already defined in the statutes. It is not necessary to redefine these terms in the Rules.

ANALYSIS:

The Authority concurs.

RESPONSE:

The above definitions have been eliminated.

R12-14-201(J).

COMMENT:

As written, this subsection appears to encroach upon the preference priorities established by A.R.S. § 30-125(A). If the intent of the Rule is to clarify treatment of entities which have an equal right of preference under § 30-125(A), the Rule should be simplified and shortened to so state.

ANALYSIS:

The Authority concurs with the comment and agrees that the intent of the Rule is to clarify treatment of entities which are within the same class of preference customers. It was not the intent of the Rule to impinge upon existing statutory preference rights. To clarify the language of R12-14-201(J) has been rewritten. The Rule, as adopted, read:

"J. Allocation of Long-Term Power shall be based upon the needs and preference priority of Qualified Entities, as determined by the Authority. In allocating and selling Long-Term Power pursuant to A.R.S. Chapter 1, Title 30, the Authority shall also consider the type of use within the Service Territory. Subject to existing laws, rules and regulations, Long-Term Power shall be allocated equitably among Qualified Entities of a class. Preference among different classes of Qualified Entities shall be maintained. A "class" shall be composed of Qualified Entities which hold Preference rights of the same priority."

As rewritten, this subsection reads:

"J. Within the classes or preference priorities established by A.R.S. § 30-125(A), Long-Term Power shall be allocated equitably among Qualified Entities in the same class based upon the needs of such entities and the

type of use of Long-Term Power within the Service Territory."

R12-14-502.

COMMENT:

Subsection (A) of this Rule is covered by existing sections of the Arizona Revised Statutes and is unnecessary, i.e. the Authority's records, by law, are open to public inspection.

Subsection (B) of this Rule states that the Commission shall fix and collect reasonable fees for reproduction of documents, certification of records, etc. In order to establish a fee schedule, it will be necessary for the Authority to adopt a specific Rule so providing. R12-14-502 should be stricken.

ANALYSIS:

The Authority concurs.

RESPONSE:

R12-14-502 has been stricken in its entirety.

R12-14-601(B).

COMMENT:

The first sentence of subsection (B) provides: "Unless otherwise provided by law, the Commission may reschedule, recess, continue or adjourn a hearing". To be consistent, the language "Unless otherwise provided by law \* \* \*" should be added to the second sentence of subsection (B).

ANALYSIS:

The Authority concurs.

RESPONSE:

"Unless otherwise provided by law" has been added at the beginning of the second sentence of subsection (B).

R12-14-601(E)

COMMENT:

The second sentence of subsection (E) provides:

"The Hearing Officer may take any action the Commission is required or permitted to take

unless otherwise specifically provided". The statutory scheme invests the Commission with the power to make decisions on behalf of the Authority and does not permit the Commission to delegate its responsibility. The second sentence should be stricken.

ANALYSIS:

The Authority concurs.

RESPONSE:

The second sentence of subparagraph (E) has been stricken.

R12-14-601(F)

COMMENT:

This subsection allows the Commission, as opposed to the "Authority", to appear in a proceeding as a party and if so participating requires that an independent disinterested person act as a Hearing Officer "who may take any action or decision the Commission is authorized to take." There does not appear to be any statutory authorization for such a delegation of authority. Moreover, the statutory scheme does not appear to recognize a distinction between the "Commission" and the "Authority" as separate legal entities. The Authority may only act by and through its Commission.

ANALYSIS:

The Authority concurs.

RESPONSE:

After eliminating the inappropriate language, subsection (F) reads as follows:

"F. If necessary or appropriate, the staff of the Authority may participate in any proceeding as a Party."

R12-14-601(G)

COMMENT:

This subsection provides that if for any reason the Authority's Secretary is unable to act, the Chairman of the Commission may designate a person to carry out the duties of Secretary. The Power Authority Act requires the Commission, rather than the Chairman of the Commission, to designate a person or persons who shall



execute documents and instruments on behalf of the Authority (i.e. the Authority's "Secretary" as earlier defined by the Rules). The statutes do not delegate this authority to the Chairman.

ANALYSIS:

The Authority concurs.

RESPONSE:

The subsection has been stricken.

R12-14-603(A)

COMMENT:

The first sentence of this subsection authorizes the Chairman of the Commission to preside at proceedings, rule upon questions concerning procedures, evidence, "and issues". As written, it appears that this subsection would authorize the Chairman, as opposed to the Commission, to rule on substantive matters. The statutes do not authorize a delegation of authority to the Chairman with respect to matters which must be decided by the Commission as a whole. The inclusion of the words "and issues" is inappropriate and should be stricken.

ANALYSIS:

The Authority concurs.

RESPONSE:

The words "and issues" appearing in the first sentence of R12-14-603(A) have been stricken.

R12-14-605(E)

COMMENT:

This subsection is a part of the Rule which deals with rehearing and appeals of matters presented to the Commission. A.R.S. § 41-1062(B) provides that in connection with a rehearing or review by a state agency, such rehearing or review shall be governed by agency rule "drawn as closely as practicable from Rule 59, Arizona Rules of Civil Procedure, relating to new trial in Superior Court". It appears that this subsection departs in some degree from Rule 59. To make the second sentence of the subsection acceptable, the Authority should strike the word "also" from line 17 and should strike the word "previously" from line 18 at Page 34 of the Rules.

ANALYSIS:

The Authority agrees.

RESPONSE:

The second sentence of subsection (E) now provides:  
"\* \* \* After giving the Parties notice and an opportunity to be heard the Commission may also grant a rehearing, upon a motion timely served, for a reason not previously stated in a motion for rehearing."

As rewritten, this sentence reads:

"\* \* \* After giving the Parties notice and an opportunity to be heard, the Commission may grant a rehearing, upon a motion timely served, for a reason not stated in a motion for rehearing."

III. Evaluation of Comments on the Proposed Rules.

WRITTEN COMMENTS OF THE IRRIGATION AND ELECTRICAL DISTRICTS ASSOCIATION OF ARIZONA (IEDA)

(NOTE: Certain of the written comments have been paraphrased -- the complete text of the comments has been filed as a part of the official Rule-making record.)

GENERAL COMMENT:

Does the Authority intend to restrict or diminish any discretionary authority or any current operating practices or currently contemplated future actions of the Commission? Any such limiting interpretation of the Rules would be vigorously opposed.

ANALYSIS:

It is not the intent of the Rules to restrict or diminish any existing discretionary authority.

RESPONSE:

The Rules were retained as written except as indicated on the Errata Sheet and except as modified pursuant to public comment.

R12-14-201(G):

COMMENT:

Strike "containing agreed-upon provisions" to avoid contract negotiation disputes being used to prevent

contract offers.

ANALYSIS:

The comment is well taken. The deletion would not be a substantive change in the Rule.

RESPONSE:

The language "containing agreed-upon provisions" has been stricken.

R12-14-203 (C)(3).

COMMENT:

This language is not exactly the language of A.R.S. § 30-152(A)(4). A close reading of it can produce the same intent as that of the statute, but some confusion may arise in the future.

ANALYSIS:

The Rules should not and do not intend to precisely track any statutory provision which is already in place. The information sought to be obtained under this section of the Rule is a refinement of the statutory information and is not intended to be a substitute for the language of the statute -- it seeks additional information for the benefit of the Authority in dealing with Applications for Power Purchase Certificates.

RESPONSE:

The Rule was retained as written.

R12-14-301(A) and (B).

COMMENT:

The word "capability" should be stricken and in its place should be inserted "access". Delete "Long-Term Power".

ANALYSIS:

The use of the terminology "transmission capability" substantially predates the current discussion concerning "transmission access" and "transmission capability". Even though the terms may be substantially synonymous, it is the Authority's belief that the use of the words "transmission capability" adequately serves the purpose of the Rule, which is to make certain that before a purchaser can contract with the Authority, the purchaser must have the transmission lines in place (either by itself or through others) to accept delivery of power

from the Authority. The second suggested deletion appears to be editorial and is not deemed significant.

RESPONSE:

No change resulted from these comments.

R12-14-301(D)(2).

COMMENT:

IEDA expressed concern about the wording of this provision, but if the wording is intended merely to memorialize existing record-keeping practices, then it would not be burden upon the customers.

ANALYSIS:

This Rule generally provides that with the aid of its purchasers, the Authority will endeavor to maintain a system of load scheduling and records allowing the Authority to reasonably predict a purchaser's current and future power needs, whether the purchaser should be allowed to keep power which is surplus to the purchaser's needs and whether the purchaser will have power which is temporarily or permanently surplus to its needs. This Rule does not require the customers to assume a burden of record keeping, but the Authority does expect the aid and cooperation of its purchasers. The responsibility for collecting and maintaining records and information rests with the Authority and not with the customer.

RESPONSE:

No change resulted from this comment.

R12-14-301(E).

COMMENT:

The word "energy" should be changed to the defined word "Power".

ANALYSIS:

The Rule relates to the Authority's obligation to perform surveys and identify sources of electricity or transmission service which might be available. The Authority agrees that the use of the defined term "Power" (which includes both capacity and energy) is the more correct terminology.

RESPONSE:

In the first line of the Rule, the word "energy" was

deleted and in its place the defined term "Power" was inserted.

WRITTEN COMMENTS OF ELECTRICAL DISTRICT ED-8

GENERAL COMMENT:

ED-8 desires a fair and equitable procedure for the recapture and reallocation of any excess power. These Regulations appear to embody the administrative process by which the Authority has agreed to redistribute excess Hoover to those Districts which did not reap the benefits of Central Arizona Project water and were not Hoover customers until the 1985 reallocation process, such as ED-8. If we are incorrect in this conclusion, ED-8 respectfully requests that these Rules be amended accordingly.

ANALYSIS:

In considering this Comment, the Authority assumes that the reference to "excess power" relates to Hoover Power which is in excess of a Hoover customer's needs. In the reallocation or remarketing of this so-called "excess" Hoover Power, the Authority intends to comply with all applicable portions of its final Hoover Power Marketing Plan of June 7, 1985 (the "Red Book"). Nothing in the Rules is intended to depart from such marketing plan insofar as Hoover Power which is currently under contract. The marketing plan, however, does not apply to other sources of power which may become available to the Authority, nor would it control the disposition of Hoover Power when the current Power Sales Contracts expire in 2017.

RESPONSE:

No change resulted from these comments.

R12-14-101.

COMMENT:

The phrase "common generation control scheme" as used in defining a "Control Area" for banking purposes, may not have a clear meaning.

ANALYSIS:

The Authority believes that the phrase "common generation control scheme" as used in the definition of "control area" is sufficiently clear and does not create a problem in applying the definition within the context of the Rules. It is not intended that the phrase exclude a power system with a common retail delivery transmission

scheme.

RESPONSE:

No change resulted from this comment.

COMMENT:

"Pleading" is defined on page 7 of the Rules and includes "Motions". The Courts usually distinguish between motions and pleadings in applying the Arizona Rules of Civil Procedure.

ANALYSIS:

An earlier version of the revised Rules adopted a substantial part of the Arizona Rules of Civil Procedure. However, after review by the Governor's Regulatory Review Council, it was decided that the such procedures were unduly burdensome upon the general public and the Authority opted, instead, to adopt the provisions of the Arizona Administrative Procedures Act. Consequently, there is no attempt to tie the Rules into all of the Arizona Rules of Civil Procedure. The Authority believes that the use of the word "pleading" to cover all types of filings will not result in any confusion.

RESPONSE:

No change resulted from this comment.

COMMENT:

"Power" is a defined term on Page 7 of these Rules and is defined in Titles 30 and 45, (A.R.S. § 30-1017 and A.R.S. § 45-25025) as "Electric power or electric energy, or both". Although the language is different in these Rules, Power apparently means the same thing in all contexts. The opening paragraph of R12-14-101 says definitions in Title 30 and Title 45 shall apply, but there does not appear to be any inconsistency with the Rules definition.

ANALYSIS:

The Authority agrees with the comment.

RESPONSE:

No change resulted from this comment.

COMMENT:

The word "which" on page 14, line 12, should apparently be deleted.

ANALYSIS:

The Authority believes that the comment is misdirected and may apply to some other portion of the Rules. The Authority is unable to respond to the comment.

RESPONSE:

No change resulted from this comment.

R12-14-201.

COMMENT:

Occasionally Districts such as ED-8 have purchased supplemental power through the Authority. These Districts seek these supplemental power supplies and with the assistance of the Authority, the Authority purchases this power for resale to particular Districts. These transactions generally require a short fuse. After the District assists the Authority in locating the power supply, the contracts must be executed between the third party supplier and the Authority and the Authority and the District within a short time frame. We suggest the following subsection (K) be added at the end of R12-14-201:

"K. A qualified entity may identify a supply of power which is not presently subject to the jurisdiction of the Authority, by giving written notice thereof to the Authority. The Authority may contract to purchase that power and resell that power to the qualified entity which identified the supply of power, under the terms and conditions agreed upon among the Authority, the supplier of the power, and the qualified entity which identified the supply of power and Articles 2, 3 and 4 of these Rules shall not apply to that transaction."

ANALYSIS:

The Authority believes that under the provisions of the Arizona Power Authority Act it has the ability to enter into transactions such as are described in the Comment. The Rules are not intended to restrict the broad legislative grant of powers to the Authority. A.R.S. § 30-121(E) grants broad powers to the Authority for the purchase, transmission or delivery for the State or any person or operating unit, power generated or produced from projects or works owned or operated by the United States or any agency thereof or any State, person or operating unit.

See, also, the Authority's Response to ED-8's Comment on R12-14-404, infra.

RESPONSE:

No change resulted from this comment.

R-12-14-201(H).

COMMENT:

Existing contracts with the Authority's customers should be considered in the allocation and sale of additional power. For this reason, we suggest that the following insert be considered in making these allocative decisions:

"In the allocation or reallocation of Long-Term Power, consideration shall be given first to the contractual obligations of the Authority and the purchaser; second, to the financial interests and obligations of the Authority; third, to the needs and interests of the consumers of the purchaser; and fourth, the needs and interests of purchasers and prospective purchasers".

ANALYSIS:

R12-14-201(I) spells out the priorities which the Authority believes are appropriate in dealing with allocation or reallocation of Long-Term Power as modified by R12-14-201(K). Because the Arizona Power Authority has a substantial and ongoing commitment to its bond holders, the fiscal soundness of the Authority is, in the Authority's view, of primary importance in the marketing of Long-Term Power. The needs and interests of the Authority's purchasers, customers of purchasers and prospective purchasers are second only to the need to protect the Authority's financial interests (See subsection (I) of this Rule.) The Authority believes that the provisions of these two subsections of Rule R12-14-201 provide the necessary parameters under which the Authority would consider the allocation or reallocation of Long-Term Power and that additional language is neither necessary nor appropriate.

RESPONSE:

No change resulted from this comment.



R12-14-201(J).

COMMENT:

"Federal Power" is used as a defined term on Page 13, Lines 3 and 4 in R12-14-201(J). Neither these nor Title 30 or 45 contain a definition of this term.

ANALYSIS:

The reference contained in the comment is apparently in error and the Authority cannot respond in any meaningful way.

RESPONSE:

No change resulted from this comment.

R12-14-401.

COMMENT:

The recapture of excess power not used for three consecutive contract years should be mandatory rather than discretionary with the Authority. Our second point is that the Authority should look back to see if excess power had been made available by the customer rather than speculate solely on future needs and uncertain conditions. Furthermore, other qualified entities which may benefit from the recapture should be given notice of the hearing and an opportunity to present evidence. These suggestions are proposed as follows:

"D. Subject to the terms of the purchaser's power sales contract, if, for any reason, all or a portion of power purchased from the Authority exceeds the purchaser's electric load for the period of three consecutive years, and the Authority has determined good cause does not exist for the non-use of said power, the authority ~~may~~ shall recapture all or a portion of the purchaser's Long-Term Power. The Authority shall give the purchaser and the qualified entities at least 30 days' notice of a hearing on the Authority's intention to recapture Long-Term Power. At such hearing the Authority shall determine if the purchaser's Long-Term Power can be reasonably expected to exceed, in whole or in part, the purchaser's future needs. Any portion or all of the purchaser's Long-Term Power which the Authority determines to be excess to the purchaser's needs or historic use may be recaptured by the Authority."

ANALYSIS:

The Authority disagrees that the recapture of excess power should be mandatory rather than discretionary with the Authority. Further, the other amendments suggested by ED-8 are not acceptable from a policy standpoint and the suggested changes are so significant from a substantive standpoint as to possibly require a recommencement of the rule-making process. With particular reference to notice being provided to Qualified Entities in addition to the purchaser (in the event of an attempted recapture) the other notice provisions of the Administrative Procedure Act and of these Rules would result in ample public notice of any hearing held by the Authority with regard to an effort to recapture power from a purchaser.

RESPONSE:

No change resulted from the comment.

COMMENT:

During the settlement of the Hoover Power Allocations certain Districts which are not recipients of Central Arizona Project water were granted preferential status in the allocation of additional preference power. In order to make this condition clear, we offer the following recommended language for insertion at R12-14-201(L):

"The Authority shall give due consideration to the electrical needs of qualified Districts who do not receive (or are not eligible to receive) delivery of water from the Central Arizona Project in the allocation of power by the Authority."

ANALYSIS:

Although the Authority may, in its discretion, give consideration in the allocation or reallocation of Long-Term Power to whether or not a District or other entity is receiving or is eligible to receive Central Arizona Project water, the Authority does not believe that it is appropriate to make this a mandatory requirement. However, in the reallocation of excess Hoover Power, which is now being marketed under contracts which expire in 2017, the Authority intends to observe all applicable provisions of the final Hoover Power Marketing Plan dated June 7, 1985 (the "Red Book"). The conditions set forth in the Red Book, however, relate specifically to the reallocation of Hoover Power in 1985 and do not apply to any other Power which fall under the jurisdiction of the Authority nor, in fact, will the Red Book apply to an

allocation or reallocation of Hoover Power after the existing contracts expire in 2017. Further, the suggested language is of such a significant substantive change as to possibly require a recommencement of the rule-making process.

RESPONSE:

No change resulted from this comment.

R12-14-403.

COMMENT:

This Regulation proposes a review process in which the Authority will consider "if excessive charges or costs" might "defeat the purpose of passing on the greatest possible benefits of the Authority marketed power to the ultimate consumer."

In practice, how does the Authority intend to implement the "greatest possible benefits test"?

ANALYSIS:

The Authority believes that ED-8's comments may have been directed to an earlier draft of the Rules. The Authority cannot identify the section of the Rules to which this comment relates and is therefore unable to respond to the comment.

RESPONSE:

No change resulted from this comment.

R12-14-404.

COMMENT:

"Short-Term Power" is a definition created to embody all non-Long-Term Power; that is "any supply of power available by or through the Authority for a period of 366 consecutive days, or less". This term is used to describe what power a customer may request the Authority to purchase and deliver to that customer without the notice and reallocation process which is available to all customers.

Because ED-8 does not have an allocation of Hoover hydro-power sufficient to meet its entire load, it must seek supplemental power supplies. At times it may be less costly to contract for a supply for more than 366 days. If so, ED-8 should not have to incur the consulting and legal costs of pursuing a power resource and then have the Authority give notice and reallocate

that power to others.

In brief, the number of days should have no application as to how "Short-Term Power" is handled under R12-14-404.

ANALYSIS:

As mentioned in response to a comment concerning R12-14-201, the Authority has broad legislative discretion in arranging for and contracting with customers for a supply of power, both Long-Term and Short-Term. The Authority does not believe the sources of supply which are mentioned in the comment (a power resource which is, in effect, arranged by ED-8 and only marketed through the Arizona Power Authority as a matter of convenience) do not necessarily fall within the definition of either "Long-Term Power" or "Short-Term Power" as envisioned by the Rules. In the ED-8 example, the Authority does not believe that such a power resource would be either subject to the jurisdiction of the Authority or subject to its disposition. Rather, the ED-8 transaction is one of convenience and the power resource really never becomes a power resource requiring adherence to the allocation process normally applicable to Long-Term Power, even if the term of the contract exceeds 366 days.

RESPONSE:

No change resulted from this comment.

R12-14-601(C).

COMMENT:

The Arizona Administrative Procedure Act (A.R.S. § 41-1001, et seq.) applies to all hearings and rehearings under these Rules. If the Arizona Rules of Civil Procedure apply to proceedings before the Authority, will the Rules embody the recently-adopted Zlaket Rules of Procedure?

ANALYSIS:

Having adopted the provisions of the Arizona Administrative Procedure Act and, in particular, the provisions of Article 6 of that Act dealing with adjudicative proceedings, contested cases, hearings, evidence, etc. the Authority does not believe there is any reason for these Rules to depart substantially from any of the provisions of the Administrative Procedure Act unless, of course, there is a provision of the Arizona Power Authority Act which requires a procedural distinction.

The Authority believes that it is not appropriate in these Rules to decide whether the Zlaket Rules will or will not apply in terms of the Administrative Procedure Act. Presumably, a court will resolve the problem, if it exists. The Authority believes that a speedy and inexpensive procedure will benefit its customers and the public. Therefore, the Authority (unless required by statute or court decision) does not intend to adopt nor require the application of the Zlaket Rules to matters pending before the Authority.

RESPONSE:

No change resulted from this comment.

R12-14-603.

COMMENT:

We recommend a rule similar to Rule 6, Arizona Rules of Civil Procedure (computation of time) be adopted by the Authority and included under R12-14-603.

ANALYSIS:

A.R.S. § 1-243 provides as follows:  
"§ 1-243. Computation of time

A. Except as provided in subsection B, the time in which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a holiday, and then it is also excluded.

B. In cases in which notice of a decision by the state, any agency thereof or any political subdivision must be given to a petitioner and in which the petitioner must file a notice of appeal of such decision within a time certain of less than ten days, such time shall be computed starting with the day after the day during which the notice of decision is received by the petitioner by personal service or registered or certified mail."

The Authority believes this statute provides adequate guidelines to the public and to its customers.

RESPONSE:

No change resulted from this comment.

WRITTEN COMMENTS OF CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT

R12-14-202(A)(5).

COMMENT:

The words "or use" should be inserted after the word "sales" in line 16.

ANALYSIS:

Based upon earlier comments from other customers, this change appeared appropriate and was included as one of the items contained in the Errata Sheet.

RESPONSE:

The Rule was modified substantially as requested.

R12-14-602(C) and (G).

COMMENT:

The time periods for filing and service of answering pleadings are unduly short in the event one is served by mail.

ANALYSIS:

This comment is similar to that submitted by other customers of the Authority. The comment is well taken.

RESPONSE:

The Rule was modified to allow additional time for response in the event of service by mail. The additional language tracks the language of Rule 6(E) of the Arizona Rules of Civil Procedure relating to this topic. Rule R12-14-602(G) was revised as follows:

G. Pleadings or other documents permitted or required to be filed with the Authority may be transmitted by mail, personal service or other method which shall assure delivery, but all such pleadings and documents must be actually received for filing on or before 5:00 p.m. of the last day prescribed for such filing. ~~Ne additional time shall be allowed if pleadings, motions or other documents are served or filed by mail.~~ Whenever a Party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him

by mail, five days shall be added to the prescribed period.

Central Arizona Water Conservation District also suggested certain changes which were previously reflected in the Errata Sheet provided prior to the adoption of the Rules.

#### ORAL COMMENTS

At the public comment meeting held at the offices of the Authority on September 8, 1992 at 2:00 p.m. representatives of the Irrigation and Electrical Districts Association of Arizona (IEDA), Electrical District No. 8 (ED-8) and the Central Arizona Water Conservation District presented oral comments which the Authority believes were, either in whole or in part, covered by the written comments submitted by those entities. The Authority's previous analyses and responses are believed to be an adequate response to the oral comments.

Additional oral comments were submitted by a representative of McMullen Valley Water Conservation and Drainage District, Aguila Irrigation District, Harquahala Power District, Tonopah Irrigation District and the City of Safford. These oral comments echoed some of the written comments submitted by IEDA and ED-8. The Authority's analyses and responses to the written comments of those entities are believed to be an adequate response to the oral comments submitted by McMullen Valley, et al.

END OF STATEMENT